

DASHAPUB3546  
06/08/2018

DASHA  
pp 03546-03584

PUBLIC  
HEARING

COPYRIGHT

INDEPENDENT COMMISSION AGAINST CORRUPTION

PATRICIA McDONALD SC  
COMMISSIONER

PUBLIC HEARING

OPERATION DASHA

Reference: Operation E15/0078

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON MONDAY 6 AUGUST 2018

AT 11.06AM

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

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

THE COMMISSIONER: Yes.

MR PULLINGER: Commissioner, my name is Pullinger. I seek leave to appear in the interests of Mr Azzi.

THE COMMISSIONER: The authorisation is granted. Thank you, Mr Pullinger.

10

MR PULLINGER: Thank you, Commissioner.

MR BUCHANAN: Commissioner, I recall, please, Mr Stavis.

20

30

40

THE COMMISSIONER: Thank you, Mr Stavis.

MR BUCHANAN: Mr Stavis, the last time you were giving evidence, we were discussing a recording, which is exhibit 211, and if we could bring up the transcript of that, please. What I would like to take you to is  
10 a passage in that, which is on the second page, but really we need to go to the first page so that you have context. Would you mind just reading to yourself the first page? It is after Mr Hawatt has come back from Beijing, and he talks about the size of buildings. And if we could go to the second page, please.---Sorry, it's a bit hard to read. That's better. Thank you. Yes.

In the middle of the second page is recorded a passage where you said, "That's what you and I have been banging on  
20 about for you know the last year or two." That indicates, would you agree, that you and Mr Hawatt had been working as a team in promoting development involving buildings that were going up quite high compared to what had been in the vicinity before?---Certainly the - I guess the view that I took was that it was better to have high built forms with more open space surrounding those built forms. In terms of operating as a team, I don't agree with that, in a sense. I think he just probably shared my point of view in that regard.

Well, the expression "banging on about" does suggest  
30 advocacy on the part of the pair of you, you and Mr Hawatt, for higher development?---It wasn't only with Mr Hawatt. I mean, certainly mentioned it to the general manager and the council in general when we had those workshop meetings about looking at the pros and cons of what the current LEP states and how we could, I guess, improve on that.

Could I take you, please, to page 12 of the transcript in  
40 exhibit 211. In the middle of the page, the passage commencing, "Exactly mate", you referred to a proposed development by Joe Alha; is that right? Can you see that there?---I'm just reading it. The "Exactly mate" I think refers to the transition zone comment, yes.

Certainly. I apologise. You're quite right. What I am directing your attention to, though, is the rest of that

passage, which is a reference to "Joe Alha's one"?---Yes.

"Campsie", and then you say "he loved what I came up with", and Mr Hawatt was pleased with you telling him that. What was it that you had come up with?---It doesn't say he loved what I came up with in that paragraph, sorry, sir.

No, but can you remember - - -?---Yes, sorry.

10 - - - a proposed development by Joe Alha?---Yes.

At Campsie?---Yes, I do.

And did you provide a solution to a regulatory problem, that is to say, an issue with the development controls which would have inhibited or prevented his proposed development?---To the best of my recollection, I made it perfectly clear to Mr Alha that this was part of a big master plan, that that was being reviewed in terms of a  
20 Campsie commercial centre itself. In terms of a solution, I'm not sure - my understanding was that I - we had engaged a firm, Cox Richardson, to look at providing sort of a master plan, if you like, for the Campsie centre itself. But I certainly recall that the initial proposal that was the planning proposal that was lodged was totally unreasonable, from my point of view, anyway.

It sounds, doesn't it, in the way you conveyed it to Mr Hawatt, that you came up with a solution to his problem  
30 with his proposed development, and he loved it?---That's in - that's probably in reference to a meeting that I had with him, where I presented some schematics, some initial working drawings that we had come up with from the consultant. So that's what that's in reference to.

You are sure of that?---I believe so. I believe so.

When you went on to say "but he's gonna play the game because he's not very happy with Mr Daniel currently", what  
40 did you mean?---I'm sorry, I don't - I don't know what I meant by that at that time.

Is that a reference to Matt Daniel?---I believe Mr Daniel, yes, was representing Mr Alha at the time, yes, for the planning proposal.

And it was a planning proposal rather than an application,

was it?---Yes.

10 And your expression "he's gonna play the game", does that mean that he's going to go along with the way you propose that the planning proposal be progressed?---No. I think it was - that was probably in reference to the body of work that we were preparing at the time and that there was a need to wait for that body of work to be completed before, you know, we'd even consider the planning proposal that he'd put in.

20 Can I take you to the next page, please, page 13 of exhibit 211, where about a third of the way down the page you said "and Homer Street hallelujah". Mr Hawatt said, "Yeah, what happened with that one, it was going", and you said, "Right, jump up and down, go up on your roof and say hallelujah Spiro." Mr Hawatt said, "It's all finished is it?" You said, "I've fucken come". "Oh fuck" said Mr Hawatt. Then you said, "I've come to an agreement so it's gonna happen." Mr Hawatt said, "And they were happy with it?" You said, "They're gonna be of course they are. Of course they are." What was the cause of your excitement that you were conveying in that part of your conversation with Mr Hawatt?---I'm just trying to recall. I really - I really don't remember that conversation, to be honest with you. It may have had something to do with the fact that there was a - the report that was completed by them.

30 The JBA report?---Yeah, yeah.

The stage you were at at this time was that you had obtained the JBA report; you had had a meeting with Mr Olsson in April 2016; but then this is September - I do apologise. Excuse me a moment. In April 2016, and this is 25 April 2016, it sounds as if there were some other disputes going on, which was resolved by an agreement into which you had entered?---No. Not that I'm aware of, no.

40 You were certainly indicating that it was a very satisfactory resolution as far as you were concerned and as far as Mr Hawatt should be concerned; you would accept that?---I would, yes.

But you can't tell us what it was?---The only thing I can say is that it was in reference to the fact that there was a report that was supporting the 17 metres.

But why did you describe it as an agreement?---That I can't say. Obviously the actual resolution of council was for 17 metres, so at that point it may have been a reference to that.

And, sorry, if you could just spell out what you mean by that?---Well, sorry, the Gateway Determination was for 17 metres, so it probably was in reference to that. There was no other agreement.

10

So your satisfaction was due to the fact that you now had a report from the applicant which could be used to satisfy the Gateway Determination condition?---Yeah, we had a report from a reputable firm, absolutely.

And it could be used to satisfy the Gateway Determination condition?---Well, at the very least to progress to exhibition, yes.

20

Could I just ask you, though, what at this stage, April 2016, could the JBA report be used for other than satisfying the Gateway Determination condition, which otherwise remained unsatisfied?---Yeah, you're right, you're right.

30

If I could take you back to volume 10, page 80, please. This is an email from Mr Farleigh to you of 2 May 2016 in which he tells you that additional information from the proponents has been received and gives you a description, essentially, of the JBA report and that it has been reviewed in the context of the conditions attached to the Gateway Determination and that Ms Ho's review of this material was on file. Do you see that?---I do, yes.

That email reads very much, doesn't it, as if Mr Farleigh had not been aware that you were obtaining the JBA report?---That I can't say, I'm sorry.

40

Well, you hadn't made him aware of it; is that a fair thing to say?---I don't - I honestly don't remember if I did. I may not have. I just can't remember.

This is a matter where, certainly by April/May, indeed earlier, you had cut the staff out of the matter and had the file yourself and were dealing directly with the proponent and the proponent's architect and the author of the JBA report, or the principal of JBA, to obtain that

report; isn't that right to say?---Yes, I took a more proactive approach, absolutely, yes.

And so it might be no surprise that it came to your staff as a surprise that this material had come in?---As I said before, I don't remember whether or not I had conveyed or communicated to the staff about this additional report that was coming.

10 Why wouldn't you have provided the report to your staff yourself rather than let the proponent send it in to them and them discover it for the first time that way?---Well, that's the standard procedure. They lodge - whether they lodge amended plans, amended planning proposals, it's just standard procedure that they do that. Applicants, that is.

That they do what, just so that I can make sure - - -?---Just lodge, lodge whatever additional information.

20 Page 81 is an email dated 6 May 2016 from you to Mr Olsson asking when you could expect to receive his report as discussed the previous week. Do you see that?---Yes, I do, yes.

You have not cc'd in your staff to that email, either?---No, I haven't.

30 Had you told Mr Farleigh or Ms Ho that you had asked Mr Olsson for a revised report that addressed the JBA report?---I believe so, yes.

Why wouldn't you have cc'd them in to this email, then?---I really don't know why.

Why didn't you ask them to chase it up?---Because, as I said before, I was taking a more proactive approach at that point in time with that.

40 Why were you taking a more proactive approach on this matter at that time?---Sorry, what was that?

Why were you taking a more proactive approach?---Because there was an urgency, obviously. There was a timeline with the Gateway Determination that needed to be adhered to, and that's just what - that's just the way I am. I - you know, I like to be hands on.

But in plenty of other matters, you directed your staff to chase up reports, didn't you?---Yeah, that's true. That's true.

10 If I can take you to page 82, please, Mr Olsson here provided you, attached to an email dated 9 May 2016, with his revised report. He described it as a draft. At page 83 through to page 109 is that report. If I can take you, please, to the introduction on page 85, in the second paragraph, the left-hand column, Mr Olsson said:

20 *Our initial study was prepared in June 2015. That is reproduced in this report on page 1 to 23. Canterbury Council received a "Planning Justification Report" from JBA Planning dated March 2016. Olsson Associates have reviewed the JBA Report and we make our final recommendations in Appendix 1 of this Olsson Associates report.*

Thereafter appeared the report of Mr Olsson until he got down to page 108, and at page 108 the appendix commenced, headed "Final Recommendations". He indicates:

30 *Following the submission of this report, without Appendix, Canterbury Council received the [JBA report] ... and makes the following comments and recommendations.*

Under the heading "Building Height Principles", a quantity of material appears at the bottom of that column:

40 *The JBA report ... refers to the request made by the NSW Department of Planning and Environment in the Gateway Determination ... which requests that the Planning Proposal include: "Further justification to support a maximum building height of 17 metres on the site.*

If we just skip over to the right-hand column, "The JBA Report", and then they quote:

*... "considers the potential impacts of the proposed 17 metre height limit. Given*

*Council's recommendation for a 14 metre height limit which was accepted by the Department in their Gateway Determination for the Planning Proposal, this (JBA) assessment focuses in particular on the additional 3m sought by the applicant for the site on these key elements which make up the character of the area."*

10

Then Russell Olsson reverted to his commentary:

*It is our view that the JBA report focuses on the additional 3m (the 17m height) to the exclusion of the important planning and urban design principle of stepping down heights towards the river. That principle is evident in the adjoining development at 25-33 Homer Street, where the heights step down from 5 storeys on Homer Street, to 4 storeys and 3 storeys in the centre of the site, and 1 storey at the riverfront.*

20

If I can continue on down to about six lines from the bottom of that column, Mr Stavis, do you see where it commences, "There is a setback to the top floor"?---Yes.

It says:

30

*There is a setback to the top floor. Counting floors from the western end of the site, this top floor is effectively 6 storeys ...*

Then he identifies the figure in the report concerned.

40

*This is an excessive height in the context of the riverfront, and also excessive in the context of this Planning Proposal process.*

*The original Planning Proposal for 15-23 Homer Street in April 2014 ...*

And I just interpolate, Mr Stavis, that was the planning proposal submitted by Mr Faker.---Okay, yes.

Continuing:

*... had a 17m height (5 storeys) set well back from the river, adjoining the building at 25-33 Homer Street. This is the height that was the original point of contention in the Planning Proposal.*

There is some further discussion, and then it says:

10

*Not only is the JBA report seeking to justify the 17m height, it is seeking to bring it substantially closer to the river than the original Planning Proposal. This top floor will be easily visible as one crosses the bridge.*

Then under the heading "Floor Space Ratio", there is a discussion of that. Then if I can take you over to "Recommendations", in the right-hand column:

20

*. The 4th Storey ... in the JBA report be set back 5m from the riverfront building alignment and*

*. The 5th Storey ... be set back 8m from the riverfront building alignment (that is, a further 3m back from the set back 4th storey).*

30

Do you remember reading this?---I do, yes.

And you didn't like what you read, did you?---No, because the actual, I guess, starting point in his recommendation talks about a DCP, DCP52, which is a 2008 DCP, which was a superseded DCP, and he uses that as the premise for building envelopes stepping down to two storeys at the riverfront. Now, you've got to bear in mind that we had an LEP 2012 that overrode DCP 52. So I thought the premise of DCP 52 was flawed initially. And from my recollection, in the JBA report they did have a stepping down effect. There were RL levels right down the site. Now, six storeys - I don't recall there being six storeys, but from the other day, I read in that report that there were five levels stepping down the site. So I think it's fair to say I didn't agree with his assumptions, no.

40

If I can take you to page 110 in volume 10, this is an email from you to Mitchell Noble dated 9 May 2016. Mitchell Noble had taken over as the manager, land use and environmental planning?---That's correct, yes.

And you said:

10           *I don't particularly like his recommendation, not quite what we discussed. Let's chat tomorrow please about his wording.*

Can I ask you, when you said to Mr Noble "not quite what we discussed", what was it that had been discussed in this regard by you and Mr Olsson that you were referring to?---What we were looking at, as I said previously in my evidence, was looking at the possibility of providing additional height along the corner of, I believe it is Illawarra Road and Homer Street, and further analysis to be  
20           done in terms of the overshadowing impacts on the adjoining residential flat building.

You would agree that from your memory of Ms Ho's review in a memorandum of the JBA report and what I've taken you to in Mr Olsson's revised report, you had both your staff and an independent consultant criticising the approach taken in the JBA report?---I'm aware of that, yes.

30           And are you telling us that you thought they were both wrong?---Absolutely.

Is it possible that they were right and you were wrong?---I don't believe so.

Can I take you to, in this same volume, page 92. Do you see Ms Ho was a person who had qualifications in urban design?---That I'm not sure of, sorry.

40           She was in your urban planning team, though, wasn't she?---Correct.

And Mr Olsson was an urban designer?---I believe so, yes.

He identified on this page, under the heading "Urban Analysis" and sub heading "Introduction" urban design principles which he said had been applied in his analysis. Do you see the dot points commencing in the middle of that

page and going over to the right-hand side of the page?---I do, yes.

With respect, Mr Stavis, you didn't have the expertise to know, did you, whether the urban design principles which Mr Olsson identified as informing his opinion were appropriate or not?---No, I disagree with that. I disagree with that.

10 You didn't have qualifications in urban design, did you?---No, but I have 25 years' experience in planning.

Your strength was in assessment, was it not, rather than the more holistic approach of looking at the appropriateness of development in its context?---No, I had experience in planning proposals in the past, through my consultancy, but if I had to categorise the level of experience that I had, yes, it's more towards development assessment, yes.

20

Can I suggest that in these circumstances, you should have deferred to the urban design expertise of your staff and your consultant?---Can I draw your attention to the opening statement in the introduction, which basically - - -

Is this on page 92?---On page 92.

30 Yes.---It makes clear reference to the fact that he's using DCP 52, which at that point in time was obsolete. And then in those principles, he talks about stepping down the site, which is, in my opinion, what the JBA proposal was seeking to do - step down the site.

40 And make it bulkier and bring it closer to the river?---Not necessarily. As I said before, this is a planning proposal. It does not necessarily mean that - they've still got to go through a development application process. So all the environmental impact analysis that needs to be done under the EP&A Act would be done at that point in time. So it's not a given that you would achieve - you would be able to achieve the maximum, as stated in an LEP.

And, Mr Stavis, we visited this topic last time, but you know, don't you, that if planning controls allow a tall, bulky building, that improves the chances of a tall, bulky building being constructed and allowed to be constructed on that site?

MR PARARAJASINGHAM: I object, Commissioner. He hasn't agreed that this particular planning proposal would allow a bulky building. That characterisation he has not adopted. So if learned counsel wants to use a different expression. My concern is the use of that term "bulky", which this witness has not accepted.

10 THE COMMISSIONER: I think on the evidence, "bulky" is established, but --

MR BUCHANAN: I'm sorry, Commissioner, but my question is the general argument that Mr Stavis is deploying at this stage of his examination, that - - -

THE COMMISSIONER: A DA would change things?

MR BUCHANAN: Yes.

20 THE COMMISSIONER: Necessarily?

MR BUCHANAN: Yes.

I'm just taking you back to that argument and asking you whether a rezoning which allowed the construction of a tall, bulky building would almost inevitably mean that a tall, bulky building would be allowed to be constructed on that site?---I disagree.

30 Can I suggest that in this case, your approach to this matter, the Homer Street matter, once you had the Olsson revised report, was to treat it as if it was a DA requiring assessment and then facilitating the approval of it?---No.

40 And what you were trying to do was to, may I suggest, achieve outcomes which you understood to be favoured by Mr Hawatt and Mr Faker, the development proponent?---I don't think it's any secret that - what Mr Faker was proposing and what Mr Hawatt wanted, I guess. But at the end of the day, my position was this is one step in the process. As long as it followed the principles and there was adequate assessment by way of a report that actually qualified those principles, then I was happy for the application to progress to the next stage.

Can I just ask you this: If your argument as to the relative insignificance of planning controls in an LEP to

what ultimately will be approved is correct, then there would be no need for planning controls in an LEP, would there?---No, I didn't say - - -

I know that. I'm taking your argument to what I suggest is the logical next step and putting that to you and inviting your response?---I don't believe that's the logical next step. Planning controls in an LEP are required.

10 Why?---Well, they set the general parameters, I guess.

Why do you need general parameters, if your argument is correct?---Because you need to contextualise what a proposal is ultimately being prepared, I guess - so there needs to be some sort of context in terms of built form for - you know, for different localities.

And that context comprises controls?---Yes, it does.

20 And if the controls are increased - or loosened, then people can build or apply to build bigger and bulkier buildings than if the controls are not loosened?---There is a process to assess. It's not a case of just throwing controls out the window. You still have to go through a process.

Are you saying in lodging a development application?---Absolutely, yeah.

30 I do have to suggest to you, Mr Stavis, that your approach, the argument that you are putting to us, is one which is a nonsense?---I disagree.

Can I ask you, please, if we can go back to your dealings in your office with this matter, whether you did have a conversation with Mitchell Noble about what should be done in relation to the revised Olsson report?---Look, that I can't recall specifically, I'm sorry.

40 Did you brief him on how council had got to the stage it was at with the planning proposal?---I believe I did, yes.

And you would have informed him about the Gateway condition?---Absolutely.

Gateway Determination condition?---Yes.

You would have informed him about the fact that there was a report that had been commissioned from Mr Olsson in the first place, which had come back and recommended 14 metres but not supported 17 metres?---I don't recall whether I specifically did or whether he got that information through his staff, so I just don't recall exactly.

10 You would have explained to him that this revised Olsson report didn't satisfy the Gateway Determination condition?---I don't recall actually saying that to him, I'm sorry.

Did you get the impression he understood that the revised Olsson report didn't satisfy the Gateway condition?---Eventually, yes, yeah.

20 Was there any discussion between you as to what the applicant had been seeking, what the proponent had been seeking?---I think at some point in time he became aware of what the applicant was seeking because he was aware what the Gateway Determination was about, I guess, or he would have been.

Did you have a discussion with Mr Noble about how to solve this problem?---Problem being, sorry? Can you clarify that?

Well, you had a Gateway Determination condition.---Mmm-hmm.

30 And the report that had been commissioned by council to satisfy it, did not satisfy it?---Yes. I don't recall whether I did that. All I remember was asking or seeking his advice on the specific reports and whether - and what reports should be placed on public exhibition, from memory.

You didn't explain to him what the significance was of the Olsson report and the significance was of the JBA report?---Not that I can recall.

40 So he didn't have any understanding, as far as you're aware, that one satisfied the Gateway condition and the other did not?---I believe he had the reports, so I assume that he read the reports.

You see, did you say to Mr Noble words to the effect that 17 metre building height was the decision of council?---No. I said 17 metres was the Gateway Determination. I remember

saying that.

You didn't at any stage indicate to him that the planning proposal had gone forward because of a decision of council seeking to increase the building height to 17 metres?---It's likely that I did say that at some point, yes.

10 And did you say to Mr Noble that you had spoken with Mr Olsson about his report?---That I'm not sure about, I'm sorry.

Did you say to Mr Noble that you had spoken to Mr Olsson to see if he, Mr Olsson, was flexible, and he said no?---That I'm not sure about. No, sorry, I don't recall that.

20 And did you convey to Mr Noble the problem that the planning proposal had to go out to public exhibition?---Can you, sorry, repeat that question?

Yes. Did you convey to Mr Noble your concern that the planning proposal had to go out or on public exhibition?---Can you elaborate on "concern", what you actually mean by "concern"?

30 Did you indicate, did you say anything to him about the fact that the stage you were at was: the next thing that happens is we put the planning proposal on public exhibition?---It's likely to be the case, yes.

He would have understood that - - -?---Yes.

- - - you were concerned about what do we do next?---Yes.

And did you say to him words to the effect that, "We're facing difficulties in moving Homer Street forward because of the Olsson report"?---I don't recall saying that at all.

40 You indicated to Mr Noble, didn't you, that you wanted him to provide you with a solution?---As I said before, it was in relation to what reports we could put on public exhibition.

Did you indicate to Mr Noble that you wanted him to come up with a solution?---Not that I recall.

You see, it was your approach to the way you ran your

division that you were a solutions kind of guy?---Sure.

You never conveyed to your staff that that was the approach you wanted them to take?---Well, solution in the sense of progressing the application, and we had a couple of reports and I was seeking his advice in terms of how we were to progress the planning proposal from that point in time.  
So - - -

10 So you were seeking his advice as to a solution?---Well, in that regard, in that context, yes.

And did Mr Noble suggest to you an option to progress the planning proposal was to use the JBA report to satisfy the Gateway condition?---I believe so, yes.

20 But he also raised with you, didn't he, whether it was unusual to use the applicant's own planning report when there was an independent study available and council had commissioned that independent study?---Not that I can recall.

It would be unusual, wouldn't it?---As I said, I defer to my staff member, Mr Noble, to give me advice in that regard, but I'm not sure if that was unusual or not. As far as I was concerned, the Gateway Determination asked for an additional study to justify, and that was provided.

30 Mr Stavis, you know, don't you, that if council had commissioned an independent report to satisfy a Gateway Determination condition, then it would be very unusual not to use that report in going forward to public exhibition of the proposal?---No, I don't know that.

And you say, do you, that Mr Noble didn't raise with you any query as to whether or not this was perhaps the right way to go about it?---In all honesty, I don't recall him ever raising it with me.

40 So he may have, but you don't recall it?---I just don't recall.

You directed Mr Noble, didn't you, to use the JBA report and not to use the Olsson report in preparing the materials that were to go forward to exhibition?---On his advice. On his advice.

Mr Stavis, why do you say that? Why are you giving that evidence rather than saying, "Yes, I did"?---Ultimately the decision rests with me. I accept that.

You're trying to shift the blame, though, aren't you?---No, I'm not. No, I'm not.

10 Why are you saying, "On his advice"?---Because I recall him giving - having a conversation with him about that particular issue, and he suggested to me we could put up the JBA report. I recall that.

You're making it sound as if you had your doubts about whether it was the right thing to do, and you only did it because your staff member suggested it?---No. I was seeking his opinion.

20 You had all along, hadn't you, contemplated that the JBA report could be used even before you had a draft on your desk to satisfy the Gateway Determination condition, hadn't you?---No.

30 There was no point to having that report unless it could be used, was there?---As I said in my previous evidence, I wasn't satisfied with the Russell Olsson report, that he had gone to the extreme lengths of actually exploring the 17 metre height limit. So in that context, and in the context of having a Gateway Determination that just - that asked for an additional study to be done, and the fact that I had a manager who obviously had Department of Planning experienced, we progressed. That's the best way I can put it.

There was no point to the JBA report being commissioned unless it could be used, was there?---That's fair, yes.

40 And the only use to which it could be put would be to satisfy the Gateway Determination condition, which was not satisfied by the Olsson report; isn't that correct?---That is correct.

And when you say Mr Olsson had gone to the extreme lengths in relation to the 17 metre height, that was what he was commissioned to do. He was commissioned to review the planning proposal to increase the building height limit to 17 metres, wasn't he?

MR PARARAJASINGHAM: I object. I think the witness's evidence was that he did not go to the extreme lengths, Mr Olsson did not go to the extreme lengths.

THE COMMISSIONER: My note was he was not happy with the Russell Olsson report because he did not go to the extreme lengths of considering the 17 metre rule.

MR PARARAJASINGHAM: Precisely.

10

MR BUCHANAN: I withdraw the question.

THE COMMISSIONER: But I think your question is an apt one.

MR BUCHANAN: I will just go back one step and I'll reframe the question, Commissioner.

20

Didn't you understand the job that Mr Olsson had been asked to do, to be to review the 17 metre height limit which had been proposed in the planning proposal?---Yes.

30

THE COMMISSIONER: Well, what did you mean by he "did not go to the extreme lengths" of considering the 17 metre height?---There were issues pertaining to the solar analysis that he had carried out at that point in time, which I wasn't satisfied with, that he had gone and looked at it in greater detail. For example, his report doesn't show any RL levels on any window locations on the adjoining properties, from memory. So if you're looking at solar access, you really need to consider what the windows are, where they're located, how high they are off the floor and how much solar access is likely to be achieved. So that was one of the issues.

MR BUCHANAN: Could I take you, please, to page 111 in volume 10. This is an email by you, at the top of the page, to Mr Noble of 10 May 2016 at 6.37pm [sic]:

40

*As discussed today, please proceed to submit a response to the Department's Gateway approval utilising the JBA report and provide me with a timeline on when this will be submitted. This is a priority let me know if you need additional resources to assist.*

Can I ask why it was a priority?---10 May. I'm not sure whether I was referencing the fact that it was going to take - sorry, I'm not sure at that point in time how long there was until the Gateway was going to expire or - I just don't have that information in front of me. But I believe it's a reference to that. But it's certainly - it was certainly an issue with respect to Mr Hawatt asking - and the GM at the time, wanting progress on the application.

10 If you can take it from me that the Gateway Determination was altered on 24 February 2016 - this is volume 10, page 33 - so that its time frame extended to 26 March 2017?---Okay, okay.

Does that perhaps suggest that the reason that you told Mr Noble on 10 May 2016 was this priority was more due to the pressure you were receiving from Mr Hawatt and Mr Montague?---That's likely to be the case, yes.

20 What was the pressure you were receiving from Mr Hawatt?---To progress the application.

And what was the pressure you were receiving from Mr Montague?---Same.

How did Mr Montague convey that to you?---Oh, on numerous occasions.

30 In respect of this planning proposal?---Yes, yes. Yeah, verbally, yes.

The Homer Street planning proposal?---Yes.

How many planning proposals did your division have that were current as at May 2016? I appreciate you wouldn't remember the exact number, but a ballpark figure?---There were a few.

40 Yes?---I just can't remember the exact number, I'm afraid, but there were a few.

A lot?---There were a lot when I had started, yeah. Yeah.

And planning proposals, by their very nature, have a bit of a life to them?---Correct.

And so by May 2016, there still would have been, to use

your euphemism, a few; is that fair to say?---That's fair, yes.

Was Mr Montague talking to you about the number of planning proposals and the need to progress them?---Certainly.

He was?---Yes.

10 Now, I just want to clarify, then, he did speak to you specifically about the Homer Street proposal and progressing it?---There were - - -

More than once?---Yes. Yes.

Despite the fact that you also had a number of other planning proposals?---Correct.

20 And was Mr Montague on your back about those?---Absolutely. Absolutely.

What was he saying?---I don't recall now, but I'm pretty sure it was - one of my key performance indicators, and he made it perfectly clear at the time, was to clear the decks, so to speak, which included the planning proposals that were on foot at that point in time.

30 There was nothing in the email of 10 May 2016 at 6.37pm [sic] to Mr Noble about the Olsson report and what should be done with it?---No.

Was that because you had spoken with Mr Noble and directed him to use the JBA report and not put on exhibition the Olsson report?---No. As I said before, I sought his advice on what we - what sort of - what reports we needed to put on, and that would have been just confirming our conversation.

But having sought his advice - - -?---Sure.

40 - - - did you not make an executive decision?---I did after that.

Did you convey that executive decision to your staff, Mr Noble?---He knew about it, yes, of course.

Well, what was the decision?---To put it - to put the JBA report on exhibition.

And do what with the Olsson report?---That I can't recall, but obviously nothing.

10 Now, you will recall that I had taken you to a file note of a conversation that Ms Ho had had with Helen Wilkins of the Department on 14 July 2015 - that's volume 9, page 177 - as to what council should do if the report it commissioned to meet the Gateway condition didn't support the building height limit sought in the planning proposal?---Yes.

It's about the middle of the page, "Helen Wilkins advised as follows"?---Yes.

And then the second dash point:

20 *Where a study has been carried out that cannot meet the conditions of the Gateway Determination, Council needs to form a position on the matter, ie whether to support the height recommended in the study or revert back to the original recommendation on the planning proposal. This would necessitate a revised planning proposal.*

30 Can I suggest to you that another option for you was to prepare a report to council on the planning proposal, saying, "This is the position we have reached. There is something of an impasse that has been reached, and we seek direction"? In other words, why not leave it to the elected representatives to decide?---Sure, yeah. Look, with the benefit of hindsight, I guess one could have taken that approach, yes.

And you knew that Mr Hawatt and Mr Azzi controlled the numbers on council?---I did, of course, yes.

40 And you knew what Mr Hawatt wanted?---Yes.

Is that right?---Yes.

And so is that the reason why you didn't bother taking it back to council, because you knew what the direction would be, to progress the planning proposal to achieve a rezoning which allowed for a building height limit of 17 metres on that site?---No, not necessarily. As I said to you before,

we had a Gateway Determination. There was a 17 metre height limit issue, subject to an additional urban study report. So I sought the opportunity to find - I guess to exhaust whether or not the 17 metres was possible. Certainly there was pressure, yes, I accept that, and I have accepted that in the past. But again, I was trying to find - I guess, exhaust the possibility of whether 17 metres was possible on that site.

10 But wasn't council, the elected representatives, entitled to know that the report which had been commissioned to satisfy the Gateway condition did not support the planning proposal; indeed, not in its first iteration nor in its second iteration? And given that council was paying for it, wasn't council entitled to know what the outcome was?---But as I said before, sir, look, the premise of that report started from a development control plan that was  
20 obsolete, and the principle of that development control plan was a stepping down of a built form down the site to the foreshore. I believe the JBA report suggested that, anyway, so - - -

The reason you didn't take it back to council, notwithstanding that the report that had been commissioned to satisfy the Gateway condition, was, in my respectful suggestion to you, that you knew that it would be a waste of time because you knew what Hawatt wanted, you knew what Montague wanted. They wanted that 17 metre height because it was what the proponent wanted. And you were determined  
30 to do what you could to achieve that outcome?---If I have to - hand on heart, I'd say that was part of the pressure that I was feeling, yes. But at the end of the day, it was satisfying myself whether that 17 metre height was achievable across the site in a stepped form.

You know that Mr Noble proceeded to give instructions to his staff along the lines of your instruction to him in relation to progressing the JBA report - sorry, the  
40 planning proposal to exhibition and using the JBA report to satisfy the Gateway Determination condition?---I believe so, yes.

Can I ask you, then - that was in about May. This is in May 2016. Can I ask you about a communication between you and Mr Faker at around this time - exhibit 75. If you could go to the last page, yes, thank you. On the fourth page, do you see that on 19 May - this is one of those

cases where it's probably easier to read on the screen than in hard copy.---Yeah, sure.

On 19 May 2016, Mr Faker rang you and the line was open for a minute and 35 seconds. What was that conversation about?---I'm sorry, I don't recall.

10 It would be fair to say that Mr Faker was trying to chase up the progressing of his planning proposal?---Yeah. I see no other reason why. Yes.

And that was the only matter that you were dealing with at that time from Mr Faker; is that right?---As far as I'm aware, yes.

Now, if I could show you, please, volume 10, page 128. This is simply a copy of a newsletter issued by the Canterbury-Bankstown amalgamated council?---Yes.

20 That is published in the Canterbury-Bankstown Express, 31 May 2016?---Yes.

In the bottom of the left-hand column, you can see a reference in the third line to 15-23 Homer Street, Earlwood?---Yes.

And it talks about increasing the maximum permissible height of buildings from 10 metres to 17 metres?---Yes.

30 If you have the volume in front of you, page 129 has another copy, which is somewhat more legible, of a notice as to the matter going on public exhibition. Do you see that?---I do, yes.

40 And if we go to page 130, the detail of what's included of the materials that were put on exhibition is there set out, and I appreciate it's in very small print. We might be able to get it on the screen. But attachment 7 is "JBA Height Study Report". There's a series of attachments?---Yes.

If we could scroll down the page, they include the "Applicant's Urban Design Report" - that's attachment 5, and then attachment 7, the "JBA Height Study Report", but the Olsson report was not included in the materials that were put on exhibition?---Yes.

Was the department made aware of what was being put on exhibition?---That I'm not sure about.

Was there a process for that to occur?---I'm sure there was, yes. Well, sorry, whether there was a formal process to actually communicate that with them, I'm not sure.

10 Was the department made aware that the study commissioned by council to satisfy their Gateway Determination condition had not been included in the materials put on exhibition, but the proponent's study was?---That I'm not sure about.

In commissioning the Olsson report in the first place, council was seeking independent advice as per the instructions of the department; you'd accept that?---I don't - to the best of my recollection, I don't think the criteria was "independent advice".

20 I withdraw that question. Thank you. Can you point the Commission to any case of which you're aware where in respect of a council, a planning proposal has been put on public exhibition and an independent consultant's report obtained to satisfy a Gateway Determination condition, but that report was not included in the materials placed on public exhibition, but the development proponent's consultant's report justifying the planning proposal was put on exhibition?---I can't, but I'm not sure whether that hasn't happened before. But I can't point to anything.

30 In ensuring that the JBA report was commissioned, you were, weren't you, at least in hindsight, trying to get a report which justified the applicant's case?---I was trying to get - to exhaust all the possibilities of whether there would be - it would be acceptable to have a 17 metre height.

And that was the applicant's case?---I believe so at that point in time, yes.

40 You saw it as your job to get reports which assisted developers, didn't you?---No, I saw my job to test the applications, and consultants that I used were reputable consultants, so, I mean, I had no reason to think that there was anything sort of - that they weren't going through their proper due diligence.

But you knew what you were doing in asking the proponent to

come up with a report that satisfied the Gateway Determination condition, didn't you, that is to say, you were making sure a report came into existence which did satisfy the Gateway Determination condition, which is what the proponent wanted?--Again, I think I've said this before, I mean, JBA are not - they're not - it's not a firm. It's a highly reputable firm. So I have no reason to believe that they would not have done their proper due diligence to explore the 17 metre height limit.

10

But, Mr Stavis, you were the one who procured the commissioning of that report from and by the proponent, weren't you?--No. I think I've answered that question before. No.

You discussed with Mr Faker and Mr Jelcic the commissioning of such a report, didn't you?--I gave them the option of looking at a number of options, yes.

20 You proposed to them that they obtain such a report, didn't you?--Okay, I think that's fair, yes.

And do you think now that you should have put both reports on exhibition?--Look, sir, with the benefit of hindsight, the answer is yes.

30 And why do you think, with the benefit of hindsight, you should have put both reports on public exhibition?--Well, at the very least to make - I guess to present a case of all the facts on exhibition. But I'm strongly of the belief that the Gateway Determination asked for an additional urban study. Now, there was no clarity on that, and in fact from what I recall, I mean, the advice we got from the department at that point in time was, you know, it's a matter for council to decide, you know, who does the study and so forth.

40 And by not putting the Olsson report on public exhibition, you concealed some of those facts, didn't you?--No, because I think in the previous recommendations that went to council, the Olsson report was almost identical in its recommendations that my staff at that time had proposed.

What's the purpose of public exhibition, Mr Stavis?--I guess to provide all the facts, yeah.

And you concealed, didn't you, very important facts from

the public, namely, that that report had been commissioned by council?---Sure.

And it declined to support the planning proposal?---I wouldn't use the word "concealed", no. To the best of my - - -

10 What word could you use? The effect of what you did was to conceal that fact from the public, wasn't it?---That wasn't my intention.

That was the effect of what you did, though, wasn't it?---Yes.

20 How could it not have been your intention to conceal it from the public?---Because we had a Gateway Determination that asked for an additional urban study report, and that's what - on the advice that I got from my staff as well, I came to the conclusion that an additional study is an additional study. And I can't say it any other way.

Even though the report commissioned by council did not support, indeed opposed, the planning proposal, that was something you thought the public would be better off not knowing?---No. I disagree with that. I didn't think that.

Well, why?---Well, I just didn't think that. I didn't think that at all. My mind didn't go there at all.

30 Even though that was the effect of your decision?---With the benefit of hindsight, yes.

Well, you knew at the time that would have been the effect of your decision?---No, no.

40 How could you not have known that if you didn't put the Olsson report on public exhibition, the effect would be to conceal from the public that council had commissioned a report which didn't support the planning proposal?---I can't answer that. I didn't know. It didn't occur to me.

Did you arrange for councillors to be provided with a copy of Mr Olsson's final report or a summary of it?---That I can't recall.

Did you arrange for councillors to be provided with an

indication as to what Mr Olsson had recommended?---I think I said in my previous evidence that I may have indicated to some of the councillors about the need for a report, but in terms of whether I gave them the detail, I just can't recall.

Sorry, what councillors are you speaking of now?---Sorry, mainly Mr Hawatt in relation to this matter, yeah.

10 So you didn't take any step to ensure that council discovered that the consultants that had been retained to provide a report supporting the study declined to support - to support the planning proposal declined to support the planning proposal?---Sorry, can you repeat that, I'm sorry?

You didn't take any step to ensure that councillors became aware that the report commissioned by council to support the planning proposal did not support the planning proposal?---I'm not sure whether I did or not, sorry.

20 You've got no memory of doing anything like that; is that right?---Not really, no.

Did you cause the JBA report to be commissioned because of any pressure you were under from Mr Hawatt to obtain an outcome on this planning proposal favourable to the proponent?---Look, that I can't honestly say as I sit here.

30 Why not, sir?---The only thing I can say is that, yes, there was pressure from council, Mr Hawatt and the GM at the time, to progress these applications.

Are you saying that you would have commissioned or caused to be commissioned the JBA report absent any pressure from Mr Montague or Mr Hawatt?---Yes. Yeah, I would have. Yes.

You would have done that off your own bat?---I would have.

40 So you can't use, can you, pressure from Mr Hawatt or Mr Montague as an excuse for your own conduct in this case, can you?---I can, because - well, at the end of the day, as I said before, we're looking at a Gateway Determination. So I was tasked with progressing planning proposals and DAs and so forth. That was made abundantly clear to me at the time by the GM, that was a key and fundamental thing that I needed to do. I tried to, to the best of my ability, progress those applications. And certainly this is one of

those cases.

Can I put this proposition to you, that a proposal to amend the LEP needed to have strategic merit and be made with the best interests of the public in mind?---Yes.

10 As the director of planning, you had a duty to uphold and always prefer the public interest, didn't you?---Yes. As I said before, it's a balance between the two, yes. The public as well - yes.

If there is a balance, when would the public interest be subsidiary to a private interest, in your opinion?---It wouldn't, no.

20 It was in the public interest for the community to know what the opinions were of the consultant retained by council in relation to the Gateway opinion, wasn't it?---In relation to the Gateway opinion?

In relation to the Gateway condition, it was in the public interest for the community to know what the opinions were of the consultant retained by council in relation to the Gateway condition?---Look, I've conceded that point. With the benefit of hindsight, yes.

But you knew at the time it was in the public interest for the community to know, didn't you?---No, sir.

30 And to fail to put the Olsson report on exhibition was, in effect, to - I used the word before - conceal it. I'll use another word now - to suppress it, to suppress it from the public and suppress it from council?---No. As I said before, you know, I sought advice from my staff as well. But ultimately, yeah, it was my decision, I accept that.

And the effect of your decision was to suppress that report?---The effect was, yes.

40 Did you suppress it in an effort to achieve an outcome favourable to Mr Faker?---No.

But that would have been the outcome if there had, as a result of there not being the Olsson report out there in the public arena, fewer objections to the planning proposal, wouldn't it?---No, I don't agree with that.

The fewer objections there are to a planning proposal, the more likely the planning proposal is to proceed; isn't that the case? Isn't that just logic?---Objections in the sense of public objections?

10 Yes.---Look, the public would have been afforded the opportunity, in the advertisement of the planning proposal, in any case. So the objections of the public were known even before I started with this planning proposal. So I don't agree with that.

Does that mean that that's a matter that influenced you at the time, that you didn't think the public exhibition process was a bona fide and necessary component of the LEP making process?---No, that's not what I said, no.

I'm just taking it the next step. Isn't that the effect of what you're saying?---No.

20 Because, of course, the JBA report and the Olsson report were the reports of experts containing expert knowledge, which the general members of the public wouldn't have, as a rule; correct?---Correct, yes.

30 By the decision you made to put the JBA report on exhibition and not the Olsson report, all that the public had to draw upon by way of expert assistance was a report which assisted the proponent and not a report which did not assist the proponent?---There would have been a planning proposal report done by my staff at the time as well to consider.

I'm talking about the public exhibition process.---Yes.

40 And the public exhibition process gives the public an opportunity of considering the materials on which the council will be forming an opinion as to whether or not to progress the planning proposal; isn't that right?---It is, but if I can elaborate, that's not just - it's not just one report that goes on public exhibition. There's a whole package of documents that go on public exhibition.

But to withhold from the public the opinions of an expert which are contrary to the planning proposal is, in essence, to skew the public exhibition process, isn't it, to pervert it?---No. I don't agree with that, I'm sorry.

Why not?---Because I believe that we had a bona fide report from a reputable firm to support the 17 metre built form down the site. So, yeah, that's the reason.

10 Can I suggest this to you and invite your response, that to arrange for the JBA report to be exhibited and not the Olsson report was to dishonestly favour the development proponent and to disregard your duty to uphold the public interest?---I disregard that - I don't agree with that, I'm sorry.

After amalgamation, as you would have been aware that council decided not to proceed with the exhibited controls for the site?---I'm not sure whether they did, but - because at that point in time I wasn't actively involved in applications. So I can't be quite certain that that was the case, I'm sorry.

20 Did anyone at council, after amalgamation, have any discussion with you about why you had put the JBA report on exhibition rather than the Olsson report?---Not that I can remember.

Did Mr Pedder have any discussion with you with a view to informing his report to council about the matter?---Not that I can remember, I'm sorry.

30 You had a number of communications with Mr Hawatt about this matter; is that right?---Correct.

And is it right to say that unless the communication was by email, it was rare for you to record a communication that you had with Mr Hawatt when he was talking to you about the Homer Street planning proposal?---Only from what we saw in the previous evidence, in the exercise book, yeah, it was.

Excuse me a moment.---Sure.

40 I'd like to move on to another topic, if I may.  
998 Punchbowl Road, Punchbowl, also known as  
1499 Canterbury Road?---Yes.

You've told us a little bit about your relationship with Mr Demian. Mr Demian was the development proponent in the case of 998 Punchbowl Road; is that right?---I believe so, yes.

Can you just describe the site for us, please?---It's a corner site. From memory, I think it's an old service station site and it fronts on to Canterbury Road, is the main frontage, and there's a - from memory, there's a park at the rear.

10 I'm sorry, there's actually a document I can put in front of you that will assist. Sorry, that wasn't meant to be a memory test. There's actually a document that will assist. If we could blow up the aerial photograph on that page there. Do you see the aerial photograph there in front of you?---I do, yes.

That was a disused service station, was it?---I believe so, yes.

20 Is it fair to say it wasn't very large, as development sites go?---That I'm not sure of, I'm sorry. If you gave me the square metres, I'd be able to answer that.

When you arrived at council in early March 2015 - - -?---Yes.

- - - the planning proposal, which commences at page 1 in volume 12, had been received; is that right? It's dated February 2015.---That's correct, yes.

30 Now, was the context for that planning proposal that the council had hived off the planning proposal for 998 Punchbowl Road from the residential development strategy because it had its own RMS issues, and to prevent it from jeopardising the whole, the larger residential development strategy planning proposal?---I'm not sure if this was one of them, but there were a number of them that were hived off, as you put it, yes.

40 Do you recall that there were a number of strategies included in the residential development strategy LEP planning proposal, multiple properties?---Yes. I remember that, yes.

And that, as a consequence of an RMS objection to that planning proposal, council was required to undertake a traffic study for Canterbury Road?---That's right.

And individual planning proposals were lodged with council that came out of the residential development strategy

planning proposal; is that right?---I'm not a hundred per cent sure, but that may be the case, yes.

10 Well, did you ever get the impression that a number of individual planning proposals were being submitted, that is to say, submissions were being made by proprietors for a planning proposal in respect of their individual site, in order to escape from the sort of never-never land situation that people were in if they were part of the residential development strategy planning proposal process, because a halt had been put to that because of an RMS objection requiring a fresh study for a large part of Canterbury Road?---I believe so, but I'm not sure whether this was one of them. I just can't recall.

In any event, 998 Punchbowl Road did not require a traffic study; is that right - this planning proposal?---That I'm not sure about, I'm sorry.

20 Can I take you to page 3 in volume 12, and do you see there that a bit of history is provided in the second, third and fourth paragraphs on that page. If I could just take you to the fourth paragraph in particular:

30 *At the Council meeting on 2 October 2014, Council resolved that a planning proposal be prepared to amend Canterbury Local Plan in respect of the subject land by amending the maximum Floor Space Ratio ... to 2.2:1 and to allow development to a height of 15 metres.*

?---Yes.

That planning proposal was put forward - and if I can just take you to page 34 - that simply provides a date, 10 February 2015, as the date of its submission to the department?---Yes.

40 Do you see that?---Yes, I do.

Then if I can take you to page 35, there is a response six days later from the department, referring to the proposal and in the second paragraph saying that a preliminary review of it suggests that, so far as this particular one is concerned, it doesn't contain adequate information to proceed with assessment at that time, and

council was therefore requested to submit additional information to demonstrate adequate justification for the 2.2:1 FSR sought to clearly demonstrate that it had strategic merit?---Yes.

Now, that's all before you arrived?---Yes.

10 Then, if I can take you to pages 36 to 39, this is a brief and consultancy agreement for urban design assessment, with the consultant being Annand & Associates?---Yes.

Do you see that?---Yes.

There's a recitation of the history on page 36, the first page of the brief and consultancy agreement, about council's planning proposal?---Yes.

20 And identifying, in the three dot points at the bottom of page 36, the issues to be resolved: demonstrate adequate justification for the 2.2:1 FSR to clearly demonstrate it had strategic merit; address a particular direction to ensure that it encouraged housing which is of good design; and to undertake an adequate urban design assessment that included the consideration of issues including those required by SEPP 65 and the residential flat design code?---Yes.

30 This was, as you can see from the bottom of page 38, sent out by Ms Dawson and returned by Mr Annand, page 39. Can I ask you to go to page 156. This is a letter which, if you go to page 157, you can see is dated 8 April 2014 - - -?---Yes.

- - - by Ms Dawson to Statewide Planning Pty Ltd. Statewide Planning Pty Ltd was the corporate vehicle that Mr Demian was using for this particular site. Do you recall that?---I do, yes.

40 Can I take you to the fourth paragraph, where Ms Dawson informed Statewide Planning:

*It was subsequently confirmed with the Department that this urban design study should be of an independent nature.*

She then goes on to explain that Mr Annand's firm had been retained. Do you see that?---Yes, I do.

You would have seen that on the file at some stage?---I don't recall, but it's likely that I did, yes.

Now, if I can take you back to page 39, if I can just draw your attention to the top of page 39. Council contact for Mr Annand was identified as Mr Foster, and his telephone details were provided. That was Tom Foster. Do you see that?---I do, yes.

10

Was Mr Foster, when you arrived at council in March, the file officer for this matter?---I believe so, yes.

Can I take you to page 40, and that's the first of a number of pages going through to page 95 of a black and white photocopy of a draft of a report, the first draft of Mr Annand's report, headed "Urban Design Review of Planning Proposal", and it bears the date March/April 2015. Do you see that?---Yes.

20

Do you see that there's lots of handwritten annotations, on almost every page?---I do, yes.

If you could assume that they're the handwriting of Mr Foster and Mr Farleigh for the purposes of this questioning, please?---Yes.

And I'd ask you to assume as well that the changes that were sought by Messrs Foster and Farleigh were incorporated by Mr Annand into the next version of his report. Can I take you to page 45 in volume 12. Looking at that page, can you see that the first dot point, under the heading "Urban Design Analysis", reads:

30

*The proposal as set out in the proponent's Planning Proposal Report is generally not able to be supported.*

If you could go down to the third dot point:

40

*An FSR increase from 0.5:1 to 2.2:1 does however seem to be an overdevelopment of the site. Our investigations suggest a building height of 5-6 floors ... and a maximum FSR of 1.8:1 would be more appropriate.*

Do you see that that's the typewritten material to which I've drawn your attention on page 45?---Yes.

And would you accept that the handwritten notations there do not seek to change Mr Annand's opinion as expressed in typewritten form, not in the passages I've drawn your attention to?---Are you talking about the actual handwritten notes?

10 Yes.---Okay. Well, there's a handwritten note on that page that says, "Add a comment that" - - -

Mr Farleigh's handwriting?---Yes. "Add a comment that proposal for of 2.2:1 at height of 15 metres do not appear to be achievable given site constraints of assessment against SEPP 65".

What is the difference between that and the first sentence of the first dot point:

20

*The proposal as set out in the proponent's Planning Proposal Report is generally not able to be supported.*

?---Well, Mr Farleigh's comment - I mean, Mr Farleigh's comment actually provides more sort of - I guess an attempt to try to provide justification for that.

Yes?---Yeah, yeah.

30

Asking for more detail to be provided, in essence?---Sure.

But otherwise, there's nothing in there on the part of Messrs Foster or Farleigh to try to change the consultant's opinion, is there?---Not on that page that I can see, no.

Can I take you, please, to page 170. Just to give you context, can I ask you to go back to perhaps page 169, and do you see that there is an email there to you from Mr Annand discussing some detail of the next version of his report?---I take it that it is the next version. But, yes, you're right.

40

That's an email dated 16 June 2015?---Yes.

And 18 June 2015, the report is provided attached. That's on page 170. If you go over to page 171, through to about

page 278, I think I'm right in saying, yes, including appendices, that is the next version of Mr Annand's report. If I can provide you with this assistance, that in the course of Mr Annand giving his evidence, we established that the version commencing at page 171 is the second version of his report?---Okay, I accept that. Okay.

10 If I could take you, please, to page 176, this is pretty much the same page as we looked at in the black and white earlier version, that is to say, it's the commencement of urban design analysis. The first dot point reads:

*The proposal as set out in the proponent's Planning Proposal Report is generally not able to be supported.*

He goes on to give some explanation. In the third dot point:

20 *An FSR increase from 0.5:1 to 2.2:1 does however represent an over-development of the site.*

Then, as suggested by Mr Farleigh, he added a dot point:

30 *A proposed FSR of 2.2:1 and height of 15m do not appear to be achievable given site constraints and assessment against SEPP No 65 and DCP controls.*

You became aware of these conclusions on Mr Annand's part; that's fair to say?---Around that date, I think that's fair, yes.

It's apparent, isn't it, that they're not favourable to the proponent?---I'm assuming that the 2.2:1 is what they were asking for, and, yes, it seems to me that it's not favourable, no.

40 Can I put this to you, that it was your receipt of this report that marked you becoming involved in some detail in progressing Mr Annand's involvement in the matter? Do you remember that?---I don't know whether this report was the trigger or whether it was, again, one of these applications that were identified by the general manager and Mr Hawatt and I believe Mr Azzi in terms of making me aware of this proposal.

Well, thinking back now, can you remember a discussion with Mr Hawatt about the 998 Punchbowl Road matter?---There were - there were numerous discussions, the detail of which escapes me, but I certainly am aware of a meeting that I had, possibly two, possibly three, where he was present, the general manager was present, Mr Demian was present, around this application.

10 And was Mr Azzi present at any of those meetings?---He was, too. Sorry, I'd forgotten.

And did Mr Hawatt say anything that you recall about what you should be doing, or to indicate what you should be doing in respect of this particular application?---I don't recall anything specific other than them expressing an urgency to progress.

20 And "progress", of course, meant, as you understood it, progress to approval, that is to say, adoption, the making of an amending LEP?---Yes.

And do you recall Mr Azzi saying anything as to his view as to what you should be doing in relation to this proposal?---Progressing. The same thing.

30 Do you recall Mr Montague saying anything as to what you should be doing in relation to this proposal?---Yeah, the same thing.

And you've told us about two or three meetings, is that right, where those gentlemen were present?---Yeah, I can't remember the exact number, but there was certainly more than one, from my recollection.

And Mr Demian was present at those meetings?---That's right.

At each of those meetings?---Yes.

40 Did you have separate meetings with Mr Demian, that's to say, in the absence of Mr Hawatt or Mr Azzi, but with Mr Montague?---Just with Mr - the GM?

Thinking about it, if you can, was there an occasion you had a meeting with Mr Demian and Mr Montague but in the absence of Mr Hawatt and Mr Azzi?---There was one occasion

that I can recall, yes.

What happened on that latter occasion?---Most of those meetings, including that one, were meetings that I was called in to the GM's office, and Mr Demian had already been in there.

10 He was already present, that is?---Correct. And it was all about just trying to get an understanding from the GM's perspective of where we were at with the application. They were the main meetings, that general flavour. Yes.

Did you have meetings with Mr Demian in the absence of those three men about this matter?---About this one? I just don't recall if I did.

20 Did you have meetings with Mr Montague in the absence of Mr Demian and the absence of Messrs Hawatt and Azzi about this 998 Punchbowl Road matter?---There were occasions, this one as well, where the GM would call me in to his office and inquire about where things were at with applications, and I believe this was one of them.

Was this one that Mr Montague took an interest in?---Correct.

And I used those words, I appreciate, but when you said "Correct", what do you mean by that?---Sorry?

30 By him taking an interest, if you could tell us what you mean by Mr Montague taking an interest in this matter?---Only in the sense that he would call me or my PA and say he needed to see me about a matter, and I'd be called up in to his office. When I attended, he'd ask me about certain applications, and I remember him asking me about that one.

40 Do you recall FSR being the stand-out issue for this planning proposal?---Absolutely.

MR BUCHANAN: I am informed it might be time, Commissioner, this might be a convenient moment.

THE COMMISSIONER: Yes. All right, we'll adjourn for lunch and resume at 2 o'clock.

**LUNCHEON ADJOURNMENT**

**[1.00pm]**