

DASHAPUB03431
02/08/2018

DASHA
pp 03431-03475

PUBLIC
HEARING

COPYRIGHT

INDEPENDENT COMMISSION AGAINST CORRUPTION

PATRICIA McDONALD SC
COMMISSIONER

PUBLIC HEARING

OPERATION DASHA

Reference: Operation E15/0078

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY 2 AUGUST, 2018

AT 9.30AM

Any person who publishes any part of this transcript in any way and to any person contrary to a Commission direction against publication commits an offence against section 112(2) of the Independent Commission Against Corruption Act 1988.

This transcript has been prepared in accordance with conventions used in the Supreme Court.

MR PARARAJASINGHAM: Commissioner.

THE COMMISSIONER: Yes.

MR PARARAJASINGHAM: Mr Stavis is here today and he's agreed to resume his evidence. The only thing I'd ask, Commissioner, is whilst he has recovered it might be the case that on occasion Mr Stavis might need a short break. That will be a matter for him, but I just raise that if, Commissioner, that was something that you'd be open to.

10

THE COMMISSIONER: Yes, that's fine. Now, Mr Stavis. Now, you're feeling better?

MR STAVIS: I am better than I was.

THE COMMISSIONER: Now, as Mr Pararajasingham has said, if at any time you need a break, just signal either to me or to your counsel or whoever's asking you questions, and we'll take a break.

20 MR STAVIS: Okay. Thank you.

THE COMMISSIONER: And we'll re-swear.

THE COMMISSIONER: Thanks, Mr Stavis.

MR BUCHANAN: Commissioner. Mr Stavis, last Thursday, 26 July, you told us that Nick Katris spoke with you about the director of planning position before you lodged your application. Do you recall giving that evidence?---Yes.

10

Did anyone else speak with you about the position before you lodged your application?---Quite possibly. I don't recall but it is possible, yes.

And what is it that you have in your memory that makes you give that answer rather than "I don't think so" or - - -?---Only because I'm not sure, to be honest with you, and I don't want to give any false evidence.

Can I just ask you to keep your voice up if you can, sorry.---Yeah, sorry. Sorry.

20

Can I approach it another way?---Sure.

Who, as you recall it now, were the first three people to talk to you about the position? You don't have to get them in order, in sequence, but just the first three people.---Okay. So it was definitely Nick Katris. George Vasil. I'm just trying to think. Obviously Mr Khouri, Bechara Khouri. Yeah.

Did you speak with anyone else about the position before you lodged your application, apart from those three?---Um - - -

30

No, I withdraw that question. Sorry, that's a misleading question. I'll frame it a different way. Did you speak with anyone apart from Nick Katris about the position before you lodged your application?---Apart from Nick Katris, well, other than the two gentlemen that I mentioned, I don't believe so, but I can't be a hundred per cent certain.

Now, there are two pieces of evidence that you gave last Thursday that I'd just like to take you to before asking you a question. ---Sure.

40

One was transcript page 3304. "I remember the first contact I had with Mr Montague was, and I'm, it was in relation to meeting with me but I don't recall him leaving an actual message." And the second piece of evidence that I'd like to take you to is transcript page 3332. When I showed you the entry, and perhaps if the witness can now be shown Exhibit 60, please, page 1, this is the call charge records that I showed you last Thursday. When I showed you the entry for 12 – if we could go to page 5, please.---Yes.

And if we look at the entry for 12 November, 2014 at 7.30pm, Mr Montague calling you and the line being open for 34 seconds. I was showing you that entry last Thursday. The cursor is against it on the screen at the moment.
---Yep.

10 You said that you couldn't be 100 per cent sure that that was the first contact you had had with Jim Montague, plainly about the director's position. Thinking back now, did you have a contact with Mr Montague about the position before 12 November, 2014?---Look, it is possible but I, I really can't say with any certainty.

Do you know how Mr Montague got your mobile telephone number for that call?---No, I don't, I don't know with any certainty but I assume he got it from somewhere obviously, but - - -

From the contact that you had previously had with Mr Khouri would it have surprised you if Mr Montague had got your number from Mr Khouri?---No.

20 Can I ask you whether you had a meeting or meetings with Mr Montague before you lodged your application dated 25 October, 2014?---I can't say with any certainty whether I did, to be honest with you. There were, as I said in my previous evidence, there were a number of meetings that I had with him at that café in Kingsgrove but as to the timeline, whether that was before I'd lodged my application, I can't be certain.

30 Excuse me a moment, Commissioner. Commissioner, I apply for a variation of a section 112 order made on 1 December, 2016 in respect of evidence given by this witness recorded in transcript page 554, line 8 through to page 555, line 4. 6, line 6.

THE COMMISSIONER: Excuse me for a minute. I vary the non-publication order made on 1 December, 2016 in respect of the evidence of this witness commencing at page 554, line 8, and finishing at page 555, line 6 of the transcript.

40 **VARIATION OF SUPPRESSION ORDER: I VARY THE NON-PUBLICATION ORDER MADE ON 1 DECEMBER, 2016 IN RESPECT OF THE EVIDENCE OF THIS WITNESS COMMENCING AT PAGE 554, LINE 8, AND FINISHING AT PAGE 555, LINE 6 OF THE TRANSCRIPT.**

MR BUCHANAN: Mr Stavis, what I'd like to do is read from an extract of transcript of evidence that you gave on 1 December, 2016, and if you could listen to what I read out and then I'd like to ask you a couple of questions about it, please. Question, "Yeah, I can repeat the question. After that conversation with Mr Vasil and Mr Khouri, what happened? What were the

next steps in relation to your recruitment for the position of director of city planning?" Answer, "Okay, what happened, okay, okay. I believe I met Jim Montague a number of times." Question, "Had you lodged your application for the position by this time?" Answer, "No, no." Question, "Okay." Answer, "No." Question, "Where did you meet Mr Montague?" Answer, "We met at a local coffee shop near my place. It was called George's at the time but it's changed its name. It's in Kingsgrove." Question, "And how many times did you meet Mr Montague?" Answer, "I can't recall but it was a lot." Question, "How did he first get in contact with you or you first get in contact with him?" Answer, "No, he rang me." 10 Question, "He rang you?" Answer, "Yes." Question, "On your mobile telephone number?" Answer, "Yes." Question, "Do you know how he got your number?" Answer, "No." Question, "And what did Mr Montague say to you in that conversation?" Answer, "Again it was, I distinctly remember him asking me why do I want to apply for the position, right?" Question, "Had you indicated your interest in the position at that time?" Answer, "To Jim?" Question, "Yes." Answer, "Yes." Question, "Okay." Answer, "Yes, I did." Question, "In what way had you done that?" Answer, "We 20 met and he said, you know, 'I hear that you're interested in the position.'" Question, "Okay." Answer, "Yeah." Question, "Did he tell you how he heard that?" Answer, "No, no." Question, "So going back to your first telephone conversation with Mr Montague, what did he say to you?" Answer, "Something along the lines of 'Hi, Spiro. This is Jim Montague, general manager at Canterbury Council. Let's catch up for a coffee.'" Question, "Okay." Answer, "Something like that." Now, Mr Stavis, I'm not asking you to tell us today something because you know that you said that previously. Do you understand?---Yeah.

30 It's really important that you understand that.---Sure.

All I'm doing is saying that is what you said on 1 December, 2016.
---Sure.

So accept that.---Yeah.

And obviously 1 December, 2016 was closer in time - - -?---Sure.

- - - to the events in 2014 that you've been talking about than today is.
---Sure.

40 And so normally, logically your memory might have been fresher then of the events you were trying to describe in 2016 as having occurred in 2014.
---Sure.

But there's two aspects to that evidence that I'd just like to take you to, one is that you said you met Mr Montague a number of times and had not lodged your application for the position by that time. That's the first thing. The second thing though is the answer you gave to a question, "In what way had

you indicated your interest in the position at the time?” And you said, “We met and he said, you know, ‘I hear that you’re interested in the position.’” That answer by you in 2016 suggests that you had a memory of Mr Montague saying something that indicated he had been told that you had applied or were interested in the position, not that you had actually lodged an application. Do you understand?---I do, yes.

10 So now that I’ve provided you with a recitation of the evidence you gave on that subject in December 2016, what do you think now as to whether you had had any meeting with Mr Montague about the position before you applied for it on 25 October, 2014?---I think that’s more likely, yes, that I feel that obviously the evidence that I gave back then was fresher in my mind and I see no reason why that would be false.

Well, it’s not falsity that I’m asking you about.---Sure.

It’s simply correctness.---Yes.

You understand?---Yeah.

20

No suggestion that you were making things up on this subject.---Sure, sure.

It’s just simply we’re just trying to work out what is reliable in terms of evidence. Okay.---Yep. I - - -

Do you think as you sit there now today, that Mr Montague said to you when you met on an occasion, “I hear that you’re interested in the position?”---Yes.

30 And so at the time you sat down on Saturday, 25 October, 2014 to write your application or finish off your application, whichever it was, just thinking about that moment when you’re preparing what you’re writing, had you already spoken with Mr Montague? I’m just trying to approach it from a different angle.---Yeah, sure. I think that’s likely, yes, yes.

How many times did you meet Mr Montague at Giorgios in Kingsgrove?
---I, I believe it was in the vicinity of about four to six times, thereabouts.

40 Were all of them in relation to you applying for the job or were any of them after you’d been appointed or started work?---No, I believe it was all around that time when I was applying for the position, it wasn’t after I had started.

Were any of those meetings at a time when the offer of employment had been withdrawn?---No.

I just want to put to you a proposition.---Sure.

I'm not trying to suggest you're giving false evidence or anything like that. I just want to test what you're saying.---Yeah, yeah.

Four to six meetings sounds like a lot of meetings with the general manager when he is assessing who to select for appointment. What do you say to that?---Look, it's probably closer to four rather than six, I'd say, but there were, we had, you know, I recall because we, you know, we were talking and meeting quite regularly prior to the withdrawal. You know, if it's not
10 how many.

Well, in that case are you saying no less than three?---I think that's fair, yeah.

And I just want to be absolutely certain we understand what you're saying. ---Sure.

Were any of those meetings between the time that Mr Montague offered you the job and the time that, as you understood it, he withdrew the offer?---I
20 don't believe so as I stand here today.

Now, can I take you to the content of discussions with Mr Montague at those meetings. Was anything said to you by Mr Montague about the role of the director being volatile?---Yes.

What was said on that subject?---That because of what happened to the previous director the role had become quite a challenging role, I guess, in the sense that there were expectations from certain councillors and that there were real issues with trying to, I guess, bring the department, reform the
30 department in the sense of improving processing times and the like.

So did Mr Montague use the word "volatile" in describing the role?---I believe so, yes.

And was there anything else he said that explained to you why in his opinion the role was volatile?---Because of certain councillors.

When was it that Mr Montague first mentioned to you the name of Michael Hawatt or Pierre Azzi?---Very early in our meetings.
40

These meetings or subsequent meetings?---No, these meetings, yeah. Those early, early meetings.

He did actually identify the councillors he was referring to?---Yeah.

Did he refer to any other councillors during those meetings?---I don't believe so, no.

Was there anything that Mr Montague said in these meetings on the subject of finding solutions to problems more so than Marcelo had?---Yeah.

What was said on that subject?---Yeah, it was a case where he said to me that obviously he expressed that the position that whoever was successful had to be loyal to him as well, but that because of all the problems that were previously experienced by the former director – in the sense that not getting things done and finding solutions to development applications and the like – he was looking for a solutions kind of guy.

10

And you indicated I think previously that you had very clearly indicated to Mr Montague in these meetings that that was what you considered you were.---Correct.

Can I ask you now about interactions with Mr Montague after you started work in March 2015.---Yep. Um - - -

No, no, sorry, I'll ask you, I'm just indicating I'm changing the subject. ---Sorry.

20

Was there anything Mr Montague said to you which indicated to you what you should do if a councillor asked you to do something?---Yeah.

What was said on that subject?---It was clearly pointed out to me that, and in the presence of other directors as well, that we, whenever there were councillor requests that we had to prioritise those requests.

When you say there were other councillors there as well, you can recall a specific occasion, can you?

30

MR ANDRONOS: Objection, Commissioner, that wasn't his evidence.

MR PARARAJASINGHAM: He said other directors.

MR BUCHANAN: I do apologise.

MR PARARAJASINGHAM: He said other directors.

MR BUCHANAN: Other directors present.---Directors, yeah.

40

Sorry. Thank you. You can recall a specific occasion, can you?---Not the exact date but it was in one of those executive meetings that we used, we used to have quite regularly where Mr Montague expressed, you know, obviously his expectation about how we should treat councillors and that we should treat their requests with a sense of urgency, yeah.

Commissioner, can I make another application to vary a section 112 order.

Page 577 of transcript of evidence given by the witness on 1 December, 2016, commencing at page 577, line 20 and concluding on page 578, line 16.

THE COMMISSIONER: I vary the non-publication order made on 1 December, 2016 to exclude the evidence of the witness recorded on the transcript commencing at page 577, line 20 and finishing on page 578, line 16.

10

VARIATION OF SUPPRESSION ORDER: I VARY THE NON-PUBLICATION ORDER MADE ON 1 DECEMBER, 2016 TO EXCLUDE THE EVIDENCE OF THE WITNESS RECORDED ON THE TRANSCRIPT COMMENCING AT PAGE 577, LINE 20 AND FINISHING ON PAGE 578, LINE 16.

20

MR BUCHANAN: Mr Stavis, I'll read to you from transcript of evidence that you gave on 1 December, 2016 to the Commission and if you could listen to - - -?---Sure.

30

- - - what I read to you and then I will ask you a couple of questions. Question, "And you say aggressive. What sort of conduct did Mr Azzi engage in that made you think it was aggressive?" Answer, "He was swearing." Question, "He was swearing at you?" Answer, "Yeah." Question, "Did he raise his voice?" Answer, "Yeah. Oh, yeah." Question, "And what words did he use?" Answer, "Rude words. I don't remember exactly but it was very aggressive, yeah, yeah." Question, "What did he want you to do in relation to that proposal?" Answer, "Oh, he just said I needed to fix it." Question, "What did you understand by fix it?" Answer, "Well, it was in relation to a condition that required a setback along the rear boundary of this particular application, which ultimately potentially would have resulted in a loss of yield, so he made it clear to me that, you know, I needed to fix it, whatever, you know, but he didn't go into specifics." Question, "Okay. And you said you understood his words that you would go the way of the former planning director to be a threat to your job. Do you think that Mr Azzi was capable of carrying out that threat?" Answer, "Oh, yeah. Yeah. At that point in time I was. You could, it was clear. Well, I'll make it easy. Jim Montague had us in. We had regular meetings, internal meetings with the directors, and there was an occasion when Pierre Azzi was giving Andy Sammut, who is a, was a director there as well." Question, "Do you mind spelling his name just for the transcript?" "Yeah, I think it's S-a-m-m-u-t." Question, "Thank you." Answer, "And Andy was, I don't know, I don't know the specifics of it, but Andy, basically Andy wasn't doing what Pierre wanted, and Jim Montague made it clear at that meeting, he said, 'Whatever these guys want, you give them.' He said that." Question, "And did he tell you what would happen if you didn't give them what they wanted?" Answer, "No, but you can, it was inferred that, you

40

know, these guys had the power, I guess, to make our life hell.” Question, “They had the power to get rid of you?” Answer, “Yeah, that’s what I took out of it anyway.” Question, “It’s the general manager’s role to appoint staff at council.” Answer, “Correct.” Question, “Is that right?” Answer, “Correct.” Now, you heard me read that extract of transcript of evidence you gave on 1 December, 2016. Can I, at the risk of repetition, provide the same caveat. I am not asking you to here change or add to or vary the evidence you have given today just because you have heard me read out an extract of evidence that you gave on a previous occasion. What I’m asking you to do is reflect upon the evidence you gave on the previous occasion that I’ve read out to you, and can I ask you, do you have a recollection, as you sit here today, of a meeting with other directors and the context being that Andy Sammut wasn’t doing what Pierre Azzi wanted and Jim Montague said at the meeting, “Whatever these guys want, you give them”?---Yes.

Can you give us a little bit more detail, please?---Sure. Look, that was one of a number of meetings that had that sort of flavour, I guess. That particular occasion, I, I don't recall exactly what the issue was, but it was clear that Andy was, Andy Sammut wasn't, I guess, providing a service that Mr Azzi was expecting, and I recall Jim Montague saying, look, Andy, you know, you, you, you really, pretty much pull your finger out and just make this, fix this, basically. So I do recall that, that particular conversation in that meeting.

There’s a difference between Mr Montague saying, in effect, “Respond to councillors’ requests quickly or in a timely fashion,” on the one hand, and Mr Montague saying, “Whatever these guys want, you give them” or “Whatever the issue is you fix it.” Do you see what I’m - - -?---Yes.

How would you respond to that?---The latter.

It was the latter that was the effect of the words that Mr Montague said? ---Yes. Correct.

Now, I just want to take the phrase that you used when giving evidence on 1 December, 2016, I suggest by way of commentary, “These guys had the power I guess to make our life hell.” Did councillors have the power to make your life hell while you were at Canterbury City Council?---I, I think certain councillors, yes, indirectly I guess through the general manager and as I said in my previous evidence, it was clear history would suggest that they did with the former director of planning, yeah.

Did Mr Azzi or Mr Hawatt make your life hell while you were at Canterbury Council?---On occasions, yes, yes.

Is there any particular occasion that you can recall, apart from the telephone call from Mr Azzi late at night - - -?---Sure.

- - - about 212 Canterbury Road, so bring that aside, was there any other particular occasion that you can recall when Mr Azzi made your life hell?
---Not, not that I can recall, sorry.

Was there any particular occasions as you sit there now that you can recall that Mr Hawatt made your life hell?---As I said before in my previous evidence, I think Mr Hawatt was a little bit more subtle in his approach, but I can't recall a specific matter I guess.

10

When you say Mr Hawatt was a bit more subtle in his approach, what do you mean subtle?---Look, I think it's fair to categorise him as being a bit more passive in his approach, in his interaction with staff, although having said that, there were occasions where, you know, he would get heated, whereas Mr Azzi was renowned for being more aggressive in his attitude I guess, in his communication.

20

And despite being a bit more passive in his approach, was Mr Hawatt effective in getting you to do what he wanted you to do?---Effective in the sense that he actually had a better understanding of planning than - - -

Better than Mr Azzi?---Than Mr Azzi for example.

Yes.---And, you know, with all his faults he actually did take advice in situations where, you know, I felt that, you know, things were being asked were unreasonable in planning terms, yeah.

30

In a planning sense you had to answer of course to more than just the general manager and council in a way, didn't you, because there were formal processes whereby decisions could be reviewed and/or challenged, including in the courts?---Correct.

And you knew much more about planning than either Mr Hawatt or Mr Azzi?---I think that's fair, yes.

And although Mr Montague had been around for a long time and took an interest in planning issues, you knew more about planning than he did.
---I think that's fair, yes.

40

Now, can I ask you a different question. Did Mr Montague ever give you an indication as to whether in a particular circumstance you should favour the applicant, the development proponent?---There was one occasion that I recall where again in the presence – at these executive meetings that we had – in the presence of other directors as well, basically he said, look, if it's a 50/50 proposition, go in favour of the applicant.

Now I'd like to take you to some specific properties if I could, please, and your involvement or knowledge in respect of them, and the first one is 51

Penshurst Road, Roselands. If the witness could be provided with volume 7 in Exhibit 52, please. And if you could turn to page 1 in that volume, you'll see the first page of a development application in respect of 51 Penshurst Road, Roselands. You can see that the applicant is a Talal El Badar. And if you turn over the page you can see that it's a demolition and construction of 12 townhouses (two 2-bedroom, three 3-bedroom, seven 4-bedroom units) with one level of basement car parking.---Yes.

10 Can I take you, please, to page 15. Even before I do that, can I just ask you, do you have a memory, is that enough for me to put before you to ask you this question and for you to be able to answer it – do you have a memory of having dealings with Mr Hawatt in relation to this property?---No, not this property, yeah.

So if I can take you then to some documents. Could I take you to page 15 in volume 7. This is a copy of an email exchange. The first email is on 11 May, 2015 from Mr Hawatt's email address. You recognise that, I take it. ---Yes.

20 And, "Hi, Spiro. The owners of the above property have been waiting for over one month for the engineers' stormwater response and the DA with council for 12 weeks. Can you have a look and find out why the delays? Thanks, Councillor Michael Hawatt." And you forwarded that to George Gouvatsos asking for what the story was. Do you see that?---Yes. Yes.

If I can ask you then to go to page 21. This was, together with some other documents – I'll take you to them. If you could also go to page 23, which goes through to page 53. This is an officers' report to the City Development Committee meeting of 11 June, 2015 in respect of that property, and you can see that there's a recommendation that the application be approved as a deferred commencement due to outstanding engineering issues subject to conditions. This is in the summary. And if I could take you to page 33, the recommendation appears there for a deferred commencement consent, and then the conditions are set out against the letter, capital A. And can you see that the first condition is "The site drainage should be designed to drain under gravity. As the site falls to the rear, an easement for drainage over downstream properties will be required to be created. Satisfactory written documentation, the creation of an easement or of a legal agreement to create an easement shall be submitted to council." Do you see that?---Yes.

40 Can I take you then, please, to page 66 in this volume, and this is a one-page letter to council from Mr El Badar dated 28 July, 2015, indicating that he was unable to obtain the downstream owner's consent for the easement and asking that in lieu of the easement, "Council allow us to incorporate a combination of pump-out and charged system for the entire site." Do you see that?---Yes.

Taking you then to page 70, this is a communication from Mr Hawatt, I think it's actually an SMS, but we can, yes, if we go to page 153, this is a schedule of texts extracted from Mr Hawatt's telephone in relation to this property and text number 3 you can see in the third column from the right is to you and it's dated the fourth column from the right, 3 August, 2015, sent at 11.20am, and the message, second column from – I've said right all the time, haven't I, I meant left. The message second from the right is, "Hi, Spiro. 51 Penshurst Road, Roselands, re stormwater pump-out connection, can you see how to help?"---Yes.

10

"Thanks, Michael Hawatt." Going back to page 70, you responded to that text by an email on 4 August at 6.22pm, copying in George Gouvatsos, Paul Richardson and Jim Montague. "Dear Michael. I refer to your inquiry about the subject stormwater plans and advise as follows. Following the issue of a deferred commencement consent we received stormwater plans for this DA on Thursday and they've been referred to our development engineer to review and advise the applicant as to whether they address the terms of the deferred commencement consent. I have asked the development engineer to prioritise this assessment. I trust this addresses your inquiry." Mr Richardson was your development engineer?---Sorry, can you show me the - - -

20

Sorry, page 70.---Yeah, I'm on page 70, yeah. Oh, okay, sorry.

I apologise, I should have indicated where on the page.---That's okay.

So it's about a third of the way down.---Yep, no, no, I've read it now, thank you.

30

And you see that you sent it to, amongst other people, Mr Richardson. He was the development engineer, is that right?---Yeah, he was, to the best of my recollection he was consultant engineer that we, that we had hired to try and alleviate some of the backlog in terms of the referrals, yes.

And George Gouvatsos, he was your manager - - -?---Yeah.

- - - for development assessment?---Correct.

40

So that explains why he was copied in. Why was Jim Montague copied in? ---Ordinarily if, the practice was that any communications with councillors, Mr Montague would be generally cc'd in on.

But that wasn't a practice you followed all the time, was it?---I can't say that I followed it all the time but I felt that, I believe I did the majority of the time.

Okay.---Yeah.

Why did you cc in? I understand it was a communication with a councillor, but had you been asked or did you decide off your own bat, why did you copy in Mr Montague?---Only for the reason I gave before.

Yes.---There wasn't any, from what I recall there wasn't any sort of, I'm just trying to think whether there was any communication from Jim to me.

Yeah.---But I can't recall if there was, I'm sorry.

10 And if we go to page 6 – I'm sorry, no. If I take you to page 71. The same day, bottom of the page. Mr Richardson gave you an explanation as to where things were at in relation to the application. That is to say there's no evidence of an ability to obtain an easement, and the condition was to provide drainage by gravity to an easement, and furthermore that was the condition that the applicant's architect did actually ask for. Do you see that communication?---Yes.

And you subsequently received a section 96 application to modify the consent to substitute for the requirement that it drain by gravity over
20 easements with a stormwater pump-out system, is that right?---I believe so, yes.

Can I take you to page 81 and page 82. Is that that application?---Yes.

Now, is this matter coming back to you now, coming back to memory?
---Only in the sense that, yes, I guess a little bit, yes.

Is it coming back to you as one involving intervention by Mr Hawatt?
---Yes.

30 And what is your memory – I'm not trying to trap you with other documents – but what is your memory, now that I've taken you through this much, of Mr Hawatt's involvement in this matter?---He obviously communicated that there was, he wanted me to look into this issue, and I'm just trying to think whether it was this application that he actually revealed that the applicant was in fact a relative of some sort. I can't be certain of that, to be perfectly honest with you. And, yeah, so it was just a typical sort of an inquiry. I took it as any other inquiry that Mr Hawatt was putting forward to us.

40 So now that you can see the name of the applicant, Talal El Badar, you have a memory, do you, that on this or another application you learned that Mr El Badar was a relative of Mr Hawatt's?---Correct.

And what's your memory, as you sit here now, of how you learned that?---I actually believe it was Mr Hawatt who told me.

Did he indicate the nature of the relationship?---Yes. I believe he said his son-in-law, from memory, yeah.

Can I take you, please, to page 153 again and another text, this time item 4, the left-hand column, from Mr Hawatt to you on 31 August, 2015, at 4.24pm, “Hi, Spiro. Re 51 Penshurst Road, Roselands. Section 96 was submitted last Thursday re stormwater access using pump-out system. The applicant have tried on a number of occasions to get access through his neighbours’ properties but to no avail. Even with good offers, no-one is willing to accept. The applicant is avoiding going to court. How can we help him re his proposal? Thanks, Michael Hawatt.” Taken with the earlier
10 text that you’d received from Mr Hawatt, by this stage, 31 August, 2015, and Mr Hawatt using the language, “How can we,” first person plural, “Help him with his proposal,” did you see this as a request from Mr Hawatt that you assist in providing a solution for this applicant?---I think that’s fair comment, yes.

And did you come up with a solution? I’ll be taking you to documents, but do you have a memory as you sit there now?---Not that I can recall, sorry.

Page 153 again, item 8 on that schedule, a text to you on 28 September,
20 2015 at 3.59pm from Mr Hawatt which read, “Any news re stormwater for 51 Penshurst Road, Roselands?” So you’re starting to get a fairly regular stream of requests from Mr Hawatt in relation to this matter. Would that be fair to say?---Yes.

When you – I withdraw that. I’d assume you received requests from other councillors?---Yes.

Leave aside Councillor Azzi for the moment, just think of councillors other than Michael Hawatt or Mr Azzi, you received requests from other
30 councillors to look into matters that you had files for in your division - - -? ---Yes.

- - - from time to time, did you?---Yes.

But you indicated the last time that you gave evidence that Mr Hawatt was far and away the most prolific in making these requests. Is that right?
---That’s correct.

Did other councillors ask you to provide solutions for applicants?---Yes,
40 absolutely. Just thinking, the only other two councillors I guess that would fall sort of after in terms of quantity of requests would fall after Mr Hawatt and Pierre Azzi would have been Fadwa Kebbe and to a lesser extent, Councillor Vasiliades, yeah.

And I just want to try and draw a distinction if I can, you tell me if this is not legitimate, between on the one hand councillor requests as to where things are at and on the other hand, a councillor request to actually provide a solution for a problem that the applicant had.---Oh, a bit of both actually.

In the case of both Councillor Kebbe and Vasiliades?---Yes.

Thank you. Now, Councillor Azzi, he didn't make anything like as many requests of you as Councillor Hawatt of this kind that we've seen here. Is that right?---Yes.

10 I'm not talking about phone calls saying fix it, I'm just talking about communications of any sort of frequency - - -?---Yes.

- - - asking you to report on where things are at for a particular matter or find a solution for a particular matter. Is that right?---Yes, he wasn't as prolific, no.

And in what way did Councillor Azzi communicate his requests?---The majority of the times were by way of telephone calls.

20 You had a system at Canterbury Council, didn't you, that involved your PA logging exchanges by way of requests and response to requests from a councillor, is that right?---Yes.

And was there a name that was given to that system? It was an electronic system.---Yeah, look, my PA at the time had responsibility over the maintenance of that, maintaining that, but I think it was just a councillor requests. It was like a, not a Word/Excel spreadsheet but something similar, yeah.

And is that why so many of your emails cc'd her in?---Correct.

30 So that she could then log the communications in this spreadsheet?
---Correct.

And what was done with the spreadsheet as you understood it?---We reported on that spreadsheet, so we had - - -

To whom?---To the general manager. And I can't remember the actual, I guess, the frequency of that but it was generally, from memory, a quarterly, yeah.

40 Now if you could have a look, please, at page 125 of volume 7. It's very small print so we'll bring it up on the screen for you.---Sure.

And you see it's on council letterhead, and it appears to be a spreadsheet and it's headed ECM Tasks Report (Previous Quarter Report by Councillor). And in the second column from the left, Eva Rahme, R-a-h-m-e, is the actioning officer. She was your PA.---Correct.

And so is this an example, going over page 126 as well and indeed a number of subsequent pages, of such a report?---Correct.

If Ms Rahme – I'm sorry, and page 125 is indicative of the extent of Councillor Hawatt's requests as recorded because they're sorted by councillor.---That's correct.

However, Ms Rahme could only enter data of which she was provided with a record.---That's right.

10

And so if Councillor Azzi rang you, or for that matter any other councillor rang you, and you did not make a record that was then transmitted to Ms Rahme, then that communication wouldn't end up on this report.---Yes, that's correct.

20

And you didn't make a record of every or indeed many requests that you received by telephone, certainly from Councillor Azzi, did you?---I, it was my practice to, if I did have a request that I felt that needed to be followed up, then I would a lot of the times just SMS Eva or send her an email to that effect. Whether I captured everything, I probably didn't, no.

So when you received a request from Mr Hawatt by SMS and you replied by SMS, was that something that it was your practice to copy Ms Rahme in on?---Not necessarily copy her but copy the SMS text and send it via email normally.

30

But that of course would take, it might sound like only a little while but that would take a good, you know, 15 to 20 seconds out of your day and you had a lot of work to do, didn't you?---That's true.

And so you didn't always do that, did you?---No. Like I said before, I can't be absolutely 100 per cent sure that I always did it, no.

Well, no. Isn't it more accurate to say you know you didn't?---Yep.

40

In this spreadsheet was there anything to indicate the medium, that is to say the media, whether it was an email, whether it was an SMS, whether it was a face-to-face request, whether it was a telephone request?---I, I have no idea, to be honest with you.

THE COMMISSIONER: What's the reference to the column entitled Doc ID?---I'm not sure, yeah.

Was this really created by Mr Rahme?---This was, this system was before like, I inherited this system so I'd assume it was in play a long time before I started.

MR BUCHANAN: And in fairness, you didn't actually inherit it, it was there in place when you arrived and you yourself didn't directly input data into it.---No, that's correct, yes.

If we could go back to page 153 of volume 7, please. We looked at message number 8 in this table on 28 September, 2015 from Councillor Hawatt. "Any news re stormwater for 51 Penshurst Road, Roselands." Can I take you to message number 10 on this table to you from Councillor Hawatt on 27 October, 2015 at 8.55pm. "Hi, Spiro. Re 51 Penshurst Road, Roselands, all info requested was sent eight weeks ago and waiting. Any news? Michael." So that's another communication from Mr Hawatt - - -?---Yes.

- - - on the subject of 51 Penshurst Road.---Yes.

Can I take you please, to page 215 in volume 7. If you look on the second half of that page you can see that Vasili Conomos came into the picture. He was a solicitor from Conomos Legal acting for the applicant, as you understood it, now that you read this email dated 7 December, 2015 at 3.12pm?---That's correct, yes.

20 And you responded the same day at 4.28pm, "I have instructed my staff to finalise the report." Do you see that?---Yes.

Can I take you to page 217. That email from you to Mr Conomos you forwarded to Ms Eberhart on your staff and she responded the same day at 4.51pm, indicating that a draft report had been written for the DA and she was awaiting engineering comments, and then on 11 December, at 9.51pm, you wrote to Ms Eberhart and Millad Rouhani, Rouhana, R-o-u-h-a-n-a, who was an engineer, I think, on your staff.---Yeah.

30 Or a contract engineer.---Correct.

And you said to them, "Hi, guys. Has this DA been finalised? Super urgent."---Ah hmm. Yes.

40 Why did you use the words "super urgent" with three exclamation marks after it in that email?---To the best of my recollection that, there was a, despite all the resources that we were trying to bring on board from an engineering perspective, things were still being dragged along. From recollection there was an issue with advice that was given between the experts, so for the applicant and also from our representatives, and then considerable time delay for us as a council to respond. The other urgency about, around it was obviously that we had been told that any councillor request was considered a priority.

And so would it be fair to say that you wrote the words "super urgent" with three exclamation marks in part because of the communications you were receiving from Michael Hawatt about the matter?---Yes.

Did you have the view that, at the end of the day, if Michael Hawatt intervened with you in relation to a particular matter, then you would respond more quickly or see that the resources in your division were deployed more quickly to deal with the matter than would have been the case had Michael Hawatt not been communicating with you?---I think that's fair.

10 And would it be fair to say that the people on whose behalf Michael Hawatt intervened with you generally speaking got a faster and more favourable result than if Michael Hawatt had not communicated with you in respect of the matter?---Not always.

Sometimes?---Sometimes, yes.

And you were about to add to your answer when you said "not always".
---No, I was just going to say sometimes. You took the words out of my mouth, yeah, yeah.

20 And what you did when you received these types of communications was to communicate to your staff a need for urgency that might not have been communicated had Michael Hawatt not communicated with you.---That's fair.

Excuse me. Now, you told us that the communications about matters in your division were far more prolific when they came from Michael Hawatt than from any other councillor, but you did receive requests by other councillors to look into matters in your division. When you received those requests from other councillors, did the applicants in those matter receive a
30 faster and more favourable service than would have been the case had a councillor not intervened?---Yes.

Can I take you to a different property, 23 Willeroo Street, Lakemba, and this might be the other property that you were thinking of earlier - - ?---Sure.

- - - when you talked about the applicant being Talal El Badar, although in this case along with his wife, Laila, where you learned from Michael Hawatt that Mr El Badar was Mr Hawatt's son-in-law.---Yeah.

40 Excuse me a moment. Can I take you to volume 6 – we're finished with volume 7, if we go to volume 6 in Exhibit 52, please, page 6. Sorry, no, in the first instance page 1, sorry. If I could take you to the DA.---Yes.

This DA's got a received stamp of 16 March, 2015. The applicant is a Khaled, K-h-a-l-e-d, Hamec. I'm sorry, no, I apologise, that's wrong. A Khaled, but the applicant's name is Hamec, Hamec, H-a-m-e-c Pty Limited, and can you see the owner's consent is signed by Talal El Badar?---Yes.

And do you recall that Khaled was the given name of the architect who worked for Hamec Pty Limited?---(No Audible Reply)

Not yet, okay.---No, sorry.

You'll see it later on. Going to page 2, the description of the proposed development was, "Demolition of existing structures and construction of five unit multi-dwelling housing development over basement level." And its use was identified as residential. Do you see that? It's very hard to read.
10 ---It's very blurry but I do, yeah.

It's sometimes easier to see on the screen.---Yeah.

Can I take you please, to page 6. Item 1 in this table of text messages extracted from Mr Hawatt's phone is to you on 21 – sorry, start again, on 24 July, 2015 at 12.12pm, and it reads, "Hi, Spiro. Can you let me know the issues associated with a site at 23 Willeroo Street, Lakemba? I am told that it's an isolated site with units on both sides. This should be assessed on its merit, not on the current DCP with the setbacks which makes it unworkable.
20 Thanks, Michael Hawatt."---Yes.

If you're not able to say, then as with any question, you just tell us, but can I ask, is that an expression or a combination of expressions that you can explain to us, that a particular site described as isolated with units on both sides it was argued should be assessed on its merit, not on the current DCP with the setbacks which makes it unworkable. What did that mean to you?
---Well, when you're dealing with isolated sites there are certain planning principles that have been set out by the court, Land and Environment Court, that deal with how one should assess a development of that nature and what
30 sort of controls and how those controls are worked out. In the case of a DCP that is quite prescriptive in its standards and if barring the fact that they're isolated, an isolated site, it would ordinarily require certain setbacks.

As a result of the DCP's requirements?---As a result of the DCP. And which for all intents and purposes will leave very little developable area. So that's why the court brought out these planning principles that deal with isolated sites.

And that is to say, as you understood the case law, where setback
40 requirements of a DCP were overly onerous having regard to the site and the proposed development, then there was a different basis to be applied for assessing it or might be a different basis for assessing it?---Might be, yes, yes. Yes.

And "on its merit", what does that mean in this context?---In this context, ordinarily we'd look at what the potential impacts would be for a proposal that was proposing a setback that was less onerous than what a DCP would otherwise require. Yeah, so as a whole - - -

You'd have regard to the purpose of setbacks in the first place, that sort of thing?---All that, yes, yes.

Thank you. Now can we have a look at page 89, please. This is a copy of a page from an exercise book. Do you recognise the handwriting?---Yeah, it looks like it's my writing, yes.

10 Did you keep notes while you were working as director of planning at Canterbury in an exercise book from time to time?---Yes.

And the entry on the second half of the page is headed Meeting with Michael Hawatt, 18 December, 2015, and then there's seven items. Do you see that?---Yes.

What was the function of this writing on the second half of this page?
---They would be issues that Mr Hawatt would have raised with me, and so I was merely jotting down what those issues were or things to look at or follow up on, yeah.

20

Was this a set of, as it were, minutes of a meeting made as it was progressing or afterwards? Or was it an agenda, as you understood it, for a meeting to occur on this date with Michael Hawatt?---No, it was after.

It was made after?---Yeah.

Or during the meeting?---Or during the meeting, yes.

30 And you made these entries to assist you in remembering later what had been discussed, is that right?---Correct, correct.

Now, are you able to recall, looking at the entries on the second half of this page, this particular meeting?---No, sorry.

There's nothing written by you to indicate that anyone else is present at the meeting. Do you see that?---Yes, I do.

40 Does that mean that no-one else was present at the meeting?---Not necessarily but it's possible, because I did meet with him at council on occasions when it was just the two of us.

The times when you met with Mr Hawatt and there was a staff member present, weren't they times when there was one item on the agenda, a particular site, and you had there with you either the manager and/or the team leader and/or the file officer?---I think that's fair, yes.

Whereas this is a series of sites, possibly seven, as many as seven sites.
---I think that's fair, yes.

And so the likelihood is, this is a record of a meeting that you had with Michael Hawatt and no one else being present?---It's likely, yes.

Now, why did you meet with Mr Hawatt on 18 December, 2015, likely in the absence of anyone else and these matter were canvassed?---As I'm sitting here I can't tell you why on that particular occasion I did.

10 Why – I withdraw that. You had numerous meetings during your time as director of planning with Michael Hawatt and no one else being present, didn't you?---That's fair, yes.

And at those meetings almost invariably what was discussed was at least one, if not a number of sites.---That's correct.

The sites being the subject of either development applications or planning proposals.---That's fair, yes.

20 So can I take a step back from this particular meeting, why did you have those meetings with Mr Hawatt? I'm just trying to ask you an open question and invite you to take a step back now and look down on your time there at Canterbury and thinking of those meetings that you had with Mr Hawatt, why did you have those meetings with him?---He was a councillor. I took meetings with other councillors as well, and it was a forum in which they would express inquiries or whatever it was that their constituents or whoever were making of them. It was not unusual in the context of, during that period of time anyway, for councillors to have communication with a director, and you know, we also had the permission of the general manager to meet with, with, with councillors, yeah, so - - -

30 But if you were to put into the scales on the one side the meetings you had with Michael Hawatt by himself in relation to a site or a series of sites, and the meetings with any other councillor at all, the scales would very quickly tip, wouldn't they, onto the side where you loaded up the meetings with Mr Hawatt. Wouldn't that be fair to say?---Yes and no. With Councillor Fadwa Kebbe, we had regular catch-ups with her as well, and I had, the sheer volume of inquiries that Michael Hawatt was having or was putting to me, yes, so it would be more a case of, I'd certainly be meeting with him more regularly than the others, yes.

40 THE COMMISSIONER: The matters that you dealt with in catch-ups with Councillor Kebbe, what did they cover?---Just very similar. Like she'd have inquiries made of her from certain people and, and, you know, all sorts of matters, it wasn't just development applications or planning or whatever, it would just be sort of day-to-day stuff that, because my portfolio was many and varied, so she'd ask me to look into things for her and just give her a status I guess, yeah.

MR BUCHANAN: Now, was a record created of that meeting beyond any calendar entry you might have made in anticipation of it and the note that we can see in your exercise book on page 89 of volume 6?---I can't, I can't recall, I'm sorry.

You weren't in the habit, were you, of providing to your PA a record of these meetings with Mr Hawatt?---No, I don't think that's true. There were occasions where I did, yeah, but certainly I can't be a hundred per cent sure that I did it all the time.

10

That'd be the minority of the occasions, wouldn't it?---Probably.

Now, the entry numbered 6 on this page is "23 Willaroo Street, section 34 conference (What's the latest?)" in your handwriting. The section 34 conference was, as you understood it, a conciliation conference that was taking place in class 1 proceedings in the Land and Environment Court. ---That's right.

Is that right?---Yeah.

20

And when you wrote, "What's the latest?" was that a note for you to chase it up?---Yeah, yeah.

So it was an inquiry that you were responding to?---Yes. Yes.

Yes. Could we please play a recording, LII 00866, recorded on 21 December, 2015, commencing at 5.42pm. Mr Stavis, you will see a transcript come up on the screen. If you could listen to the recording as it's played and have a look at the transcript. There are times when we made a decision – with the Commissioner's consent – to change some things in the transcript. If you think the transcript's not right, then we'd like to hear about it from you as well as from others who are listening.---Okay.

30

Thank you.

AUDIO RECORDING PLAYED

[11.08am]

40 MR BUCHANAN: Commissioner, I tender the audio file and transcript of that recording.

THE COMMISSIONER: The audio file and transcript of the recording LII 00866, recorded on 21 December, 2015, at 5.42pm, will be Exhibit 209.

#EXH-209 – TRANSCRIPT SESSION 866

MR BUCHANAN: Mr Stavis, you heard that recording being played.
---Sure.

Are there any changes that you would propose to the transcript?---Not that I can think of, no.

10 Can I ask you some questions about it, and if we could just keep the first page on the screen, the recording indicates that you had a very familiar relationship with Mr Hawatt by this stage, doesn't it?---Can you ask the question again? Familiar in what sense, sorry?

Well, when you use the word Michalis, that had an indication, didn't it, that the man had a name Michael and you were applying a Greek – is it diminutive or a term of affection? Is that fair to say?---That's his name in Greek, yes.

But Mr Hawatt wasn't Greek, was he?---No, no.

20 You were, are of Greek descent?---Of Greek descent, yes, yeah.

And Michalis is a term of affection to a person with the given name Michael, would that be fair to say?---No.

How would you describe it?---The Greek equivalent of Michael is Michalis, yeah.

30 Thank you. The conversation was a very friendly one between, as it were, workmates.---I think that's fair, yeah.

By this stage, December 2015, you were working with Mr Hawatt as a team, weren't you, in dealing with planning matters in which Mr Hawatt had an interest.---I think, I think we all were a team at council, so I, I don't necessarily believe that I treated him any differently to any other councillor, really.

40 Well, you had a much closer relationship with Mr Hawatt than you had with any other councillor, didn't you?---Yeah, because of the fact that he had made so many inquiries and so forth. So he was more - - -

Oh, yes, I'm not saying there wasn't a reason for it.---Yeah, yeah, sure.

We can go into the reason for it later, but I'm just talking about the character of the relationship you had with - - -?---Sure.

- - - Mr Hawatt by this stage was a very close one of people who treated each other as, as it were, as equals in relation to planning issues in which Mr Hawatt had an interest.---Sure.

Is that fair?---Yeah.

Now, in relation to the resignation of Ms Dawson, you expressed, as it were, delight at her resignation. I'm looking at page 3 of the transcript.---Sorry, I'm just reading.

You expressed delight at her resignation, didn't you?---Um - - -

10 Where it's recorded a bit over halfway down the page, after Mr Hawatt said, "What?"---Yeah.

And you said, "Yeah, yeah."---Look, I - - -

As in, yes, we've achieved it.---No, I don't, I don't look at it at that, like that, sorry.

That's how it sounded though, didn't it?---In isolation probably, yes, yeah.

20 Well, it's not in isolation, you laughed.---Yeah.

You laughed all the way through when discussing her resignation.---Sure, sure. I accept that.

When you said, "Yeah" to Mr Hawatt on that occasion, you knew that he would be delighted too, to hear that she had resigned.---I think that's fair.

30 How did you know that?---Because he had expressed concerns over her in the past, amongst other stuff as well.

What concerns had he expressed. Can you tell us what he said?---I don't remember exactly what he said but it was always negative in terms of just the fact that, well, I don't know how else to put it, to be honest with you, he was always very negative towards her and also a number of other staff, but I can't recall exactly what he said.

40 Well, was it your understanding that Ms Dawson was a person who did her job, applying planning principles and where they were appropriate, rules, as she saw fit according to the merits of the case?---Possibly, but I, I found her to be very conservative.

Very?---Conservative.

Yes.---And very, and that department in particular had issues with I guess timelines and processing and so forth, yeah, so - - -

And when you say conservative, you mean insufficiently flexible?---Yes.

More likely to make a decision by reference to objective standards than the circumstances of the applicant in the particular case?---I think that's fair, yes.

You say, you told her – I withdraw that question. Looking again at page 3, you told Mr Hawatt that she resigned because of the pressure she was under, she couldn't handle it, she'd told you that?---I see that, yes.

10 And you thought that was funny.---I guess so, yes.

And you then made it clear that you were the one who put her under that pressure.---Okay. Yeah, I think that's fair.

You put her under pressure in order to try to get rid of her.---No.

Page 5 of the transcript, the middle of the page, you said, "Yeah, so there's, there's one down."---Ah hmm. Yes.

20 That's a clear indication, isn't it, that you put her under pressure in order to get rid of her, and she wasn't going to be the only one who would be going out the door.---There was, very early in my tenure there were concerns at the department itself that were expressed to me by the general manager, and we, in order to start with the process we employed an external consultancy to look at a review of the department itself.

Is this the urban planning department?---No.

30 Which department?---Yeah, well, amongst others. And the development assessment. So, and it was a company that assisted previously for other HR matters that council had experience with. And we were looking at reviewing the whole of the department, because the way it was put to me was the department wasn't performing and there were certain people in there that were entrenched in, I guess in their ideologies and views. So, yeah, so that, that's an answer to your question.

And who was it who put this to you? Jim Montague?---Yeah, yeah.

40 And what did you understand it to mean when he said the department wasn't performing?---Just that there were a number of planning proposals, for example – just take the urban design department as an example – that had been in there and entrenched in there for a long time. So I guess it had to do with issues pertaining to timelines but also looking at ways in which we could, they could find solutions to move these applications forward.

Solutions for planning proposals or solutions for development applications?
---Both, actually. Both.

THE COMMISSIONER: But you've shifted then in your answer from timelines and delays from your previous answer, which was there were people in the department who were entrenched in a particular ideology.
---Yeah, so - - -

So was there a concern about personnel and the way that they approached?
---There was, yes.

10 And this external consultant, were they engaged to do a review of the department?---Correct.

And did they report?---Yes. There was a report, yes.

And who was the external consultant?---A company, from memory, called Mastertech.

Mastertech.---Yeah.

20 MR BUCHANAN: And do you know when they reported?---Not exactly, sorry. It would have been probably around mid-2015, maybe a bit later, yeah.

And what was the burden of the report?---It looked at, I just, I can't recall exactly the specifics of it but it looked at reviewing each position and seeing whether those positions were still relevant, and looking at the structure of the department itself. Yeah, mainly around that.

Did it propose a restructure?---Sorry? Was it - - -

30 Did it, the report, propose a restructure?---I believe so, yes.

Did you implement a restructure?---No. No, because it, I mean, it, it took a while for that report to be finalised, I guess, and by that stage we had the council amalgamations and what have you, yeah.

So you had it for a bit less than a year and you didn't implement it?---Look, I can't be exact with the dates, to be honest with you. I'm not sure. I was just - - -

40 Now, your jesting with Mr Hawatt in this telephone conversation on 21 December, 2015 about Ms Dawson and others was about getting rid of the conservatives, as you saw it, in the department, was it?---No, it was about getting more proactive people.

What does proactive mean in this context?---People that would look at applications on merit and not necessarily be entrenched in views, which is what I found to be the case when I first started. Yeah.

Does merit in this context to you mean taking more of the applicant's situation and arguments into account than had previously been the case? ---No. It involved in a number of cases where applications were being, there were certain views that had been formed early on in the piece and those views were consistently applied over time without really looking at the merits, in my view, anyway.

10 THE COMMISSIONER: I don't understand what you mean by merits. Surely, as we've heard, any assessment has to look at the various controls in place. That's your starting point, isn't it?---Yeah, but, Commissioner, you must remember that the controls that applied at the time, there were inconsistencies with a number of those controls in the sense that they didn't talk to each other, right? That DCP was brought out, I found out after, that was, was rushed through and that particular version had controls in there, from what I recall anyway, that didn't necessarily relate to each other. So you've got height controls, setbacks and the like, and they did not necessarily talk to the LEP as well. So, yeah.

20 MR BUCHANAN: So did that mean that you wanted staff – and as you understood it, Mr Hawatt wanted staff – to give less weight to controls than would otherwise have been the case?---No. I, I, I expected them to look at each application on its merit, and then when it, if there were, for lack of a better term, erroneous controls or controls that didn't talk to each other to apply a merit-based approach.

And what would a merit-based approach involve in this context?---You look at all sorts of things. You look at, under the Environment Planning and Assessment Act there are certain criteria that you need to go through.

30 You mean giving less weight to the controls, don't you?---Sorry, what was that?

You mean that where the control was on some view inappropriate, that less weight should be given to it than would otherwise be the case?---I agree, yes.

40 It didn't occur to you that another approach might be to instead put in place a review of controls that were considered to be inappropriate with a view to having them changed?---Which I did. I implemented. We had a review of the DCP and a lot of those inconsistencies in the DCP were, towards the end of my tenure, removed.

And is there any other review that you commenced of planning controls that had to be applied from time to time with a view to getting rid of the inappropriate controls and substituting, if there needed to be substituted, appropriate controls?---No. The Development Control Plan was an all-encompassing plan for the, and generally for the entire LGA area, so I mean the next step was going to be to try and review the controls, the merits of the

controls. What we were doing as part of the first review was just trying to clean up the inconsistencies that were in, in the DCP at the time.

You see the DCP is one environmental planning instrument of a number that had to be considered when looking at any application, be it a submission for a planning proposal or a development application. Isn't that right?---I would disagree with the planning proposal, the DCP isn't, isn't entirely relevant in that regard.

10 No. And it was the people in urban planning like Gill Dawson that you wanted to get rid of. So the DCP didn't have much to do with her, did it? ---She was not responsible only for the DCP, she was responsible for the whole department.

Exactly.---Yeah.

20 And the DCP, which is all that you've identified as being, as having inappropriate controls in it, was but a small part of the fabric of environmental planning instruments that the planners had to consider when doing their work.

MR PARARAJASINGHAM: I object. Commissioner, in addition to problems in the DCP this witness did speak of the relationship between the DCP and the LEP and how they were not talking to each other, to use his words, so it's not correct to say with respect that the only problem this witness has identified are problems in the DCP, he did actually enlarge on that about four minutes earlier.

30 MR BUCHANAN: I press my question, Commissioner.

THE COMMISSIONER: My note was that it was the DCP that was rushed through, he did talk about erroneous controls and controls not talking to each other, but his answers did focus on the DCP. Like in anything, sorry, Mr Pararajasingham, really with anything concrete, the problem that he has identified was the DCP.

40 MR PARARAJASINGHAM: I'm mindful not to lead the witness, so I'll try and do this obliquely, but he's been asked specifically about that. In my submission it is not with respect accurate or fair to say that the answers have been limited to that. That's probably all I can say about it without - - -

THE COMMISSIONER: No, look, I'm going to allow the question.

MR BUCHANAN: The DCP was but a part of the fabric of environmental controls that had to be considered when planners did their work, wasn't it? ---Yes.

And you instituted a review of the DCP. Correct?---That's right.

Did you institute a review of the LEP?---Yes, that was on foot. I believe it was before I had started there was a review on foot for the LEP itself.

You're talking about the Residential Development Strategy?---No, no, the Local Environmental Plan itself, the LEP, 2012 I believe it was.

10 Who was conducting that review?---Oh, it was an ongoing process. I think it was from memory, I can't remember the officer who was in charge of it, it may have been Allan Shooter, but certainly under Warren Farleigh section, yeah.

Yeah, what?---Well - - -

20 Under Warren Farleigh what happened in relation to a review of the LEP? ---There was, from memory there was a councillor request to review the LEP and the DCP, that was before I had started, and I know that there were a number of reviews that had taken place and reported to council, even before I had started, that sought to change certain, I'm not sure if it was controls, objectives or a combination of the both in the LEP. Now, whether that - I, I, I just can't recall if we actually, we did enact some of those but not, not everything.

Enact what?---The changes to the LEP.

The changes to what?---The LEP.

But these are on a site-by-site basis.---Not all of them, no.

30 These were rezoning applications.---No, no, there were other, there were other issues, there were other controls from memory that were also implemented.

Whilst you were in office as director of planning?---I believe so, but - - -

40 Beyond rezoning applications. Can you think of any of them?---I'm just trying to think. Yes, there were I think changes to the definitions in the LEP, there were changes to the application of a floor space ratio control for specific developments.

That's rezoning applications in effect.---No, they're not, generic controls, right, we're not talking about site-specific controls, for a certain type of development, yeah.

These were part of the Residential Development Strategy, weren't they? ---They, I think they began life that way, yes.

Mmm.---Yeah.

I note the time, Commissioner. I have got a bit more on the subject to go, but it might be appropriate to take morning tea at this point.

THE COMMISSIONER: Right. We'll take the morning tea adjournment and resume at 5 to 12.00.

SHORT ADJOURNMENT

[11.37am]

10

THE COMMISSIONER: Thanks, Mr Buchanan.

MR BUCHANAN: Commissioner. If we could go back, please, to the transcript of Exhibit 209, page 5. In the middle of that page when you said to Mr Hawatt, "Yeah, so there's, there's one down," you were indicating to him, weren't you, that members of your staff whom you didn't like and whom Mr Hawatt didn't like would be leaving. One had gone and more would go.---I wouldn't say I didn't like that person, so if I can answer it that way. What was the rest of your question, sorry?

20

Well, when you said, "There's one down," what did you mean?---Well, basically, as I said before, we were, the general manager tasked me with the view of reforming the department.

Yes, you told us that. But when you said, "There's one down," that plainly indicates that more are to go or a hope that more will go.---I think that's fair, yes.

30 And you understood that Michael Hawatt would appreciate that, didn't you?
---I think that's fair, yes.

Now, turning to a couple of lines below that, where you said, "Now, listen, the only way, because there's lawyers involved now, what you should tell your, the person is," you stopped yourself from saying you should tell your son-in-law and instead said "the person".---I, I don't, I don't think that that was anything that I consciously made comment of or admitted.

40 And the without prejudice meeting you said would be with you or was to be with you.---I, I was, would be part of it, yes.

And going over to page 6 of the transcript, and you said, "And then I can sit in that room and we'll work it out." That was a proposal that you would work a solution out with the applicants, including their lawyers.---Correct.

Would it be fair to say that you were providing the applicant on whose behalf Mr Hawatt was ringing in this case, or to whom you were talking to him about, with an advantage which applicants that Mr Hawatt didn't ring

you about wouldn't have obtained from you?---Not necessarily, because the view at the time was any appeal-type matters should be conciliated. So most of the applications that we had before us that were the subject of appeals were, were resolved through the mediation process, yeah.

But if the applicant wasn't playing ball and wasn't proposing changes to their plans which were sought by your department, then the matter would go back to court in the ordinary course? Is that your understanding?---Yes.

10 And did you yourself intervene in every section 34 conciliation conference that took place while you were director?---I wouldn't say every, but I was made aware of, most court-related matters I was made aware of. We constantly monitored and I constantly got briefing sessions from, from my manager at the time.

But did you intervene with a view to providing solutions in each of them? ---Not in each of them, no.

20 You did in this case because Michael Hawatt was involved, didn't you?---I think, in all honesty, this was an application that involved some degree of toing and froing because of the fact that it was an isolated site, and, you know, I wasn't going to waste resources and money unnecessarily if there was to be a solution. Sure, the fact that Michael took an interest in it highlighted the need for me to get involved, yes.

30 If we could go to page 101 of volume 6 in Exhibit 52, please. This is a memorandum prepared by Mr Hargreaves, dated 5 January, 2016, to go to file, about a without prejudice meeting for those proceedings in respect of 23 Willeroo Street that you and Mr Hargreaves had had with the owners and with Khaled from Hamec Pty Ltd. Do you see that?---I do, yes.

And this was an account of, or a record for the file, of what occurred at that meeting.---I believe so, yes.

Do you remember this document? Because it came back to your attention, I think, later on when a dispute arose as to what had happened in the without prejudice meeting.---Sorry, your question was I remember the document?

40 Yes.---I, I can't say with any certainty.

Well, if you don't, you just tell us.---No.

Thank you. But you can see there that a number of requirements were advised to the owners and to the architect for the owners, items 1 to 5. ---Yes.

And in the second-last paragraph, commencing in response to capital B, in inverted commas, another requirement was advised. Do you recall that?---I don't recall that, no. Sorry.

You can see it there in the document.---I do, yes.

10 Can I ask you to go to page 295 in this volume. I'm sorry, in volume 5, please. If we go to – this is another schedule of text messages extracted from Mr Hawatt's telephone, and on this page, item 512 is a message from
20 Mr Hawatt to you on 5 January, 2016, at 6.57pm, reading, "23 Willeroo Street, Lakemba. Two square metre study?" Question mark after that word "study". "Doesn't that sound ridiculous? I asked them to look at six square metre study instead. Can you look into? Help. Thanks, Michael." And at 7.14pm, this is message number 513, you replied, "Hi, Mike. I never gave them a size and certainly not two square metres, but there's more to it. The studies were basically capable of being used as a third bedroom which would mean additional car parking could not be provided. Reducing the studies to study nukes," n-u-k-e-s, "would ensure future occupants would not use them as a third bedroom. I'm happy to compromise to four square
20 metres, believe me, it's a good outcome for them. Happy to discuss." Do you see that?---Yes.

This was you providing, this is an illustration of you providing a solution to the development proponent for whom Mr Hawatt was advocating?---Yes.

30 If I can take you, please, to volume 6, page 125. Halfway down the page is an email from Talal El Badar to you on 20 January, 2016. "Hello, Spiro. As you can see from the last meeting we had, it was all a waste of time as council's solicitor has terminated the section 34 stage. This is very
30 upsetting." Do you recall receiving this on your holidays, while you were on leave?---I don't, sorry, no.

You replied, I'm sorry, you forwarded that to George Gouvatsos. "George, what's the story? Andrew and I met with them on a without prejudice basis and we had agreed to a position and to give them time to submit amended plans. Please find out what's going on and fix the issue." Do you see that?
---I do, yes.

40 You told, I'm sorry, you asked Mr Gouvatsos to "Fix the issue."---Yes.

For him to provide a solution to whatever the issue was. Is that fair to say?
---Sure, that's fair, yes.

And the outcome of that would have been that there would no longer have been, as you understood it, complaint to Mr Hawatt or to you from the applicant, had a solution been provided - - -?---Yep.

- - - by Mr Gouvatsos then the complaint would have been put to rest.

---Yeah, I think that's fair.

The next day, page 131, 21 January, can you see that there was, at the bottom of page 131, an email from a solicitor on behalf of Peter Jackson sent on 19 January to Vasili Conomos of Conomos Legal, saying that she was instructed by council to respond to the most recent set of without prejudice drawings, and then there's a detailed response, at the end of which on page 132 Mr Conomos was told by council's solicitor, "In the circumstances council is of the opinion that the without prejudice amended drawings are unacceptable and accordingly will be seeking to terminate the section 34 process and have the matter listed for a defended hearing."
10 ---Yes.

Do you remember this now?---(No Audible Reply)

Do you remember being told while you were on leave that the section 34 process was being terminated by your staff?---I don't remember if it was while I was on leave but I remember having a conversation to that effect, yes.
20

And in the middle of page 131, email from you on 20 January, 5.14pm, "George, see below." I'm sorry. First of all you can see that the solicitor's emails were forwarded to you by Talal El Badar at 5.07pm on 20 January. That's a bit over halfway down the page.---Yeah. Excuse me, yes.

And then you've forwarded that to George Gouvatsos. "See below. Did they submit amended drawings after my meeting with them? If so, I want to personally review before terminating the section 34 conference. Instruct the solicitors accordingly." And then you received an email from Mr Gouvatsos on 21 January, at 9.21am, "Spiro, please see below Andrew's response about this matter," and thereafter there's a paragraph setting out a response, and he goes on to say, "It should be noted that Talal has only engaged with us about making amendments to the design since the commencement proceedings and not during the DA stage when we requested amended plans. Had Talal provided amended plans that addressed the issues raised by you and Andrew on 5 January, 2016 and went some way to address our contentions, it is likely that we'd be in a stronger position to enter into a section 34 agreement." Do you recall receiving correspondence to that effect?---Something very similar, yes, yeah.
30
40

And from your earlier answer about your personal interest in matters that had gone to court, would it be fair to say that you wanted to keep a degree of control over the way proceedings in which your council was involved were conducted?---That's fair, yes.

And so it's likely, then, that you would have wanted to make sure that there were good grounds for abandoning the section 34 conciliation process before agreeing to that?---Yes.

And so in that instance the intervention of Mr Hawatt or the fact that he was involved is not likely to have had much of an impact? You would have probably had the same view even if he hadn't been involved, simply because it was litigation? Is that the burden of your evidence?---I think that's fair, yeah.

You didn't let your staff basically conduct litigation willy-nilly.---No, no.

10 Can I take you to page 190 in volume 6, please. This is 29 January, 2016. There's an email there that – I'm sorry, we need to perhaps go back a little bit to page 191, and it actually goes over to page 192. You can see that there's an email on page 191 from Talal El Badar, 28 January, addressed to "Dear Spiro", providing you with some details. Then the second-last paragraph on page 191, "Could you please tell your lawyer that you are happy that the amended plans adequately reflect what was discussed at our meeting? We're at a loss as to what other changes could be expected to be made arising out of the conference, and the dot points are very unhelpful in that regard as well." You said, 28 January, towards the top of page 191,
20 "Talal, I have never seen the amended plans so I'm not in a position to confirm anything, let alone my support. As I explained to you, I will review before 3 February and advise if I believe that changes reflect what was discussed at our without prejudice meeting on 5 January. I have only just returned from leave." Does that ring a bell now, that you were on leave previously?---Look, it's clear that I was, yes, yes.

And then there was an email from you commencing in the middle of page 190 to Abdullah, Talal and Khaled. "I have now reviewed the amended plans and I must admit I'm most disappointed." And then the next
30 paragraph, "The issues I raised at the without prejudice meeting on 5 January, 2016 were as follows," and then you took in the contents of Mr Hargreaves's memo recording what had happened at the without prejudice meeting. Do you see that?---I do, yes.

And can I ask you then to go up to the top of the page, and can you see that it's an email from you to Mr Hawatt, cc'd to Ms Rahme, dated 29 January, 2016 at 12.36. "Hi, Michael. Please see below FYI. I'm trying hard to accommodate them but as a narrow isolated site," sorry, "But it's a narrow isolated site and therefore needs to be sensitively designed which is what the
40 court will ask him to do (there's case law on this.) They may as well make the changes I'm suggesting now rather than spend money paying lawyers et cetera, he will still get five times two-bedroom townhouses with what I'm suggesting." Do you recall this correspondence?---Yes.

And was the reason that you sent this to Michael because you were responding to an inquiry?---I believe so, yes.

And you were explaining to him that basically you were working hard to try to achieve an approval for his son-in-law but that his son-in-law had to provide what you required for that purpose.

MR PARARAJASINGHAM: Well, I object. I don't think the witness has agreed that he knew it was his son-in-law at this point.

10 THE COMMISSIONER: I thought he had. Sorry, Mr Pararajasingham. When Mr Buchanan took him to that change in the, I'm sorry, in the telephone intercept - - -

MR PARARAJASINGHAM: From your to person?

THE COMMISSIONER: Yes.

MR PARARAJASINGHAM: It was put to him that he was going to say your son-in-law or something to that effect and my memory is he said no, or didn't agree with that.

20 MR BUCHANAN: There was, Commissioner, an earlier – sorry to interrupt. There was an earlier piece of evidence that the witness gave in answer to my question as to whether he knew that there was a relationship and he in fact identified the relationship as that he was aware of as being son-in-law and father-in-law.

30 THE COMMISSIONER: I remember the earlier evidence and my recollection was Mr Stavis's evidence on the telephone recording was that he was disagreeing with the proposition that he deliberately stopped in referring to the applicant as your son-in-law and changed it to a neutral description, I thought it was a non-acceptance of that proposition, not a suggestion that he didn't know the identity of the applicant.

MR PARARAJASINGHAM: Well, perhaps it needs to be established that at the point of time that this email was sent that that was in fact this witness's understanding of the relationship.

40 MR BUCHANAN: Well, in deference to my learned friend I will. As at 29 January, 2016, you knew that Talal El Badar was the son-in-law of Mr Hawatt, didn't you?---I can't be exact with the time of when I actually found out, but I believe it was around when this application was live I guess.

And you told us that your source of information was in fact Mr Hawatt. ---That's correct, yes.

Now, you were in this email indicating that you were working hard to provide a solution to the owners which would result in an approval. Isn't that fair?---(No Audible Reply)

But that the owners had to do, make the changes that you and your staff had indicated were required before you'd agree to an approval.---I think that's fair, yes, although can I just add?

Yes.---It, it wasn't necessarily up to me to make the approval. It had to go through a process through the court obviously, through consent orders. And I can't recall if there was a process before that where we had to notify the council about that, about our decision. I just can't recall if that was the process.

10

Well, assume that that was required, that instructions had to be provided by council for a section 34 conciliation agreement to be signed on behalf of council. Nevertheless you would sign off on a report to council to that effect, would you not?---I believe so, yeah, yeah.

It might be drafted by your staff, but being litigation you would have signed off on it, wouldn't you?---Yeah.

Now, can I take you then to volume 5 again, page 295, item 516 at the
20 bottom of the page. It's on the screen. It might be easier to read there, sir. Item 516 at the bottom of the screen. A text from Mr Hawatt to you on 31 January, 2016, at 12.23pm. "Hi Spiro. What's the issue re 23 Willeroo Street, Lakemba? It's within the FSR and height limit and meets objectives of setbacks and is an isolated site. Why council is playing hardball? Let me know. Michael." And if I can take you then to page 296, item 517, at the top of the screen, a text from you to Mr Hawatt the same day, at 1.24pm, "Hi, Mike. I'll show you tomorrow when we meet what I'm getting at. He can get what he wants but I think the architect and his solicitor is giving bad advice. Cheers." Were you having regular meetings with Mr Hawatt by
30 this stage?---What date was that?

This is 31 January, 2016.---I'd say so, yes.

And I think you've already indicated, you weren't having regular meetings with any other councillor, were you?---Yeah, no, Councillor - - -

Regular meetings?---Oh, not as frequent as Councillor Hawatt, no.

40 You had isolated meetings, would that be your evidence, in relation to other councillors?---No. There were what I would class as regular meetings but certainly not to the quantum with Michael Hawatt with Fadwa Kebbe.

Can I ask the witness be shown Exhibit 85, please. Page 30. Sorry, my mistake, page 37, page 37. This exhibit is a compilation of calendar entries. The entry is for, it looks as if it's been made by you, if you can see, it's on the screen, it might be easier to read on the screen.---Yeah, yeah, it looks like it was, yes.

To meet with Mr El Badar about Willeroo Street and also Penshurst Road but on 2 February in a meeting room at council chambers starting at 1.30pm. So that's on 2 February and at 1.30pm. Can I ask you if we can go, please, to volume, some fresh documents, page 12 of this bundle of documents. Can you see that that's another page from an exercise book with your handwriting on it?---Yes.

10 And if we can just enlarge a little bit, yes, the bottom half of the page, thank you. Can you see that what you've recorded is, "Hawatt and Azzi meeting, 2 February, 2016?"---Yes.

And there's a number of items that were discussed. Is that right?---Yes.

I just want to confirm. This is not an agenda that you created but it is minutes for your purposes of a meeting that you had with Councillors Hawatt and Azzi?---They were notes that I took - - -

Yes.--- - - - about issues that were, or matters that were raised - - -

20 Right.--- - - - at the meeting.

And sometimes you made a note of what you needed to do?---Yes, that's fair.

And towards the bottom of that page is an entry, "23 Willeroo." And then an arrow and the words, "Sort out solution."---Yes.

30 Why did you make the note, "Sort out solution" in respect to 23 Willeroo Street as at 2 February, 2016?---That would have been I guess the matter that was raised probably from Michael Hawatt to look into it and, and, and, and find a solution I guess.

And finding a solution was with a view to an approval being granted? ---Well, certainly with my support, yes, yes.

And you can see there the third item is also Homer Street.---Yes.

40 But there doesn't appear, does there, to be a note that you've made, other than that it's an item, Homer Street?---No.

There's three ticks next to the first three items. Do you know what they signify?---On occasion I'd just tick issues as discussed.

Or did you go back to them after the meeting and tick them off as being something that you'd attended to - - -?---I think - - -

- - - having regard to whatever the, whatever was discussed at the meeting with the councillor concerned?---I think that's likely that I'd probably actioned those and probably ticked it off my list I guess.

And do you know whether you forwarded a record of this meeting to Ms Rahme for entry into the database?---That I can't say.

10 Could we go over to the next page, and tell me if I'm wrong but it looks like the next page is a continuation of the record that you made at the meeting.
---Yeah, I think that's fair.

And so there are other items like 998 Punchbowl Road, Harrison's and subdivision.---Yeah.

And "Jimmy Maroun's (Spoilers)" being an indication of 538 Canterbury Road, the car wash location.---Yes.

20 If we could just have a flick through, please, from the first of the pages and following. What I'd like to do is tender these pages as a bundle rather than a page-by-page basis. Excuse me a moment. The first two pages – if we can have a look, please, commencing at page 3. What I'm reminded is that the first two pages are Exhibit 207, and I just want to quickly show you what it is that I'm going to be tendering. We'll be coming back to various of these pages later. The first two pages – sorry, commencing at page 3 – the first two pages are pages from a diary, 17 and 18 March and 22 and 23 March. Do you see that?---Yes.

And are they your diary?---I believe so, yes.

30 Then page 5 is notes by you, at the top headed "22/7/15". Do you see that?
---Yes, I do. Yes, sorry.

But from the fact that there's a different pen used for the second half of the page, the second half of the page might record a different meeting or indeed a different communication or indeed just thoughts you were having at the time.---I think that's fair, yes.

40 Then page 6, the top entry with two asterisks is "Homer Street planning being prepared." Is that the word "planning"?---I believe so, yes.

Thank you. Going over the page. Page 7. Page 8. Page 9. Page 10 has got "13 Homer Street" at the top. Page 11. This time it's got a 29/10/15 date on it. It's got 538-546 Canterbury Road, Campsie.---Yes.

And "Jim Maroun, George, Anton, Tony Jreige and Katrina". That's an indication of a meeting.---Yes.

That would be in relation to 538 Canterbury Road, obviously.---Yeah.

And then over the page, page 12, the one we were looking at that has a date at the very top of 1 February, '16, but the entry I took you to was for 2 February, 2016, being a meeting with Messrs Hawatt and Azzi. And then over the page, page 13, which seemed to be a continuation of the notes of that meeting.---Yes.

Page 14. These are all notes made by you?---Yes, I believe so.

10 Page 15. The note at the top is the name of the administrator who was appointed, isn't it, in May 2016? And indeed the only date you've got there is the day after the amalgamation occurred, and that would seem to be the end of these notes.---That sounds about right, yes.

Commissioner, I tender them on the basis – no, I'll just ask the witness one further question. All the handwriting that you've seen on them is your handwriting?---I believe so, yes.

20 And the first two pages are copies of entries in a diary, whilst the rest of them are all pages in an exercise book.---I believe so, yes.

So, Commissioner, I would tender those pages, being paginated 3 through to 15.

MR PARARAJASINGHAM: Commissioner, can I just inquire? The exercise pages, is my friend able to indicate whether they are consecutive pages or a selection of pages?

30 MR BUCHANAN: They're a selection.

THE COMMISSIONER: All right. The bundle of documents consisting of pages 3 to 15 and including an extract from Mr Stavis's diary and extracts from an exercise book that he maintained in his handwriting will be Exhibit 210.

**#EXH-210 – SELECTION OF DIARY & NOTEBOOK ENTRIES
MADE BY SPIRO STAVIS BETWEEN 17 MARCH 2015 & 13 MAY
2016**

40

MR BUCHANAN: So that exhibit will be available on the Commission's website this evening. Can I take you, please to volume 5, page 296, in Exhibit 92, and to some further text messages, items 526 and 527 on that page. Item 526 is a message by Mr Hawatt to you on 3 February, 2016, at 9.12am, "Hi, Spiro. Willeroo Street amendments were sent yesterday afternoon. Have you seen them? Is it okay now so I can tell him? Thanks,

Michael.” You would have understood “him” to be a reference to his son-in-law.---Yes, I believe so.

And item 527 from you, at 9.43am, answer, “Yes, I've instructed the lawyers to back off. He needs to submit an amended package.” And if I can take you then, please, to item 532 at the bottom of that page. On 8 February Mr Hawatt texted you, “Hi, Spiro. I thought Willeroo Street, Lakemba was completed based on a compromise which was reached. What is the issue now? Michael.” And on page 297 of the schedule, at item 533, you
10 responded at 12.56pm the same day, “There is no major issue, just bits and pieces which I spoke to him about at the time. That’s why he’s coming in to see me, so we can sign off and he can go away and prepare amended package.” Having reviewed all of this material, the material I've taken you to, it’s fair to say that as a result of Mr Hawatt’s interventions with you, Mr El Badar and his co-owners received a higher level of service from you than would have been the case had Mr Hawatt not intervened?---That’s fair.

Indeed, if you had not intervened there would have been a likelihood, wouldn’t there, that they would not have submitted amended plans and the
20 applicant wouldn’t have achieved the outcomes he achieved?---I, I think that he probably would have at some point in time during the course of the court proceedings, so to that, to that extent I think it’s not unusual if it goes, it goes to a full-on hearing that there is an opportunity for amendments to be made. So I can’t speculate as to whether or not he would have done it, yeah.

Excuse me. Can I ask you to have a look at volume 6, pages 188 and 189. So we’re looking at page 188, and can you see that it’s plans for Willeroo Street?---Yes.

30 And there are handwritten annotations. Do you recognise those annotations?---That’s my writing.

When did you put that writing on those pages?---I’m not sure, to be honest with you.

At some stage after 5 January, 2016, it would seem from the one that’s halfway down on the right-hand side because you say in brackets (“Need to reduce as per our discussion at our meeting on 5 January, 2016.”)---I think that’s fair, yes.
40

So you were indicating on the plans amendments that needed to be made in your opinion. Is that right?---Yes.

So it wasn’t just a case of asking them to come back with amended plans, you were making the amendments for them, the owners?---No. What I was trying to do was to convey to them to provide some clarity on the issues and concerns that we had. It’s not necessarily a case that if they just followed, they may have come up with some other alternative.

What was it that, looking at the top part of the plans you were indicating should be deleted?---It looks like protrusions out from the living area and the kitchen/dining area I guess, and this probably was an attempt to try and convey to them that they needed to increase the setbacks.

That if they deleted those items, the setbacks would be increased?---Correct. I believe so, yeah.

10 And if we could scroll through, down to the second set on this page, what was the effect of the annotations that you made on this page, on the bottom part of this page?---The same, probably.

On a different level?---Yeah.

If we could have a look at page 189 in volume 6 as well. I think page 189 might be a duplication, Commissioner, of page 188 in the brief. Of course the annotations appear to be identical with those that appear on page 189. When you were making these annotations, you were in effect proposing edits of the owner's plans.---Yes.

20 Would it be fair to say that given that the question still had to be answered should this application be approved or not, that by editing the applicant's plans or proposing edits to the applicant's plans, you were putting yourself in a position of conflict of interest by both editing the application and at the same time being responsible for the assessment of it?---No, I don't, I don't agree with that. I, as I said earlier in my evidence, I wasn't, that was a practice that I was used to and it was designed to provide some clarity around the concerns we had, and we were in a court mediation process. By virtue of the term mediation, there had to be a degree of, of compromise from both sides.

30 But how does that mean that there was no conflict of interest on your part when you were providing intellectual property to the applicant for the purposes of them making their application and then being responsible for the assessment of that intellectual property?---Look, I, I don't view it that way. Again, in that medium it was expected that you come up with a mediated solution. So for me it was a case of, hey, we've got an issue with setbacks. This, these are the sorts of things you need to look at. It was not uncommon for me to do, that was not an uncommon practice for me.

40 Certainly, can I put this proposition to you, it was appropriate for council through you to indicate what its position was in this case so far as setbacks were concerned, but was it appropriate that you indicate "and this is how you can do it" or "this is how you should achieve it so far as concerns your application" rather than, given that it's the applicant's application, really it was for them to make the application?---No, I don't think it was inappropriate at all. As I said, it was a way in which to try and provide

clarity around the issues for them, and in that mediation process it was, it was about trying to find, I guess, a compromise. But I don't see it as being inappropriate at all.

Can I suggest that you're not coming to grips with my question.---Sure.

10 It's the conflict of interest between a person who is editing an application on the one hand and then turning around and putting another hat on and saying, well, those edits might or might not be appropriate, having regard to what needs to be done under the Act in terms of assessment. Do you see the problem there, that you're taking on the position of both the applicant and the consent authority?---I wasn't the consent authority though. We were charged to, we had an application before us that was more or less plausible and again, at the risk of repeating myself, I was merely trying to provide clarity around the concerns, and I'm not sure exactly of the timeline but there were any number of incarnations and, and, and opportunities that were given, that both parties had to resolve these issues, and that for me is a way in which you can get to the issues quicker.

20 But was it for the assessor to provide planning services to the applicant, wasn't it for the applicant to retain their own architects and planners?
---Probably, yes.

And so to that extent don't you agree that it was inappropriate for you to provide planning services to the applicant?---I didn't see it as providing planning services.

30 But that's what you were doing, wasn't it?---I disagree. What I was trying to do was convey a point across to the applicant of what needed to be done in terms of what issues needed to be addressed.

40 It was for you to say to the applicant the setbacks need to be X and for them to go to their planner and say how can we achieve X, rather than for you to say, and these are the ways that you can amend your plan to achieve that, and then turn around and assess whether that's been adequate or not.
---Look, I, again, I, I don't, I, I, I take your point and I agree with you to a certain extent that that would probably have been a more logical way of doing it, but again, this sort of informative drawing up plans and making amendments to plans to get your point across to someone is not uncommon, it's not uncommon.

But it wasn't something that your staff did on any sort of regular basis, was it?---Look, my staff had their own experiences and I had my experience and, and - - -

It was something you did on a regular basis but not your staff.---I'm not sure whether my staff did anything similar. Certainly I was aware having had regular meetings with staff that they used to mark up drawings and the like,

that's what planners do, they identify issues and, and identify, and, and, and mark up drawings if that, if that needed to be the case.

With a view to identifying issues?---Yeah.

How frequent was it that you edited plans submitted to you by or on behalf of applicants whilst you were director of planning at Canterbury?---Um - - -

10 MR PARARAJASINGHAM: I object. We need to be precise with the language here. It was originally put that this was an annotation to a plan. It's now put that it's an edit. Something may turn on that.

THE COMMISSIONER: I think annotation was used just as a means for Mr Stavis to identify that it was his handwriting. I didn't see it as adopting by Mr Stavis at that point, that purely it was just annotations. He seems to have agreed that he was suggesting substantive amendments at least in this context to reach a compromise within a section 34 conference.

20 MR PARARAJASINGHAM: I accept that, Commissioner. It's just if the words "annotate" and "edit" are being used interchangeably, then so be it. If it's not then perhaps that could be made clear to the witness.

MR BUCHANAN: Well, they are being used interchangeably, but I can ask another question that might assist if it's also on the record. You expected, didn't you, when you made markings like this on plans that applicants had provided you, that they would take them back to their draftspeople and have those markings implemented?---No, not necessarily, because as I said before it was, there are more than one way to skin a cat, so to speak. So for me it was more a case of these are the sorts of things that I think you need to
30 address, and whether they can do it or not, I'm not an architect. I don't purport to be an architect. So, yeah.

Can we have a look at page 188 again? I'm sorry if I might appear to be labouring the point, but you're not indicating what needs to be addressed. You're saying, "This is what needs to be done."---I don't see where I've said this needs to be done.

40 THE COMMISSIONER: How about "delete".---Yeah, well, as I said before, Commissioner, it's a way of trying to increase the setbacks along that side. That might be one way that they could do that. They may turn around and come back with another, different way.

But if they came back, if they adopted your suggestion there, "delete", if they adopted that and it came back to you to write a report for council, you'd have to approve it, wouldn't you?---Well, I mean, in the context of this particular plan, the main issue that I can see that this refers to is setbacks. Now, I'm not sure if there were any other issues with it, and I think I was shown earlier - - -

And, sorry, I was just focusing on that issue.---Okay. Okay.

I take your point, there might have been other issues within the application that haven't been adequately addressed. But on this issue of setbacks, you say quite clearly "delete". If they followed that and it came back to you, you'd have to approve it on the question of setbacks.---I would consider it favourably, yes, yes. I think that's fair.

- 10 MR BUCHANAN: Can I take you to page 186 in volume 6, two pages earlier. Those two – sorry, those plans with your writing on them were provided as an attachment to your email to Mr El Badar, the architect Khaled and Abdullah Osman in your email of 29 January, 2016. If you have a look at the last sentence, "Notwithstanding the above, I have attached a sketch plan which provides some suggestions on how you can amend to satisfy our issues."---Sure.

- 20 So you accept that that was how you described these writings on this copy of the applicant's plans?---Some suggestions, some suggestions on how they can amend. Is that what you're referring to?

Yes, to satisfy your issues.---Yeah, I think so.

So how frequently was it that you annotated or edited an applicant's plans and provided those annotations or edits back to them?---I wasn't personally involved with every application but, in terms of the day to day assessment, but, look, there were occasions when I did it, yes. I can't put an exact number on it, I'm sorry.

- 30 Thank you, Commissioner. I'm sorry we've gone a bit over time.

THE COMMISSIONER: We'll adjourn for lunch and resume at 2 o'clock.

LUNCHEON ADJOURNMENT

[1.05pm]