

DASHAPUB03476
02/08/2018

DASHA
pp 03476-03494

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 2.00PM

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.

THE COMMISSIONER: Yes.

MR BUCHANAN: Mr Stavis, thinking back to the 23 Willeroo Street, Lakemba matter, if you had not intervened in the way you did, it's not likely that the applicant would have achieved the outcomes he achieved, is it?
---I mean I can't speculate. As I said before, it's, there's a process that one
10 would have to follow, obviously he would have probably gone to a full-blown hearing and potentially achieved results that way.

In the case of both Penshurst Road and Willeroo Street - - -?---Sure.

- - - you essentially acted as Talal El Badar's planning advisor and guide to get him through the process to a successful outcome in each case, didn't you?---No, I, I, I disagree. I was merely trying to facilitate a solution, an amicable solution between both parties, council and, and the applicant.

20 And the reason that you did was because of Michael Hawatt's interventions with you. Is that fair to say?---He certainly brought it to my attention, yes, those two matters.

Well, you favoured Talal El Badar in these two matters because of Michael Hawatt's interventions with you. Isn't that right?---Sorry, can you repeat the question, sorry?

Yes, sure. You favoured - - -?---Yeah.

30 - - - Talal El Badar's applications because of Michael Hawatt's intervention with you?---I wouldn't necessarily use the word favoured, but he certainly obviously his intervention heightened the urgency I guess of dealing with the applications, yes.

And it resulted in your interventions?---Yes.

Can I take you to another matter, please, and that is 15-23 Homer Street, Earlwood.---Yes.

40 So we've finished with volume 6, and if I could ask the witness be shown volume 9, please, in Exhibit 52. If I take you to in the first instance, just to provide you with a little refresher, the officers' report commences at page 38 on volume 9.

If I could just give you the opportunity of skimming that summary, and bearing in mind this is for a CDC meeting held on 13 November, 2014.
---Yes.

And if I could now take you to page 44, and we're just halfway down the page. It's on the screen. It might be easier to read if we can blow it up a little bit, please. "The suggested building envelope comprises a perimeter block form that runs along the northern and eastern frontages of the site. The scheme, this being a submission for a planning proposal, envisages a five-storey mixed-use development along the Homer Street frontage, stepping down around the corner from five to four along the Cooks River, and then stepping down to three storeys along the western edge where it adjoins the residential development at 25-33 Homer Street. The majority of the development will be residential with ground floor retail uses along part of the Homer Street frontage. The applicant has estimated that the scheme would have an FSR of 2:1. It is important to note that this is significantly greater than the 1.49:1 on the existing adjoining building and 1.1:1 on the Adora Chocolates site," which I think was on the other side of Homer Street. Do you recall that?---Yeah, it's the café across, diagonally opposite, yeah.

Thank you. And if I could take you to page 45. You can see there a diagram showing the proposed built form. And Homer Street, as I understand it, ran along the right-hand side of that plan, and the river was on the northern side of the plan. If you could just take in the material under the heading Height. "The applicant's justification for an increased height limit is so that it can facilitate a similar scale of development to that of the adjoining development at 25-33 Homer Street. The applicant submits that the development at 25-33 Homer Street has an overall height of approximately 17.5 metres and contains five storeys." However, the officers go on to say, "A review of the approved DA plans," for the adjoining development, I interpolate, "does not support this and reveals at the street frontage the highest point of the building is 13 metres – that is, four storeys – and the highest overall point of the building is the line of the skillion roof on the upper-level unit, which is approximately 17 metres and four storeys. This height occurs for a small section of the building and it is set back at least 12 metres from the street frontage of the building." If I can take you then to page 48. The officers' report recommended that "a planning proposal be prepared to amend the maximum building height to be set at 14 metres on part of the land (along Homer Street) and the current maximum height of 10 metres be retained for the remaining part of the land at 15-23 Homer Street, Earlwood." There was also a proposal for an amendment of existing uses to make it a mixed-use development on ground level, but that's not the focus of this part of the inquiry into 15-23 Homer Street. Can I then take you to page – I'm sorry, before we go there can I just take you back, then, to page 47, where it's indicated that, about a third of the way down you'll see the indented passage, "For these reasons it is concluded that for that part of any proposed development along Homer Street frontage, the maximum height should be limited to 14 metres, which could accommodate four storeys," and then it says, "The rest of the height could retain the current maximum height of 10 metres, which could accommodate a mix of two and three-storey building." So that was the officers' report and

the resolution, page 50, of the City Development Committee was at about point 7 on the page, resolved that a planning proposal be prepared to amend the maximum building height to be set at the same height as the building next door, which is 17 metres, and then went on to talk about the mixed use development amendment. Now, when you arrived at Canterbury in March of 2015, this was a file which was being handled by Lisa Ho. Do you recall that?---Yes.

10 And managed by Warren Farleigh and Gill Dawson?---I believe so, yes.

You became involved in it, didn't you?---I did, yes.

Why did you become involved?---Initially through Mr Hawatt asking me to have a look at this planning proposal and also indirectly with the general manager.

When you say indirectly - - -?---Oh, sorry, I should say and also the general manager.

20 Rightio. Was it directly with Mr Montague?---Yeah.

And did you receive any contact from the applicant himself, a Mr Assad Faker?---I believe I did, but I'm not sure when in that process.

And you don't think it was Mr Faker's contact that initiated your involvement, but rather the contact from Mr Hawatt and Mr Montague?---I believe so.

30 And was the stage when you became involved when a consultant who had been retained by council to provide a report had made recommendations in relation to building height limit which it came to your attention didn't satisfy the Gateway Determination which had been provided in respect of the planning proposal?---I believe so, yes.

40 So if I could then just take you to documents. Firstly if I could take you to the, just to give you a date, page 89. This is a letter from Mr Montague, which as you can imagine was drafted by a member of your staff to be at that stage, this is 13 January, 2015, forwarding to the department the planning proposal and the letter is date 13 January, 2015. Do you see that?---Yes.

And then if I could take you to pages 58 and following, the planning proposal itself runs from pages 58 through to 88. I'm not asking you to look at each page, but if I can just take you for example to page 68.---Yes.

And do you see there, there is in a section of the proposal headed Explanation of Provisions an indication of the relevant proposed LEP amendment to change the building height limit from 10 metres to 17 metres

and there's no qualification or addition or anything, just simply the building height limit that applied to the site?---This is on page 68?

I'm sorry, 68, 68.---68, yeah.

It's in a small table at the top. It's on the screen if it's easier to read there, Mr Stavis, where the cursor is.---I just can't see where it says 17 metres on this document, that's all.

10 Where the cursor's now wiggling.---Oh, sorry, yes.

The heading for the table is HOB Map Changes.---Yeah.

And it's a one-row table.---Yep. I've got it.

And it's 17 metres under the heading Proposed LEP Amendment.---Yep.

Did you become aware that there had been an attempt to modify council's resolution in relation to the building height limit section of the resolution for the planning proposal?---Um - - -

Does that ring a bell at all?---Not really, no.

Okay. Can I take you to page 94, and this is part of the minutes of the meeting of council held on 26 February, 2015, and item 15/15 is in respect of 15-23 Homer Street and it indicates that there was a motion on notice from Councillor Hawatt that in respect of, and then it identifies the resolution, dated 13 November, 2014, "The intent was that the proposed building at 15-23 Homer Street, Earlwood, is to be of similar height and stepping down as next door. Accordingly an appropriate amendment be made by the planning division and be brought back to council for consideration before sending to Gateway for determination." Does that refresh your recollection at all?---This, I note the date and this was 26 February.

You weren't there, I appreciate that.---No. Yeah.

But no one drew to your attention an attempt by Councillor Hawatt to change - - -?---No.

40 - - - the resolution?---No.

In any event, if I can just, having taken you to it, take you to two paragraphs below that where, under the heading Acting Director's Comment you can see a paragraph commencing, "A planning proposal to effect the council resolution on 13 November, 2014 was prepared and sent to the Department of Planning and Environment on 15 January, 2015 for a Gateway Determination."---Yes.

In other words, the advice that was provided to council was the planning proposal's already gone in for a Gateway Determination, because that date, 15 January, 2015, precedes obviously 26 February, 2015.---Yes, yes.

Does any of that ring a bell?---No.

Okay. Can I take you, please, to volume 9, page 96. And do you see that that is an email exchange between you and Councillor Vasiliades?---Yes.

10

On 6 March, 2015, so it's shortly after you've started work.---Yes.

And do you recall that we saw this email the other day because it is the day after the meeting at the Canterbury Leagues Club which you attended with Mr Montague and a number of councillors to discuss planning issues generally?---Sure.

20

But in the same email, Mr Vasiliades said to you, this is the third paragraph, "In respect of 15-23 Homer Street, Earlwood, the clear intention of the councillors was as per the proposed motion on 26 February, 2015 and not 17-metre height limit throughout the site." And then he goes on to say that the motion was withdrawn on 26 February, as you've seen in the minutes. He goes on to say, "I was one of the councillors who voted in support for this item on 13 November, 2015," I think he means 2014, "And I request that you discuss the matter with the general manager and Gillian to ensure that the outcome of this planning proposal is no 17-metre height throughout the site but as per the draft resolution on 26 February, 2015. A 17-metre height throughout the site would," and it says, "Would be appropriate in this location," but I think it's clear that what Mr Vasiliades intended to say was, would not be appropriate in this location. Do you see that?---I do, yes.

30

And you responded, "Thank you for your well wishes. I note your comments regarding the above property and the establishment of the planning panel. I will discuss with Gillian early next week as she is away today, and will provide further advice." Now, do you know whether you did discuss the issues that Councillor Vasiliades raised with you, with Ms Dawson?---I can't recall whether I did.

40

And now that I've taken you to this email, does the issue of an attempt to modify the 17-metre height in the original resolution, in November 2014, does that ring a bell? Still doesn't ring a bell?---No. No.

So do you, as you sit there, don't have a – sorry, you do have a recollection of the planning proposal pursuant to the November 2014 resolution asking for the building height limit to be increased to 17 metres, is that right? ---Yes, I do, yes.

You do have a recollection of that?---Yes.

You don't have a recollection of any attempt to mollify that height limit?
---No.

And you don't have a recollection of it being drawn to your attention, even though you see Mr Vasiliades's email to you in March?---I don't. Sorry, that was very early in my tenure. Sorry.

10 Now if I could take you to page 105. You would at some stage have looked at this document, I take it, being an advice of a Gateway Determination dated 19 March, 2015, from the department on pages 105 and 106, and then the determination itself set out on pages 107 and 108, together with – on page 109 – a written authorisation to council to exercise a delegation from the department to make an amending LEP.---Yes.

20 Can I take you, please, to page 107. I'm going to take you to the first condition of the Gateway Determination, and my question is going to be do you recall this condition coming to your attention? So the condition is "Prior to public exhibition, the planning proposal is to be amended to include," and then it had three dot points, the third reading, "Further justification to support a maximum building height of 17 metres on the site, an additional study that accurately represents and addresses the impact of future development on the character of the local areas, to be made available with the planning proposal during the exhibition period."---Yes.

And do you recall that Gateway condition or the effect of that Gateway condition coming to your attention?---Yes. Yes.

30 Just before parting from the Gateway Determination, can I just take you to page 108, where the last condition was that "The time frame for completing the LEP is to be 12 months from the week following the date of the Gateway Determination," and that Gateway Determination date was 19 March, 2015. Do you see that?---I do.

Can I take you to page 110. This is an email from Ms Dawson to her section or her team, which is cc'd in to you, dated 23 March, 2015, in which she discusses what should be done to meet the Gateway Determinations. You see that?---Yes.

40 Excuse me a moment. The third paragraph reads, "In terms of who undertakes these additional urban design studies, that is up to council."
---Yes.

And then skipping a paragraph, "The department will review the revised planning proposals and the accompanying urban design studies, urban design review studies at the time of exhibition. Should they consider that the relevant study has not adequately justified the proposed height/FSR, then the department has the option of making a submission to the exhibition

thereby constituting an unresolved government agency objection.” You became aware that a firm of architects called Olsson & Associates were commissioned to provide the study required by the condition, the third condition, sorry, the third dot point to the first condition of the Gateway Determination. Is that right?---Yes.

And you weren’t involved in making that selection, were you?---No.

10 Was there to your understanding however an advantage in an external consultant being retained to prepare that report by reason of the distance that would ordinarily be between the external consultant and council?---Um - - -

Given that council was the proponent?---Yeah, yeah, yes.

If I can take you to page 147, this is an email from Ms Ho to Mr Russell Olsson dated 14 May, 2015, and okays a fee proposal. The fee proposal itself is commencing back on page 142, a scope of services and fees, and on page 148 there is a letter to Olsson & Associates accepting their fee proposal and essentially commissioning them from Ms Dawson, dated 29
20 May, 2015.---Yes.

If I can take you to page 149, this is the first page of a draft of Mr Olsson’s report. This is dated, could I ask you to accept it from me, 18 June, 2015. There’s an email on page 174 that essentially tells us that. And the introduction of the draft report at page 151 of volume 9 says in the third paragraph in the left-hand column, “This document provides this development impact study and advises that a 17-metre height limit would be excessive for the study site and recommends alternative height limits. A 17-metre height limit is inappropriate for the following reasons,” and then it
30 provides a number of reasons. In the next column, “In addition to height recommendations this study will also comment on the related issues of FSR and permitting ground floor residential usage.” Page 158 of this volume. The draft identified, in the middle column on that page, urban design principles which the author said had been applied, going from the middle column over to the right-hand column. So nine different urban design principles. And then on page 159, said in the middle paragraph at the end, “Excessively high development close to the river would reduce the visual connection of the riverside to 2-10 Homer Street.” Page 162, the author
40 said, “The proposed development at 15-23 Homer Street blocks nearly all of the eastern façade windows of 25-33 Homer Street development. A better urban form for 15-23 Homer Street would maintain increased visual access of these windows towards the Cooks River.” And then, on pages 168 and 170, proposed an alternative envelope or an envelope with alternative dimensions. And the tallest component varied from 13.2 metres and 14.5 metres above natural ground level, giving an average height above ground level of 13.85 metres. Can I take you to page 169. It calculated an FSR of 1.29:1 and went on to recommend an FSR of, I think – I might have to

withdraw that. No, that's 171, page 171, they recommended that the height have a maximum FSR set at 1.3:1.---Yes.

Can I just take you to a paper, which was prepared before you arrived at council, on page 55 of volume 9, where the planning team were asked to provide data at the request of a councillor – I think the mayor – as to the FSR of a 17-metre building height across the site as resolved by council. And can you see in the second row of the table in Ms Dawson's email – I don't know whether she did the calculation, but she set out there a calculation of 3.75:1 based on 75 per cent coverage of 17-metre building height.---Yes.

You see that?---Yes.

So that was in stark contrast with the FSR that would follow from the building envelope recommended by the consultant, page 171 of volume 9, of 1.3:1.---Yes.

That would be fair to say?---Yes.

Ms Ho reviewed Mr Olsson's draft report, page 174, and provided, under the heading Commentary on page 175-176 – no, I apologise. I withdraw that. She provided in the right-hand column of a table, on pages 175 and 176, matters that she drew to Mr Olsson's attention as requiring attention from him, and I want to suggest to you that those changes were largely as to data rather than opinion in Mr Olsson's report, with the exception perhaps of the request at 175-6 for amplification of discussion of recommendations in the council assessment report of 13 November, 2014, and the reasons for them. Just having a quick look down the items in that table, would you agree that that's a reasonable characterisation of the – sorry.

MR PARARAJASINGHAM: Commissioner, if this witness is going to be asked that question, in fairness he ought to be permitted the opportunity to look at the relevant parts of Mr Olsson's report and these particular, what appears under the headings here, rather than to kind of very briefly accept the proposition that is put to him. That's as I understand what the question is getting at.

MR BUCHANAN: In my submission, it is very reasonable that the witness be given an opportunity to read this table, but I don't know that it's necessary to read Mr Olsson's report as well. However, if the witness wants to, if he would like to indicate that, then for my part I'd be happy to accommodate him. But if Mr - - -

THE COMMISSIONER: Sorry, Mr Buchanan. Maybe if you repeat the question and then I'll ask Mr Stavis if you are happy answering it just reading the table on pages 175 and 176, or whether in addition you'd like to be able to have a look at Mr Olsson's report.

MR BUCHANAN: So the question is that, with the exception of a request to amplify the reasons given in the council officers' report, which is at the bottom of page 175 under the heading Review of the Planning Proposal – so that section there – with the exception of that section there, it would be reasonable to characterise the changes Ms Ho sought as being changes in respect of data rather than an opinion. She was not asking Mr Olsson to change his opinion that the 17-metre height was excessive and that the alternative building envelope he proposed was preferable. That's my question.

THE COMMISSIONER: Now, before you answer, can you answer it? Do you want to read the table on pages 175 and 176? Or in addition do you want to read the table and have reference to Mr Olsson's report?---The latter, please.

The last one.---Yeah.

MR BUCHANAN: Can I make a suggestion?

THE COMMISSIONER: Yes.

MR BUCHANAN: I'm going to be making an application for a short adjournment in the middle of this afternoon just to give a break to stretch legs but also to accommodate the witness's own needs. He's being cross-examined all day. Could perhaps that task be undertaken, in other words, in about half an hour?

THE COMMISSIONER: And you can move on to - - -

MR BUCHANAN: Yes, I can move on to something else.

THE COMMISSIONER: All right. I think that would be a good idea.

MR BUCHANAN: Can I take you to page 177 of volume 9. And can you see that this is a file note by Ms Ho of a conversation that she had with Helen Wilkins in the department in relation to the Gateway Determination, and she recites in the third dot point the relevant condition of the Gateway Determination – that is to say, relevant to the consultant's report. And she then says in the last paragraph, sorry, the last sentence of that third dot point paragraph, "The consultant was not able to support the 17-metre height limit on the site. It recommended an alternative height of 14 metres." Ms Ho goes on to say, "Advice was sought from the department as how to progress the matter in light of the above situation. Helen Wilkins advised us as follows." And you can see the advice, if you could just read it to yourself, that Ms Ho recorded receiving from Ms Wilkins.---Yes.

And then Ms Ho went on to say, “Ms Wilkins also advised the department won’t make a plan that is not properly justified.” Did you see this file note at any time?---Not that I can recall, no.

You did have the file with you though for a period of time, didn’t you?---I did.

In 2015?---I did.

10 In having the file with you, you didn’t go through it to see what had gone before?---It’s likely that I did, yes, I just don’t recall that.

Okay.---Yeah.

So do you think it’s possible that you read this file note?---It’s possible.

Is it likely that you read the file note, given the need to acquaint yourself with what had happened before you’d come into the matter?---I’d say likely, yes.

20

And just to provide you with a further update, can you see that at page 178 in the middle of the page on 16 July, 2015, the consultant firm provided the study with the revisions as requested to Ms Ho?---(No Audible Reply)

It’s in the middle of the page, Bronwyn Horn?---Ah - - -

Page 178?---Yeah, yeah. Yes, I see, I see that.

30 So did the conundrum or issue come to your attention that you had this planning proposal that pursuant to a resolution, had been prepared pursuant to a resolution of council for an amendment to the height limit to increase it from 10 to 17 metres, had been submitted to the department, the department had said okay, we’ll delegate authority to make an amending LEP but we do require that there be a report provided to justify or provide additional justification for the increase in height, and that the report commissioned by council to satisfy that condition of the Gateway Determination did not satisfy that condition because it did not support the increase in height to 17 metres? Did that conundrum come to your attention?---Yeah, I believe so, yes.

40

And was the solution a solution of an amendment to the planning proposal as indicated by Ms Ho in her file note of her conversation with Ms Wilkins on 14 July, 2015?---Sorry, can you repeat the question?

Should, what should have been done would have been to prepare an amendment to the planning proposal pursuant to the suggestion by the department to that effect, and take it back to council and say this is what has occurred and we’re not in a position to be able to satisfy the Gateway

condition, having regard to the report that we've commissioned and accordingly can we recommend that the planning proposal be amended accordingly.---Um - - -

Isn't that what should have happened?---Possibly, yes.

And you know that's not what happened, don't you?---I don't recall exactly the, how it happened, but I don't believe there was a report that in the way that you described it before ever went to council, no.

10

And the fact was, wasn't it, that council needed to be satisfied that it could meet the relevant condition of the Gateway Determination, isn't that right? ---Correct.

The relevant condition required a study to support the height set out in the planning proposal?---Correct.

20

And given that the study that had been carried out didn't meet the condition, council had to decide, didn't it, whether either it would support the height recommended by the consultant in his study or revert back to the officers' recommendation, which were of a similar nature to the consultant's recommendation in broad in terms of actual height limit. You'd accept that, wouldn't you?---Um - - -

14 metres, 14 metres.---Yes.

30

Either way, a revised planning proposal would be required.---If there was a study that wasn't supporting what the Gateway Determination, to satisfy the condition in the Gateway Determination, you would, yeah, you would need to - - -

Well, but it's a bit more than that, wasn't it? You had commissioned a study in order to satisfy – when I say “you”, your team - - -?---Yeah, sure. Yeah.

40

- - - had commissioned a study to satisfy the Gateway Determination condition, and the study did not support the height proposed in the planning proposal. That was a different situation from not having a study that supported the height in the planning proposal, wasn't it?---Yes.

And what you set about doing – tell me if I'm wrong – was trying to get a study which did support the height proposed in the planning proposal.---No, not, not, not in that particular way. I mean, there was a lot of meetings and discussions with team, with the team about that study.

About which study?---Russell Olsson's study.

Yes.---And at that point in time I wasn't satisfied that the study itself had exhausted all the possibilities that it needed to, and from memory it was exactly the same view as my staff had put in their report.

THE COMMISSIONER: Sorry, the Olsson report was the same as your staff's - - -?---Recommendations, from memory.

MR BUCHANAN: And was that a bad thing?---No, not necessarily, no.

10 What was the significance of the fact that the Olsson study came up with a result that was effectively the same as the officers' report?---Well, sorry, can you repeat that again?

What was wrong with the fact that the Olsson study had come up with a result that was effectively the same as the recommendation of the officers' report?---I wouldn't say there was anything wrong with it. It was a case of ensuring that there was a fresh pair of eyes looking at it as well, and I wanted to make sure that we were exhausting every possibility to try and see whether in fact the 17 metres was achievable or not.

20

Well, so far you'd had your own staff recommend three metres short of 17 metres. You'd had an independent consultant recommend three metres short of 17 metres. Were you going to just keep on looking for studies until you could find one that would support 17 metres?---No. I was looking for, we were, I wasn't satisfied at that point in time that we had exhausted all, or we analysed it to the nth degree to feel comfortable in saying that we can't achieve the 17 metres. For me the – and I just glanced at that report before.

30 The Russell Olsson report?---The terminology - - -

Sorry, do you mean the Russell Olsson report?---I do, yeah, yeah. And I would like to be given an opportunity to read it in further detail, but it reads as if it was almost like a – not a cut-and-paste, but it was almost paraphrasing what the officers' recommendation was.

40 What is the significance of that?---Well, if you're looking at getting an analysis being done, then to my way of thinking you'd want to be able to look at it from a fresh pair of eyes and to ensure that, you know, that you exhausted all the possibilities.

And so what would be the proper thing to do if you wanted a fresh pair of eyes to analyse it?---The fact that we only went out to one particular consultant without – and I stand to be corrected, but from the evidence that I've seen so far I think was probably wrong. I think at the very least in those circumstances when you're talking about procuring consultants you at least go out to three different consultants when you're asking - - -

And get three different reports?---Well, no, not necessarily get three different reports but canvass at least - - -

Sorry, get three reports?---No, no, no, no, just to canvass three, three different quotes I should say, but based on the evidence I've seen you've only got, we've only asked for one particular consultant to provide a report.

10 Yes. Are you saying that it would be quite improper for you to obtain a report from an external consultant where you had not put it out to tender and obtained three quotes?---Ordinarily it's best practice to do so. I don't know if improper is the right word to use, but yeah.

And did you ever do that when you were director of city planning or cause that to be done at Canterbury?---I didn't have, I wasn't – well, the simple answer is no probably, yeah.

20 You never put it out to tender or you never sought a report from a single consultant and asked them to provide a report?---I don't recall if I did, I'm sorry.

So does that mean that in this case what you then did was asked your staff to put it out to tender for a second opinion?---Um - - -

30 Is that what you did?---I'm just trying to think if that, no, I think it was more a case of expressing my concerns with the report in the sense that I didn't feel that he'd analysed it to the nth degree that it needed to, and there were subsequent meetings that were held with that particular consultant, between myself and I believe a number of the staff members where I expressed that view to, and he, from memory he went away and did some further analysis I guess. That's Russell Olsson I'm referring to.

Well, can I take you to – I withdraw that. You had a meeting didn't you with your staff, that is to say Ms Dawson, Ms Ho and Mr Farleigh, about that particular report from Mr Olsson? Is that right, do you remember that meeting?---I, I do, yeah.

40 And would it be fair to say that in that meeting you did not appear interested in listening to the position that was being put forward by Ms Ho or the argument that was contained in Mr Olsson's report?---I wouldn't say I wasn't interested, no.

Would it be fair to say that you did not engage in the reasoning in Mr Olsson's report in that meeting?---Is this the same meeting with Russell Olsson or - - -

No.---It's a different - - -

This is a meeting that occurred in around late August or early September 2015 between you, Gillian Dawson, Lisa Ho and Warren Farleigh about the Russell Olsson report.---Sorry, can you repeat the question?

10 Yes. You didn't at that meeting engage, did you, in the reasoning in Mr Olsson's report?---I certainly did. Absolutely. I pointed out the main issue of concern that needed to be drawn out at that point in time was the issue of solar access, particularly on the adjoining property, I expressed that to, to my staff and I didn't think the analysis that was done that particular time was, examined the issue to the nth degree.

And can I suggest to you that each of those staff members, Ms Dawson, Ms Ho and Mr Farleigh, at that meeting, disagreed that it was appropriate to permit a building height of 17 metres across the site.---That's probably fair, yes.

20 Did you think it was appropriate?---No, I, I was looking, we had a, we had a Gateway Determination and we had a report, and I was looking at whether that analysis – at that particular time – whether the analysis was adequate that was contained in the report.

Can I suggest that far from trying to engage with the analysis in the report, at that meeting you indicated you were more interested in tying everything back to the part of the building next door that reached a height of 17 metres and therefore should be – on your argument to your staff – applied across the site.---That's not right.

30 Can I take you, please, to page 180 in volume 9. This is a series of text messages extracted from Mr Hawatt's telephone, and the first one is to Assad Faker. And you understand him to be the proponent.---Yes.

Do you? No, no, sorry, do you understand Mr Faker to be the development proponent for 15-23 Homer Street, Earlwood?---I believe so, yes.

40 And on 9 August, 2015, at 3.53pm, Mr Hawatt texted this to Mr Faker, "Hi, Assad. Can you submit a DA for Homer Street with your planning proposal? It's best to meet with Spiro with a preliminary plan of your proposal than submit a final DA that has support at council." It's possible that that is a typo by Mr Hawatt and he means "then submit a final DA that has support of council." And it was signed "Michael". Do you know of any basis on which Mr Hawatt would be saying that to Mr Faker at that time? ---Look, I, I think it's erroneous. How can you submit a DA – well, sorry, I take that back. I mean, that, for me that terminology is confusing. What was your question, sorry?

Well, do you know of any basis for what appears in that text?---Nothing that comes to mind, I'm sorry.

Had Mr Hawatt been discussing the matter with you?---Homer Street?

Yes.---Yes, absolutely.

Had you discussed with him, or he with you, the idea of Mr Faker submitting a DA for the site?---Not that I'm aware of, no.

Had you had a discussion with Mr Hawatt about the Olsson report?---Not that I can recall but it's possible.

10

I mean, the chances are – I'll withdraw that. What's your first memory of having a discussion with Mr Hawatt about the 15-23 Homer Street, Earlwood site?---It was pretty early in my tenure and it probably was raised at one of the meetings, the regular meetings that we had, but I don't have, I can't give you a specific date.

Do you know why Mr Hawatt, as you understood it, was raising Homer Street with you?---To be honest with you, I don't know why he would raise anything, but no, no.

20

Did he indicate a dissatisfaction - - -?---Oh, sorry - - -

- - - with the state of play on the part of the proponent?---Yes, he certainly expressed his dissatisfaction with staff, my staff, at the time.

In respect of the 15-23 Homer Street, Earlwood site?---Yes. Yes.

That is – I'll just make it clear – Mr Hawatt conveyed to you Mr Faker's dissatisfaction with your staff in relation to progress on that site, is that right?---That's correct.

30

What was it that Mr Hawatt said?---I don't recall exactly what was said.

What was the effect of what he said?---At that, early on he basically asked me to have a look at it and just see what, what the, the issues were. I don't recall if there was any more detail than that because you're referring to my first encounter with him about this.

So did you tell him what the issues were?---I would have after.

40

Well, you would have told him then about the Olsson report and the fact that it didn't satisfy the Gateway Determination condition, wouldn't you?
---Well, not, well, you were asking me before about my first recollection of when - - -

Yes.---Okay. At that point in time I don't think I was aware that there was an Olsson report.

Yes.---Certainly after it is likely that I did mention to him about the report, yes.

Well, because if the inquiry was why is it taking so long to progress, you would have said, because we can't satisfy the Gateway Determination condition for a study that supports the 17-metre height limit increase.

---Yeah, sure. I don't know whether I would have expressed it in that way to him.

10 What else would you have pointed to as explaining why it was taking so long?---The, the - - -

I mean what more could your staff do in this case?---Look, I can't answer that, sorry.

Well, on what you'd seen there wasn't anything more they could do apart from going and getting a report from another consultant, hoping that it met the Gateway Determination condition, if it didn't, going and getting another report from another consultant. Is that what you expected your staff to do?

20 ---No, no, no, not at all.

Okay. Well, what else was there that your staff could do?---Well, they needed to make sure that the report was adequate and it looked at all the issues and analysed the, particularly the solar access issue. Look, I haven't, it's been a long time since I've looked at that report but to the best of my recollection the solar access issue wasn't fully examined, and I remember saying this to Mr Olsson at the time, and then he subsequently went back and, and, and providing some additional information in that regard.

30 You don't think that the bulk of the building envelope might have been an issue?---Of course, absolutely. In terms - - -

I mean even Mr Hawatt seems to have thought that was an issue in that amending motion.---Oh, look, I, why would you say that, sorry? I don't - - -

Well, you didn't see the amending motion which indicated that they didn't propose that it be 17 metres across the site, but rather simply match the building next door?---I may have seen it after, but that was, to the best of my recollection, made before I started.

40

Yes, no, I've just drawn it to your attention this afternoon though, haven't I? ---Sure, you have, yes.

And wasn't you think the bulk of the building envelope the real problem with a 17-metre height limit across the site?---It's a corner site and in urban design planning terms, corner sites are more than capable of taking additional height. Certainly I would have agreed with the ultimate design

would have been to step it down towards the foreshore, but we're talking about a planning proposal here, we're not talking about a development application, so you don't design a building at a planning proposal phase, you set controls, and the only controls we had in the LEP were height and FSR. The applicant would have had to have gone back and lodge a development application and satisfied a whole series of other criteria as, as part of that assessment. So inevitably if you're varying a height to an LEP it doesn't necessarily mean that you can achieve that height across the board.

- 10 Mr Stavis, you know that if an amending LEP had been made that permitted a 17-metre building height across the site, then that would have been the height of the building the subject of the DA that the proponent would have lodged as quickly as possible thereafter and there would have been no development control preventing that being approved.---That's not right, and as I said before, amending an LEP to a particular height does not necessarily guarantee you development approval in the long term.

- 20 So can I take you then to page 181 of volume 9. This is a memo dated 8 September, 2015 of a meeting with Ms Dawson, Ms Ho, Mr Farleigh, Mr Olsson and yourself. Do you see that?---Yes.

It's a relatively short one and it indicates that Mr Ho provided – I do apologise, Mr Olsson provided modelling of the two development scenarios, showing different scenarios at different vantage points, and that you asked for the modelling analysis to be provided to you so that you could use the information for future meetings and discussions with the proponent.---Ah hmm.

- 30 Is that right? So does that indicate that you were already in discussions with Mr Faker?---I can't be sure about the exact time line but it seems likely, yes.

Commissioner, might I apply for a short break at this stage?

THE COMMISSIONER: Yes.

MR BUCHANAN: In all the circumstances would you allow 15 minutes?

THE COMMISSIONER: That's fine.

- 40 MR BUCHANAN: And if the witness is able to, if he could be allowed to take this volume and, to the extent that you can, relax in the back of the hearing room with it in order to have a look at the – page 174, 175, 176, and the Russell Olsson report commencing at page 149. We'll give a little Post-it note to Mr Stavis so that he has those references.

THE COMMISSIONER: All right. That's fine with you, Mr Stavis? All right, we'll break until about 25 past 3.00.

SHORT ADJOURNMENT

[3.12pm]

MR BUCHANAN: Commissioner, I have taken the liberty of advising our friends that Mr Stavis should not be required to attend further this afternoon. He was quite unwell.

THE COMMISSIONER: Yes.

10

MR BUCHANAN: And my application would be that we resume at the normal starting time tomorrow, and my friends and I will be in communication as to whether Mr Stavis is sufficiently well to be able to continue his evidence.

THE COMMISSIONER: All right.

MR PARARAJASINGHAM: Yes, Commissioner, I'll be in contact with my friend. Mr Stavis was quite unwell this afternoon, so - - -

20

THE COMMISSIONER: Yes, I was told actually he wasn't well at lunchtime as well. So, look, we'll adjourn now and resume at 9.30 in the morning. But, Mr Pararajasingham, I know you've been very good at keeping in touch with Counsel Assisting. If you can continue with that, we'll be grateful.

MR PARARAJASINGHAM: Yes, I will. I will. Yes.

THE COMMISSIONER: Before we adjourn for today, any other issues anybody has to raise? All right. We'll adjourn and resume at 9.30.

30

THE WITNESS STOOD DOWN

[3.28pm]

AT 3.28PM THE MATTER WAS ADJOURNED ACCORDINGLY

[3.28pm]