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INDEPENDENT COMMISSION AGAINST CORRUPTION

PATRICIA McDONALD SC
COMMISSIONER

PUBLIC HEARING

OPERATION DASHA

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON FRIDAY 3 AUGUST, 2018

AT 9.30AM

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

MR BUCHANAN: No administrative matters from us, Commissioner.

THE COMMISSIONER: All right. Ready to resume Mr Stavis's - - -

MR BUCHANAN: Ready to resume with Mr Stavis.

THE COMMISSIONER: Mr Stavis, we'll have you re-sworn but before we do that again can I say if during today you need a break just speak up.

10 MR STAVIS: I will. Thank you.

MR BUCHANAN: Mr Stavis, have you had an opportunity overnight to have a look at the memorandum by Lisa Ho, volume 9, page 174, the body of which is 175 to 176, which was addressed to Mr Olsson in respect of the draft of his report which he sent to council?---Yes.

10 And the question that I asked you in respect of Ms Ho's memorandum was whether the changes that she suggested were largely as to data rather than opinion in Mr Olsson's report.---Yeah, I think that's fair.

Can I take you forward then to where we were when we left off yesterday. Can we go to volume 9, page 181. I was asking you about a meeting held at council with Mr Olsson and Ms Dawson, Ms Ho and Mr Farleigh were also present. This is on 8 September, 2015 and my question to you is whether during that meeting you indicated to Mr Olsson that you were thinking of a little more height for the building envelope near the existing building.---The existing building?

20

Yes. Adjacent building.---Sorry, the existing or the adjacent building?

The adjacent building.---The residential flat building are you talking about next door?

30 The one on the south-western side of the site.---No. I actually asked him to explore as I said in my previous evidence yesterday about the concerns I had about his report in relation to the analysis that he had carried out, but I did ask him to explore whether there was an opportunity to look at greater height on the corner rather than adjacent to that adjoining building.

And can I ask which corner you're referring to?---I don't know the side street. I think it's Illawarra Road from memory. Corner of Illawarra and Homer Street and also along the frontage itself on Homer Street.

40 If I can ask you to have a look at the memorandum that Ms Ho prepared of that meeting, volume 9, page 181, can you see that the last dot point records "SS suggested that a greater height can be provided to the four-storey building along Homer Street"?---Yeah, that's, yes.

Is that correct?---No.

It's not correct?---No. I didn't say adjoining the building because obviously if you propose extra height adjacent to that building there's potential impacts.

Can I take you now to another document, please, in volume 5, page 284 and it's on the screen in front of you at the moment. It's item 339 in this page of

a schedule of text messages extracted from Mr Hawatt's phone. If it's possible to enlarge it a little bit more around 339. Thank you. The message is from you to Mr Hawatt on 30 September, 2015 at 6.20pm and the message reads, "Hi, Mike. Don't forget 3.30pm at council for meeting with Assad Faker." Message number 340 sent at 6.43pm reads, "It's to discuss Homer Street." Message number 341 at 7.10pm reads, "I really need you to attend, please, Mike. Is that okay?" And then at 8.52pm you texted Mr Hawatt saying, "Emailed you a response in relation to another property. Also, Mike, if you can't make the 3.30pm meeting with Assad Faker tomorrow re Homer Street I'd rather reschedule as I'd like you there, please." And then message number 343 at 9.08pm Mr Hawatt responds, "Thanks. I'll be there at 3.30." And you responded at 9.15pm, message number 344, "Thanks, Mike." Can you assist us as to why you were scheduled to meet Mr Faker at that time?---I mean I'm assuming that it was in relation to the proposal itself.

10
20 The council's planning proposal or Mr Olsson's report?---That I, that I'm not a hundred per cent sure of. It would have been just generally speaking about the proposal itself.

Do you know who initiated the contact with a view to scheduling the meeting?---I'm not sure if I received a phone call from Mr Hawatt prior but based on this it looks like I've initiated it.

Why was it that you wanted Mr Hawatt to be present at the meeting? ---Well, he was, he was very active in representing the applicant, Mr Assad, so I guess it was just following what had happened prior. He was, had taken an interest in this particular proposal, that's probably the reason why.

30 When you say Mr Hawatt had been very active, what do you mean?---Oh, he, in relation to this, this proposal?

Yes.---Yep. He was, he, he just, there were numerous inquiries that he made of me, and I believe the general manager, as well about the status of the application itself.

And was there any particular concern that you can recall Mr Hawatt expressing about this proposal?---Other than the timeline, I, I, I can't recall anything else.

40 When you say the timeline, trying to move things along a bit more quickly than they were going?---Correct, yes.

And when you say Mr Hawatt had been in contact with the general manager as well, was that because Mr Montague said something to you or was there some other reason that alerted you to the fact that - - -?---Well, no, the general manager from time to time would ask me about applications.

But this particular one?---Yes.

15-23 Homer Street?---Yes, yes.

And you have a recollection of that?---I do, yeah.

When you say he would ask you about this application, was there anything more to it than where's it at or how's it going or when can we expect the report to go to exhibition or - - -?---Is this the general manager or - - -

10

Yes, general manager.---All of the above. All of the above, yes.

But is there any, and there's no particular conversation that you recall with Mr Montague, other than that general memory you have of his contacts with you about it?---That's correct.

20

Now, there's no suggestion in those text messages that we looked at that any other member of staff would be attending the meeting with Mr Faker that you were trying to ensure that Mr Hawatt attended. First of all I should ask you, did the meeting take place?---I don't recall whether it did.

Did you have meetings with Mr Faker at which Mr Hawatt was present?
---Yes.

Did you have meetings with Mr Faker at which Mr Hawatt was present but no one else?---That I can't recall, sorry.

Is it possible that you did?---Possible, yes, yes.

30

If I tell you that there was no note on the hard copy of council's files for this planning proposal in relation to such a meeting, would you be able to assist us as to why that might have been the case?---Other than the general notes that you pointed to me yesterday, I, I don't see any reason why there wouldn't be a note, but as I said yesterday, it wasn't unusual for me not to be vigilant in that way.

And I'm sorry, if you could help me, when you said general note that we referred to yesterday?---You showed me my - - -

40

THE COMMISSIONER: It was - - -

MR BUCHANAN: Oh, your exercise book?---Yeah, yeah, yeah.

Your exercise book.---Yeah, yeah.

All right. Thank you. Now, is it possible that you met with Mr Faker and Mr Hawatt and at around this time, that is to say perhaps 1 October, 2015,

and the Olsson report was discussed?---I have no recollection of me discussing it with him.

However, you do know from the timeline of events that we've been going through that the most recent development up to 1 October, 2015, had been the delivery to you of the Olsson report.---Yes.

And the discussion that you'd had with your staff about it and with Mr Olsson. Is that right?---Yes.

10

And so the likelihood is that you would have discussed with Mr Faker the Olsson report?---It's possible, yes.

Well, can I suggest that it's more than possible, it's highly likely, because of its significance. That is to say, it did not support the planning proposal. ---I think that's fair comment, yes.

20

Did you provide Mr Faker with a copy of the Russell Olsson report at that meeting?---I don't recall whether I provided him but I do recall showing him the, the, I guess the general findings of the report.

And hard copy or - - -?---It was a hard copy, yeah, yeah.

And as far as you were concerned, what was the purpose of showing him pages from the Olsson report?---To basically make him aware that there were still issues of concern at that point in time and that if he wanted to I guess look at addressing some of those issues, I was trying to give him an opportunity to.

30

And on the occasion that you were with him and showing him pages from the Olsson report, what was the outcome of that meeting? That is to say, was there any agreement or understanding that you had as to what would happen next, either on your part or on Mr Faker's part, or Mr Hawatt's part if he was there?---I'm not sure if it was at that particular meeting but around that time I gave the applicant the opportunity to look at providing further information in terms of, and further analysis, so it was other than, I mean I didn't, I don't recall taking him step-by-step through the report, it was more a general thing about that we had received a report that had some negative feedback towards it, his proposal, and, but I do remember at some point in

40

time giving him an opportunity to respond.

And would it be fair to say that the reason that you gave him an opportunity to respond was the involvement of Mr Hawatt, the active involvement of Mr Hawatt in the matter?---No, not, no, I don't agree with that, not, no.

So what was Mr Hawatt asking you to do?---He wasn't asking me to do anything other than, you know, trying to find solutions, which was his general tone with applications.

So I appreciate you don't have a clear memory of each contact or each meeting, but - - -?---Sure.

- - - was there an occasion when you brought to Mr Hawatt's attention the Russell Olsson report?---That I can't remember.

10 The likelihood is you would have, surely?---I, the likelihood is that I probably would have said to him in passing, look, there's a report and it's negative, yes.

And it would have been more than in passing though given you have told us this was a matter on which you received active contact from Mr Hawatt and on behalf of the proponent?---I don't think it was the focus of my discussions with Mr Hawatt that report. It was more, you know, Mr Hawatt wanting things done in an expeditious manner basically.

20 What was there to talk about with Mr Hawatt in relation to the planning proposal if it wasn't to tell him, look, this planning proposal isn't going to satisfy – sorry, we cannot satisfy the Gateway Determination condition for this planning proposal and so the proposal isn't going to go anywhere? Surely you explained that to Mr Hawatt.---Yeah, I think that's a fair comment.

And surely Mr Hawatt would have indicated to you unhappiness with that position?---I don't recall whether he was unhappy but he certainly was pushing for that proposal to be progressed, yes.

30 If he was pushing for it to be progressed and for it to be dealt with in a timely manner, it wasn't going to be progressing or dealt with in a timely manner if something wasn't done about the Russell Olsson report. Isn't that fair to say?---Yeah, I think that's fair.

And would it be fair to say that because of Mr Hawatt's interest in the matter and Mr Faker's interest in the matter you decided it was necessary to do something about the Russell Olsson report?---No, I decided, no, I don't think that's right, no.

40 Why not?---Well, it was, as I said before, I wasn't satisfied in my own self that the Russell Olsson report had really delved into all the and exhausted all the issues, okay. We had a Gateway Determination for 17 metres. So before I had the opportunity to go back to council, you know, I wanted to at least explore all the options and that was the main reason why for me. Sure there was pressure from Mr Hawatt to progress the application, absolutely.

And was there pressure also from Mr Faker to progress it?---Probably indirectly through Mr Hawatt, yeah.

And you certainly got the impression that Mr Hawatt was advocating with you, if I can use a bureaucratic term, on behalf of Mr Faker in respect of this particular site?---Absolutely.

Can I ask if you could just step back generally. I have been asking you about a meeting that it appeared you were scheduling on 1 October, 2015 with Mr Hawatt and Mr Faker and whether any member of staff was present, and skipping over your initial response you indicated that there were times when staff members weren't present and there were times when you didn't cause a record to be made of those meetings. Is that fair to say?
10 ---That's probably fair to say, yes.

When you had such meetings with development proponents, whether with Mr Hawatt or Mr Azzi or not, would it be fair to characterise those meetings as occasions when you and the proponent were strategising as to how best to progress the proponent's project, be it an application or a planning proposal?---I wouldn't use the word strategise. I think I was there to assist and to try and provide information as best as I could. There were certainly advices or recommendations that I made, yeah.
20

What in your mind is the difference between coming up with a solution and proposing it to the developer and on the other hand strategising with the developer as to how best to progress his application or proposal? What's the difference between the two?---I think coming up with a solution, it's an amicable thing in the sense that you try to balance I guess the, the wants of an applicant and, and offset against the impacts on adjoining properties and the like and the public in general. I don't know whether I'd use the word strategising. I mean strategising is obviously by virtue of its meaning is, is to actually try and have a definitive way of progressing an application.
30

Mmm.---Yeah.

Is there a difference between the two?---I think there is, yeah. I think there is, yeah.

Is there anything else you can assist us with as to what the difference is?
---Not any more than I have already, I'm sorry.

When you did not cause a record to be made of the meeting and have it put on council's file, was that because you didn't want a record to exist on council's file of the meeting?---No. I mean if you go through most of the files that I dealt with, I'd say more often than not I didn't have any records, I just didn't keep detailed minutes. There were occasions when I did, but it wasn't uncommon for me not to.
40

And is the reason it wasn't uncommon because on the occasions when you didn't create a record of a meeting with a developer and/or Mr Hawatt and

Mr Azzi, you didn't want a record to exist on council files of those meetings?---No, that's not true.

You generally speaking certainly did not put on council files records of meetings with Councillors Hawatt and Azzi of the kind that you recorded in your exercise book, did you?---That I can't be sure of. That I can't be sure of.

10 If I can ask that we go, please, to volume 9, page 182. This is an email on 6 October, 2015 from you to an Aleks Jelicic. Even though his surname's not there, it pops up later, J-e-l-a-c-i-c [sic]. You know him to be an architect. Is that right? A-l-e-k-s I should - - -?---Yeah, I, I, I believe so, and an urban designer of some sorts as well.

Right.---Yeah.

And he ran a firm called Aleksandar, with a K, Design. Is that your recollection?---Yes.

20 Now, here in this email you refer to a meeting "Last Friday with the owner." And if I can tell you that the Friday before 6 October, according to a 2015 calendar, was 2 October, 2015, perhaps the meeting that had been scheduled with Mr Faker and Mr Hawatt ended up occurring on 2 October rather than the 1st. Would you accept that as likely?---That's possible, yes, yes.

Now, was there a reason – I withdraw that. Lisa Ho was the file officer for this matter?---Correct.

30 Warren Farleigh was her team leader. Is that right?---Correct.

Was there a reason why neither of them attended the meeting?---The only reason I can think of was because in my view, as I said yesterday, those, they were entrenched within their own I guess views on the application itself and I wanted to get a fresh perspective on, on, on looking at the proposal and exhausting all the possibilities.

And so you were going to engage in an end run around your staff and deal directly with - - -?---Oh, look - - -

40 - - - the councillor and the owner and his consultant with a view to achieving the owner's desired outcome. Is that right?---It wasn't, it wasn't about achieving the owner's desired outcome. It was about looking at things from a fresh perspective and I believe that this gentleman or this firm was not the only firm that was looking at, at this application, this planning proposal.

What would the attendance of the file officer and/or her team leader, how would it have prevented a fresh look being taken at the planning proposal?

---That I can't answer to be honest with you.

Is the reason why neither of those staff members attended the meeting with the owner that you didn't want witnesses to the meeting?---No, that's certainly not the case.

Now, you – excuse me a moment – at some stage provided Mr Jelcic with a copy of the Olsson report. Is that right?---I'm not sure if I did actually.

10 You're not sure if you did?---Not, I can't remember. I don't recall if I actually gave it to him.

Was there a reason why you wouldn't have?---Probably not.

Are you saying that you would have simply summarised it to him?---That I'm not 100 per cent sure, I'm sorry.

20 Well, can I take you to the fourth paragraph of this email, "I note that we agreed that you will be given some time to have the proposal peer reviewed by a reputable urban design firm and that the costs of such report will be paid for by the applicant." Do you see that?---Yes.

30 Was it the, when you say the proposal – I withdraw that. Can you go back to the third paragraph and you'll see that you said, "I note that council's urban designer has concerns with your proposal particularly in terms of overshadowing the adjoining RFB and to the bulk and scale of the potential form when viewed from the public domain." What did you mean by "your proposal" in that paragraph and "the proposal" in the next paragraph?---I, I think it was just a bad choice of words to be honest with you.

You weren't proposing that Mr Faker's submission for a planning proposal that had been sent to council be peer reviewed. You were suggesting that something else be peer reviewed. Is that right?---Can I ask what the something else - - -

Well, that's my question.---Okay. Well - - -

40 If the word proposal in those two paragraphs does not mean Mr Faker's initial proposal, the Burrell Threlfo Pagan proposal of May, 2014, then what does it mean?---I can't be a hundred per cent sure but I believe it may have been the, just, just as I said there the council's urban design report.

So it was Mr Olsson's report?---It probably was Mr Olsson's report, yes.

And the proposal was that – I'm sorry, I shouldn't use that term. The suggestion was that Mr Olsson's report be peer reviewed.---No. See, at that point in time I remember expressing issues that had been identified by Mr

Olsson to the proponent. Now, it certainly was Aleksandar as being one of them, so it's likely that I did forward that report to him to have it looked at.

And why would you have sent him the report to have a look at?---To look at the arguments and the, the issues that had been addressed by him with a view to addressing those issues.

Had the report been provided to council at that stage?---The Russell Olsson report?

10

Yes.---I don't believe so, no.

The Russell Olsson report had been commissioned by council - - -?

---Correct.

- - - to meet a Gateway Determination condition that had been conveyed to council. Is that right?---Correct.

20 But it had not itself been provided to council and instead was provided to the proponent. Is that what you're telling us?---When you're saying council are you talking about the councillors?

The councillors.---That's probably right, yes.

Were you entitled to provide it to the proponent before providing it to the council comprising the councillors?---I see no issue with that.

Had it been commissioned in order to provide it to the proponent?---No, no.

30 Isn't that a reason why it shouldn't have been provided to the proponent?---I don't believe so, no.

40 Why not?---I, I just don't think there was, that that's a reason for not providing it. The whole, the whole issue about the report, as I keep coming back to, was that I had concerns with the Russell Olsson report exhausting all the analysis that was required. I wasn't satisfied. So by furnishing the proponent a copy of that report was merely a way in which they could get a better understanding of what the concerns were and to give them an opportunity to review it, not necessarily agree with it, but look at it and identify the issues.

So having regard to the terms of the email of 6 October, 2015, this is still on page 182 of volume 9, is it fair to conclude that at your meeting with Mr Faker on 2 October, 2015, at which Mr Hawatt was likely to have been present, or you certainly wanted him to be present, there had been discussion about the fact that the Olsson & Associates report had concerns with Mr Faker's proposal, particularly in terms of overshadowing and as to the bulk and scale of the potential built form?---I think that's possible, yes.

And had you and Mr Faker agreed, possibly also Mr Hawatt, that Mr Faker would be given some time to have the report peer reviewed by a reputable urban design firm?---It wasn't a case of peer reviewing that report, it was a case of addressing the issues that were raised in that report with a view to giving him an opportunity to come back to council.

10 Well, can I just refer you to what you said in the email. You opened it by saying, "I refer to our meeting last Friday with the owner." I suppose "Our" meeting last Friday with the owner would suggest that Mr Jelcic had been present on 2 October and perhaps your meeting with Mr Faker had been the previous day as scheduled, and then the next day you met with Mr Faker again but this time with Mr Jelcic as well. Is that a possibility?---I, I don't recall whether there were two - - -

Meetings with Mr Faker?---Yeah, coinciding meetings, or whether it was just the one meeting.

20 Was Mr Hawatt present at a meeting with Mr Faker and Mr Jelcic?---That I can't be a hundred per cent sure of. It is possible though.

Anyway, you say in the third paragraph, "I note that council's urban designer has concerns with your proposal," et cetera. The fourth paragraph, "I note that we agreed that you will be given some time to have the proposal peer reviewed." Doesn't that mean that you had an agreement with Mr Faker, and Mr Jelcic possibly as well, prior to writing this email that you would give them the opportunity to have the Russell Olsson report peer reviewed?---I think, yeah. Look, yeah, I think that's fair.

30 And you went on to say, "I also agreed", referring again back to the meeting the previous Friday with Mr Faker, "to allow you/project team the opportunity to present this peer review report and findings to council's urban designed in due course."---Ah hmm.

40 So all of that sounds as if this was the solution that you came up with in response to the Russell Olsson report not satisfying the Gateway Determination condition and having an unhappy proponent and receiving pressure from Mr Hawatt advocating on behalf of the proponent. Is that fair to say? This was the solution that you came up with?---I believe so, yes.

Can I just ask then about – I'm sorry, if we can go back to the email. The last paragraph, "Please note that in accordance with the Gateway approval the draft LEP will need to be publicly exhibited and finalised prior to 19 March, 2016 hence your prompt response will need to be received as a matter of urgency." You were, weren't you, engineering an opportunity for the proponent to prepare a report to counter the Olsson report?---I was asking him to, if he wanted to provide, I wanted to identify that there was an urgency obviously because the Gateway Determination from memory was

only valid for a certain period of time so he needed, if he wanted to provide a response he needed to do so way before to give us an opportunity to, to respond.

And how would that response feed into the Gateway Determination and public exhibition process as far as you were concerned as at 6 October, 2015?---Well, whatever information we had received we'd consider that information and then obviously put a, complete a planning proposal that actually goes on public exhibition.

10

But you knew the problem was at this stage that if you put something on public exhibition that didn't satisfy the Gateway Determination condition you wouldn't be getting very far with this planning proposal didn't you? ---At that point in time I was trying to exhaust all the possibilities of trying to find, to see whether or not there was any merit in, in achieving the 17 metre height limit. So I was, and given the time constraints, the lapsing of the Gateway and I think, I recall that we actually got an extension from memory on that Gateway.

20

Yes.---So that was, that was at the forefront of my thoughts. That was the driving thing. Sure, there was pressure from Mr Hawatt to, to act in a timely manner, but for me I had to be satisfied that those, that we had exhausted all the opportunities.

When you say, "Sure, there was pressure from Mr Hawatt to act in a timely manner," you mean, don't you, there was pressure from Mr Hawatt to progress this planning proposal to the point of a draft LEP being made?---I think that's fair, yeah, yeah.

30

And that meant, as you understood the situation, because you understood it much better than Mr Hawatt did, that you needed to come up with a product that would satisfy the Gateway Determination condition. Is that correct? ---At least exhaust all the possibilities, yeah.

Well, that's how you characterise it, but at the end of the day, weren't you hoping or indicating to the owner that if you can come up with a report that does satisfy the Gateway Determination condition, then this planning proposal can be progressed, if you don't come up with one, it can't be progressed, end of story?---I think that's, that's fair.

40

And so you contemplated, as at 6 October, 2015, if not in fact 2 October, 2015 when you met with the owner, didn't you, that if the owner could come up with a product that did satisfy the Gateway Determination condition then that product would be what would be put forward in order to satisfy the Gateway Determination condition, that is to say the additional justification for the height sought in the planning proposal?---My recollection is that I believe I was asked – sorry, I take that back – was that the, whether one report goes on exhibition or the other, I sought advice from

staff in regards to that, I'm not, my expertise is not in planning proposals per se, yeah, so - - -

Just look at the last paragraph of your email of 6 October, 2015. You might not have had an expertise in planning proposals but you knew well enough that you have in sequence a planning proposal, a Gateway Determination which had conditions, the conditions needed to be satisfied, then you could go to public exhibition, then you could progress to making an amendment to the LEP.---That's fair.

10

And you knew that at the time you wrote this email, as is clear from the last paragraph, didn't you?---(No Audible Reply)

And you were saying, get this peer review report to me with a view to meeting the Gateway Determination condition and then we can go forward to public exhibition.---I didn't actually use those words.

I know you didn't.---Oh, sorry.

20

But that's the effect of what you're saying in combination with those three paragraphs there.---Sure.

Four paragraphs.---Yeah. Sorry, can you repeat the question, please?

What you had in mind at the time you wrote this email was that the proponent would produce a report which, if it met the Gateway Determination condition, would allow the planning proposal to go forward to public exhibition.---That's probably fair comment, yes.

30

Because it couldn't go forward to public exhibition without something changing, could it?---Sorry, when you say something changing, you mean - - -

Something changing from the status quo, which was Gateway condition not satisfied.---Yeah, yeah, that's correct.

So something has to change, and the change you were proposing is, you, proponent, you prepare a report, give it to me, what I'm contemplating is, and I'm putting these words in your mouth - - -?---Sure.

40

- - - is that that will then go on public exhibition as satisfying the Gateway Determination condition.---I don't, I don't recall ever saying that to the proponent, that that's what was going to happen.

But that's not the question I'm asking you.---Sorry.

What I'm asking you is, that was what was in your mind, wasn't it, at the time you wrote this email?---I can't honestly say that that's the case, no.

Now, you cc'd into that email Ms Dawson, but not the file officer or her team leader who had been dealing with the matter. Is that right?---Yes.

Was there a reason why you didn't cc in the file officer or the team leader who had been dealing with the matter?---No, no particular reason, other than Gillian was my next in charge of that department.

10 Thank you. And you also cc'd in Mr Hawatt. Was there a reason why you cc'd him in?---Because he had a, he had a keen interest, as I expressed before, on this proposal.

And is it fair to say that this is an indication that makes it even more likely that Mr Hawatt was present at a meeting that you'd had on either 1 or 2 October, 2015 with Mr Faker?---Yes.

20 And you were keeping him in the loop as to the next step being taken pursuant to the agreement you'd reached with Mr Faker.---That's probably a fair comment.

Now, can I ask you about a text message at page 180 of volume 9, on 25 November, 2015, item 11 in this schedule. It's a text message to Mr Faker from Mr Hawatt on 25 November, at 9.02am. It reads, "I am told you have till March. You need to complete your proposal quickly." That information would have come from you, is that fair to say?---I think so, yes.

30 Could the witness be shown Exhibit 74, please. And can I, instead of making it Exhibit 74, can I make it Exhibit 75, please, which, for the record, is a revised version of Exhibit 74. If I can ask you to go to page 4 of these call charge records. So I think I showed you this type of document before. It's a record of metadata in respect of telephone calls made to various telephones and collected together in a schedule. And if I can take you to page 4, can you see that there are three items there on that page?---Yes.

40 And that the second one indicates that Mr Faker's phone called a number which is identified as connected to you or associated with you on 19 May, 2016, and that the line was open for 1 minute and 35 seconds. Just looking at that number there under the heading Phone Service 2, that was your direct line number at Canterbury Council, is that right?---I, I, I don't remember the number, to be honest with you, but it probably was, yes. I just don't recall the number.

Do you remember talking to Mr Faker on the phone at all?---Yes.

Did he ring you from time to time?---Yes.

Would you just excuse me for a moment, please. If I can take you back to page 3. And if I could ask you to have a look, and about the middle of the

page – and we’ll enlarge it on the screen – for the date 6 October, 2015. And do you see there an entry for a call by Mr Faker to you on 6 October, 2015 and the line was open for 37 seconds? And then on 7 October Mr Faker is recorded as ring you again. The line is open for 28 seconds. What was it that Mr Faker was ringing you about when he rang you?---Likely about his application, I would imagine.

10 There wasn’t any other matter that he had that you were concerned with while you were director of city planning, it was the 15-23 Homer Street, Earlwood property, was it?---Yes.

And your evidence is, is it fair to describe it, that he would have been ringing you to try to either progress his proposal or to see where it was at? ---That’s fair.

Is that fair to say?---Yes.

20 Did he indicate concern on his part that it wasn’t moving along fast enough?---I’m not sure if it was on that occasion.

No, I understand that.---Yeah.

But generally speaking did he indicate that sort of concern to you? ---Absolutely.

And did Mr Hawatt indicate that sort of concern to you?---Absolutely.

Can I take you to, still in volume 9, page 195, please.

30 THE COMMISSIONER: Just before we go there.

MR BUCHANAN: Yes. Sorry, Commissioner.

THE COMMISSIONER: In volume 9, page 115.---Yes.

That’s an email you sent.---Yes.

Can you see your telephone number?---Yes.

40 And that accords with - - -?---That, yes.

- - - the number in Exhibit 75?---Yes.

MR BUCHANAN: And whilst you have that open there in front of you, just so far as that email is concerned, it would appear that on that occasion you sent to Mr Hawatt would you agree on 8 May, 2015 a copy of the Gateway Determination correspondence with the department?---Yes.

Thank you. And would it be right to say that that would have been pursuant to a request Mr Hawatt had made to you?---That I can't be 100 per cent sure but it was either me keeping him informed and sending him that or what you said previously and there is, I mean, there's a likelihood that he did ask.

10 But just in fairness to you, is it also possible that you had been trying to get him to understand how the planning proposal process and Gateway Determination process worked and that the impediment was satisfying the Gateway Determination condition and you might have indicated to him look, I'll send you a copy of the document so that you can see what I'm talking about?---That's fair, yes.

Just on this subject generally, did you find yourself in your dealings with Mr Hawatt from time to time trying to explain to him aspects of planning and assessment which you believed he didn't understand and needed to have a grasp of in order to properly understand the particular matter he was asking about?---Yes, yes.

20 And so from time to time you did explain planning matters to Mr Hawatt and also to Mr Azzi?---To a lesser extent to Mr Azzi.

Why a lesser extent to Mr Azzi?---He certainly didn't have quite a, he wasn't as knowledgeable in planning matters as Michael Hawatt appeared to be. He appeared to be able to grasp the issues a lot better.

But I mean it would just, without wanting to state the obvious, of the three of you, you by far had a firmer grasp of planning law and an understanding of how the system worked?---Yes, that's fair.

30 If I could ask you to go to page 195 in volume 9. This is another page from your exercise book. Do you recognise your writing?---Yes.

And in the second half of the page you record a meeting with Michael Hawatt, 18 December, 2015.---Yes.

And there's seven items there. I think we actually looked at this when we were looking at the Willeroo Street project. But item 4 was Homer Street, Earlwood.---Yes.

40 And you've got the word "expires".

MALE SPEAKER: "Expire".

MR BUCHANAN: "Expire". Thank you. After Earlwood. Do you see that?---Yeah, I do, yes.

And is that an indication that there'd been some communication between you and Mr Hawatt about the need for the proponent to do something about

the expiry of the Gateway Determination in about March 2016?---That's fair, yes.

Now, can I take you to another document, page 196. This is an email from you to Aleks Jelicic. Do you see that?---Yes.

Which is dated 23 December, 2015. And you say, "See my general comments attached," and there's a PDF document attached to that email. Can you see that?---Yes.

10

And if I go over the page, this is the hard copy of the PDF document, going through to page 218, and it is what came to be referred to as the JBA report, is that right?---Yes.

20

Are you able to assist us as to how come JBA Urban Planning Consultants prepared this draft report headed Planning Proposal, Planning Justification Report, 15-23 Homer Street, Earlwood?---To the best of my recollection I believe it came about after meeting with Aleks, yeah, because as I found out from, he was an architect rather than being more, his specialty being more urban design. So I, I believe it was the applicant who commissioned that report.

And did you assist either Mr Faker or Mr Jelicic in identifying JBA as an urban design consultant who could prepare the peer review report of which you had spoken with Mr Jelicic?---I probably gave him a number of names, yes.

Did it include JBA?---Probably. Probably.

30 You had, of course, previously worked with JBA.---(No Audible Reply)

Did you put – I'm sorry, you need to answer on the record.---Sorry.

You had previously worked with JBA?---Yes, yes.

Did you put Mr Jelicic in touch with a particular person at JBA?---That I'm not sure.

40 Did you deal with a Mr Gallagher in relation to the JBA report on 15-23 Homer Street, Earlwood?---It's most likely I did but I don't have any real recollection of it.

Did you know a Mr Gallagher at JBA before you had discussed with Mr Jelicic the idea of getting a peer review report on the Olsson report?---I'm not sure if it was him but I, I remember that, and I'm not sure if it was Mr Gallagher or someone from his office had been engaged by the State Government to look at the Sydenham to Bankstown Urban Renewal

Corridor. So in answer to your question, I may have dealt with him in that capacity. I just can't remember exactly.

Now, the copy of the JBA report which commences at page 195 has, if you can flip through it, please, and I'm sure you've seen it before, your handwriting on it on a number of pages.---Sorry, starts at 197?

197. Thank you.---That's okay. Sorry, you asked?

10 My question was there is handwriting - - -?---Yes.

- - - on the copy of the report that runs from page 197 to 218. Whose handwriting is it?---That's my handwriting.

Now, how did this report come into your possession so that you were in a position to put handwriting on it?---I really don't recall. It may have been emailed to me from the proponent.

20 Could it have been provided to you in hard copy form, delivered to you?
---Possibly, yeah.

Could a copy have been provided to you on a USB that had been delivered to you?---Possibly.

Was it delivered to you, whether electronically or physically, pursuant to an arrangement that it would be delivered to you?---I think that's possible, yes.

30 And what possibly was that arrangement?---Just that once they had completed I guess their report that they would forward it to me.

And with whom would that arrangement possibly have been made?---That I'm not sure about. I'm not sure if it was JBA or whether it was through Aleksandar. I'm not sure.

You reviewed the report in detail. That's clear from your comments in handwriting.---I think that's fair, yes.

40 Did you provide a copy of it to Lisa Ho or anyone else in your office?
---That I'm not sure about.

Would there be a reason why you didn't provide it to Lisa Ho, the file officer, or anyone else in the team who had been looking after this matter?
---Not one that I can think of, no.

Is it possible that you deliberately withheld it from your staff because you were trying to ensure they were not involved in the finalisation of this document?---At that point in time I took more of a hands role in that application.

Why - - -?---Sorry, what was your question again?

Why did you take more of a hands role in this application at that time?
---Because I wasn't satisfied with the way our staff were dealing with the matters. I mean they, in my view as I said before, we hadn't explored all the possibilities of whether or not there was adequate justification for the 17 metre height limit and to be quite frank I wasn't, wasn't getting anywhere with some of the staff in that regard because - - -

10

And who were those staff?---It was mainly, well, well, Warren Farleigh obviously, Lisa Ho. They're the two that come to mind.

Did you have arguments with them about it, about the matter?---I wouldn't call them arguments, no, no.

Did you have disagreements with them about the matter?---I expressed my, my concerns with the reports that were being prepared so to that extent, yes.

20 Did it concern you that you were not getting the support of your staff for the views that you were taking, say, in relation to this matter?---No.

Didn't concern you?---No, not at the time, no.

But you were the boss of the division.---Yeah.

And you weren't getting the support of your staff in relation to a matter in which you were taking a keen interest.---It's not unusual for that to occur.

30 Are you saying that it wasn't unusual for that to occur whilst you were director of city planning at Canterbury?---No, I'm just saying that in general as a boss it's not unusual for, from time to time, staff would not agree with certain, you know, with, with the corporate position, I guess.

And the corporate position, as far as you're concerned, was what you thought?---No, it was actually trying to find – as I keep repeating myself – trying to exhaust every possibility that we could to see if there was adequate planning merit for the 17-metre height limit.

40 An alternative view, I'd invite you to comment on this, would be that you were doing your best to give the proponent an opportunity to get the planning proposal advanced because otherwise it wouldn't be advanced.
---That's fair.

And were you doing that because of pressure from Mr Hawatt?---No, I was doing that, trying to find an amicable solution, within the time frame. My practice is to try and give people the benefit of the doubt, to try and assist

people. That's what the Canterbury way was, and that stemmed from the general manager.

To assist development proponents getting their proposals and applications up?---Not necessarily, but to assist in the process.

Well, what could it possibly mean other than an outcome of ensuring that proponents' proposals and applications succeeded? That's the outcome, isn't it, of finding these solutions?---But succeeded in what form? You know - - -

Succeed in whatever possible form necessary in order to achieve success. ---Yeah, that's a fair comment.

In case I forget to come back to it, you made this comment on the front page of the JBA report, "Aleks, my comments in red. This should not be misconstrued as approval/support of the proposal. Spiro." Why did you write that?---Because the main purpose of that report or my comments was to assist to provide clarity in terms of the information, the issues that he needed to address, and it wasn't to be misconstrued as supporting the proposal.

And needed to address from what point of view or whose point of view? ---Well, mine at that point in time.

Applying any particular standard or discipline or principles?---Just general town planning principles.

You, is it fair to say, were trying to improve the report from a town planning point of view as you understood it?---No. No. I was merely trying to get him to understand that there were issues with his report.

But the issues were, what, deficiencies as you saw them, is that right?---Just have to quickly look at it, if you don't mind. Is that all right?

Yes, sure.---Yeah, I believe that he needed to make further, that there were issues with the report that he had to look at addressing, yes.

And were those issues deficiencies in the report as you viewed it?---Yeah, I think that's fair.

You wanted to improve the quality of the report. Is that right?---I wanted, I wanted him to address the issues as I saw them at the time.

You saw it as a poor quality report that needed changes to be made to make it a better quality report.---I wouldn't categorise it as a poor quality report, but certainly I felt that he needed to address, there were some issues that

needed to be explored, and that was the purpose of my comments, trying to provide some sort of clarity for him at that point in time.

Can I ask you to go to page 208. The comment in the right-hand margin in parenthesis, "Look at Olsson's report and comment on key points re key vistas, et cetera, et cetera." Why did you write that on that page, or at all? ---I believe it was probably an attempt by me to, to point out to him that there were issues with vistas and so forth that had been identified by Russell Olsson.

10

And what did that mean though for the person who was drafting the JBA report?---That they needed to look at the comments that were made in the Russell Olsson report and - - -

With a view to doing what to the draft report?---Providing comment, providing, providing comments in their draft report.

On what Mr Olsson had said?---Yeah.

20

If you go to page 214 of volume 9. Now, you have a series of comments down the left-hand margin, but at the end you say, "More detailed analysis and justification required." You saw this report as being deficient in meeting the goal of satisfying the Gateway Determination condition of providing additional justification for the 17-metre building height limit in the planning proposal?---That version of the report, yes.

You of course had to deal with this report as director of city planning once it came in, in its final form. Isn't that right?---Yes.

30

You had to decide what to do with it?---Yes.

Isn't that right?---Yes.

And you ultimately decided to put it on, in with the materials that were put on public exhibition. Isn't that right?---I, I don't believe it was, I sought advice from staff I believe at that point in time, that's - - -

40

And does that mean you didn't make a decision to include it in the materials and put it on public exhibition, Mr Stavis?---It certainly doesn't mean that, no.

No. You put yourself in a position of conflict, didn't you, by both editing the report and then later, as you foreshadow on page 197 in your front page, approving it and supporting it?

MR PARARAJASINGHAM: I object. He didn't agree that he edited the report.

MR BUCHANAN: Oh, very well. Did you edit the report, Mr Stavis?
---This report?

Yes.---No.

Oh, you didn't?---No. I, I commented on the report.

I see. What did you expect to be done with the comments?---The, the, the
proponent to address the issues that I had identified.

10

Yes. By making edits along the lines of what you had asked for in your
comments?---No, by addressing the issues.

Well, when you said – we'll go through this in a little bit of detail, shall we,
as to whether you edited it or not. You said for example, page 204, "Needs
more detailed analysis." Then you criticised the drawing on page 204 and
pointed out deficiencies in it. What did you expect to be done with that?
---For the, for the consultant to address the issues.

20 What issues?---The issues that I'd raised, or my concerns.

How would they address them?---By exploring and doing further analysis
and ultimately leading to a revised report, yes.

And how would they revise the report?---Well, I wouldn't - - -

They'd make edits to it, wouldn't they?

30 MR PARARAJASINGHAM: I object. Perhaps he can answer the question.

MR BUCHANAN: Would they make edits to it or not?---They would, yes.

Yes.---Yes.

You were proposing edits to the report, weren't you?---No.

Are you seriously expecting the Commission to accept that you weren't
proposing edits to this report by making these changes that are in your
handwriting on almost every second page?---No.

40

You're not expecting the Commission to accept that, are you?---Sorry, I am
expecting the Commission to accept that.

You were putting yourself in a position of conflict, weren't you, by both
making the comments that you made with a view to the report being edited
along the lines of your comments and then – as you foreshadowed in your
note on page 197 of volume 9 – approving it or supporting it, weren't you?
---Sorry, can you repeat the question.

You were putting yourself in a position of conflict of interest.---I don't see -
- -

On the one hand you had an interest in the final version of the report. On the other hand you had to approve it or support it.---I, I don't believe I had a conflict of interest, no. I was merely providing comments to a report that was provided to us by a proponent.

10 And then if those comments were implemented by way of edits to the report, you had to make a decision as to what to do with the report with those edits in it, didn't you?---It, it, the simple answer is yes but can I just answer the question? You're talking about a reputable firm. They're not going to make comments and they're not going to edit reports if they don't agree or explore or possibilities. So my expectation was for them to look at the issues at hand and to, if they could provide the justification then that was a matter for them.

20 You, in making the comments you made – I'm sorry, I withdraw that. You procured this report being commissioned, didn't you?---No, I didn't.

You caused it to be commissioned.---No, I merely suggested to them to get, to look at providing their own reports, yes.

And you don't think that that meant that you caused it to be commissioned?
---No.

30 What did you expect would be done with the report at the time that you agreed with Mr Faker and/or Mr Jelicic that it would be prepared?---The, I don't know whether, look, can you ask the question again, sorry?

At the time that you agreed with Mr Faker and/or Mr Jelicic that this report be prepared, what did you expect would be done with it?---Well, I'd expect, I expected them to explore the issues that were at hand, and, and with the benefit of having a Russell Olsson report that was done, to look at it potentially addressing the issues. Now - - -

40 And then what?---And then if, if there was, if we were of a mind to be satisfied with the report, then it could be used as part of the planning proposal.

That's not the sort of conduct in which planning officers at a local council engage when dealing with satisfying a Gateway Determination condition seeking further material, is it?---I, I, I can't, I can't answer that. I don't know the answer to that.

And it would be fair to say, wouldn't it, that this degree of involvement on your part in trying to progress this planning proposal was unusual for a

director of planning.---I'm not sure. I had never been a director other than this, on this occasion.

You, by making the suggestion that this report be prepared and then by making the comments that you wrote on it and sending it back with a view to edits being made, were making yourself an advocate for Mr Faker.---I don't believe so.

10 Now, you know that Lisa Ho had reviewed the Olsson report. Is that right?
---I'm not sure if - - -

Well, you remember that last night you had a look at her memorandum?
---Oh, sorry. Yes. And her comments, yes.

Yes.---Yes, yes.

And you had the file didn't you?---There was a period in time that I did have the file, yes.

20 You would have been aware that (a) she was the file officer and (b) she had made comments on Mr Olsson's report. Why in that circumstance would you not have sought her input or commentary on the JBA draft report?---I can't answer that. I don't know why other than to say what I said before and that is at that point in time they were, staff, Lisa was entrenched in her views and it's no coincidence that the Russell Olsson report in my opinion was, had exactly the same findings as what the council planner's report recommendation was. So I wanted to make sure that we explored every possibility.

30 What was the problem with council officers being entrenched in their views in your opinion?---That's not a problem per se. The, from my perspective as a director of planning I wanted to explore that all the possibilities of whether or not we could achieve the 17 metres. It's as simple, that's all, that's the best way I can put it.

40 But if your reason for not keeping the file officer and her team leader involved in the file was that you thought they were entrenched in their views, what was wrong, and there was no problem with their being entrenched in their views, what was wrong with keeping them in the loop?
---I don't know whether I didn't keep them in the loop of what I was, what we were doing. I can't say that with any certainty that I didn't speak to them.

Well, you know you didn't send the draft JBA report to them for review don't you?---I don't, I don't know that.

Assume that you didn't.---Okay. Okay.

Why wouldn't you have sent it to them for review?---At that point in time I took a more hands-on role. That's the only explanation.

But taking a hands-on role on the part of the director doesn't prevent you from asking your staff to provide input particularly where judgement is required on the part of professional people.---Well, the input, I knew what their input was. I don't, this, this was not in isolation. We had discussions about this particular proposal over a period of time so it wasn't as if, you know, I didn't know what their thoughts were on the, on the proposal.

10

How did you know what their thoughts were on the JBA draft report?---That I didn't know. That I didn't know.

And you didn't want to take the risk of being exposed to them. Is that fair to say?---No, that's not, that's not true at all.

Well, you say that you were aware that they had entrenched views. Did you think that they would be critical of the draft JBA report if you exposed it to them?---I can't say with any certainty they didn't see that report anyway.

20

I'm not saying they didn't see the report.---Sure.

But the draft report, the one you commented on.---Right. Again - - -

Why didn't they get a look in on that the way you did?---I can't answer that. I don't know if - - -

30

Well, an explanation is that you thought that any contribution that they made would be unlikely to progress the planning proposal, a 17-metre building height planning proposal. Would that be fair to say?---Yeah, that's probably fair to say, sir, yes.

And what you wanted to do was to progress a 17-metre building height planning proposal?---I, we had a Gateway Determination. I wanted to pursue all those possibilities to see whether we could support the 17 metres, yes, and don't forget we were under a, we were under a timeline where we had to provide the information by a certain date. So that, that's why I took a lot more of a hands role as well and probably with the benefit of hindsight should have kept them more in the loop but, yeah, so - - -

40

And was the reason that you didn't keep them in the loop and that you did what you did in respect of the draft JBA report, for example, and indeed agreeing to it being commissioned in the first place, was that you were under pressure from Mr Faker, from Mr Hawatt and from Mr Montague to progress the planning proposal?---In a timely manner, yes.

Well, and we've agreed "to progress the planning proposal" necessarily means progress it to approval rather than rejection.---Don't forget there's a lot of other steps in the process.

Certainly.---Yeah.

But if you can't satisfy the Gateway Determination condition then there's a major obstacle, isn't there, to progressing it?---That's, that's a fair comment, yeah.

10

Now, at page 219 of volume 9, you had correspondence – it starts actually over on page 222, and then you sort of read backwards – but there's a series of emails starting in early January 2016 involving the department and involving Mr Jelcic's office about achieving an extension of time on the application that culminated in the emails on page 219. Do you see that? ---Yes.

20

And I actually want to take you to the page at the, sorry, in the middle, page 219 in the middle, on 13 January, 2016, at 8.58. Aleks Jelcic said to you, "Hi, Spiro. Agree." And that's in relation to the extension of time. "And we are in the process of providing additional information as per your mark-up." That would be a reference to the comments on the draft report, the draft JBA report. Would you think that would be reasonable?---Sorry, sorry, where are you looking at, sorry?

In the middle of – we've got it on the screen if that's of any assistance. ---Oh, yeah, yeah.

30

But I accept that if you want to see the context of it then you'd need to have a look at all of those pages. The pages are all emails in respect to the extension of time, and there was some confusion, wasn't there, as to who was responsible for applying for an extension of time as to whether the proponent had to or whether council had to?---That I can't recall.

Well, I'm not asking you about that. All I'm doing is suggesting that that's what all of that correspondence was about.---Okay.

40

But then we come to the middle of page 219, where the email on the 13th of January, 2016, at 8.58, is set out. Mr Jelcic is saying, "Hi, Spiro. Agree. And we are in the process of providing additional information as per your mark-up."---Yeah.

And "providing additional information as per your mark-up" is likely to be a reference to the comment you made on the draft JBA report.---I think that's fair.

And then going, if you wouldn't mind, to your response at 7.35pm on 13 January, 2016, "The issues or mark-ups raised by me were not intended as

exhaustive comments. Please do your own analysis and provide a more comprehensive analysis and package as required.” You see that?---Yes, I see that, yes.

And why did you say that?---As I said before, those mark-ups were merely trying to provide some more clarity for them around what issues I had.

10 Were you concerned that the JBA would merely implement your suggested changes and fail to produce a professional product?---No, I, I wasn't concerned about that at all. I was just providing some further clarification.

If you'll excuse me a moment. Can we have a look at Exhibit 210, please. 210. If you could have a look at page 12, the page paginated 12 I should say.---Yep.

And it's on the screen. It's a note of a meeting in your exercise book with Messrs Hawatt and Azzi on 2 February, 2016, and there's a third asterisked item is "Homer Street."---Yes.

20 You see that?---Yes.

So this would indicate that you were discussing Homer Street with Mr Hawatt and Mr Azzi because they were raising it with you?---That's fair.

And again, no note was placed on the file in relation to this meeting, was it? ---Not that I can recall.

30 And was this a typical meeting, as far as you can see from this record? ---Yes.

With Mr Hawatt and Azzi I mean?---Yes.

40 And would it be right to say that, just going back to the subject of the extent to which the council files reflected your communications with Mr Hawatt and Azzi in relation to the matters in which they were interested, the fact that no record exists on council files of this meeting would be typical of your, of the events which occurred which comprised meetings with Mr Hawatt and/or Azzi in relation to the matters they wanted to take up with you?---I think that's fair.

And I need to ask you to consider this, that the reason you didn't make a record is because you thought essentially that there was a problem with you having these meetings with Mr Hawatt and Azzi and that it was better if no record existed on council files of the fact of them occurring?---That's not true.

You didn't think that you were, by having these meetings, succumbing to a good deal more pressure to have dealings with these two councillors about

the development matters that they raised with you than was healthy?---The, the environment that we worked under as directors under the I guess leadership of the general manager was that we had to meet with the councillors, address their issues and ensure that we did things in a timely manner for them. So to that extent I didn't think that this, these meetings were anything other than that, under that sort of way the council operated at the time.

10 Did that opinion of yours change at any stage?---No, not really, no.

You always thought that the meetings you were having with Mr Hawatt and/or Azzi were the way you understood Mr Montague required you to deal with them. Is that right?---I think that's fair.

Well, I just want to explore, in fairness to Mr Montague, was there any other factor which impelled you to go along with these meetings with Mr Hawatt and Mr Azzi?---Not really, no.

20 Simply Mr Montague's direction?---Well, it wasn't, it wasn't, it wasn't just Jim Montague saying that. I mean the councillors took a more proactive approach in contacting the directors, and not necessarily going through the general manager all the time, so, and it was not uncommon for those two particular councillors calling and asking for updates on things and wanting meetings and, and those, so I didn't really, it was all part of the, I guess the way the council operated at the time.

I suppose it goes without saying that you wouldn't have had these meetings with them unless they had wanted them?---Correct.

30 That is to say – I apologise, that's a bit ambiguous – unless Mr Hawatt and/or Mr Azzi, as the case may be, had wanted to have the meetings. ---Absolutely.

You wouldn't have been seeking them out to have these meetings unless they had been requesting them?---In the majority of the cases, yes, unless there was something that I needed to ring them about, to see them about, but the majority of the cases, yeah, they were instigated by them.

40 But the circumstance in which you would need to meet them or see them or contact them would have been only as a result, tell me if I'm wrong about this - - -?---Sure.

- - - because they had indicated they had an interest in the matter so far as the particular applicant in the matter was concerned. Is that fair to say? ---That's, that's fair comment.

You weren't, when you made contact with Mr Hawatt or Mr Azzi, ringing them to get their opinion about something, or am I wrong about that?---No, that's wrong. That's wrong.

And if you did ring them to get their opinion it was because you understood that basically you needed to keep them onside and you needed to understand what their opinion was in case you found yourself in conflict with their opinion. Is that fair?---That's probably fair, yes.

10 And you learned over time that you didn't want to be in conflict with Mr Hawatt or Mr Azzi. Is that fair?---Because I knew potentially what the ramifications would be, yes.

And that's my next question.---Yeah.

What did you understand at the time the ramifications would be if you ended up in conflict with either or both of them?---Well, that they would, I'd go down the fate of the former director probably.

20 And just if you could spell it out.---Yep.

What did you understand had been the fate of the former director?
---I understood it at the time that he was, his life was made, his working life was made very difficult, to the point where he left, yeah.

THE WITNESS: Commissioner, do you mind if I have a break soon?

MR BUCHANAN: Can I take you to volume – I'm sorry.

30 THE COMMISSIONER: Maybe - - -

MR BUCHANAN: I'm sorry, Commissioner.

THE COMMISSIONER: Maybe we could have an earlier morning tea break.

MR BUCHANAN: Certainly.

40 THE COMMISSIONER: All right. We'll have the morning tea break and we'll resume at about 25 to 12.00.

SHORT ADJOURNMENT

[11.18am]

MR BUCHANAN: Could the witness be provided with volume 10 in Exhibit 52, please, and it's page 28 that I'd like to take Mr Stavis to. Can I ask you to have a look at this email. Can you see that on page 29 there's an

email from Ms Ho to a person called Deewa Baral but you can see from the email on the middle of page 28 that that person is at Planning New South Wales, that is to say, the Department of Planning?---Yes.

And that it's simply the alteration of the Gateway Determination currency time?---Yes.

You understand that?---Yes.

10 And you then forwarded that to Alex Jelacic, the email of 24 February, 2016 at the top of page 28?---Yes.

And you forwarded it also to Mr Hawatt. Is that right?---Yes.

And is that because he had raised with you or you had raised with him, sorry, earlier the question of the risk of the currency of the determination expiring if something wasn't done to extend it?---Yes.

20 Can I take you to page 36, please. This is a council form for amended or additional plans but you can see that it's got the word planning proposal written on it and that the company name is Croycon Investments Pty Ltd and it's dated 18 March, 2016 and over the page, page 37, is the final version of the JBA report with a receipt stamped from council of 18 March, 2016. Is that right?---Yes.

30 Excuse me a moment. It runs from pages 37 to 73 in the hard copy that is in volume 10 that's been placed in front of you but do you recall that it's – actually what I'll do is I'll take you if I can to a subsequent document at page 136 in this volume and you can see, just so that you can see the document, what the document is, that it is business papers for a meeting of council when it consisted of the administrator after amalgamation, and if I can take you to page 140 in this report to the council comprising the administrator, there's at the top of the page a summary of the JBA report. Can you see that in the second full paragraph there?---Yes.

40 “The report assessed the character of the local area and addresses the potential impact of a 17-metre development on the site on this local character as well as on the adjoining RFB at 27-33 Homer Street. The key findings in the report conclude that the proposed 17-metre height will not create any undue visual impact, results in a concept which is compatible with the built form of the area and will not result in any impacts on neighbouring properties.” Is that a fair summary of the report as you recall it?---The JBA report?

Yes.---Yeah, I think so, yes.

And if I can just take you to page 51 of volume 10. This is page 10 of the JBA report. Can you see that in the middle of that page there's an

indication that the development as per the JBA report has become a development of six storeys?---On page 51 was it?

Yes. In the middle of the page. Underneath the table there's three sentences. The middle sentence, "As the topography slopes downward towards the Cooks River the scheme becomes part six storeys."---I see that, yes.

10 And if you go to page 54 you can see some figures and the figure 16 in the middle of the page indicates that there is a sixth storey which is set back from Homer Street. Can you see that?---Yes.

So the JBA report took the opportunity of increasing the bulk of the development which could be included in the building envelope from that which had previously been in the planning proposal. Is that fair to say? ---Can I just ask a question, well, just point out that on page 51 of the JBA report it actually gives you the number of levels.

20 Yes.---So, and that doesn't show a sixth level.

But you can see the words?---I can see the words, yes, but when you actually look at the number of storeys it talks about five storeys, level 4.

Nevertheless, the figure shows six storeys and the words of the report talk about part six storeys.---I accept that, yes.

30 And this was never contemplated in the previous iteration of the proponent's submission as described in the officers' report, remember I took you to that? It talked about five storeys.---Yes.

And so did it seem to you that the JBA report was taking the opportunity to advance a bigger development than had previously been advanced?---In terms of the number of storeys in part, yes, I would agree with that.

And this is an opportunity you had given the proponent.---If this is the version of the report, the final version of the JBA report that was placed on public exhibition, then yes.

40 Now, your attention I think was drawn to a file note that Ms Ho created in relation to the JBA report. If I can take you to volume 10 at page 77. You see that that is a file note by Lisa Ho dated 19 April, 2016?---Yes.

Which reviews the JBA report?---Yes.

And your attention was drawn to it by an email on page 80 of volume 10, an email from Mr Farleigh of 2 May, 2016, in which he said in the last paragraph to you, "Lisa's review of this material is on file."---Yes.

Did you read Ms Ho's review?---I probably did at the time but I don't recall.

It was critical – I'm sorry, I'll start that question again. Ms Ho's review, her memo of 19 April, 2016, was critical of the JBA report. If I can just take you to the conclusion. "It is questionable whether this latest scheme," – I'm sorry, the conclusion is on page 79, Mr Stavis.---Yes.

If I could take you to page 79.---Yes, yep.

10 "It is questionable as to whether this latest scheme will be able to comply with either the ADG or council's DCP controls, notably in relation to setbacks, building separation, landscaping et cetera." Do you recall understanding that that opinion had been placed on the file?---No, I don't recall.

Or was it conveyed to you in any other way?---I, I really can't remember if it was.

20 Is it possible that you weren't paying any attention to anything that your staff provided in relation to this planning proposal at that time?---No, I don't think that's fair, no. No, I wouldn't - - -

So are you saying that you are likely to have had this come to your attention, this critique come to your attention?---It's likely.

What is it that you did about it?---Well, I, I don't recall what I did with it, to be honest with you, or, if that's the question.

30 Well, to have your staff tell you that the JBA report was problematic meant that it would be difficult really to do anything with the JBA report, wouldn't it, let alone put it on public exhibition?---No, I disagree. I mean what she's expressing there in the conclusion is, it's questionable as to whether this latest scheme can comply with either the ADG or council's DCP controls. Now, as I think I expressed in my previous evidence, those sorts of controls are canvassed through a development application. So yeah.

Yes, and what does that mean, what is the significance of that - - -?---Well - - -

40 - - - to whether this report could go on public exhibition?---Well, the conclusion doesn't say it shouldn't go on public exhibition. It's, it's merely pointing out that she questions whether there's an opportunity at some point in time to comply with the ADG and council's DCP controls.

But she also pointed out, if I can take you to the top of page 78, that, "The heights proposed along the Cooks River have increased significantly from what was submitted in the original planning proposal, let alone as recommended in our independent assessment." She gives some detail and

then says, "These heights are considered excessive and do not meet the principle of stepping down the river, nor does it address impacts on the river foreshore." Can you see that?---Where is it, in the middle of the page?

No, sorry, sir, it's the top of the page.---Oh, sorry.

It's in the paragraph on the screen, if it's easier to read on the screen, which is the one that the cursor is sitting next to.---Yep.

10 Commencing, "The heights proposed along the Cooks River."---Okay.

You don't think that those opinions were problematic for using the report for any purpose of council's thereafter?---No.

You were really determined to progress this planning proposal to public exhibition, weren't you?---I saw the urgency in, in doing it, yes, yes.

20 Could you assist us so that we can understand. Could it have been placed on public exhibition if there had been no material which satisfied the Gateway Determination condition of additional material to support the 17-metre building height limit?---Any material or, or a report that justifies the 17 metres, is that - - -

Well - - -?---I'm not understanding your question, sorry.

That's okay. You knew that there was this Gateway Determination condition - - -?---Yes.

30 - - - requiring additional material justifying the 17-metre building height limit proposed in the planning proposal.---Yes.

You knew that the Russell Olsson report didn't satisfy that condition?---Correct.

Unless you used the JBA report there would be nothing to satisfy that condition. Is that right?---If there was no report submitted, yes, that's right.

40 And did that mean that it couldn't go on public exhibition or that it could and it would be deficient?---I just can't recall the actual determination, Gateway, but you could, you could – and it's been a while, but my understanding is you could have put it on public exhibition but it would have been - - -

You could or could not?---I don't, I think you could but it may have been deficient obviously.

And that that would have resulted in an unresolved concurrence authority objection?---Yes.

Which would have meant that the planning proposal couldn't proceed any further.---That's correct.

Thank you. Of course at the time Ms Ho prepared her memo of 19 April, 2016, there was no proposal, was there, to place the JBA report amongst the materials on public exhibition?---That I'm not sure about as to the timing.

10 Well, we'll come to the timing. You, on the day after as it happens, this memo from Ms Ho dated 19 April, that is to say on 20 April, met with Russell Olsson at council. I can show you a document.---Yep.

Volume 10, page 74 and 75. Is that your handwriting in the top right-hand corner of page 74?---Yes.

And so that records, does it, that on 20 April, 2016 you met with Russell Olsson, gave him updated report, asked him to review and prepare follow-up report?---That's what it says, yes.

20 Do you remember meeting with Mr Olsson on this occasion?---I'm not sure if it was, I remember meeting with Mr Olsson but I'm not sure about, I can't recall that occasion.

And just turning over the page, can you see that there's a Post-it note. Is that in your writing or someone else's?---No, someone else's.

Thank you.---Oh, actually hang on. Sorry. Which one are we looking at?

30 The Post-it note at the top of the page, I apologise.---Oh, that, it, the phone number looks like my writing but the bottom bit "meeting organised 24th at 10.00am" doesn't seem to be my writing.

But nevertheless, you've written on the amended plans sheets on page 74 that you met with Russell Olsson and you've dated that 20 April, 2016? ---Yes.

Now, did you organise that meeting with Mr Olsson?---I don't recall. Maybe I did, yes, but I really don't recall. It's likely that I did, yes.

40 And did you ask him to come in to council and meet with you about Homer Street?---I believe so, yes.

And you didn't ask your staff to attend that meeting did you?---Not that I can recall.

And no staff did attend the meeting, did they?---On the one occasion that I'm thinking of I don't believe so, no.

And was there a reason why you didn't ask any staff to attend?---No.

Was it the case that you didn't want staff to attend because you didn't want them to witness what you were going to say to Mr Olsson?---No.

You knew, didn't you, that you were going to be trying to persuade Mr Olsson to change opinions that he had expressed in his report?---No.

And that was the purpose of the meeting wasn't it?---No.

10

You were wanting him, weren't you, to provide an update of his report – a follow-up report to use the words you've written on page 74 of volume 10 – which addressed the JBA report. Correct?---I wanted him to look at the issues that were raised or the report itself, yes.

And - - -?---In the context of his report, his previous report.

Yes. And you wanted him to change the opinions, didn't you, that he had expressed in his previous report?---No, I never said that.

20

Did you, however, at the time you were organising the meeting, want him to change the opinions that he had expressed in his report?---No.

Now, you told Mr Olsson at the meeting on 20 April, 2016, didn't you, that you had this report from JBA?---I'm not sure whether I told him or showed him the report. I can't recall exactly.

Either way it was drawn to his attention?---Yes.

30

And did you say anything to him to this effect, "The councillors are very pro-development and it's difficult dealing with them"?---No, I don't recall saying that at all.

Is there any reason why you wouldn't have said that?---Why would I? He's not, he wasn't part of the staff I guess.

Well, it was true that the councillors you were thinking of, Mr Hawatt and Mr Azzi, were very pro-development weren't they?---Of course.

40

And it was difficult dealing with them wasn't it?---Of course.

You asked Mr Olsson to review the JBA report, isn't that right?---In the context of his report, yes.

And you said of it, "I think it is better than the previous proposal."---I don't recall saying those words, I'm sorry.

Do you think it's likely or possible that you said them?---No.

Why not?---Well, it's, I, I, it's not something that I would normally say ordinarily.

You had had input into that report, had you not?---As I said before, I provided comments in relation to that report, yes.

10 And as you understood it, those comments had been taken on board by JBA in their preparation of the final report, isn't that what you understood?---I, I don't, I mean, without reading the report in detail, I'm not sure, but – sorry, can you repeat the question?

Did you consider the JBA report to be a better report than the previous proposal?---I don't, I don't remember whether I thought it was better, but if we, if it did progress to a planning, sorry, to public exhibition then it's likely that I would have been satisfied with the report, yes.

20 And so if that was what you thought, the likelihood is you would have said that to Mr Olsson, isn't it?---Said what, sorry?

What you thought about the JBA report.---No, not necessarily.

You wouldn't have told Mr Olsson what you thought about the JBA report, even though you are in all likelihood giving him a copy and asking him to review it? You wouldn't have told him what you thought about it?---I asked him to review the report.

30 You wouldn't have told Mr Olsson what he thought, what you thought, sorry, of the JBA report even though the context was you were asking him to review it?---I don't think so. I don't believe so.

Why wouldn't you tell Mr Olsson what you thought of the report you were asking him to review?---To get his opinion, to see whether or not he, what he thought of it.

But isn't it only logical and common sense – ordinary, in fact, in an exchange like this – that you would be saying to this consultant, “I think it's a good report”?---Well, if you put it like that, possibly, yes, yes.

40 And if you thought it was better than the previous report – namely, for example, Mr Olsson's report – is there a possibility that you told him that? ---Sorry, what was that again?

I withdraw that. You used language to Mr Olsson in that meeting in which you indicated to him, didn't you, that you wanted him to change his report. ---No.

You said to Mr Olsson, didn't you, there is a lot of pressure from councillors to have development on this site.---I don't recall saying that at all.

But it would have been the truth if you had said it.---If I had said it, yes.

And you asked him to assess the JBA report and change his report, didn't you?---No.

10 And you told Mr Olsson, didn't you, "You can charge whatever you like for the changed report."---No, I believe when it came to those sorts of amendments, I would have likely said to him you could charge it at your hourly rate.

You mentioned to Mr Olsson a register for urban designers, didn't you?
---I don't recall mentioning it to him, no.

20 And you indicated to him that council was looking out for urban designers like Mr Olsson and that he should register.---No, I don't recall saying that at all.

It is the case, though, that as at April 2016 you were involved in a proposal to set up an urban design panel?---Absolutely, yes.

You didn't indicate to Mr Olsson that consideration was being given to setting up an urban design panel?---I don't believe so. I don't - - -

Why wouldn't you have indicated to him that there was a proposal in council to set up an urban design panel?---Why would I?

30 Because he's an urban designer.---Sure, but he was there to, for that specific site so I, why would I say that to him?

Because you would be offering him an inducement – that is to say, future work – if he were to do what you asked him to do, which is to change his report in favour of the JBA report.---That's simply not true.

40 Did you ask Mr Olsson to – I withdraw that. You know that in Mr Olsson's report he proposed an alternative building envelope which came to 14 metres in height, is that right, and something like 1.3 in FSR?---To the best of my recollection that sounds about right, yes.

Did you ask Mr Olsson to consider the bulk – sorry, to consider the possibility of increasing the bulk on the corner of the site?---There was, there were discussions along those lines in, I remember it was in a meeting with staff present as well and it was, I asked him to, whether, what his thoughts were on exploring the possibility of getting a corner, more of a corner element, a higher corner element on that site given that it is a corner site.

Did you ask Mr Olsson to redo his report?---No, I asked him to review the report.

Review the JBA report or his report?---Yeah, and also to look at providing, at that point in time as I said earlier, I wasn't satisfied with the analysis that was provided in his report so I'm not sure which meetings we're talking about now.

10 We're talking about the meeting that you wrote about - - -?---Sure.

- - - on the amended plans sheet - - -?---Sure.

- - - which occurred on 20 April, 2016.---Yeah. I don't recall whether it was that meeting where I asked him to look at the possibility of, and what he thought about the corner element, a higher corner element on the site.

20 Are you saying that it's possible that on 20 April, 2016 you asked Mr Olsson to look at increasing the bulk on the corner of his building envelope in his report?---I just don't recall if it was that meeting.

Are you saying then that it's possible that you did but you can't recall whether it was that meeting or another meeting?---That's fair.

When you say, and I'm reading the note that you wrote on 20 April, 2016 on the amended plans sheet, asked him to review and prepare follow-up report, doesn't that indicate that you wanted him to produce another document?
---That's what, that's what that alludes to, yes.

30 And that would involve or include a review of the JBA report?---I think that's fair, yes.

Excuse me a moment. You understood at the time, didn't you, that you were meeting with Mr Olsson on 20 April, 2016 that it would be dishonest to try to influence an independent consultant in the opinions they expressed in their report?---Can you repeat the question. Sorry.

40 Yes. As at 20 April, 2016 when you're having this meeting with Mr Olsson he is an independent consultant. Do you accept that?---He's a consultant, yes.

An external consultant.---External, yes.

Yes. He was meant to be independent. Is that fair to say?---Not, no, I think the Gateway Determination didn't offer that distinction from memory at the time.

So are you saying that it would have been all right to have been pressuring Mr Olsson - - -?---No.

- - - to change opinions that he honestly held in his report?---No.

10 It would have been dishonest instead, wouldn't it, to have pressured him to change opinions he expressed in his report, wouldn't it?---Well, I, being a consultant in a former life, I know that I would, if I believed in something I wouldn't, I'd stick to my beliefs. So whether the term is dishonest I don't know but sure, it's not the done thing to do, that's right.

And it would be dishonest to offer inducements - - -?---Absolutely.

- - - to an external consultant to change the opinion they expressed in their report?---Yep, yep.

Isn't that right?---Yep.

20 And it would be the wrong thing to try to influence the decision of an independent consultant assessing an application for example, wouldn't it?
---Are we talking about Mr Olsson?

Generally.---Generally speaking. Can you repeat the question?

Yes. It would be the wrong thing, wouldn't it, to try to influence an independent consultant assessing an application?---I think that's fair, yes.

30 Did you at around this time, on 20 April, 2016, call Mr Olsson and in the course of that conversation, did he say to you words to the effect, "If you want me to change my report I want to retain the findings as per my first report?"---I don't remember that, I'm sorry.

Do you recall having a telephone conversation with Mr Olsson at around this time when you were asking him to review the JBA report and prepare a follow-up report?---I don't recall, no.

40 Can I take you forward a little bit in time, five days later. Can I ask you to listen to this recording of a telephone conversation, please. Commissioner, it's LII 07365, recorded on 25 April, 2016. Excuse me. And I'm informed that it's an extract of a telephone conversation and it's reasonably long. Now, Mr Stavis, what I mean by that is, apart from reasonably long, which you'd understand, is that it's not the whole of the conversation, irrelevant material that doesn't concern this matter or this inquiry has been excised.
---Sure.

That's all that that means.

AUDIO RECORDING PLAYED

[12.18am]

MR BUCHANAN: Excuse me a moment, Commissioner. Commissioner, I tender the audio file and transcript of that recording.

THE COMMISSIONER: The audio file and transcript of the extract of the telephone conversation LII 07365 recorded on 25 April, 2016 at 5.55pm will be Exhibit 211.

10

#EXH-211 – PORTION OF TRANSCRIPT SESSION 7365

MR BUCHANAN: We have a suggestion for an amendment of our copies of the transcript, Commissioner. At page 10 of the transcript which is on the screen at the moment, where the cursor sits Mr Stavis said, “You can’t do that” rather than “You can do that”.

20 THE COMMISSIONER: It makes more sense, doesn’t it?

MR BUCHANAN: It makes more sense. Mr Stavis, do you understand what we're suggesting there, where the cursor appears on the transcript, that at that point what you were saying about people like Mr Demian was that they can’t get away with what they’re achieve rather than they can?---That's fair, yes.

30 So if we can make that amendment on our copies. Mr Stavis, you heard that recording being played. Is that - - -?---Yes.

Did you?---Yes.

Did you recognise your voice and that of Mr Hawatt?---I did.

Was that telephone conversation upon, as you understood it, a return by Mr Hawatt for a visit to China?---Yes, I believe so, yes.

40 And you were giving him a report of things that had happened in his absence. Is that fair to say?---That's fair.

And if I can ask you to – can we look at page 3 of the transcript, please. Can you see in the – there’s probably another suggestion to be made as to amendment of our copies of the transcript in the exhibit, Commissioner. Can you see that there are, there's a series of passages attributed only to Mr Hawatt rather than exchanges between Mr Hawatt and Mr Stavis and as to the passage commencing “Absolutely, mate” we suggest that is Mr Stavis talking.

THE COMMISSIONER: Is that the only - - -

MR BUCHANAN: Yes.

MR DREWETT: I agree with that, Commissioner. I heard that as well.

THE COMMISSIONER: Mr Stavis, do you remember?---No, I don't remember the conversation but I assume that that's correct.

10 Any other objections to that change?

MR BUCHANAN: Excuse me a moment.

MR PARARAJASINGHAM: Commissioner, my instructing solicitor thinks that he's observed a similar mistake later on in the transcript. He just needs to - - -

THE COMMISSIONER: Work out which page.

20 MR PARARAJASINGHAM: Work out which page, yes.

THE COMMISSIONER: All right. Thanks.

MR BUCHANAN: Mr Stavis's representatives would like an opportunity to check the transcript against the audio file and that's something that can be done out of session and we're certainly open to any suggestions as to other changes that need to be made.

30 THE COMMISSIONER: How about we make the change that you just identified at page 3?

MR BUCHANAN: On page 3 if that's possible, that is to say, the passage currently attributed to Mr Hawatt commencing "Absolutely, mate" should read, should be attributed to Mr Stavis.

THE COMMISSIONER: Yes. And then, Mr Pararajasingham, if you can raise any subsequent amendments.

40 MR PARARAJASINGHAM: Certainly, Commissioner.

MR BUCHANAN: If we look at the transcript and the passage underneath the passage we've just changed the attribution of, Mr Hawatt said to you, "I thought you might have some issues when you mentioned to call you back when I arrived." So had you left a message for Mr Hawatt for him to ring you on his return from being overseas?---It's likely but I don't recall. But it is likely.

Now, obviously the person Charlie you're referring to is Charlie Demian?---
Correct.

And the particular development proposal or proposals on Canterbury Road
to which you're referring, am I right in saying that they do not include 548
or 570 Canterbury Road? That is to say, not the Harrison's store and not the
carpet store next door, instead it's some other proposed development on
Canterbury Road?---Can you take me to where the reference is in the
transcript.

10

Well, for example, can you see a third of the way down page 4 - - -?---Yes.

- - - you talked about "the other ones he bought further down the road, you
know, those houses on Canterbury Road"?---Yes.

And by definition that means it's not 570 or 548 Canterbury Road because
they were large retail shops.---Correct.

20

Nevertheless is it right that you were describing an exchange that you had
had with Mr Demian when he had had Bechara Khouri there and when you
had had a member of your staff there or perhaps an external consultant, and
the exchange was as you heard you recount to Mr Hawatt?---Yes.

Essentially would it be a fair description of it to say that Mr Demian was
trying to bully you at the time?---That's fair, yes.

30

My attention has been drawn to the fact that when I said 570 was a carpet
store, it's in fact a carpet store and three houses, but if we could have a look
at the transcript again, there's a reference to a Drummond Street being a
cross street, an intersecting street, and Drummond Street is nowhere near
570 Canterbury Road, is it?---No.

When you said to Mr Hawatt, page 5, it's on the screen now.---Yep.

40

You'll see it commences, "So my guy's presenting," and do you see that
you go on to say, "I spent like fuckin' 10 grand of council's money, mate,
just to do this, all right, just to try and help him get it, getting it over the
line." What were you referring to there?---At that point in time I believe
that I, we had engaged, I'm just trying to look at the dates, but we had
engaged an external urban designer to review the Canterbury Road Corridor,
and from the best of my recollection I think his name was Philip Graus from
Cox Richardson, yeah, so that's probably what I was referring to there.

But the passage where you said, "I spent 10 grand of council's money, mate,
just to do this, all right, just to try to get him, try and help him getting it,
getting it over the line," sounds as if it was an expenditure that was directed
to a particular application - - -?---It, it, it - - -

- - - rather than a more holistic approach to development on Canterbury Road?---It, it was not unusual at that point in time for us to engage the services of, because we didn't have the expertise of urban designers on board, to look at specific applications, so it is possible, yes.

And did you do that in order to help Mr Demian get the application approved?---Look, no. It was more a case of trying to make him understand that there were issues with his application or applications, whatever that refers to.

10

It's the expenditure of council's money that I'm asking about.---Sure.

When you say that you had, "Spent 10 grand of council's money just to do this, all right, just to try and help him getting it, getting it over the line," you're saying, aren't you, I have spent 10 grand of council's money to try to get this application approved?---No.

20

What other construction could possibly be placed on the words, "To try and help him getting it, getting it over the line?"---To come up with a suitable design that would meet council's objectives as well as obviously making him see the light in terms of how you could actually design a building.

With a view to getting his application approved?---Well, depends on what form, but yeah, ultimately that was, we were there, well, I guess I was trying to find a solution obviously, yes.

30

Now, if I can take you three pages on in the transcript, please. Sorry, we went too far. My apologies. Do you see the first passage attributed to you on page 7 of the transcript?---Yes.

Where you say you went home that afternoon and then you say, "Anyway, by chance Pierre rings me about 5.00, as he usually does on a Friday, you know, when they all go there and whatever." When you said, "Anyway, by chance," you were being sarcastic, were you?---No, I, I don't know. Maybe that was a bad choice of words, but I wasn't being sarcastic, no.

40

When you said that "Pierre rings me about 5.00, as he usually does on a Friday," that would tend to indicate that it wasn't by chance, that it was something that happened regularly.---But if I recall, I left earlier, so I, you know, he, he obviously did contact me on a Friday afternoon, normally after work, yeah.

And on this occasion you were at home.---Yeah. That sounds about right.

And he contacted you, as he regularly does on a Friday, that's what you're saying there, "when they all go there and whatever", to use your words. ---Sure.

That's a reference to people being at Mr Azzi's house, enjoying his hospitality, is that fair to say?---I think so, yes.

And when you said, "They all go there," to whom were you referring?
---Look, I think I said before, you know, they, it would be Charlie Demian, Bechara Khouri - - -

Mr Montague.---Mr Montague, yeah.

10 And various people from the district, particularly on the ALP side of politics in the local area?---I don't know that. Not sure about that.

But so far as concerned Canterbury Council, the "they" would be a reference to Mr Montague; Mr Azzi himself, obviously, as the host; and the development proponent Mr Demian; and Mr Khouri, who was a local identity, is that right?---That's fair.

Can I take you, please, to page 8 of the transcript where you said, commencing, "This guy, mate," and then you say, "I said to Jim, 'Mate, if
20 he's, if he's overextended himself and he's expecting us as a council to save him, mate, I can't, I can't do this anymore,' I go." When you say "I go" you're simply saying that's what you said.---Sure.

When you said, "I can't do this anymore," are you indicating, look, there are limits to what you can do to assist Mr Demian to get his applications approved?---Yes, and also his, just his manner, yeah.

You weren't going to tolerate that sort of behaviour either?---Yeah.

30 Now, can I take you, please, to – so page 9 going over to page 10. Mr Hawatt said to you, "No, he," meaning Mr Demian, "pushes. He pushes his limit. He does, I've noticed that. It's like you give him an inch and, as I said, he wants a mile. That's the, that's the problem with a lot of them, you know, and I'm getting really fed up with some of them. You know, some of them are sincere and genuine, you can talk to them, but some of them it's like they go overboard." Do you see that? I've just read out to you, leaving out your responses, what Mr Hawatt said. Did you understand him to be talking about developers?---I believe so, yes.

40 Developers with whom you and he, Mr Hawatt, were dealing?---I'm not sure if he's referring about all of them but, yes, yes.

And essentially in this conversation that you're having with Mr Hawatt it's quite clear really that you regarded you and Mr Hawatt as operating as a team in making decisions about development in the local government area. That would be fair to say wouldn't it?---No. I wouldn't say we were operating as a team, no.

What words would you use to describe your relationship with Mr Hawatt as evidenced by this particular recording so far as it concerned, that is to say, development applications in the local area?---He took, as I said before, he took a, a, quite an active interest in applications and this was me merely giving him an update in terms of the, where each application was at and making him aware of the issues that I was facing, particularly exchanges between developers and the like and myself.

10 And getting his opinion on matters that you put before him in the conversation?---No, it was more a case of informing him so that he could, you know, potentially, because I knew that he was in regular, well, he was in meetings with these people that it will tend to back, tell them to back off I guess. It was more about trying to relieve the pressure.

Because of as you understood it the power that Mr Hawatt had by reason of his relationship with these people?---Yes.

20 Can I just take you to a passage – excuse me a moment. Where the cursor is on page 10 which is on the screen at the moment, you said to Mr Hawatt, “You can do that, Michael. If we, if I support this the way he wants it, my friend, we’re fucked. I can’t, I, there is no justification for it at all, at all.” When you said to Mr Hawatt that if you supported it the way Mr Demian wanted it we’re fucked, what did you mean?---I just believe as a council.

I do apologise. Sorry, I do apologise. At page 10 the Commission has notionally corrected its copy of the transcript where what appears in typewriting is, “You can do that M”. It should read, because Mr Stavis actually said, “You can’t do that M”.

30 THE COMMISSIONER: Yes.

MR BUCHANAN: And I should have read that onto the record at the time I took Mr Stavis to that passage. Now, can I take you to a passage where you spoke about Joe Alha, page 12.---Yes.

40 Where you said, “Exactly, mate. Anyway, so that, that’s what happened on Friday. Everything at, like, Joe Alha’s one, I had a meeting with him just so you know,” and you identify the suburb as Campsie and you say, “He loved what I came up with.” What was it that you had come up with?---At that point in time we had hired the services of that gentleman I mentioned before, Philip Graus, to look at a complete master plan of Campsie Town Centre. He had already jumped the gun though and had lodged a planning proposal that was, for Campsie that was what I considered to be excessive. Some of the heights that I believe Philip Graus had come up with looked at increasing the heights in Campsie, so maybe that’s reference to that.

But it’s what you had come up with, not what - - -?---Well, that’s - - -

- - - your consultant had come up with.---Well, it's - - -

It suggests you, you proposed a solution and Mr Alha liked it.---Look, I think that's probably a bad choice of words.

Did you provide a solution to Mr Alha?---No, I provided certainly some, like he had a consultant team on board but we did provide information on progress I guess in terms of where we were heading or where we were looking at heading for Campsie Town Centre.

10

Can I just ask you whether you can be quite sure that it was Mr Graus's product that you had in mind when you say that now for the second time that this is what you had been referring to, because page 15, you see, Mr Hawatt seems, about two-thirds of the way down the page, to be indicating that he's changing the subject to something that hasn't been discussed yet, namely the master plan for Campsie, at that point.---Discussed with whom, sorry?

I'm sorry?---Discussed with whom, sorry? You mean in terms - - -

20

Well, with you.---Oh, okay. Sorry. No, that was, I remember having discussions with not only Mr Hawatt but also the general manager and so forth. The plan was always to do a master plan for the whole of the town centre itself.

Yes. No, no, I'm sorry, I'll rephrase my question. What I'm suggesting is that the language Mr Hawatt used at the point which is a bit over halfway down page 15, "How, how's the master plan for Campsie coming along," indicates that Mr Hawatt is certainly not clear that you've been talking about the master plan for Campsie, but rather is introducing a new subject into the conversation with you, and therefore doesn't understand that you've previously been talking about the master plan for Campsie.---Yeah, I think that's fair comment, yeah.

30

Well, does that suggest perhaps that you weren't talking about the master plan for Campsie previously, you weren't talking about the product of Philip Graus, and you were instead talking about a particular solution you'd crafted for Mr Joe Alha when you said, "He loved what I came up with?" ---Look, the only, the best of my recollection, the only information, the body of work that we were doing around Campsie was in relation to the master plan itself, so I don't think that was the case.

40

And when you said, "I spent like 10 grand of council's money, mate, just to do this, all right, just to try and help him get it, getting it," you were talking about then Mr Demian?---Okay.

That was perhaps not a reference to the Canterbury master plan either, but rather some other expenditure that you had caused to be incurred in order to

assist Mr Demian get an application approved.---The, there were a number of sites along Canterbury Road that we had engaged Philip Graus to look at as an urban designer, so my, the best of my recollection it's in reference to those.

10 Was there any product that you obtained by way of a report for example, which had cost about \$10,000 which you commissioned to try to assist Mr Demian get an approval for an application?---Only in reference to, there was a, I recall that again, the same gentleman, Philip Graus, we looked at, I don't recall whether it was \$10,000 or what, but as, as a way in which to see how we can treat Canterbury Road, particularly in light of the fact that there was a resolution to look at increasing heights on some of the sites. So it is possible, yes.

I note the time, Commissioner.

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

20 **LUNCHEON ADJOURNMENT**

[1.02pm]