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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 THURSDAY 9 AUGUST 2018

AT 9.35AM

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.

MR BUCHANAN: Commissioner, if Mr Stavis could be recalled, please.

THE COMMISSIONER: Yes, Mr Stavis.

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MR BUCHANAN: Mr Stavis. When you're ready.---That's okay.

10 On the last occasion, I was asking you about a document received from DDC Urban Planning, volume 13, page 127, in which at page 129, on behalf of Statewide Planning, the writers asked for the planning proposal for 998 Punchbowl Road to be amended to allow on site a maximum building height of 25 metres and a maximum permissible floor space ratio of 2.7. Do you see that?---I do, yes.

20 And I asked you whether this came out of the blue, and you started giving an account of something that you had referred to before, which was a meeting in the general manager's office with Mr Hawatt, Mr Azzi, Mr Demian and Mr Montague, and that there was a plan with some scribbled notes on it?---Yes.

Do you remember telling us that?---Yes.

30 Can I ask you if we can just put that to one side for the moment and come back to this document from DDC Urban Planning. I would like to just perhaps provide a bit more context for you because a second version of that letter - the first one was dated 16 October 2015; that's at page 127. The second one is at page 155 and is dated 26 October 2015. Do you see that? On page 157, the request was that the planning proposal be amended to allow on site a maximum building height of 25 metres and a maximum permissible floor space ratio of 2.8:1. Do you see that?---I do, yes.

So do you recall that there were two separate consecutive requests on behalf of Statewide Planning to increase the FSR?---No, I don't recall, yeah. I recall the later one.

40 And could I ask, please, though, when you answered my question on the last occasion as to whether this came out of the blue, you started to refer to the meeting at the general manager's office. Had there been any other notice to you that this was coming?---Not that I can recall, no.

And could I ask you to think carefully for a moment. I'll ask you in more detail about the memory you have of the

meeting in the general manager's office, but can I ask you just to think carefully about it. Are you sure that these letters, or the second one at least, dated 26 October 2015, came after that meeting in the general manager's office?---To the best of my recollection, I believe so, yes.

10 What I would like to just show you, if we could, please, is exhibit 85, page 30. This is the exhibit comprising a series of entries as to scheduled meetings. Excuse me a moment. It's page 17, sorry. I gave the wrong page number reference. So it's exhibit 85, page 17.---Yes.

Can you see that this is an entry in the calendar system at council that was organised by Andrea Sutcliffe, who I think you've told us for a period of time worked for Mr Montague?---That's right.

20 And it's for a meeting in the general manager's office in relation to 998 Punchbowl Road, Punchbowl in relation to Charlie Demian, and that the required attendees were yourself and Mr Montague. Do you see that?---I do, yes.

30 The date of that meeting is 29 October, whilst the date of this letter from DDC Urban Planning, the second of the two letters seeking an increase in FSR in the planning proposal - this is at page 155 of volume 13 - is dated 26 October. Now, of course we all receive letters sometimes that are dated somewhat differently from the time when we receive them, but I'm showing you all of this in order to ask you to just think, if you wouldn't mind, please, about whether you think that you first saw this second letter, the one dated 26 October 2015, before or after the meeting in the general manager's office that you were starting to explain to us?---As I said before, to the best of my recollection, I believe it was - that meeting had happened before, and I'm actually not sure about the 29th. Maybe that was another meeting that had been arranged. But I believe that I was shown that document at that first meeting, which would have been - - -

40

Preceded, you think?---I believe so, yes.

These two letters, or at least the second one?---I believe so, yes.

Do you remember that I have previously shown you a sketch

plan with handwriting on it - this is volume 13, page 199 - and you have - well, what do you say about that document in relation to what you were given or shown at this meeting in the general manager's office?---This appears to be the document that I was shown at that meeting, yes.

As you can see, it has on it 2.8?---Yes.

10 As the FSR. Was that the first time that anyone indicated to you that the figure being sought for the FSR was to be revised upward to 2.8?---Yes, I believe so.

Were you surprised when you saw it?---I was, yes.

You have a memory of being surprised when you saw it?---I was, yes.

20 I interrupted you in your account of this meeting in the general manager's office. You've told us about who was present. You've told us that they were already in the room when you got there. Can you remember whether it was a meeting which you had been scheduled to attend or whether you were simply called up to the office, and, when you got there, everyone was there?---I believe it was the latter, yes.

30 And do you remember who called you up to the office?---Well, it was either the GM or the GM's PA at the time.

And do you remember what time of day the meeting was?---That I can't be a hundred per cent sure.

Morning, afternoon? I don't want you to fix on something if you can't remember.---I can't remember, sorry.

40 So can you tell us, please, what happened when you went into the room, taking your time and taking it step by step?---Sure. As I said before, I entered the room and Mr Hawatt, the general manager, Pierre Azzi and Charlie Demian were all present. We sat down. Typically the general manager's office had a little lounge area, so we sat around that lounge area and I was shown this document.

Do you remember by whom?---I believe it was Charlie Demian who presented it to me.

Did he say anything?---Nothing that I can recall other than in general terms just putting the case forward for what he was thinking about this proposal.

10 What did he say in that regard that you can recall?---That basically he had gone away, done some homework with his consultants and believed that this was something that could be supported, and knowing Charlie Demian, he's very forceful in, I guess, his presentation, and he basically put to me the merits of the proposal as far as he saw them, anyway.

Was he very forceful in his presentation on this occasion?---Yes. Yes.

What's your memory of how he was presenting his case?---Well, in this case, he wasn't aggressive, I believe because he was in the presence of others as well.

20 Well, leaving that aside.---Sure, sure.

He wasn't aggressive?---No.

30 But how did he present his case?---He basically went through what he believed to be the merits of the proposal. So he took me through the proposal and articulated that he believed that in the spirit of what the council had resolved along Canterbury Road before, that at the very least a 25 metre tower element on the corner is something that council should consider. That was the main thing that I remember out of that meeting, apart from the FSR, I should say.

How did you respond?---Look, as I normally respond. I said, "Yeah, we'll look at it on its merits." I was non-committal at that meeting in any way, shape or form.

40 But you had surely in mind the history of the planning proposal and of Mr Annand's reports to that point and you appreciated, didn't you, that Mr Annand had indicated that FSRs somewhat less than 2.8 were not supportable? You didn't indicate, "Well, this is going to be a problem" or anything like that?---I said to him - I distinctly remember saying to him, "Why has the FSR gone up from what was previously discussed with me?", to which I don't remember what his reply was, but I do recall saying that at that meeting.

Was there any indication on your part of whether 2.8 was achievable?---No. No.

Did Mr Montague say anything?---Not that I can recall, other than in just very general terms about looking at it. I remember him saying, "Spiro, look, go away, have a look at it and see what you think", words to that effect, anyway.

10

Was there anything that was said about you having to come up with a solution?---Not that I can recall specifically, no, sorry.

Was anything said by Mr Azzi or Mr Hawatt?---They were, I guess, asking for me to look at the proposal as it was being presented to me and to come back certainly to Charlie about what my thoughts were on the proposal.

20

So they did contribute to the meeting verbally?---Yes.

Now, can I just ask you to take a step back and think how many meetings did you go to in Mr Montague's office where those four men were all present and you were talking about - or the subject of discussion was one of Mr Demian's developments?---Oh - - -

All four people.---I'd say at least three or four times.

30

Was there any occasion when Mr Montague said at one of those meetings that you had to come up with a solution?---That I can't recall.

MR BUCHANAN: Just excuse me a moment, Commissioner. Commissioner, can I make an application to vary the non-publication order, please.

THE COMMISSIONER: Could you just hold on for a minute, please. Yes.

40

MR BUCHANAN: Page 595. The application is in respect of the non-publication order made on 1 December 2016 in respect of evidence given by the witness to the Commission recorded on page 595, commencing at line 17 and concluding at page 596 at line 29.

THE COMMISSIONER: 29?

MR BUCHANAN: 29.

THE COMMISSIONER: Just give me a minute.

MR BUCHANAN: Yes. Commissioner, can I modify the application?

THE COMMISSIONER: Yes.

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MR BUCHANAN: Can I commence at line 1 on page 595.

THE COMMISSIONER: I vary the non-publication order on 1 December 2016 to exclude the evidence recorded at page 595 commencing at line 1 and finishing at page 596 line 29.

20

I VARY THE NON-PUBLICATION ORDER ON 1 DECEMBER 2016 TO EXCLUDE THE EVIDENCE RECORDED AT PAGE 595 COMMENCING AT LINE 1 AND FINISHING AT PAGE 596 LINE 29.

MR BUCHANAN: Mr Stavis, I'd like to read to you, if I can, please, from the transcript of evidence that you gave to the Commission on 1 December 2016, and if you could listen to what I read out and then I'll ask you questions about it.

30

And was there also an issue about increasing the FSR on that site?---Yeah.

That's the floor space ratio?---Yeah, yeah. Look, yes.

What was that issue?---The issue was in relation to try and get a certain FSR on the site and whether or not that could be achieved?---Yeah.

40

And could it be achieved?---There was difficulty in getting the development when you apply all the principles that I mentioned before to achieve an FSR, the FSR that was wanted, I guess.

Who wanted that particular FSR that was

difficult to achieve?---Well, obviously the proposal.

What was in the proposal?---Yeah, yeah.

Did anybody else speak to you about trying to achieve that higher FSR?---Mr Montague.

10 *Mr Montague did. When did that conversation take place?---We had a meeting in council in his office.*

Yeah. Was anybody else present?---Yeah.

Who else was there?---Charlie Demian.

Mr Demian was there?---Yes, Pierre Azzi and Councillor Hawatt, yeah.

20 *And what did Mr Montague say during that meeting?---Well, I walked in on the meeting, right. They were there before I arrived. I walked in on the meeting and there was a bit of paper like that with some scribble notes on it and there was - I distinctly remember there was an FSR figure on it, yeah. So it was all - it was - yeah, so when I walked in, it was a case of again me defending the fact that*
30 *we couldn't achieve a particular yield.*

Who were you defending that against?---The developer.

So Mr Demian?---Sorry, when I say "defend", I mean that I couldn't - we could not achieve the yield that was being sought within the design parameters.

40 *And did you say that during the meeting?---Absolutely.*

And did anybody respond to that comment?---Yeah, well, Charlie Demian wasn't happy.

What did he say?---Oh, he was - I don't

think I can repeat it here, but he was very abusive and telling people in no uncertain terms that I didn't know what I was doing, yeah.

Did he raise his voice?---Oh, yeah.

And he used strong language?---Yes.

10 *Swear words?---I don't believe swear words, no.*

Okay. Just strong language?---Yeah, yeah.

Can you tell us what he said?---Oh, "You don't know what you're talking about", you know, that sort of stuff, yeah, yeah.

20 *And did Mr Hawatt say anything in that meeting?---They were - nothing that I can recall, no, no.*

Did Mr - - -?---It wasn't - they were very quiet in the meeting.

So when you say "they", do you mean Mr Hawatt and Mr Azzi?---Azzi, yeah.

30 *Did Mr Azzi say anything in that meeting?---No, not that I can recall, no.*

So what did Mr Montague say?---Well, you know, we've got to come up with a solution.

And did you give any undertaking in that meeting about what you would do?---I, I - the only thing I said was put, you know, what the issues are, put your page to us and we'll have a look at it, yeah.

40 *Is that how you left things at the meeting?---Pretty much.*

You heard me read that transcript of the evidence you gave on 1 December 2016. When you gave that evidence, was that evidence the truth?---It was probably closer to the time, I guess, so I'd say yes, yes.

And what do you say about the evidence you've given today - - -?---Sure.

10 - - - about a meeting in Mr Montague's office with those three other gentlemen present as well and you being given a piece of paper with some scribble notes on it that had an FSR figure on it?---I guess given today's two years after I gave that evidence, so it's probably more accurate what I gave back then.

In December 2016?---I believe so, yes.

Did my reading of that evidence spur any recollection in your mind now about that meeting?---Yeah, yeah, it did.

20 What is it that you can now recall, sitting here as you do, that has been spurred by me reading that transcript out to you?---Certainly I guess the comments that the general manager made in terms of finding a solution and also the - what I gave earlier in terms of evidence in terms of the presentation that Charlie Demian had given, it's probably a bit more accurate what I said back in 2016.

Do you have a memory now, though, of being told by Mr Demian you didn't know what you were talking about - - -?---Yeah.

30 - - - and you having to defend yourself?---I do. I do.

Was it at that meeting, though?---It was. It was.

Because you have told us that Mr Demian was, if I can use that word, abusive towards you more than once?---Absolutely, yeah, and this was another occasion.

40 As well, however, in December 2016, when you were giving evidence of the meeting, you said that Mr Hawatt and Mr Azzi were very quiet in the meeting and basically didn't say anything. What do you say now as to their contribution at that meeting? Do you have a recollection?---Yeah, I still stand by that. I don't believe that they were - I believe that they didn't say much at that meeting, yes.

And I just want to go back, then, to your memory of what Mr Montague said in terms of the particular contribution to the conversation. Can you, as you sit there now, recall

him saying that a solution had to be found?---Yeah.

If so, I want to ask you to tell us what is your recollection about what Mr Montague said on that subject, if you wouldn't mind?---I distinctly remember after - towards the end of the meeting Mr Montague - I mean, there were a series of exchanges with everyone, and then Mr Montague saying to me distinctly, "Look, we have to find a solution to this."

10

And what did you understand Mr Montague was saying to you? What did you have to do, according to what your understanding of what Mr Montague was saying to you?---Essentially to look at the proposal itself and see whether or not - look, the tone and the spirit of what he was saying was pretty much "look at finding a solution" in the sense of look at finding a way in which we can get the 2.8:1, yeah.

20

Now, can I take you back to the sketch plan, please.---Sure.

30

THE COMMISSIONER: Before we move on to that, could I just ask you, in part of the evidence that Mr Buchanan read to you, you were asked about who were you defending that against, and you said the developer, and you said, "Sorry, when I say defend, I mean that I couldn't - we could not achieve that yield that was being sought within the design parameters." When you referred to the "design parameters", what were you referring to?---Just in particular the body of work that we had done previously with Mr Annand as well and also the general parameters when you're looking at planning proposals. But, at that point in time, we had - there had been a fair amount of work that had been done to try and achieve an appropriate FSR on the site.

40

So you were referring to Mr Annand's reports and also, what, the various controls that applied to the site?---Just from an urban design perspective and all that other - all that body of work that had been done and flushed out from the previous incarnations of the planning proposals.

By Mr Annand and also, what, your staff within council?---I can't honestly say. In my - to the best of my recollection, it was mainly Mr Annand's work, yes.

THE COMMISSIONER: Thanks, Mr Buchanan.

MR BUCHANAN: Just following those questions up, specifically Mr Annand had, in his reports, drawn attention to what he believed were parameters, if I can use that term, which he thought the proponent hadn't taken into account or given sufficient weight to, such as the RMS road widening reservation on Canterbury Road, which reduced the available footprint for development. Is that the sort of parameter you're talking about?---That and also all the setbacks and open space controls and those sorts of things and - - -

Which Mr Annand had drawn attention to?---Yes, exactly.

If we could look again, please, at the sketch plan. Do you recognise the handwriting or any of the handwriting on that page?---The only handwriting I recognise is on the bottom left-hand corner, where I've scribbled, "Urban design", "Traffic report" and "Planning report", and I believe I put that in after I had received - while I was at that meeting. But I don't recognise the other handwriting, I'm sorry.

What were the circumstances in which you put in that material against the three asterisks?---I was just putting down thoughts that were occurring to me at the meeting.

Were they things which you spoke about at the meeting?---I believe so, yes.

Can I just check, after "urban design" appear the words "peer", something that has been crossed out and a slash and "needs context/analysis". Is that your handwriting?---Yeah, I believe so.

And did you put all of that handwriting on that sheet at the time whilst you were at the meeting?---I believe so.

The word "peer" might suggest, having regard to your use of it in other contexts, that you were considering the need for an urban peer review, urban design peer review; is that right?---I can't be sure as I sit here today.

"Traffic report" - what would that be a reference to in the circumstances of 998 Punchbowl Road?---Ordinarily you would prepare a traffic report as well as other things that comprises of - when you're looking at, I guess, an assessment, a planning proposal, yeah.

When you say you would, do you mean the proponent would or, if it's a planning proposal, council would?---Normally the proponent would do that and provide it as part of a package.

10 And "urban design", was that something that you wrote down because it was something you considered the proponent should provide?---I believe so, yeah. I can't be a hundred per cent sure.

And the words "planning report", the last asterisked item - is that something that you believed the proponent should provide as part of a package?---Sure, sure.

20 And what did you mean by "planning report"?---Ordinarily with a planning proposal, as any other application, you would prepare a - a town planner would prepare a planning report on behalf of the applicant, so that's probably in reference to that.

Would that be different from an urban design peer review?---I'm not sure if it was meant to be a peer review, but it would - it is a different report, yes.

It performs a different function, does it?---Yes.

30 Did Mr Demian write on this page at any time in your presence?---No.

And what happened to this piece of paper by the time you left the room? Where was that piece of paper? Was it with you or had you left it behind?---That I can't be a hundred per cent sure of.

I just need to check, the handwriting on the sketch plan - you've identified the three asterisked items as being in your handwriting?---Yes.

40 Is there any other handwriting on that page that is your handwriting?---No.

Did you see anyone else write on it?---No.

Is it your memory, when it was given to you, that it already had those, as it were, three columns of handwriting already on it?---I believe so, to the best of my

recollection, yes.

Q. And was there anything to indicate whose handwriting it was?---I don't believe it would have been the general manager. It's more likely that it would have been the proponent, or Charlie Demian.

10 But you aren't sufficiently familiar with his handwriting, or weren't sufficiently familiar with his handwriting, to tell us now?---No. No, no.

If I can just take you back, though, to some previous pages, page 190 - sorry, first of all, I should just show you page 197, because the plan that we've been looking at is the attachment with the document titled "Design Understanding Meeting", with the date 9 November 2015. It's a PDF. Do you see that in the header of the email dated 11 November 2015 at page 197 of volume 13?---Yes.

20 And do you see that it is an email from Mr Demian saying:

Hi Spiro.

Thanks for the follow up on the marked up plan. I have attached it above for your information.

?---Yes.

30 So that's an email dated 11 November. Can I just ask you to have a look down the page, and you'll see at the bottom of page 197 that on 9 November you said to Mr Demian in an email:

Can you please email me the marked up plan we discussed today.

?---Yes.

40 Then you repeated that request in an email in the middle of the page on 11 November 2015 at 10.28am, and it was in response to that that you were sent it by Mr Demian?---Yes.

Do you see that?---I do, yes.

So it would be a logical inference from that email trail that the meeting perhaps had been on 9 November 2015 and

not 29 October 2015, which was a date I gave you earlier?---I think if you look at the email trail, that's probably more likely, yes.

That is to say, after the meeting was over, did you take steps to try and get hold of the piece of paper?---I believe so, according to those emails, yes.

10 You don't remember walking out of the room with it and sitting at your desk and looking at it?---No. I mean, now it's come back to me, I believe that he forwarded it to me at a later time, yes.

9 November 2015 is still a while after these two letters from DDC Urban Planning dated 16 October and 26 October 2015 that we've looked at. You understand that?---Yes.

20 Are you still satisfied in your own mind that you didn't see those letters from DDC Urban Planning until after the meeting at which you were shown the sketch plan?---Look, I can't be a hundred per cent sure, but to the best of my recollection, the 2.8:1 was the proposal that I was shown.

I'm not suggesting that's an incorrect recollection.---Yeah.

30 I'm just asking, at one stage or another, you must have been surprised or alarmed or had some emotion in response to learning that the ask was now 2.8:1, and my question is: was that surprise or alarm or discovery that that was what you were being asked to satisfy a response to a document that you were shown in Mr Montague's office or a letter that you had received from planners on behalf of Mr Demian?---No, it was a document, yeah.

At some stage, though, you did see these letters?---I can't recall, I'm sorry.

40 So is it possible that you didn't actually see them?---I may not have, no. Yeah, it is possible.

I just draw your attention to the fact that the 16 October 2015 letter has, as it says it does, attached to it a number of figures and plans prepared by a company called Geoform. Are they documents that you saw at any time?---Do you mind showing me where they are?

I do apologise. Yes, certainly. Starting at page 132. Something to note is that at page 137 you can see the original of the sketch plan, the original plan upon which the scribbles appeared when you were shown the piece of paper in Mr Montague's office.---Sure.

But otherwise had you seen those pages before - pages 132 through to 140?---I have a vague recollection of seeing them, yes.

10

You don't recall the circumstances?---No, I'm sorry.

Can I draw your attention to an email in which you reminded yourself - this is page 142. I'm sorry, can I take you back to page 141 - page 141, volume 13. Can you see that Mr McGaffin, on 20 October 2015, said that DDC Urban Planning acted for Statewide Planning and attached a letter in relation to the site, although when you have a look at the email, there's no sign of an attachment. Do you see that?---Yes.

20

Then the same day, there's an email to you from Matt Daniel at the top of that page, on 20 October 2015:

Thank you for your call. I will call back to discuss in more detail.

?---Yes.

30

Do you see on page 142 an email to yourself on 22 October 2015 to call Charlie Demian?---Yes.

And then page 143, an email by you to Mr Demian on 22 October:

Hi Charlie.

Tried to call you a couple of times this arvo, please call me tmrw so we can discuss.

40

?---Yes.

All of which would be a logical response, wouldn't it, if you suddenly received the letter dated 16 October 2015 from DDC Urban Planning asking for an increase in FSR to 2.7, that is to say, you'd be wanting to talk to the proponent

and find out what's going on?---Yeah, I'm not sure, because - I'll take your word for it, for the fact that those emails relate to an attachment that - - -

Well, they don't say that there's an attachment there, do they?---No, no.

10 But you nevertheless are anxious to talk to them and talk to Mr Demian in particular?---Yeah, I believe so, because - - -

And what would that have been about?---I don't recall the exact details, but it would have been in relation to the application or potentially some information that they provided for me at that point in time.

Possibly the letter of 16 October 2015?---It's possible. It's possible, yes.

20 Can I take you to page 151, please. At the bottom of the page, this is an email from you to Mr Demian of 23 October 2015 at 2.22pm, in which you said you had just tried to call Mr Demian and said:

I just wanted to make sure we were on the same page.

30 *As you know Council resolved to increase the FSR and height on the site to 2.2:1 and 15m respectively.*

If you recall from our first meeting, we said could not achieve the FSR within the 15m height control and that we would consider additional height on the corner of Canterbury Road and Punchbowl Road to allow you to get as close as possible to the 2.2:1.

40 *I note that the revised proposal submitted last week had an FSR in excess of 2.2:1 (ie 3.2:1).*

I don't believe an FSR of 3.2:1 (which is more akin to Business zones) can be justified on planning grounds given the site's context, ie being in a residential

zone, away from the town centre/public transport, etc ...

Please make sure that the FSR does not exceed 2.2:1, in accordance with Council's resolution. I have also spoken to Matt about my concerns.

10 Can you recall why you sent that email?---I can't.

It certainly seems to be concern on your part that the proponent has upped his bid?---Yes.

And the bid that you've identified is 3.2:1, and my question to you is: if you could assume from me, please, that there's no reference to 3.2:1 in the letter from DDC Urban Planning dated 16 October 2015, what was your reference to the revised proposal submitted last week "had an FSR in excess of 2.2:1 (ie 3.2:1)"?---That I can't recall at the moment.

Do you have a recollection at any stage of being asked to accommodate an FSR of 3.2?---No.

Do you say to us that this email means to you that you must have received some sort of revised proposal the previous week for an FSR of 3.2:1, and you just can't remember it?---I think that's probably likely, yeah.

30 Well, the question is why would you have sent that email unless you had?---Yeah, exactly. I agree.

But if it's not in the documents, is it possible that the revised proposal was a reference to one of the conversations that you'd been having with Mr Demian or his advocates, such as Mr Daniel?---I don't recall having a conversation with him about 3.2:1, to be honest.

40 Or Mr Daniel?---Or Mr Daniel, no.

Do you have a recollection of ever telling Mr Demian or one of his advocates, such as Mr Daniel or Mr McGaffin, "Look, 3.2 is simply not achievable"?---No, I'm sorry, I don't.

If I could take you, then, to page 154, this is, first of all, an email from Mr Daniel of 26 October 2015, and it says:

Dear Spiro, please see attached.

And over the page, you can see page 155 is the first page of the second letter from DDC Urban Planning, namely, the one dated 26 October 2015, which, when you go to page 157, sought an FSR of 2.8. Do you see that?---I do, yes.

10 So now if you could go back to page 154, it would seem that you forwarded Mr Daniel's email and the attached letter from DDC Urban Planning to Peter Annand in an email on 27 October 2015, saying:

Hi Peter.

*See latest proposal for your review.
I note that the FSR has increased to 2.8:1.
A preliminary review seems to show that it
20 does not comply with the setbacks and open
space provisions under the DCP and ADG.*

*Can you please review and before you
finalise any comments make an appointment
to see me so we can discuss.*

So it would seem that you had forwarded that to Mr Annand; is that right?---I believe so, yes.

30 Can I break up my questions into two. Why did you send it to him at all?---Because he - I believe at that point in time, he had done a fair bit of body of work on that site, so I was seeking his opinion and what his thoughts were on this revised proposal.

40 Was there any reason why you didn't copy in to the email any of your staff, any of your planning staff?---Not that I can think of. As I said in previous evidence, at that stage I was taking more of a proactive approach, and I knew the views of my staff, anyway. So it was a case of trying to see whether - to get an opinion from a gentleman who had been working on it.

But a more proactive approach is simply your words to describe your exclusion of your staff from your negotiations with Mr Annand in his provision of reports in relation to the planning proposal and now the proponent's

own proposal?---No, I don't believe that's the case.

Why did you want to see him face to face to discuss the matter?---Because that was just common practice. It's always good to communicate face to face when you're dealing with these sorts of issues rather than trying to deal through emails and so forth.

10 I'm just wondering, can I just go back now to the meeting in Mr Montague's office just in an attempt to look again at the question of when that was. At this time, when you're talking to Mr Annand on 27 October 2015, has that meeting taken place?---I believe so, because the 2.8 - to the best of my recollection, the 2.8:1 was first shown to me at that - at a meeting in Mr Montague's office.

20 Please understand I'm not trying to get you to change your evidence. All I want to do is remind you of other material that would indicate that possibly that sketch plan had been shown to you on 9 November 2015, because that was the date on the file when it was sent to you by Mr Demian and you had spoken to him, you will recall, about having discussed the sketch plan "today"?---Look, to the best of my recollection, it took him a while to get that information to me.

Certainly.---So whether that was a day, whether it was a week, I can't be certain.

30 Well, if it is indeed the case that you had had that meeting in Mr Montague's office before you sent the email of 27 October 2015 to Mr Annand, then weren't you thinking about the - I withdraw that. I withdraw that. Can you think back to that meeting in Mr Montague's office?---Sure.

By the end of that meeting, when you left it, did you believe you had to do anything?---As I said before, obviously Mr Montague's instruction was to find a solution.

40 Yes, but what did you believe you had to do?---To look at whether or not the proposal itself could stand on merit, which would have meant that I would have needed the feedback of Peter, Peter Annand, I guess. Yeah.

But it wasn't a case of whether it could stand on merit, was it? It was a case of satisfying Mr Demian, because that was the clear message that you had been given by

Mr Montague, wasn't it?---It was in part, yes, yes.

It was entirely, wasn't it? What was the part that said, "Assess this on its merits"?---No, they were my words.

No message was given to you, was there, that you should assess it on its merits?---No.

10 So did you consider that you were, as a result of that meeting, under pressure to come up with an amendment to the planning proposal, council's planning proposal, that supported an FSR of 2.8:1?---I think that's - I felt some pressure, yes. Yes.

Well, what other construction could you possibly have put on the events you've described as occurring in Mr Montague's office on that occasion?---I think that's a fair comment. I think you're - - -

20 There's no other construction, is there?---No.

You didn't say, "I'm not going to do this", did you?---No, no.

You didn't say that to Mr Montague?---No, I didn't say that at all.

You accepted his instruction - - -?---Yes.

30 - - - we have to come up with a solution?---Yes, yes.

And you saw that as, given Mr Demian's approach and given the particular figure that had been provided to you, as meaning that you had to procure an amendment of the planning proposal that supported an FSR of 2.8:1 or have a very good reasons why you couldn't?---It's not as simple as that. Provided that I was satisfied that we could potentially achieve that FSR within the planning parameters that Peter Annand had identified in the past, did I feel
40 pressure? Yes, I did. I did.

And, yes, Mr Annand had identified planning parameters that were outside of council's control, but what was inside council's control was its bid to amend the LEP as it applied to that site, that is to say, the loosening of the height and FSR controls?---Yeah, those - that resolution of council, I believe, happened before I had started. But

I believe so. I'm not - - -

But you were being told, weren't you, at that meeting - didn't you understand what you were being told was, "There is this planning proposal. What the proponent wants now is an enhanced, an increased, FSR, and so the planning proposal has to go back to the drawing boards and be revised to meet what the proponent is seeking"---I think that's a fair comment, yes.

10

And so wasn't what you needed to do was to discuss with Mr Annand how that could be achieved?---Yes, yes.

Just excuse me a moment, Mr Stavis, if you wouldn't mind. Mr Stavis, I overlooked something in the evidence. Do you remember I took you to that email in which you had been speaking to Mr Demian at page 151 on 23 October 2015 - this is the bottom of page 151:

20

I note that the revised proposal submitted last week had an FSR in excess of 2.2:1 (ie 3.2:1).

Do you see that?---Yes.

And you couldn't recall that proposal. But I should have taken you to page 137. Do you remember I was taking you to the Geoform figures and plans?---Yes.

30

And, indeed, the original plan, which was scribbled on, that was given to you with a figure of 2.8 is at page 137. We looked at that. What I failed to note was that in the words that are on the right-hand side, "Total FSR" appears and the figure against that is 3.2. Do you see that?---I do, yes.

40

It's likely, isn't it, that the reference to a proposal which sought 3.2 was a reference to that plan amongst the Geoform documents which were part of the first DDC Urban Planning letter dated 16 October 2015, commencing at page 127? Do you see what I'm suggesting?---I do. Look, I can't be a hundred per cent certain, but it seems likely, yes, yeah.

It doesn't spur a recollection just by looking at it, but you accept that given the chronological sequence of documents, that is likely to have been the source of your

statement that the proposal that had just been submitted sought 3.2?---That's likely, yeah.

Thank you. If I could take you to page 169, you had sent to Mr Annand in your 27 October 2015 email at 9.01am what you described as the latest proposal for his review. We looked at that on another page. And on this page, we can see Mr Annand's response the same day, only a few minutes later, saying he would get straight on to it?---Yes.

10

Do you see that?---I do, yes.

The proposal, of course, was not council's proposal; it was the proponent's proposal. Do you accept that?---Yeah, it would appear so, yes.

You and your division had commissioned Mr Annand to provide an urban design review of council's February 2015 planning proposal up to that point; that's correct?---I don't recall, to be honest with you.

20

I'll take you to it. Would you just go to volume 12, page 36. An earlier volume. Page 36 is the brief and consultancy agreement for Mr Annand, the original one, signed by Ms Dawson, and it's in respect of a planning proposal submitted by council to the department in respect of which the department sought further information. That's towards the bottom of page 36. Do you see those dot points there?---I do, yes.

30

So it was pursuant to that agreement that Mr Annand had been doing his work up to this point in October 2015; that's right, isn't it?---Based on this information, I think that's the case, yes.

That being so - and I'm not trying to be naive, but I'm just asking you to explain to us - why did you send the proponent's proposal to Mr Annand for his review on 27 October 2015?---That was the last one that we were talking about?

40

If you could just have a look at page 169 in volume 13, you will recall - - -?---Yes.

- - - if we go to page 169, you can see that you forwarded to Mr Annand Mr Daniel's email to you of 26 October 2015 in which he said, "Please see attached" - do you recall

that?---Yes, I remember seeing this.

And if we go back to page 154, you can see that what was attached, commencing at page 155, was the DDC Urban Planning letter dated 26 October 2015, plus attachments?---Yes.

10 So my question to you is the history of the matter being that Mr Annand had been retained to provide a review of council's planning proposal, why did you, on 27 October 2015, send Mr Annand the proponent's different proposal?---Well, I saw no different to him dealing with the original proposal than dealing with a subsequent proposal, so it was for that reason, given that he was involved right through the process, that I felt that it was appropriate for him to look at it.

20 Well, I wonder if you could try to take all the things that you've told us about into account when considering this question. Ordinarily if council has put forward a planning proposal to the department, the department has said, "Look, we need some further information. Please provide us with justification for the FSR that is sought in the planning proposal", you then respond to that by commissioning a consultant to provide that review, and the consultant provides it - if the person who had originally made a submission which caused council to resolve that a planning proposal be prepared for what the proponent had originally sought came along and said, "Oh, I've changed my mind. I want something else now", wouldn't the proper thing have been to say to the proponent, "Well, that's very well and good, but I'm here to do what council has asked me to do, and if you want council to do something different, you'll have to put forward a submission to council for them to do that"?---Well, I believe that that's what he did. He put a submission, an amendment that he wanted us to consider.

30

40 But what was missing from the equation on this occasion was a resolution of council, or indeed consideration by council, of the proponent's fresh submission?---It would have had to go back to council, anyway. Any modification to that, I guess that resolution of council, would have had to go back to council.

But aren't you jumping the gun a bit in assuming that you should be spending council's money, both in terms of your

time and effort and Mr Annand's consultancy fees, leaping over the requirement for a resolution from council that a planning proposal be prepared and assuming that the department is going to again want a review to turn to the consultant and say, "What can we do about this fresh, different proposal that has been put forward by the proponent"?---No, I don't believe so. I don't believe so. I mean, as far as I was concerned, we had an amendment that we had to consider as a council, and what I was merely
10 doing was seeing whether or not there was, I guess, any justification from Peter's perspective about whether that could be supported. Now, ultimately if it was to be supported, it would have had to have gone back to council for a council resolution and then go through the process again. So I don't see it as jumping the gun at all.

But aren't you being naive here, because you're not taking into account the pressure you have told us you felt you were under to achieve the FSR that was the subject of the
20 proponent's revised proposal, and that was why you were approaching Mr Annand in the first place?---Look, as I've admitted to you, I was under pressure to find a solution, and I made a conscious decision to actually take a more hands-on approach in dealing with this application. But at the end of the day, you've still got to go through the proper due process, and that would have been to go through, consider the amendment, whether it could be supported, and then go back to the council and say yes or no, I guess.

I just want to suggest to you that you weren't thinking of following proper due process at all; it was the last thing that was on your mind. What you were thinking of doing was: what is it I need to do in order to satisfy Mr Demian and Mr Montague?
30

MR PARARAJASINGHAM: I object. This witness has given evidence that his position was a little bit more nuanced than that. He has already given that evidence. So, in fairness, that should be also put to him. But what's put to him at the moment does not, in my submission, summarise
40 the effect of his evidence on this issue.

MR BUCHANAN: Commissioner, I'm not suggesting that the witness has said this. What I'm putting to you him: wasn't it the case that that was actuating his conduct on that occasion?

THE COMMISSIONER: Yes, I'll allow it on that basis.

MR BUCHANAN: You had emerged from the meeting in Mr Montague's office clearly understanding what you were required to do, hadn't you?---From Mr Montague, yes.

And that was to satisfy Mr Demian?---Well, look, he didn't put it in those words.

10 No, I know he didn't put it in those words?---Yes, yes.

But wasn't it to satisfy Mr Demian?---I believe so, yes, yes.

And you didn't want Mr Demian yelling at you again, did you?---Oh, look, I really didn't care about that, to be perfectly honest with you. But it was pressure, yes, that I was getting.

20 Mr Demian put pressure on you and Mr Montague put pressure on you, didn't they?---Yeah, they did, yeah.

And there were other occasions, as you well know, where Mr Demian put pressure on you, and you vociferously objected to it when you were talking to Mr Hawatt?---Sorry, can you ask that question again?

I withdraw the question. You went to Mr Annand because you thought there's no point in going back to council; what
30 Mr Montague wants me to do and what Mr Demian wants me to do is to produce a fresh or amended planning proposal which supports 2.8:1 and I need to get a report out of Mr Annand that says just that?---Sir, I can't force Mr Annand to produce a report that he's not comfortable in producing. As I've explained to you before, there was a process. We had to look at this to see whether or not it was possible to achieve. And then at the end of the day, it would have had to have gone back to council for them to resolve any changes to the resolution that had already been passed.

40

But you had already had an exchange with Mr Annand, hadn't you, where he had indicated concerns about the FSR being achieved and you had said, "Oh, terribly sorry, but we've let the cat out of the bag to the proponent, so we're going to have to do the best we can to achieve it", hadn't you?---Sorry, I don't recall that, to be honest with you.

You had had exchanges with Mr Annand, had you not, already in which you had been telling him, "We need to get what the proponent wants"?---I don't believe I used - I said that at all.

I'm not saying you did.---Sure.

10 You had had exchanges with Mr Annand in which you had indicated to him that you and he had to get what the proponent wanted, had you not?---Not that I can recall.

MR BUCHANAN: Commissioner, can I make an application, please, to vary a non-publication order made on 12 October 2017 in respect of evidence given by the witness to the Commission recorded in the transcript at page 1187.

THE COMMISSIONER: Line?

20 MR BUCHANAN: I'm sorry, Commissioner, line 19 to line 27.

THE COMMISSIONER: The non-publication order made on 12 October 2017 is varied to exclude the evidence which is recorded at page 1187 of the transcript, commencing at line 19 and finishing at line 27.

30 **THE NON-PUBLICATION ORDER MADE ON 12 OCTOBER 2017 IS VARIED TO EXCLUDE THE EVIDENCE WHICH IS RECORDED AT PAGE 1187 OF THE TRANSCRIPT, COMMENCING AT LINE 19 AND FINISHING AT LINE 27.**

MR BUCHANAN: Mr Stavis, again I'll read to you from the transcript of evidence that you gave on 12 October 2017 to the Commission, and if you could listen to what I read to you, please, and then I'll ask you some questions about it.

40 *Mr Stavis, what did you think would happen if you weren't able to achieve 2.8:1 on the site?---Probably I'd get increasing pressure to do it and as I think I mentioned in my earlier evidence to you, my previous evidence, you know, on one occasion there was Mr Azzi had basically said to me, you know, don't go down the path of the previous director. You need to, you know, I think it was in a sort of*

a rant and I can't recall the application at the time but it was a rant about a particular DA and it was - that was probably to the back of my mind I guess that potentially they could, you know, I'd follow the same fate as the previous director.

10 Now, you've given some evidence along those lines already during this public hearing. Was that in the back of your mind at the time that you were dealing with Mr Annand in relation to the proponent's revised proposal seeking an FSR of 2.8:1?---As I think I've given evidence just earlier this morning, yes, I did feel pressure, absolutely.

20 And did you feel that the pressure was such that if you didn't achieve it, you'd follow the fate of the previous director?---I don't know whether I had that at the back of my mind in dealing with this application, but the pressure was there. I don't doubt that.

You've told us that you understood that the previous director had been essentially forced out?---Yes, yes.

What had you understood the previous director had been forced out for, what reason?---Not finding solutions.

30 That meant, didn't it, not achieving what the developers concerned wanted to achieve?---Not in all cases. I mean, solutions, in all its forms, in the sense of dealing with any departmental issues that had occurred at the time, processing times of various applications, LEP, DCP reform. So, I mean, yeah, sure, his life was made difficult, as far as I understand it, which ultimately led to him resigning, yeah.

Was the evidence that you gave in 2017 that I've just read to you true evidence?---I believe so, yes.

40 At that time, you thought that the pressure was such that if you didn't fall into line with what you were being asked for in respect of 998 Punchbowl Road, you'd follow the fate of the previous director?---Yeah, and I believe I've said that in this public hearing as well.

I've asked you, and you've touched on, why it was that you didn't copy your staff in to the email of 27 October 2015 -

this is the top of page 169 - to Mr Annand when you asked him for a review of the proponent's new proposal and to make an appointment with you so that you could discuss, and you referred to knowing your staff's views on the subject; is that right?---I believe so, yeah.

10 And so is it the case that you thought you weren't going to achieve any assistance from your staff in trying to get Mr Annand to provide a review that would support an FSR of 2.8:1?--No, it was more a case of trying to appease the general manager in expediting the application. That's why I took more of a hands-on approach to things.

20 But how would it have slowed things down to have involved your staff in the email to Mr Annand in which you asked him to review the revised proposal from the proponent?---I think if you look at the history of the performance in general of the urban planning department, it certainly had a history of, I guess, taking time and prolonging assessment of applications. The facts are that if you look at how long it took to do the LEP reforms and to deal with certain planning proposals that were on foot before I started, so, yeah.

But how does the copying in of your staff, making them aware of what's happening, slow things down?---I don't believe - I can't sit here and say categorically that I didn't make them aware of it.

30 But there's a pattern you've seen, haven't you, of there being no copying in of your staff in your communications with Mr Annand by this stage?---Sure, sure. Look, I've only been shown a few emails to that effect. I don't know - I don't recall - I remember having discussions with staff regularly about applications. Now, whether I negated [sic] to cc them in on things - yes, I've seen evidence to that effect. But I can't sit here and say to you that I did not have conversations with them about planning proposals.

40 Is the reason that you didn't copy your staff in to this email - we'll just take this one, which is second from the top on page 169 of volume 14 - asking Mr Annand to review the revised proposal and make an appointment to see you so that you could discuss - I'm sorry, second from the top on page 169.

MR PARARAJASINGHAM: Volume 13?

MR BUCHANAN: Volume 13. Volume 13. I do apologise.---That's okay.

Was the reason that you didn't include your staff in that, you felt guilty about what you were doing?---No.

10 And that you didn't want your staff to know what you were doing with Mr Annand in relation to the revised proposal from the proponent?---No.

Or was it that you felt that you didn't want any interference from your staff in this dealing with Mr Annand and asking him to do this fresh work?---No. As I said before, it was a case of I was under time pressure to deal with the application and I took more of a hands-on approach - - -

20 But you were under time pressure to deal with all the applications and planning proposals in your office, weren't you?---Yeah, we were, absolutely.

But this planning proposal is one in which it is, as I've said to you, quite clear that from a certain stage, and I've suggested to you from a stage at which you had some disagreements particularly with Ms Dawson about what was being suggested for the site, you decided that in refining the product from Mr Annand, and in this case obtaining
30 fresh product, you would exclude your staff as a result?---It was not a conscious decision, and as I said to you before, I'm almost - I can't sit here and say that I did not include them in conversations and show them proposals as they arrived.

You do recall that an earlier version - sorry, the supplementary report from Mr Annand was one which you asked his staff to tell a lie to your staff about it, and then you had an opportunity of reviewing the draft before you
40 then told Mr Annand's staff to send it again, but to you and your staff; you do recall that?---Yeah, I categorically deny that.

Well, you did it. We've seen the documents?---And I gave my explanation for that. I said that I wanted to review it first.

Well, it's obvious that you wanted to review it first. The question is why did you want to review it first, Mr Stavis?---Because I had dealings with him and I was the one that was present in the discussions that I had with Mr Annand.

I want to suggest to you that that's a silly answer. It's just a silly, unacceptable answer.

10 MR PARARAJASINGHAM: I object to that. The second part is fine; my friend can put that it's unacceptable. But to say it's silly doesn't assist anyone.

MR BUCHANAN: I won't press it, Commissioner.

You had dealings with all of these consultants, didn't you?---Which ones, sorry?

Mr Olsson?---Yes.

20

Mr Annand. There would have been others, wouldn't there? Those weren't the only two consultants you had dealings with?---Sure.

The fact that you had had dealings with them isn't a reason for telling the consultant, "Recall the email in which the draft has been sent to my staff. I want to review it first", then after you've reviewed it, saying, "Okay, now you can send it to my staff." That's not a reason, is it? It's a silly reason?---I disagree.

30

And silliness bespeaks a lie, Mr Stavis?---Sorry, what was that?

I'm suggesting you're lying about that?---That is not true.

Can I take you now, please, to page 184. This and the succeeding three pages are a document that, if you have a look at page 183, you were sent by Mr Annand on 9 November 2015? Do you see page 183?---183 or 103?

40

183.---Yes.

It's an email from Mr Annand to you on 9 November at 9.40am?---Yes.

It attaches a document called Punchbowl Road Proposal

October 2015. Do you see that?---Yes.

It says:

Please ring me so we can discuss this as soon as you have read it ...

Final answer 2:1 at 18m with 25m tower.

10 Do you see that?---I do, yes.

If you go over the page, you can see the attachment, which comprises four pages, headed "Planning Proposal Review". Do you see that?---I can, yes.

If you can just skim the next three pages, please, do you see that on page 185 there's a subheading "Recent History"?---Yes.

20 A bit over halfway down the page, there is the words:

However, the following should be noted ...

And do you see there's a series of dot points?---Yes.

And that could be characterised as a series of flaws that the author has identified in the proponent's revised proposal?---I think that's a fair comment, yes.

30 If I could go to page 185:

The proposal at general height of 8 levels (25m) is an overdevelopment of the site.

The proposed FSR of 2.8:1 is unachievable ...

Then he gives reasons. Do you see that?---I do, yes.

40 Then on page 187 he identifies what the building height should generally be but with a tower element on the corner, and then in the second dot point, "Building setbacks". Do you see that?---Yes.

Then commencing at about halfway down the page:

An overall FSR in the order of 2:1 based on

the following development potential ...

And then he sets out what he suggests could be the FSR at the bottom of the page?---Yes.

On the right-hand side, a compliant one would be 1.995:1, and that of course is very close to what Mr Annand said in his email to you of 9 November on page 183, "Final answer 2:1"?---Yes.

10

Do you remember receiving this document from Mr Annand?---I can't say that I do, I'm sorry.

So you are unable to say whether you discussed it with him?---No, I'm not.

You don't have a memory of forwarding it to Mr Demian or Mr Daniel?---No, I'm sorry, I don't.

20

And do you have a recollection of conveying to Mr Demian or one of the people who worked for him the gist of what Mr Annand had said in this document, the planning proposal review document?---Not this document, I don't recall.

30

Do you remember I showed you a calendar meeting scheduled for 9 November at 4pm in the general manager's office involving Mr Montague and Mr Demian? I'm sorry, I apologise, not the general manager's office. In the executive meeting room. Perhaps if we just pull that up, exhibit 85, page 20. The only reason I'm showing you this is just to draw your attention to the fact that it's chronologically shortly after you had received this document, this planning proposal review, from Mr Annand, and I'm just wondering whether you took it to the meeting with Mr Demian and Mr Montague at all, in any way?---That I can't recall, I'm sorry.

40

Is it possible that you didn't take it to them because you knew it wasn't what Mr Demian would want to see?---As I said, I don't have any recollection of this planning proposal that was submitted.

And knowing Mr Demian, then if you don't have a recollection of taking it to him, that would be consistent with the fact that you wouldn't have wanted to have shown him something that you believed he wouldn't have wanted to have seen? Do you understand my question? It

was a little bit complicated.---Yeah, sorry.

MR PARARAJASINGHAM: I object.

MR BUCHANAN: I'll reframe the question.

10 If he had thrown the document in your face at the meeting or said, "I'm not going to put up with that rubbish", you're more likely to have remembered it. Is that fair to say?---Yes.

And you don't have a memory of anything like that?---No.

So is it possible that even though you'd received that from Mr Annand, you didn't indicate to Mr Montague or Mr Demian that you had received that opinion from Mr Annand?---That I can't be sure of.

20 But the fact that you don't have a memory of it, and from what you've told us about Mr Demian's, and indeed Mr Montague's, attitude, the fact you don't have a memory of it is consistent with you having decided not to tell Mr Demian or Mr Montague about this opinion that you had received from Mr Annand, isn't it?

MR PARARAJASINGHAM: I object.

MR ANDRONOS: I do, too.

30 MR PARARAJASINGHAM: That doesn't follow rationally, with respect.

MR BUCHANAN: Consistent. Consistent is all I'm asking.

40 MR PARARAJASINGHAM: His evidence is that he doesn't remember. That's as far, with respect, as that can be taken. It could be consistent with all manner of things. It's of such little weight as to be of no use to this Commission, with respect.

MR ANDRONOS: It's entirely speculative. As my friend has just said, it's consistent with all number of things. It's consistent with aliens taking him away that morning and him not being able to look at it. It's so speculative as to be useless evidence.

MR BUCHANAN: No, no. No, there's no evidence of aliens

in this case, Commissioner.

THE COMMISSIONER: Not so far.

10 MR BUCHANAN: Whereas we do have evidence of this witness having memories of when Mr Demian lost his temper with him, and that was when Mr Demian didn't like what he was being told by the witness. Accordingly, it is hardly far fetched to draw an inference that from the absence of a memory of Mr Demian losing his temper with this witness about that document or the contents of it that the witness didn't take it to him or inform him about it, and ditto Mr Montague. That's the basis, and, in my respectful submission, a reasonable basis to ask the witness whether it's consistent with his memory and understanding of these two men that he didn't take it to them that afternoon.

20 MR ANDRONOS: Commissioner, that's a submission. It can be made without having any comment from the witness. My friend is perfectly entitled to make that submission. He makes it forcefully. I have no doubt that when the time comes, it will be made. But to try to elicit some kind of admission from this witness as to consistency will not assist the Commission in assessing the weight of that particular submission.

30 MR BUCHANAN: Commissioner, I'll withdraw the question. That is not a concession that I agree with my learned friend, but I withdraw the question.

THE COMMISSIONER: All right.

MR BUCHANAN: I will now take you to volume 14, if I can, please, page 1. We're moving forward now, Mr Stavis, to 8 December 2015. In the first instance, this is an exchange with your PA, Ms Rahme, in which you say ultimately:

40 *OK, I think we should reschedule for next week, please, as I'm still waiting for instructions.*

The email to which you were responding initially was about a meeting with Ms Kebbe, I think, about site visits. Do you see that in the middle of the page?---I do, yes.

That's at 9.52am. But then at 9.55am, there's an email

from Ms Rahme to you:

Hi Spiro,

*This is the meeting you asked me to
schedule with Peter Annand.*

10 So it seems that it's in response to Ms Rahme saying that
you had a meeting that you had asked her to schedule with
Mr Annand that you then responded by saying:

*... we should reschedule for next week
please as I'm still waiting for
instructions.*

From whom were you waiting for instructions?---I really
don't remember. It's likely that it was from the general
manager.

20 Could it have been from Mr Demian?---No, I don't believe
so.

Well, you were, having performed at council's expense
a review of Mr Demian's proposal, weren't you?---Sorry, can
you repeat that?

30 The exercise that you were engaged in by this stage,
December 2015, was not a review of council's planning
proposal but a review of Mr Demian's proposal, weren't
you?---Yeah, the amended proposal, yes.

40 So we'd left behind the work that was being done in
reviewing council's planning proposal, and what you were
doing was obtaining a consultant's report on Mr Demian's
proposal; correct?---As I said before, we received
additional information, and because Mr Annand was involved
in that process, almost from day dot, I felt that it was
necessary for him to actually review the planning proposal.
Ultimately the decision, whether it was positive or
negative, would have had to have gone back to council.

But what instructions from Mr Montague would you have been
waiting on at this stage?---Look, I'd be speculating. I'm
only assuming. The only people I took instructions from -
sorry, that reference is likely that it was from the
general manager. But I can't be a hundred per cent sure.

You see, weren't you essentially acting for Mr Demian in commissioning this review by Mr Annand?---No.

Can I take you, please, to page 4 of volume 14. Can you see there's an email in about the middle of the page from Mr Annand dated 23 November 2015 in which Mr Annand said that attached was his considered opinion for the Punchbowl Road site; he could readily support 2.5 at 6/8 storeys:

10

I feel 8 storeys at 2.8:1 will give rise to precedent problems but that is Council call. Please call to discuss ...

And you responded to that email when emailing Mr Annand on 4 January 2016:

Hi Peter, ...

20

Can you provide me with an update on this. Last we met you were going to prepare an updated report supporting 2.8:1 and 6/8 storeys as per the sketch I had given you?

My question is: what sketch had you given him?---That I can't be certain of. Sorry.

Do you remember preparing a sketch to give to him?---No.

30

Did you give him the sketch that you had been given in the meeting in Mr Montague's office with Mr Demian and Mr Hawatt and Mr Azzi?---As I said, I can't be a hundred per cent sure, but it's likely. It is likely.

That's because, isn't it, you say here:

Last we met you were going to prepare an updated report ...

40

Just stopping there?---Sure.

There were no, you will have noticed, file notes recording what occurred in the meetings you had with Mr Annand?---I can't be certain of that. I haven't - - -

You've gone through the brief, haven't you?---Sorry?

You have gone through the brief, the Commission's brief of evidence?---Yes, yes. Yes.

MR PARARAJASINGHAM: I object. If the proposition is that there are no file notes in the brief, then that's one thing. But whether it then follows that there were no file notes taken at all, that doesn't necessarily follow.

10 MR BUCHANAN: Have you seen any file notes of meetings that you had with Mr Annand?---Not that I can recall.

Have you got any?---Not that I can recall, no.

Did you make any?---Not that I can recall.

20 You didn't make any in your exercise book, did you?---I don't have my exercise book in front of me, but from the pages that I was shown the other day, it doesn't appear so, no.

So do you say you made file notes in dealing with Mr Annand?---I'm not saying that at all. I just don't recall whether I did.

Are you saying it's possible you did?---It's possible, yeah.

30 Where are they now?---I don't know. I assume they'd be on the council files. If they're not on the council files, then it's likely that I wouldn't have prepared any.

Well, if they're not on the council files, why would that be?---I'm not sure.

Wouldn't it be because you never made any?---It's possible. Like I said - - -

40 Well, wouldn't that be an explanation, that you never made any?---It's possible, yes.

Well, no, it's not - I'm asking you a straight question. If there are no file notes of the meetings you had with Mr Annand on the council files, what explanation could there be other than that you made no file notes?---They could have been removed, I don't know, but I'm - - -

You don't remember making any, do you?---No, I don't, sir,

no.

Right, so the conclusion that can safely be drawn is that there were no file notes made, were there?---I can't be a hundred per cent sure, sir, is what I'm saying.

Why did you make no file notes of your meetings with Mr Annand?

10 MR PARARAJASINGHAM: I object. He hasn't accepted that he made no file notes. That presupposes that he has accepted that proposition, which he hasn't done, respectfully.

MR BUCHANAN: I press the question.

THE COMMISSIONER: I'm going to allow the question.

20 Can I just ask, a file note that you would make, your usual practice - did you have a usual practice that when you made a file note, it would either be in writing or would it be recorded on the computer? Would you type it up or would you hand write it?---It would normally be handwritten.

30 And then the idea was that it would be put on the physical file of council?---Either that, I mean there were occasions where I did that, but as I think I've given evidence before, I wasn't very - I wasn't vigilant in that regard. But I used to make notes in meetings just to prompt me for any further actions, and mainly in that exercise book that I had, yeah.

THE COMMISSIONER: I'm sorry, Mr Buchanan, could you remind me your question?

MR BUCHANAN: Yes. My question is: why did you make no file notes of your meetings with Mr Annand?---I don't know.

40 Is it possible that you made no notes of your meetings with Mr Annand because you didn't want evidence of what you and he were talking about?---No, that's not true at all.

MR BUCHANAN: I note the time, Commissioner.

THE COMMISSIONER: All right. We'll have the morning tea adjournment and we will resume at 10 to 12.

MR BUCHANAN: Mr Stavis, if you could go, please, to page 4 of volume 14 and can I take you to the second paragraph:

10 *Can you provide me with an update on this.
Last we met you were going to prepare an
updated report supporting 2.8:1 and 6/8
storeys as per the sketch I had given you?*

And you can't remember giving a sketch to Mr Annand; is that right?---Yeah, I don't recall that.

Putting things together, from what you've seen so far, you can't tell us, "But I assume I gave him such and such a sketch" or anything like that?---(Witness shakes head).

20 Okay. But, of course, an updated report supporting 2.8 as an FSR is not what was in Mr Annand's planning proposal review, volume 13, commencing at the email at page 183. At page 183, we can see the email that you received on 9 November from Mr Annand attaching that file identified as "Punchbowl Road Proposal October 2015.doc", and it commences over the page at page 184. We've looked at it before. It's the planning proposal review. You will recall that at the bottom of page 185, Mr Annand said:

30 *The proposal at general height of 8 levels
(25m) is an overdevelopment of the site.*

*The proposed FSR of 2.8:1 is
unachievable ...*

Do you see that?---I do, yes.

40 Well, the chronology, then, is that in early November, Mr Annand was telling you eight levels and 25 metres is an overdevelopment of the site and an FSR of 2.8 is unachievable. Then you have a meeting with him, and he was going to, at the end of that meeting, prepare an updated report supporting 2.8:1 and 6/8 storeys as per the sketch you had given him. Are you able to assist us as to how that change, in your description, anyway, of what Mr Annand agreed to do can be explained?---To the best of my recollection, there was - there may not have been just one

meeting with Mr Annand. There may have been a few. And it was exploring the possibility of getting a 25 metre tower element, I guess. And he was - from what I recall, he was providing me with regular updates in terms of what his analysis was - what he was finding.

When you say "exploring", is that the word you used to describe you persuading him to change his opinion?---No.

10 But that necessarily is what you were doing, wasn't it?---No. No.

How could it be viewed otherwise? On the one hand, he says to you unequivocally that 25 metres is an overdevelopment of the site and an FSR of 2.8 is unachievable, and gives reasons, and then all of a sudden - well, not all of a sudden - in January 2016 you're telling him that the last time you and he had met, he was going to prepare an updated report supporting 2.8:1 and 6/8 storeys as per a sketch you had given him. How could it be other than you had persuaded him to change his mind?---Look, as I've said before, Mr Annand has been involved with the council, with the master plan process, over a number of years. He's not one that you can just dictate to.

20 But you had, on your account of your meeting with him before 4 January 2016, procured a change of his opinion as a result of meeting with him and providing him with a sketch. That's the only way you can look at that email you wrote to him, isn't it?---That's a matter for Mr Annand to answer.

30 No, no, it's your words. You're saying - didn't you say in this email:

Last we met you were going to prepare an updated report supporting 2.8:1 and 6/8 storeys as per the sketch I had given you.

40 Those are your words; correct?---Sure.

How had you achieved that?---I don't recall.

Well, you must have done something to change his mind, mustn't you?---No. I can't say that I did, no.

Well, he must have changed his mind. Let's start at that

point. On what you say there, he had changed his mind in a meeting with you?---I think that's fair.

How had he changed his mind?---Look, I don't recall exactly how he changed his mind. He obviously went and did a series - a body of work and came of the view that he could support that.

10 What was the body of work he had done?---I believe he explored a number of options. Look, I'm not overly sure on the timeline, but he did explore a number of options that looked at how -(a) whether it was possible to get the 2.8:1 and (b) how could that be achieved on the site, and I think that was in the form of sketches and, from memory, handwritten notes and so forth.

20 The only sketch you refer to is a sketch you had given him?---No, but I remember seeing a series of sketches from him, not from me.

What did you mean in this email by referring to "as per the sketch I had given you"?---Look, I really don't know. I don't remember that.

Obviously you had given him a sketch, hadn't you?---It may have been one of his sketches that I had marked up. I'm not sure. I can't - as I've answered before, I can't be certain.

30 It's clear, in any event, that you worked with him to procure a change of his mind about the achievable FSR and what was supportable in terms of the height of the tower element?---No, I don't agree with that.

Why not?---Because, as I said before, Mr Annand is an experienced consultant, and he is not one to not support something that he didn't believe in, I guess.

40 I didn't say he didn't believe in it.---Sure.

What I'm asking is didn't you and he work together for him to come up with an opinion that 2.8:1 could be supported as well as a tower element of eight storeys?---I did ask him to look at that, yes.

You see, Mr Annand wasn't an independent consultant in this exercise, was he? I'm talking about the exercise of him

reviewing the proponent's revised proposal?---I believe he was.

In what way?---Well, he had been involved in the process from day one, from the point of view of doing a body of work for council.

10 That didn't necessarily make him independent of council or of you in the work that he did, did it?---Well, sorry, I'm not quite understanding the question.

The question I asked is: Mr Annand wasn't independent of you in the work he was producing in relation to the original or the revised proposal, was he?---I believe he was.

20 And I'll ask you again. Why do you believe he was independent?---Because he was involved in the process from day one.

But so were you?---No, I wasn't. I mean, we're talking about a planning - a resolution that happened, I believe, before my time.

Yes?---Yes.

And does that mean that you were independent? Is that what you're saying?---That I was independent?

30 Yes, of council or of the proponent?---No, I was part of council, yes.

MR BUCHANAN: Commissioner, can I make an application, please, to vary a non-publication order made in respect of evidence given by the witness on 12 October 2017 commencing on page 1188 at line 9 and concluding on page 1189 line 38.

40 THE COMMISSIONER: Just excuse me for a minute. The non-publication order made on 12 October 2017 is varied to exclude the evidence of this witness recorded in the transcript at page 1188 line 9 and finishing at transcript 1189 line 38.

THE NON-PUBLICATION ORDER MADE ON 12 OCTOBER 2017 IS VARIED TO EXCLUDE THE EVIDENCE OF THIS WITNESS RECORDED IN THE TRANSCRIPT AT PAGE 1188 LINE 9 AND FINISHING AT TRANSCRIPT

MR BUCHANAN: Mr Stavis, I'm going to read to you the transcript of evidence that you gave to the Commission on 12 October 2017, a portion thereof, and if you could listen to what I read to you, please, and then I'll ask you some questions about it:

- 10 *Okay. When you say, "Last we met you were going to prepare an updated report supporting 2.8:1", was that a reference to what we've spoken about this morning being that you were asking Mr Annand to come up with - - -?---Yes.*
- - - a solution for you whereby his report would support - - -?---Yes.*
- 20 *- - - an FSR of 2.8:1 - - -?---Yes*
- - - because you needed that to happen?---Yes.*
- And I'll just take you to some parts of the attachment there. You can see it's dated 20 November, 2015?---Yes.*
- And what I will take you to is the second page of that memo?---Yes.*
- 30 *So Mr Annand advises you in the third line there that an FSR of 2.8:1 can be achieved with a full building height of eight storeys?---Yeah.*
- And then in the next line he notes that he still has a problem with an eight-storey building - - -?---Yeah.*
- 40 *- - - because it will provide a precedent for eight storeys all along Canterbury Road?---Yeah.*
- And then on the next line he says, "Thus I would personally and professionally prefer a six-storey height limit with capacity for some eight-storey in*

a particular location like a tower element on the corner."---Yeah.

And on the last line of his letter he says, "An FSR of 2.8:1 is a dangerous precedent, particularly for the south side of the street."---Yeah.

10 *So Mr Annand has given you a number of warnings about what his view of the application is and the environmental issues with it?---Yeah.*

And that was on 20 November 2015. And then you proceeded anyway to go ahead and ask him to prepare an updated report supporting 2.8:1 - - -?---Yeah.

20 *- - - although he had advised you that he considered it to be a dangerous precedent.---Yeah, yeah. Can I just clarify on that?*

Yes.---At that point in time it was only in relation to a planning proposal, so there still would have been a lot of other hoops that needed to be followed through a DA process and what have you as well. But, yes, you're right what you said before.

30 *As we were discussing this morning though, there are many steps in the process and a recommendation for approval the whole way along is very helpful to an application in that position in achieving a particular yield for the end of the process. Is that right?---Yeah, I think, I think that's fair comment, yeah.*

40 *So to have a supportive planning proposal at this stage would have gone a long way towards the applicant achieving their desired yield on the site?---It would have helped, yes.*

And in fact the planning, Department of Planning had already indicated to you that

they needed justification for yield on that site.---Correct

So Mr Annand's report would have been very helpful ammunition for that process?---Correct

10 *And would the fact that the report was being prepared by somebody outside council also have been helpful?---It doesn't hurt to get another opinion, yeah.*

Is that because the consultant is supposed to be independent?---Supposedly, yes.

Mr Annand wasn't really independent on this application though, was he?---I'd have to say no, yeah.

20 *Commissioner, I tender the email dated 4 January 2016.*

THE COMMISSIONER: All right, the email from Mr Stavis to Mr Annand on 4 January, 2016, will be Exhibit 35.

Did you hear that extract from the transcript of your evidence on 12 October 2017 being read?---Yes.

30 *If I can take you to the last part first, was it true evidence when you said that the consultant was supposedly independent but that Mr Annand wasn't really independent on this application?---Look, I - I still believe that he was independent. I don't know at that point in time whether I answered the question - I understood the question in its entirety, but I believe that he was independent as I sit here today.*

40 *Why did you tell the Commission on 12 October 2017, and I'll read the relevant part to you again:*

And would the fact that the report was being prepared by somebody outside council also have been helpful?---It doesn't hurt to get another opinion, yeah.

Is that because the consultant is supposed

to be independent?---Supposedly, yes.

Mr Annand wasn't really independent on this application though, was he?---I'd have to say no, yeah.

Was that evidence true?---I believed it to be true at the time, yes.

10 But you don't believe it to be true now; is that what you say?---Well, no, I'm not saying that. I'm saying that I guess, you know, where I sit now, the evidence that was given back then was probably more likely to be closer to the truth.

Than the evidence you've given today on the subject?---Yeah. Look, I recall it differently today, to be honest with you.

20 But it's not recalling an event so much as recalling the nature of a relationship. That was the subject matter of that testimony and my questions to you about whether Mr Annand was truly independent, wasn't it?---Sure. Sorry, what was the question again, sorry?

It was questions about the nature of the relationship you had with Mr Annand, not about an event as to whether it happened or not?---Yes.

30 So it wasn't a matter of forgetting an event but of changing your evidence on the nature of the relationship you had with Mr Annand on this application?---Look, I wouldn't consider that I had a relationship with Mr Annand up until starting at Canterbury Council. I believe there to be a professional relationship.

And I'll just read to you again from the extract of the evidence given on 12 October 2017:

40 *Okay. When you say, "Last we met you were going to prepare an updated report supporting 2.8:1" ...*

And I interpolate, that's a reference, of course, to page 4, volume 14?---Sure.

I return to the extract:

... was that a reference to what we've spoken about this morning being that you were asking Mr Annand to come up with - - -?---Yes.

- - - a solution for you whereby his report would support - - -?---Yes.

10 - - - an FSR of 2.8:1 - - -?---Yes.

- - - because you needed that to happen?---Yes.

Was that true evidence when you gave it?---Yes.

If I can take you, please, to the attachment to your email of 4 January 2016, can you see that there is a number of attachments - this is on page 4 of volume 14 - including
20 "Spiro Stavis, Punchbowl Road.doc"?---Sorry, what page are we on?

Page 4?---Page 4, yes.

Volume 14. Your email to Mr Annand, including an attachment. Can you see that?---Yes.

It's called "Spiro Stavis, Punchbowl Road.doc"?---Yes.

30 And is that the document which starts over the page and goes to, I suggest, page 7 dated 20 November 2015 from Mr Annand to you?---I don't recall it, but it obviously is, yes.

It would appear that this is an indication of something that had happened in between the planning proposal review in which he said he couldn't support - sorry, that 2.8:1 was not achievable, because here on page 6 of volume 14, at about the middle of the page, he says:
40

Thus an FSR OF 2.8:1 CAN BE ACHIEVED WITH A FULL BUILDING HEIGHT OF 8 STOREYS (25M).

Do you see that?---I do, yes.

So what were the circumstances in which this document came to you?---That I can't recall.

Was it because you had made it clear to Mr Annand that he was to provide you with an opinion that 25 metres could be supported, as could an FSR of 2.8:1?---Yes.

Can I take you, then, to a document starting on page 10 - - -

10 THE COMMISSIONER: Could I just ask, before we leave that, on page 5, Mr Annand says, "I have reviewed the annotated plan." Do you see that?---Yes.

Is that the plan that had the handwriting on it that was given to you or was shown to you at the meeting with Mr Demian and then subsequently emailed to you?---That I can't be certain of, Commissioner, but I don't remember there being any other plan, yes.

20 MR BUCHANAN: Just looking at the plan on page 7 of volume 14, do you recognise any of the handwriting on that?---No.

Do you recognise the plan part of that page?---Not really, no, other than it's similar to the other plan that I was shown earlier this morning.

Except that it doesn't have any of your handwriting on it?---Yes.

30 And there's a different style of handwriting that is on it?---Yes, yes.

Can I ask you to assist us with the block that's on the left-hand side of page 7. Can you see that in the middle of that block - it's headed "City of Canterbury" - there is, as it were, I don't know if icon is the right word, but a representation which is very similar in outline to the plan that's on the right-hand side of the page?---Yes.

40 Can you assist us as to what the function of that block is that's divided up into three parts, has "City of Canterbury" at the top, a representation similar to that plan on the right-hand side, and then a scale at the bottom and an indication of where north is? What's the function of that block?---Well, the scale component is obviously a scale in reference to the plans, I would assume. But I'm not sure.

Now, can I take you, please, to page 9. This is an email to you from Ms Avval, cc'd to Mr Annand, and it's dated 7 January 2016 and reads:

Please find "998 Punchbowl Road (1499 Canterbury Road, Punchbowl), December Edit attached in this email.

10 And there's an attachment identified, that's called "Urban Design Punchbowl Road Review of Planning Proposal 998 Punchbowl Road Final Draft.pdf". Do you see that?---I do, yes.

If you could just go over the page, and then I'm going to take you back to that email. Do you see that that's a copy of apparently a final draft of a report dated December 2015 by Annand Associates?---Yes.

20 Can I ask you, going back to the email, the email doesn't appear to have been copied to Mr Farleigh or Mr Foster. Are you able to assist us as to why it wouldn't have been?---Not any more than what I said earlier this morning. I was obviously taking more of a proactive approach.

Yes, but the previous time Ms Avval had sent a report like this to you and copied in your staff, she was told to change that. Do you remember that?---Sure.

30 Is it possible that what Ms Avval is doing here is following your instructions of not copying in draft reports from Mr Annand to your staff?---I can't speculate.

Can you give us any other explanation as to why your staff weren't copied in?---No. Maybe she just sent it to me. I'm not - I don't know why.

Does it surprise you that your staff were not copied in?---No, not necessarily, no.

40 The report contained in volume 14, starting at page 10 - and please feel free to flick through it. It seems to conclude on page 70. There are a number of appendices. And if I could take you to page 14.---Yes.

If you go to page 31, do you see that there is a page headed "Conclusions"?---Yes, sir, yes.

And that Mr Annand identifies particular documents as being relevant council documents, and three of them are of the nature of a planning instrument or master plan, and then he identifies documents provided by the proponent, including a planning proposal. Do you see that?---Yes.

This is a report on Mr Demian's revised submission for a planning proposal; is that fair to say?---I believe so, yes.

10

And so, although there is some reference to history in it, essentially it's a report on what the proponent seeks, and I'm going back to page 14 now. There's history set out under the heading of "Rezoning of site", but under the heading "Amendment to floor space ratio", Mr Annand makes it clear that the amendment is sought by the proponent in order to increase the permissible FSR on the site from the current 0.5:1 to 2.8:1, and then he contrasts that with the council planning proposal. Do you see that?---Yes. So that's point 2, in the middle?

20

Yes.---I do, yes.

So if I can take you down, then, to a bit past the middle of the page, "3 Amendment to height of buildings map", the reference there to planning proposal is not a reference to council's planning proposal, is it, but a reference to the proponent's submission?---Look, we considered it one and all. When we're talking - we had a planning proposal on foot, and, yes, if you want to make that distinction, this report appears to largely comment on the proponent's amendments. But I'm not sure if - I mean, what he's referencing by "planning proposal", I assume the planning proposal that was on foot.

30

The planning proposal that was on foot sought a height of 15 metres?---Yes.

He says under the heading "Amendment to height of buildings map":

40

The Planning Proposal requests a height limit of 25m...

?--- Yes.

So it must be a reference to Mr Demian's revised

submission?---As I said before, I believe so, yes.

And similarly, in the table underneath that, the floor space ratio, under the column heading "Proposed" is 2.8:1, which is not what council was seeking but what Mr Demian was seeking?---That's correct.

10 You will recall the brief and consultancy agreement document that we've seen a couple of times whereby council retained Mr Annand to conduct a review of council's planning proposal, and it was an exercise, wasn't it, that was sought of testing and validating, if appropriate, the development standards which council proposed be applied to the land?---I think that's fair, yes.

20 This report, however - I'm talking about the report commencing on page 10 of volume 14 - was an exercise in validating development standards which the proponent wanted to apply to the site?---I believe that's correct, yes.

Did you cause a revision of council's brief and consultancy agreement with Mr Annand to be prepared and provided to him to reflect the change in his task?---Not that I can recall.

Was it a proper use of council's resources for you to, in effect, commission Mr Annand to prepare a review of Mr Demian's proposal?---I don't believe it was improper at all.

30 Can I take you, please, to page 148 of volume 14. This is an email to a member of your staff on 30 January 2016 - page 148 of volume 14 - namely, Warren Farleigh. Do you see that?---Yes, I do.

And you have asked Mr Farleigh to:

40 *... please program this to go to March Council meeting. I think I sent you an updated report from our urban designer and updated package from the applicant late last year. Very important we meet this deadline. We can discuss when we next meet, just wanted to send you this reminder while it's fresh on my mind.*

I want to suggest to you that this was the point at which you re-engaged with your staff in relation to this matter,

namely, when it came to preparing the papers for council in respect of the planning proposal?---No, I'm pretty sure I had discussions with staff right through that process. So in terms of - so, yeah, no, I don't agree with that. I mean, that's the best - that's my recollection.

I'll just take you back, then, to volume 14, page 71. Do you see that that's an email from Mr Annand to you in relation to whether there were any edits?---Yes.

10

If I can take you to an email of 8 January 2016, there's an email from you to Mr Demian and Mr Daniel, cc'd to Mr Gouvatsos, Mr Montague, Mr Foster and Mr Farleigh?---Sorry, what page is that on?

Page 72.---Okay.

I'm sorry, the next page.---Yes.

20

I apologise. I should have given you the number. What you've said there to Charlie and Matt is:

I have now received a draft copy of our Urban Design's report which basically supports an FSR of 2 .8:1 and 25m height from an urban design perspective.

30

So the stage at which you're communicating with Mr Gouvatsos and Mr Foster and Mr Farleigh is once you've achieved the goal of getting a report from Mr Annand which supports what you were asked to obtain, as you understood it, by Mr Montague and Mr Demian; that's right, isn't it?---Like I said before, I can't - I remember having discussions with staff through the process, but based on the emails you've shown me, I don't disagree with that.

40

Can I ask you if you wouldn't mind, please, going back to page 148 in volume 14. Why was it very important that you met the deadline of the March council meeting as at 30 January 2016?---I believe that was an instruction from the GM.

And what was it that Mr Montague said to you in that regard?---Like on many occasions, he said to me that this needed to be - this needed to go to the next available council meeting or committee meeting, whatever the case.

As we've seen, by 30 January you had sent Mr Montague a copy of the report from Mr Annand supporting what it was that Mr Demian had wanted, so Mr Montague knew that you were in a position then to progress the matter in a way which would put before council what it was that Mr Demian wanted?---What page was that on, sorry?

Sorry. Remember we looked at an email - - -?---Yes.

10 THE COMMISSIONER: 72, was it?

MR BUCHANAN: Thank you.

The email of 8 January 2016, page 72?---Yes, that's correct.

20 If you'll just excuse me a moment. I think it'll be exhibit 210. If I could ask that the witness be shown exhibit 210, pages 12 to 13. I'm showing you a page from one of your exercise books?---Yes.

Do you see that it's your handwriting?---Yes.

Can we enlarge that a little bit? There you go. It's a note in respect of a meeting with Mr Hawatt and Mr Azzi on 2 February 2016?---Yes.

30 I should ask you, it appears that it goes over two pages. If I could just ask you to have a look at that page and then take you to page 13 of the exhibit and if we could enlarge that a little bit, please. It seems to be a continuation of the list of asterisks matter from the previous page and at the top of the page is 998 Punchbowl Road. Do you see that?---Yes.

40 Can I ask that the witness also be shown exhibit 85, please, page 35. This is a calendar entry that you appear to have made. You're identified as the organiser for a meeting in your office - it says that the date is 1 February 2016 at 3.3pm, and the subject matter in the body text is "Councillors Hawatt and Azzi", and the calendar entry is headed "Projects update meeting". Do you see that?---I do, yes.

Is it possible that the note that appears in your exercise book that we looked at a moment ago that has the date 2 February 2016 and appears to be made in respect of

a meeting with Mr Hawatt and Mr Azzi, is a note of the meeting that was contemplated when you made that entry in your calendar for a meeting on 1 February with those two men?---That I can't be certain of.

But from time to time, of course, scheduled meetings had to be postponed?---Yes, yes.

10 Why were you having a projects update meeting, to use the title that you gave to that entry in the calendar, exhibit 85?---It's probably a poor choice of words, but as I've said before, Councillor Hawatt in particular, and to a lesser extent but still quite frequent, met with me to discuss applications and the progress of applications, and so forth, so it's probably in reference to one of those meetings.

20 Would it be fair to say that this meeting was held not in order to respond to a councillor's or councillors' inquiry but in order to keep Mr Hawatt and Mr Azzi updated as to your work in respect of matters in which they had expressed an interest?---I think a bit of both. In a lot of the cases, they brought up new business, new inquiries, at those meetings as well.

30 But this is not the sort of meeting, is it, that was contemplated by the provision in the code of conduct for councillors to make inquiries of the general manager or directors; this is essentially, as you said in your title to the calendar entry, an updating of councillors of projects which you were undertaking in which you knew they were interested?---As I think I've said before, we were advised by the GM to be in regular contact with councillors. As to - and I didn't - we were encouraged to meet with councillors so this - - -

And report to them on your work as if they were the GM?---Sorry?

40 And report to them on your work as if they were the general manager?---It was not unusual.

It was not unusual in the cases of Councillors Hawatt and Azzi, but no other councillor?---Oh, no, Councillor Fadwa Kebbe.

You gave a report on, of the work that you were doing,

generally speaking, on matters in which she had expressed an interest?---Absolutely.

But she is not present at this meeting. Why is that?---I don't know. I can't answer that.

10 Doesn't it mean that the meetings that you had with Councillor Kebbe were of a quite different nature to the meetings for this purpose that you had with Councillors Hawatt and Azzi?---Sorry, can you repeat the question?

20 Yes. The meetings that you were having with Councillor Kebbe were a response to councillor inquiries of the kind contemplated by the code of conduct. But these meetings, one of the kind headed "Projects update meeting" scheduled for 1 February, and it would appear quite likely recorded in exhibit 210, page 12, was a reporting on your work to men who expressed a considerable interest in the work you were doing on numerous planning matters?

MR PARARAJASINGHAM: I object, Commissioner. That was a very long question. Perhaps my friend can just break that up a little bit. I lost the thread of it.

MR BUCHANAN: I saw the witness nodding.

30 I wonder if - are you agreeing with my questions?---No, no. I was going to ask you if you could repeat the question. Sorry.

40 The nature of the meeting with Councillors Hawatt and Azzi that's recorded in these two documents that I've shown you is quite different from a response to councillor inquiries of the kind contemplated by the code of conduct, wasn't it?---Not - well, not in its entirety. As I said before, it was not unusual for them to raise new inquiries at those meetings as well. And also, Councillor Kebbe was also making inquiries of me of applications and raising new business as well, so I really distinguish between the two.

She wasn't running your department, was she?---No.

Not in the way Councillor Hawatt was?---I don't think they were running the department.

No?---No, I don't think so.

THE COMMISSIONER: Did she ever attend a meeting where you were told to find a solution, such as the meeting that you had when Mr Montague told you to do that?---No. No.

MR BUCHANAN: I note the time, Commissioner.

THE COMMISSIONER: All right. We'll have the luncheon break and resume at 2 o'clock.

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LUNCHEON ADJOURNMENT

[1.00pm]

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