

DASHAPUB3870  
13/08/2018

DASHA  
pp 03870-03903

PUBLIC  
HEARING

COPYRIGHT

INDEPENDENT COMMISSION AGAINST CORRUPTION

PATRICIA McDONALD SC  
COMMISSIONER

PUBLIC HEARING

OPERATION DASHA

Reference: Operation E15/0078

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON MONDAY 13 AUGUST 2018

AT 2.02PM

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: Mr Stavis, do you have volume 22 there?---Yes.

You do?---Yes.

10 Would you go to page 124, please. If I could take you to the top of that page, it's on the screen in front of you, if that assists. It's an email from you to Mr Montague of 30 November 2015 in relation to 548 Canterbury Road DA, and this is where there was an absence of RMS concurrence, as it were, or conditions, and you indicated that the DA had been referred to RMS "today". You went on to say:

20 *To overcome this issue I propose to provide you with a motion that can be moved off the floor or as a Memo from you to the Councillors recommending the following (or similar) ...*

And then you proposed the motion that appears underneath. That would appear to indicate, wouldn't it, that as at 30 November 2015 you were certainly well aware of the requirement, if a deferral had been recommended by an IHAP, to ensure that it went to the CDC or to council, that there be a motion moved off the floor or as a memo from the GM in  
30 this case recommending the motion? In other words, there needed to be intervention?---Yes.

In relation to how IHAP recommendations were dealt with at Canterbury Council, I'm going to provide you verbally with some figures. Commissioner, this material will be supported by documentary evidence but at a later stage. The figures, if I can assist you, come from regulation 268X of the Environmental Planning and Assessment Regulation, which require the provision to the department of annual  
40 reports as to Independent Hearing and Assessment Panels and particular data as to how those panels have been operating and relevantly as to decisions made by council relating to matters referred to the panels.---Okay.

You would have been aware of a report made whilst you were at council?---I can't say that I remember.

I'm going to provide you with data, if you could just hear me out, in relation to four different financial years. The first is 2012-13. In respect of that year at council, in respect of IHAP recommendations, 13 per cent of IHAP recommendations resulted in CDC decisions contrary to the IHAP recommendation or contrary to the officer's report and the IHAP recommendation. In 2013-14, 7.5 per cent of the IHAP recommendations resulted in CDC decisions contrary to the IHAP recommendation or contrary to the director's recommendation and the IHAP recommendation. In 2014-15, so that overlaps slightly with your tenure as Director City Planning, the proportion of CDC decisions which were contrary to IHAP recommendations or contrary to the director's and the IHAP recommendations was 6.8 per cent. In 2015-16, 35.3 per cent of the IHAP recommendations resulted in CDC decisions which were contrary to the IHAP recommendation or contrary to the DCP recommendation and the IHAP recommendation. That's a large jump during your tenure from respectively 13 per cent to 7.5 per cent to 6.8 per cent, and then under your tenure 35.3 per cent. Are you able to assist us as to why that occurred?---No.

10

20

Does it come to you as a surprise?---Not really, because from what I recall, a lot of the decisions that were adopted by the council during my time there were taking on board the director's recommendations as opposed to IHAP.

30

Why does that appear to have been so significantly more the case when you're Director City Planning than in the case of your predecessor?---I don't know. I don't know.

40

Was it anything to do with the people that you have told us were putting pressure on you to achieve favourable outcomes for selected development proponents?---That I can't really answer because, as I said before, earlier today, both my recommendation as director and IHAP's recommendations generally were put on the same business paper, and it was up to the council to decide which recommendation to take.

That doesn't explain, does it, or indeed address, whether the fact that, as you've told us, you were under pressure from Mr Hawatt and Mr Azzi and Mr Montague in respect of the applications and planning proposals of certain development proponents seems to have coincided with such a significant jump in IHAP decisions being disregarded by council or the city development committee?---Yeah, I think I've given evidence in the past where certain councillors,

those two councillors in particular, expressed dissatisfaction with the way IHAP were putting forward recommendations, particularly at the end of the process. Yeah.

Yes, and are you saying to us that this must have been, on those figures, unique to your tenure as Director City Planning?---I can't answer that. I'm not sure.

10 Was there any other factor that could explain the discrepancy between the previous years and 2015-16 and the 35.3 per cent of cases in which the IHAP recommendation, or the IHAP recommendation and the director's recommendation, was departed from by council?---Nothing comes to mind, no.

The day before the meeting of the city development committee in respect of the development application for 570-580 - that's to say, on 12 August 2015; volume 21, page 79, if we could go to it, please, is a copy of  
20 a couple of emails, the first from you to Mr Montague on 10 August 2015, so three days before the meeting of the CDC, and you told Mr Montague:

*Councillor Hawatt asked me earlier today to provide him with draft conditions which change the recommendation from a deferred commencement consent to a standard approval with the only material change being to Deferred Commencement Condition 3 in my report being replaced by Condition 6.2 in the attached which allows for "live-work units" as opposed to commercial suites, should the Council decide to move away from a deferred commencement consent.*

30

What was the conversation that you had with Councillor Hawatt to which you were referring in that email to Mr Montague?---It probably was, as the email says - I don't recall the specifics of that conversation.

40 How many times did you receive a request from a councillor, whilst you were Director City Planning at Canterbury, to provide them with draft conditions that changed a recommendation from a deferred commencement consent to a standard approval?---Not many.

Wouldn't you recall when that occurred?---No, sir. I mean,

this was three years later. I don't recall the specifics of the conversation.

How is Councillor Hawatt likely to have conveyed his request to you?---By telephone normally.

10 How many times did you get such a request from Councillor Hawatt or Councillor Azzi?---I don't recall whether there were any other circumstances where they sought to change it to a standard approval, but there were certainly a number of occasions where they asked to - they sought clarification on conditions of approval and so forth, and in some cases they even wanted amendments or changes to be made.

20 Just in fairness to you, you know, because you've told us, that you received a call from Councillor Azzi in relation to 212 Canterbury Road in which he was angry and was telling you to fix it - you've given us that evidence?---Yes.

On that occasion, did you prepare a set of conditions for council to consider to replace the deferred commencement condition that you had recommended in the officer's report?---I don't recall if I did or not. I'm not sure.

30 Then you can see the emails from Mr Montague to Mr Hawatt of 12 August and from Mr Hawatt to Mr Montague of 13 August higher up on page 79?---Yes.

Were you involved in any of that, for example, circulating the draft copies to the councillors?---Not that I recall, but I can't be a hundred per cent certain that I didn't.

40 Did anyone consult you about changing the recommendation that you had made for a deferred commencement consent to a standard approval?---I really don't recall, but, I mean, obviously from the conversation that I would have had with Councillor Hawatt at the time, as stated in the email, obviously that is probably when that occurred, I would imagine, but I just don't recall if there was anybody else who spoke to me about it.

Were you unhappy at the suggestion that your recommendation for a deferred commencement consent was likely to be overturned?---I don't know if "unhappy" is the right word, but I really don't know what I felt at the time. I was

pretty much just trying to do my job. I just don't recall those conditions off the top of my head.

The standard approval conditions?---Yeah, yeah.

When you say you were just trying to do your job at the time, didn't your job involve the exercise of professional judgment?---Yes.

10 Frequently?---Yes.

And to come up with a recommendation for a deferred commencement consent and conditions for that deferred commencement consent would have involved an exercise of professional judgment?---Yes.

Even if it had been drafted by one of your staff, you would have approved it, particularly given it was a Demian application?---Yes.

20

You never felt chagrin at your exercise of professional judgment being set aside at the request of a councillor?---I'm just not sure that deferred commencement - it depends on the extent of the change, obviously. That deferred commencement condition 3 - I don't know what it stated.

30

It just involves changing one of the deferred commencement conditions into a standard approval condition, doesn't it?---Okay - well, I'm assuming it's the same condition but just - - -

Yes.---Yeah, yeah. Not really, because from what I can see, those commercial suites, it would have been, I guess, a standard sort of very minor change in terms of from showing detail on a drawing that basically converts the commercial suites to live-work units.

40

But from the fact that it was deferred commencement condition 3, it can be inferred that there were two preceding deferred commencement conditions, can it not?---Sure.

And it doesn't appear that it was proposed that anything be done in respect of those two conditions other than that they be got rid of, whatever they were?---I'd have to see the consent.

But did you just sort of roll over whenever you were countermanded by Mr Montague, Mr Hawatt or Mr Azzi?---No, I wouldn't say that. Again, it depends on the extent of the changes that they were seeking. That standard - that condition, the way it reads, would have been only a very minor difference.

10 If we can go to page 43 of volume 21, can you see that there were in fact five conditions in the officer's recommendation as to deferred commencement consent?---Yes, sir.

And that the other deferred commencement conditions, certainly as to 1 and 2, were of some substance, were they not?---Yes.

20 And the effect of substituting a deferred commencement consent and simply transposing condition number 3 into the standard approval conditions but not the other conditions was to make the approval a lot more congenial to the development proponent, wasn't it?---Can I just ask a question? So the deferred commencement conditions 1, 2, 4 and 5 ultimately were adopted as deferred commencement conditions?

Well, no, it wasn't deferred commencement.---Okay.

30 It was turned into a standard approval.---Okay. Sorry, your question was?

40 The elimination of certainly conditions 1 and 2, if not also conditions 4 and 5, would have made the outcome for the development proponent a lot more convenient than the outcome that had been proposed in the officer's report?---If they were adopted as standard conditions, I don't think it really mattered all that much, other than he would have had a consent pretty much soon after receipt of the notice of determination, whereas as deferred commencement he would have had to have done that body of work before a consent would have had to have been issued, so it would have taken a lot longer.

If you look at pages 81 and 82, this appears to be the record of the approval as granted by the city development committee resolution. Just looking at the first few conditions there, including condition 2, before commencing

the development, there's no sign of the conditions 1, 2, 4 and 5 proposed in the deferred commencement consent conditions in the officer's report, is there?---No, I think they're adopted on page 80. Sorry, page 84, not 80. It was the report page number.

And where is that, sir?---Point 6.

Thank you.---You read down - - -

10

Yes, 6.1?---Yes, 6.2, 6.3 and so forth.

And 6.4?---Yes.

So as you've drawn our attention to it, the deferred commencement conditions were no longer a condition, literally speaking, deferring commencement?---That's exactly right.

20

Which is, nevertheless, an advantage to the proponent over the situation as proposed in the officer's report?---From a timing perspective, yes.

Now, if I could take you, please, to volume 23, page 7. You can keep the other volumes there, because we will be referring to them. So page 7 in volume 23. It's on the screen in front of you. We can enlarge it a bit.---It's a bit hard for me to read the screen.

30

That's okay. Can you see that it's a development application by Statewide Planning that bears the receipt date 28 October 2015?---Yes, sir.

And that it's in respect of 570-580 Canterbury Road?---Yes.

For a description of what it involved, we need to go to the SEE, which is at page 22, and the title page indicates the nature of the proposed development:

40

*Proposed two additional levels to approved mixed use buildings.*

Do you see that?---Yes.

Can I just draw your attention to the DA number, which was 510, that's 510 of 2015. Before Mr Demian lodged that application, was there any understanding that you had with

him that he would provide a submission in support of the DA explaining why the building height limit in the LEP should be varied under clause 4.6 of the LEP and explaining how the additional two storeys would be a better planning outcome than if the height limit was not breached?---I don't recall having a meeting or discussion in that regard.

10 If I can take you to volume 15, page 13, can you see that at its meeting on 14 May 2015 the city development committee had resolved that - and I'm looking at item 3 on the minutes:

*A planning proposal be prepared to increase the maximum permissible building height from 18 metres to 25 metres on land at 538-546 Canterbury Road, Campsie and land at 570-580 Canterbury Road.*

20 And that that planning proposal be forwarded to the department for a Gateway Determination. That was in May 2015. Then if I can take you to page 14, can you see that that is the covering letter for a copy of a planning proposal in respect of those two properties which was sent by Ms Dawson, or addressed by Ms Dawson, to the department on 6 November 2015, and if you go to page 16, it's the commencing page of the planning proposal?---Yes.

So that occurred in November 2015?---Yes.

30

Can I take you forward in time. In February 2016, do you recall there being some urgency about the preparation of the officer's report for the IHAP and council in respect of 570-580 Canterbury Road, that is to say, the DA 510 to add two storeys to the approved development?---There was always urgency around Mr Demian's applications, but I don't recall whether at that time line, that time frame that you put to me, whether there was any specific, I guess, urgency put to me.

40

Can I take you to volume 23, please, back to volume 23, and to page 68. This is an email conversation that I think commences at the bottom of page 70, where on 22 January 2016 the office manager of Willana Associates sent a fee proposal for professional services to Ms Kocak, one of your assessment officers. Yes, assessment officers?---Yes.

And Ms Kocak responded on 25 January 2016. Can you see that at the top of page 70?---Yes, sir.

Then there's further correspondence. The data Ms Kocak sought is provided on page 69. Then can you look at the bottom of page 68, please, where on Monday, 8 February 2016 Ms Kocak says to Mr Brewer of Willana:

*Hi Michael*

10

*Thank you for providing this quotation. I will be forwarding the matter to our Director for a decision to be made today. We have an application similar to the Harrisons Timber application which you worked on, next door to that site at 570 Canterbury Road. Would you be interested in providing a quotation for that assessment which consists of a DA and*

20 *Section 96 similar to the Harrisons Timber site?*

Do you see that?---Yes.

Then there's an email at 8.59am on 8 February from Mr Brewer to Ms Kocak:

*Thank you for your email. Spiro and I spoke about these sites on Thursday/Friday last week ... we would be*

30 *happy to provide an estimate along our current agreement with Council.*

Does any of this bring back to your memory having conversations with Ms Kocak and/or Mr Brewer about obtaining from Willana an assessment report in respect of the DA for two additional floors on 570 Canterbury Road?---The best of my recollection of those conversations, there was obviously an urgency to get these applications out as quickly as possible and we didn't have the resources in-house to actually process those applications in a timely manner, so there were a number of applications that we outsourced to external consultants, but I don't recall the detailed conversations that would have occurred between myself, Mine and Michael Brewer.

40

Was Michael a person you dealt with in respect of

externally prepared assessment reports?---I've dealt with -  
I dealt with Michael. I'm not sure if I dealt with him  
prior to these ones. I certainly had dealings with his  
boss, Stuart Harding, before my tenure at Canterbury.

10 But so far as concerns Mr Brewer's statement that he and  
you spoke along those lines the preceding Thursday/Friday  
to his email of 8 February 2016, you can't assist us with  
that conversation?---Sorry, I can't help, not in any  
detail.

If you could go to the bottom of page 67, at 10.45am on  
8 February Ms Kocak responded to Mr Brewer:

20 *Please find attached documents associated  
with the application. This assessment is  
urgent so I would greatly appreciate if you  
could get back to me this morning so I can  
get approval to proceed. I originally  
thought it was a DA and S96 combination  
like the neighbouring site however, this  
application is DA only.*

*The report will need to be finalised by  
Friday.*

And you can see that that is Monday, 8 February that that  
is sent on?---Yes.

30 You instructed Ms Kocak to retain Willana Associates to do  
an urgent assessment of DA 510/2015, didn't you?---I would  
have, yes.

Was there discussion that the two of you had about whether  
two other quotes should be obtained?---That I can't recall,  
I'm sorry.

40 Can I take you, then, to the email at the top of page 66.  
After an email from Mr Brewer to Ms Kocak at 11.42am, at  
12.03pm on 10 February 2016 you emailed Ms Kocak:

*I know there maybe probity concerns but it  
might be easier to just get Michael to do  
it for this one. Up to you and George.*

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

And what did you mean by that?---I'm not sure. Probably - I really can't say with any certainty, unless it was in reference to getting some additional quotes.

Yes.---Yes.

Council had a procurement policy, were you aware of that, at that time?---I can't say with any certainty, I'm sorry, no.

10

We'll just see if we can find a copy of it. While that's happening, can I take you to the related subject. Why was the deadline Friday, 12 February 2016 for the assessment report? Can you help us with that?---That would have been probably as a result of the general manager asking me to expedite the matter, I would imagine.

20

Thinking about it, if the general manager had not given you such a direction, would you have imposed a deadline of the Friday at the end of the week on which on the Monday you were trying to retain a consultant to write the report?---Probably not.

No. It's a pretty harsh deadline, isn't it?---Yeah, yes.

And particularly because there was the sticky issue involved of the variation of the height limit in this DA of some 7 metres difference?---It certainly added to the complexity of the proposal, yes.

30

That suggests that it is likely that Mr Montague had given you some sort of direction?---Yes.

To get the report in, and 12 February was probably your internal deadline on that, the deadline he'd given you?---No, I think we probably worked our way back and worked out how long it would take for the report to be prepared and ultimately circulated, to go on to an agenda.

40

The document on the screen is the council procurement policy. It's taken from its policy register and you can see that it was authorised in 2012 and it was amended subsequently in 2012, and this had a review date in December 2014 and I would like you to assume that it was in place in 2015-16. If we could go, please, to the fourth page of the document, section 7, headed "Procedures", paragraph 5 reads:

*If there is an appropriate supply agreement then a supplier under that agreement should be engaged. It is good business practice to obtain quotations from several suppliers under the agreement before engaging a supplier. Always check the terms and conditions before making a purchase under an existing agreement.*

10

Then if we could scroll down to section 6, you can see that the question of obtaining quotations depended somewhat on the value of the procurement activity. How much was a contract like this worth to Willana?---I'm not sure.

What ballpark figure?---I'm not sure.

Would it have been in excess of \$100,000?---Oh, no.

20

So less than \$100,000?---I think it was in the - in that email that you showed me.

Yes.---I believe.

THE COMMISSIONER: Page 67.

MR BUCHANAN: Page 67, there's a quote substantially less than \$100,000?---Yes.

30

THE COMMISSIONER: I think we're in the \$5,000 up to \$49,000.

MR BUCHANAN: So was this a contract that fell into the \$5,000 to \$49,999 range:

*Obtain 3 written quotations from suppliers of your choice.*

?---I believe so.

40

Is that what you meant by "probity concerns" in your email of 10 February 2016 at the top of page 66 in volume 23?---Probably, yeah.

MR BUCHANAN: Commissioner, I tender the Canterbury City Council Procurement Policy.

THE COMMISSIONER: Mr Buchanan, do you remember what date it was --

MR BUCHANAN: It had a 2014 date on it, a review date of 2014. So, sorry, an adopted date of 2012.

THE COMMISSIONER: So dated June 2012?

MR BUCHANAN: Yes.

10

THE COMMISSIONER: The Canterbury City Council Procurement Policy adopted June 2012 will be exhibit 212.

### #EXH-212 CCC PROCUREMENT POLICY ADOPTED 26 JUNE 2012

20

MR BUCHANAN: But essentially in your email to Ms Kocak, you shifted the buck to her and George Gouvatsos and you simply flagged that there might be probity concerns if they went ahead?---Yeah, and I left that up to them to sort out. That's what that's in reference to.

30

You didn't think that it was your job to provide guidance when it came to probity and the conduct by your staff of the work you were asking them to do?---Not really. I mean, they're - George Gouvatsos is a very experienced planner, been around Canterbury Council for many, many years, so I just left it up to the manager and obviously Mine, who's also an experienced planner, to sort out.

As it happens, Mine obtained three quotes - page 72 of volume 23 - but by then it was Wednesday, 10 February 2016, and her email to Mr Gouvatsos indicates:

*... please find attached three consultants' quotations for the assessment of the above applications.*

40

You said to them in your email at the top of page 72 dated 11 February 2016 at 9.53am:

*Team*

*I think given the time constraints and their experience we should go with Willana.*

Is that right?---Yes.

And had by then the deadline of 12 February been changed?  
It must have been, mustn't it?---It must have, yeah.

Can I ask you, though, still on the subject of this aspect  
of the procurement policy - if I could take you to  
volume 23, page 270?---Yes.

10 Can you see that that's a fee estimate provided by Willana  
dated 30 July 2015 in respect of DA 592 of 2014 in respect  
of 546 Canterbury Road, Campsie? If I can ask you to go to  
page 269, this is an email from a Pina Darji at Willana to  
Ms Rahme and to yourself of 22 August 2016. Do you see  
that?---Yes, sir.

In which she says:

20 *As per our phone conversation earlier  
today, I have attached the fee estimate  
that was sent regarding the project at  
548 Canterbury Road, Campsie.*

*At the moment, this is all I can find on  
our system.*

30 You were asked to explain this email, or that email and  
that estimate, if I can take you to page 268 in volume 23?  
It's an email from you to a Lili Cabo at Canterbury, do you  
see that?---Yes, I do.

Dated 23 August 2016. What was Ms Cabo's  
position?---I really don't recall, to be honest with you.

To whom did she report?---I don't know.

Can you see the text? It's concerning 548 Canterbury Road,  
Campsie message, and you say:

40 *Lili,*

*Please see attached.*

*The circumstances behind the engagement of  
Willana to prepare an independent  
assessment report were as follows:*

*I was instructed (by the former GM) to finalise a report in time for the next available meeting. I explained to him that I did not have the resources internally to meet his deadline. He asked me to get it done even if we needed to go to an external consultant.*

10

*I recall asking our senior planner Rita Nakhle (currently on maternity leave) to obtain necessary quotes, however in the end due to the urgency of the matter and in consultation with the former GM I approved the attached quote to engage the Willana to proceed.*

20

*I realise we did not follow proper procedure however I was instructed to finalise the matter in this way by the former GM.*

Do you recall sending that email?---I do recall the conversations that I had with the GM when I brought it to his attention.

To the new GM?---No, the former GM.

Oh, right, yes.---Yeah.

30

What was that conversation?---And it was in relation to - I brought it to his attention about the quotes.

40

Can you tell us what was said, please?---It was basically words to the effect - well, the conversation was generally me pointing out that we needed to obtain - sorry, we didn't have the resources to actually do it in-house within the specified time that he gave me and that probably the only way we were going to achieve the deadline would be to go to an external consultant, and I did point out to him about the quotations, and he said to me, "Look, just proceed with the quotes you've already got." At that point in time, I'm not sure if - we obviously didn't receive two other quotes, but at that point in time, we had received the quote from Willana, and he basically authorised me to approve it.

So is it your evidence that you're not saying that you drew his attention to the procurement policy?---No.

You drew his attention to the state of the matter, namely, that there was only one quotation and not three?---Yes.

And he said, "Proceed regardless"?---Yes.

That's the reference, is it, that you make in the last paragraph of that email:

10            *I realise we did not follow proper procedure...*

?--- Yes.

And:

*... however I was instructed to finalise the matter in this way by the former GM.*

20            ?---Yes.

So I just want to be quite clear about it, what you said in that email was true?---Yes. Yes, sir.

Now, thinking of the DA 510 to add two storeys to 570 Canterbury Road, did you have a number of meetings in late 2015/early 2016 with Mr Demian in the presence of Mr Montague?---I believe so, yes.

30            What is your memory about that?---The meetings that we had with the general manager involving Mr Demian were always a case where Mr Demian was presenting a proposal of some sort and he would then spruik the merits of his proposal in the presence of the general manager, and I definitely remember that 548 Canterbury Road was one of them, and 570 Canterbury Road.

40            Thinking in particular, if you wouldn't mind, of the two additional storeys DA for 570, were the meetings being held with you and Mr Montague being present, or was Mr Demian trying to convey a message to Mr Montague as well? Are you able to answer that? Do you understand what I'm asking you, really, is what I mean? What I'm just trying to ascertain is, did you understand these meetings in late 2015/early 2016 about the DA to add two storeys to 570 Canterbury Road that involved Mr Demian and Mr Montague to be essentially meetings between you and Mr Demian about

the progress or any changes that might need to be made to the design of the proposed development, and it was Mr Montague who was simply being present; or was Mr Montague the intended audience as well as you?---The latter.

Did you get an understanding from those meetings as to why they were being held in Mr Montague's presence?---I sensed that they had a fairly close relationship.

10

What was it that gave rise to that sense?---Because every time Mr Demian would make an inquiry about an application and make that inquiry of the GM, the GM would almost instantaneously call me up to his office or inquire about particular applications that Mr Demian had, so - yeah.

20

Now, I might have interrupted the answer you were giving a moment ago. I just want to ascertain was there anything else that informed your understanding of why these meetings were being held with Mr Montague being present as well?---Almost, in a sense, to make me aware, I guess, how important his applications were and he had the backing of - by having the general manager there present, it was almost like a bit of a - I wouldn't use the word "intimidating", but a word to that effect, to me.

To pressure you?---Yes.

30

There was an occasion a little later in 2016, I think, where you thought that what Mr Demian was asking for in relation to the DA for 570 Canterbury Road was a road too far and there were conversations involving you, Mr Montague, Mr Hawatt and Mr Azzi about how to deal with that. Do you recall that?---Yes, I do.

40

Leaving that aside, generally speaking did Mr Montague express to you, either in the presence of Mr Demian or in the absence of Mr Demian, disagreement with what Mr Demian was asking of you?---No.

Do you still have volume 15 there, Mr Stavis?---Yes.

Could you go to page 58, please. If we could look at the bottom of page 58 first, it goes over the page, but there's nothing of substance on it. At the bottom of page 58 is an email to Tom Foster from Louise Starkey of the department on 14 December 2015, and can you see that it is saying that

a preliminary assessment of council's planning proposal for 538 and 570 Canterbury Road to increase the building height from 18 metres to 25 metres has been undertaken? Do you see that?---Yes.

And that the department, to continue with the assessment of the planning proposal, requested the following clarification/information, and then there are seven items. Do you see that?---Yes.

10

Firstly, she asked for an update of the draft traffic assessment study for the major redevelopment sites along Canterbury Road that was being done as part of an overall - the residential development strategy planning proposal?---Yes.

And item 2 is connected to that, in a sense. It's about traffic and parking. Do you see that?---Yes, sir.

20

Then:

*3. Any additional site specific justification for the proposal regarding its departure from and inconsistency with Councils Residential Development Strategy 2011 and the departure from the draft height controls for the site under the Belmore Precinct of the draft Sydenham to Bankstown Urban Renewal Corridor Strategy;*

30

*4. A copy of any urban design study undertaken to inform the proposal;*

*5. A copy of any urban design study undertaken for the adjacent site [the Harrison site];*

40

*6. Details of approved development applications for the subject sites including any pending development applications with Council for assessment and currently awaiting determination ...*

And item 7 was about contamination. Do you recall that email from Ms Starkey of the department?---I can't say that I do, no.

It was a bit of a red flag, wasn't it, now that you look at it, from the department in relation to the planning proposal?---In relation to the planning proposal, yes. Yes.

10 And you can see in the middle of the page that on 14 January 2016 Mr Foster sent the email to Mr Farleigh saying that they're items the department wants addressed before they'll consider the site for Gateway Determination. Then at the top of the page is an email from Mr Farleigh to Mr Gouvatsos, cc'd to Ms Dawson, and Mr Farleigh says:

20 *Please see the email below from the Department of Planning in relation to the Planning Proposal for 538-546 and 570-580 Canterbury Road. The Department has specifically requested a number of matters that are to be addressed prior to any further consideration of the planning proposal.*

*Please note this also refers to details of both approved and pending DAs for the sites.*

30 *In light of this request, it may be prudent to defer further consideration of any relevant applications pending the submission of this material to the Department and their consideration thereof in relation to any Gateway Determination.*

*Also please note this request may yet entail the commissioning of further work.*

Do you recall having your attention drawn to that email?---No. Sorry.

40 Were you aware of concerns amongst your staff that they were being asked to assess DAs when planning proposals to achieve planning controls which would accommodate the scale of the proposed development were still being considered?---Some staff, yes.

Mr Farleigh was one of those?---He was, yes.

And were you aware of concerns amongst your staff that in

respect of DAs seeking significant variations from planning controls, developers were using clause 4.6 to try to run around the need for LEP amendments to first be made via the planning proposal and Gateway Determination process?---Was I aware?

Yes.---Yes, it was brought to my attention.

10 Did Ms Dawson bring that to your attention?---I can't recall if she did, I'm sorry.

And do you recall who drew it to your attention, any particular person?---I believe it was mainly Warren Farleigh and maybe one or two others from that urban planning section. I don't recall if any of the development assessment staff commented to me about that.

20 Did Ms Kocak comment to you about it in relation specifically to this application?---I can't remember, sorry.

Or any other application?---No, I can't remember.

30 What did you think about those concerns that clause 4.6 was being used by proponents to get around the need for the LEP to be amended despite the significant variations that, in some cases, were being sought under clause 4.6?---That's why I ended up getting legal advice, to ensure that there was a legal mechanism, if it was legal for us to be able to consider clause 4.6 variation to the extent that some of these DAs were being proposed at.

40 But what did you think about the tactics that it was suggested to you by your staff were being adopted by some development proponents in utilising clause 4.6 to get around the controls in the LEP and the utilising of the fact that there was a planning proposal to sort of hoist themselves up in the clause 4.6 process?---Look, I was concerned early on, obviously. What I thought about it? Look, from my perspective, we have applications before council. The circumstances of how those applications evolved are really not our concern as a council. The fact of the matter is we have to consider applications on their merit. Obviously the proper process in terms of amending LEPs or controls in LEPs would be to go through a planning proposal process first and then go through a development application process thereafter. But I was faced with

having applications in front of me which dealt with those issues both in terms of planning proposals and in terms of DAs, and we had an obligation to assess the DAs as well as go through the process of the planning proposals.

10 You didn't think that if there was an obligation to consider the merits of the DAs, a relevant consideration was that the proponent had instigated a planning proposal to modify the planning control seeking to be varied in the DA and that the variation was significant?---Again, I sought advice on that issue, and the advice we got back was that really there's no hard and fast rule about to what extent you can vary a standard, so I felt comfortable that you could consider clause 4.6 to vary those standards.

20 What I'm suggesting to you, Mr Stavis, is that there is a difference between what you can legally do, on the one hand, and the merits of a matter if you have grounds for a view that a proponent is gaming the system?---As I said before, we as a council had no control over that.

Well, it did. You were being told by your staff the prudent way to deal with it would be to defer further consideration of relevant applications pending the determination of the planning proposals?---Well, that would have meant that the applications would have just sat there for a considerable time.

30 Yes, and whose fault would that have been, if not the proponent's? They're the one who created the situation.---But they also lodged development applications that we were obliged to consider.

40 You were obliged to consider them, but you have agreed that a relevant consideration is the fact that the same proponent had instigated a planning proposal to vary the planning control, it seemed in some cases with a view to then utilising the instigation of the planning proposal to get themselves a clause 4.6 variation, which in some cases was quite a significant variation. Now, if that's a relevant consideration, then why couldn't the outcome of considering that be, "We'll put it to one side until the process that has been instigated by the same person who lodged this development application is concluded"?---Because it's not a relevant consideration when you're dealing with a development application that has been lodged.

10 The department, however, on page 58 of volume 15, seemed to think - or certainly seemed to be interested, didn't they, in their consideration of a planning proposal for 538 and for 570 Canterbury Road, in any approved development applications for the subject sites - this is item 6 - including any pending development applications with council for assessment and currently awaiting determination. Why do you think the department asked for that information when they were considering the question of a Gateway Determination for the planning proposal for those two sites?---I don't know.

Oh, Mr Stavis, surely you could work it out for yourself that the department might have thought that the development proponents were trying to game the system?---I don't think you can draw inference from that statement - - -

20 What other inference would you draw?---I have no idea. Maybe they just wanted to see what they were proposing in detail.

Yes, but why? How does it assist the department in working out what Gateway Determination, if any, should be granted for the planning proposal to know whether there are pending development applications for the sites?---Maybe for clarity purposes, to get a better understanding of the development.

30 And do what with that information?---For them to consider.

Yes, and do what with that information when they're considering it? How would it inform the department's process of deciding whether to provide a Gateway Determination or not?---I'm not sure how.

You don't think that the department thought that there might be something going on here that is worthy of investigation?---No, it didn't cross my mind, no.

40 Nevertheless, the department certainly, as a result of a preliminary assessment only, imposed fairly onerous requests on your division before they would be prepared to consider a Gateway Determination. Do you see that?---Yes.

You didn't think that that was of some significance?---No, because we were dealing with development applications.

And it seems that Mr Farleigh thought that there was some significance to the department's request in the way he framed his email to Mr Gouvatsos of 14 January 2016 at the top of page 58 in volume 15, because he thought that, as a consequence of those requests, it may be prudent to defer further consideration of any relevant applications pending the submission of that material to the department and their consideration of it in relation to any Gateway Determination?---But that was his opinion, yes.

10

Where would he have got that idea from?---I have - well, I would imagine he was dealing, obviously - his whole section was dealing in relation to planning proposals. Where he would have got that information from I'm not sure.

So did you ask him, "Mr Farleigh, what do you mean? Why are you suggesting that it would be prudent? Can you just explain it to me. I don't understand"?---I don't recall having that conversation with him, no.

20

Why didn't you have a conversation with him like that, if you were genuine in addressing the concerns raised by the department inferentially and raised inferentially, too, by your staff?---I'm not saying I didn't. I'm just saying I don't recall if I did or not.

What are you likely to have done?---I'm not sure. I'm really not sure. I mean, the email's addressed to George Gouvatsos, not to me, so - - -

30

We can solve that. If we go to the preceding page, page 57, you can see that on 4 February 2016 Mr Gouvatsos wrote to you, cc'ing it to Mr Hargreaves, Ms Kocak and Mr Farleigh, and you can see that even though it's not reproduced in this sheet that is page 57, the forward is of the request for additional information: planning proposal for 538-546 Canterbury Road, Campsie and 570-580 Canterbury Road, Belmore, the exact same subject heading as was on Mr Farleigh's email to Mr Gouvatsos, page 58?---Sure.

40

So, looking at the email from Mr Gouvatsos to you, he attaches, it appears, that email from Mr Farleigh because you can see that it's described with exactly the same subject heading - the attachment is described with exactly the same subject heading. Can you see that?---The heading is the same, but the attachment - - -

As the attachment, so it's a forward of an email?---Oh, okay.

Then he says:

*Spiro*

10 *Further to the attached email the following advice is provided by Warren.*

*This planning proposal has been submitted for a Gateway Determination.*

*The Department has raised some initial concerns and requested further information. We are working through this.*

20 *Note that this one has not even made it on to the Department's LEP tracking yet.*

*Again we do not have any delegation for this and there is no certainty as to the final outcome.*

*One of the matters we have to provide information on is details of any DAs both approved and pending on these sites.*

30 *Tom can provide further detail tomorrow if needed.*

So having been provided with that correspondence, what did you do?---I really don't recall.

Do you recall being concerned that this was an issue that needed to be addressed?---Again, it was in relation to the planning proposal and not the DAs.

40 And so did that mean that you didn't have to address it?---I don't know whether I addressed it or not. I just don't recall.

Except that you would have read, wouldn't you, the attachment to Mr Gouvatsos's email to you?---I would imagine so, yes.

And you would have then seen that Mr Farleigh was saying:

*... it may be prudent to defer further consideration of any relevant applications pending the submission of this material to the Department and their consideration thereof in relation to any Gateway Determination.*

10           ?---That's likely, yes.

So you would have appreciated that it was an assessment issue as much as it was a planning proposal issue?---I don't see that at all.

Well, Mr Farleigh raised such an issue, didn't he?---Mr Farleigh's expertise was in urban planning, not in development assessment.

20           So did that mean you could ignore anything he suggested - - -?---No, no.

- - - in relation to how DAs that related to a planning proposal site might be handled, particularly given the department's interest in relation to the planning proposal in any pending development applications?---No, I'm not saying that at all, no.

30           Well, what are you saying?---I'm saying - I'm just stating a fact, that his expertise was in planning proposals, not in DA assessments.

Why are you telling us that?---Because you asked me why I didn't take his advice or what did I do with that. I don't recall.

So is the answer to the question, then, "I didn't take his advice"?---I don't recall, sir, in all honesty, what - - -

40           A moment ago you gave an answer which suggested like it was an explanation as to why you didn't take his advice, so is that explanation based on the premise that you didn't take his advice?---No, not at all.

Did you take his advice?---I don't recall if I did or not

Can I take you, please, to page 60 in volume 15. Can you

see that this is an email dated 5 February 2016? I just remind you that Mr Gouvatsos's email to you that we looked at a moment ago on page 57 was on 4 February 2016.---Sure.

So looking at the email of 5 February 2016, it's from you to Mr Gouvatsos, Mr Foster, Mr Farleigh, and Ms Kocak is cc'd in. Do you see that?---Yes, I do.

You said:

10

*I spoke with Martin Cooper (acting Director from the Dept of Planning) earlier today. I called him to seek his advice on the issues raised below by Helen and Louise in the context of the DAs we have at the moment in relation to these sites.*

20

*We went through each of the points and I explained where we were at, eg provided brief outline of the draft results of Council's traffic analysis re the RDS, etc, etc. He seemed comfortable with these responses and in general with the way we were heading. Without putting words in his mouth he didn't seem too concerned with the "merits" of the planning Proposal.*

30

*I understand Tom is collating the requested info. Martin said he is happy for it to be considered as "additional information" to the existing Planning Proposal, so a cover letter from Tom addressing the issues with supporting documents should suffice.*

40

*Based on my discussion above, I am comfortable to continue with our DA assessment, so long as we respond to the issues raised by the department below in our assessment reports.*

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

Would you like a break?---Yes, please. Thank you.

THE COMMISSIONER: All right, we'll have a very short break of about five minutes.

**SHORT ADJOURNMENT**

**[3.26pm]**

10 MR BUCHANAN: Mr Stavis, returning to volume 15, page 60 and your email to Mr Gouvatsos, cc'd to your staff, dated 5 February 2016, it would seem from the last two paragraphs that you were very much alive to the suggestion that Mr Farleigh had made in his email that it would be prudent to put aside DAs that were pending where there was a planning proposal on foot for the site concerned. Would that be right to say?---I think that's fair, yes.

20 Had you rung the department because of Mr Farleigh's suggestion - not to ring the department but to put aside DAs that were the subject of planning proposals for the site, at least these DAs? Is that the reason you rang the department in the first place?---I'm not sure, but it's likely.

30 That's on 5 February 2016. Can I take you to 23 March 2016. Volume 23, page 107. Can you see that email is from Mr Montague to Mr Hawatt on 23 March 2016, and it's in respect of 570-580 Canterbury Road?---Yes.

30 In the subject heading, after the address of the property, Mr Montague said "(Charlie Demian)", the email reading:

*Michael*

*We need to meet with Spiro to discuss this application. Please let me know when you are available.*

40 Signed "Jim". Now, I appreciate you're not a party to that email, but does the fact of that sort of communication between Mr Montague and Mr Hawatt in relation to that property come to you as any surprise?---No.

Why not?---Because for Mr Montague to actually talk to Michael Hawatt about it, he would have got some sort of inquiry from Charlie Demian, I would imagine.

10 I appreciate that that email by itself is not very  
illuminating as to just what the issue was, but you can see  
there that the request to Mr Hawatt was that the three of  
you meet to discuss that application. If I could ask you  
now to listen to a telephone recording, LII06262, recorded  
the same day, 23 March 2016, but commencing at 8.06pm.  
This recording commences at the beginning of the  
conversation, but the part of the recording that we're  
playing concludes during the conversation, because the rest  
of it is not relevant to the inquiry. If you could pay  
attention to the transcript, which will appear on the  
screen?---Sure.

#### TELEPHONE RECORDING PLAYED AND TRANSCRIPT DISPLAYED

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

THE COMMISSIONER: The audio file and transcript of the  
recording LII06262 recorded on 23 March 2016 at 8.06pm will  
be exhibit 213.

#### #EXH-213 TRANSCRIPT SESSION 6262

30 MR BUCHANAN: Mr Stavis, you recognised your voice and  
that of Mr Hawatt?---Yes, sir.

And you initiated that call?---Yes.

On page 6 of the transcript, it records your references to  
"Mine" as "Renee". Do you see that?---Yes, sir.

And they were references to Mine Kocak, weren't  
they?---Yes.

40 MR BUCHANAN: We can change on page 6 the two references  
to "Renee" to "Mine".

Were there any other changes to the transcript that you  
think were required as you heard the recording being  
played?---I haven't gone through it in any great detail,  
but I see nothing, no.

Thank you. Why did you make that call to Mr Hawatt?---Because I knew that Mr Demian was going to be right on the phone to the general manager, and I knew that Mr Hawatt had considerable interest in this, in terms of inquiries.

And influence with the general manager?---Oh, yeah.

10 In the transcript, if we could go to page 3, please, if I can take the second passage attributed to you on page 3, it reads as if you and Mr Montague wanted to run the issue past Mr Hawatt. You said:

*... I think we just want to run that by you ...*

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

20 And had you had a discussion with Mr Montague earlier in the day about this?---I believe it was shortly after I had a discussion with Mine about the fact that he wasn't - he hadn't submitted amended plans and made - - -

Mr Demian hadn't?---Yes, and made changes to the extent that was required. So it's likely that I went and saw Mr Montague in his office.

30 And you were describing to Mr Hawatt, were you, as recorded on that page, Mr Montague's response to the idea that it might be necessary to take the issue up with Mr Demian, that is to say, Mr Montague, "He's a bit sort of wary of it", and later on, at a bit over halfway down the page, you said, "I told him I can't support it" - meaning Mr Montague:

*I told him I can't support it and he wants to back me, but he's - he's - he's afraid that you know he might cause offence.*

40 What was that in reference to?---It was probably in reference to Mr Demian's reaction.

That Mr Montague was scared of Mr Demian?---I don't know if "scared" is the right word, but certainly he was concerned about his reaction, that's for sure.

Could I take you to the bottom of page 4 of the transcript. When you and Mr Hawatt discussed how you could get it through, Mr Hawatt said:

*Well, we stopped him last time, didn't we?  
I mean I said to - he wanted this, I said  
no.*

10 What was that a reference to, as you understood it, the "last time"?--I really don't - I really don't know. It might have been in reference to either the previous - the site next door or maybe - because he - there was various - he submitted various amendments for this particular site, I remember, so it might be in reference to the previous submission that was put in as an amended scheme.

20 When you say "submission", you mean development application or iteration of a development application?--The current development application, but he had submitted a number of amendments, I believe.

And if I could take you to the top of page 7 of the transcript, the first passage attributed to you reads:

*I - I assumed that the - he was gonna  
honour the agreement at the beginning when  
he lodged it. And he's done none of that  
mate ...*

30 Do you see that passage?--Yes, sir.

And do you recall I asked you earlier today whether there had been an agreement between you and Mr Demian before he lodged DA 510 of 2015?--Yes.

40 Does this spark a recollection as to whether there was an agreement with Mr Demian?--There was - I think "agreement" is probably a bad choice of words. There was no agreement between me and Demian about this proposal, other than me pointing out to him the issues that he needed to address to achieve a better planning outcome, and I remember talking to him about getting advice from his own town planner in that regard. But there was never any - - -

Is this in relation to 548 or 570?--No, I believe it was 570 as well, yeah.

If I can take you, then, to the middle of page 8, do you see there the passage in the middle of the page attributed to you:

*I think that's the best way mate 'cause  
he's gonna - he's gonna get pressure from  
Charlie ...*

He being Mr Montague?---That's right.

10

And you're asking for Mr Hawatt to essentially join forces with you and with Mr Montague so that Mr Montague isn't isolated in dealing with Mr Demian in relation to this; is that a fair way of looking at it?---I think so.

That was what you were trying to achieve?---Yeah. I was concerned that Mr Demian was just going to go off in his normal fashion, and I felt that it - you know, strength - - -

20

In numbers?---In numbers.

But also in people that Mr Demian listened to?---Yes.

And, as you understood it, he listened to Mr Hawatt?---He did, yes. To what extent I'm not sure, but yes.

So did you make changes to Mr Demian 's plans for the approved development in relation to 570 Canterbury Road?---I remember - - -

30

Or propose them?---Yeah, I remember saying to him explicitly that in order to satisfy the clause 4.6 arguments, he would need to make changes to the approved scheme.

So let's just be clear. You're talking about the clause 4.6 arguments to support the DA for the additional two storeys on 570 Canterbury Road?---Correct.

40

He needs to make changes to the six-storey approved development, the plans for it, that is?---Correct.

Can you just give us a brief outline of the sorts of changes that you considered necessary and why?---Sure. So at that point in time, in order to achieve a better planning outcome, there were a number of ways you could do

it. One was to improve the efficiency of the building.

Efficiency?---Yes, and also look at providing a better-quality building. That in part could involve larger units, treating the materials and finishes in - of a higher quality, and also looking at if there were opportunities to provide a public benefit of some sort. One of the avenues that we were considering along Canterbury Road was to provide laneways, and I'm not sure if ultimately that was adopted in that scheme - laneways adjacent to north and south of Canterbury Road either through a voluntary planning agreement arrangement or through public rights of way.

And that was one of Mr Hawatt's pet subjects; is that fair to say?---I believe he was the one who moved the motion before my time.

So when you say "we", you mean you and Mr Hawatt?---No, no. Trying to achieve that outcome?---Council, I meant. Council, yes.

Why were those changes, or changes of those types - and if I'm using the wrong word, tell me - necessitated if the DA for the additional two storeys on 570 was to be approved?---Because it was about achieving a better planning outcome. The two storeys were just two storeys over an approved building, so you've got to really look at it in its entirety.

Did you see - and tell me if I've got this wrong - - -?---Sure.

Did you see the changes that you were proposing to the approved development as assisting the proponent in having the clause 4.6 submission in respect of the two additional storeys accepted?---In part. It goes some way, but it just depends on where that additional two storeys is being proposed. You've still got to go through the environmental assessment of considering the extra height and making sure that it's in the context, where it is, it's appropriate, and also that it doesn't necessarily create any additional impact on neighbours and the like. So there's many factors around that, achieving that better planning outcome, as I understood it back then.

MR BUCHANAN: Commissioner, I note the time. Would this be a convenient moment?

THE COMMISSIONER: It would be. We'll adjourn until 9.30 tomorrow morning.

THE WITNESS STOOD DOWN [3.55pm]

10

AT 3.55PM THE MATTER WAS ADJOURNED ACCORDINGLY [3.55pm]

20

30

40