

DASHAPUB3904
14/08/2018

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pp 03904-03952

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INDEPENDENT COMMISSION AGAINST CORRUPTION

PATRICIA McDONALD SC
COMMISSIONER

PUBLIC HEARING

OPERATION DASHA

Reference: Operation E15/0078

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 14 AUGUST 2018

AT 9.44AM

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, please.

<SPIRO STAVIS, sworn

[9.44am]

10 MR BUCHANAN: Mr Stavis, yesterday you provided the Commission with a tabbed-up copy of the exercise book and diary entries that you provided with a view to identifying notes which recorded a meeting with Mr Annand. Is it fair to say that none of those notes that you had tabbed up concerned 998 Punchbowl Road, Punchbowl?---I believe so, yeah.

Can I ask whether we can show on the screen one page which you tabbed up, however. Do you see the document on the screen headed "CAMPSIE CENTRE (and others in Canterbury)"?---Yes.

20 And it's a proposal for a "workshop process to identify and test different development opportunities within the 800m walk from Transit (Railway Stations)"?---Yes.

Who prepared this document?---I believe it was Mr Annand.

And you received it from him?---That's correct.

Was the proposal implemented in any way?---No, sir.

30 Was there any reason why it wasn't implemented?---This document was presented to myself and Mr Montague in a meeting that Mr Annand requested. I think it was in response to what the State Government was proposing in relation to the Sydenham to Bankstown rail corridor and all the uplift along the railway lines. He saw this as, I guess, his view or vision of how to progress.

40 Yes, but my question is was there a reason why the proposal for a workshop process to identify and test different development opportunities was not implemented?---Not that I can think of, in terms of why it wasn't implemented.

Why it didn't go anywhere?---Yeah, I'm not sure why.

MR BUCHANAN: Commissioner, I tender that page.

It's a sheet that you kept in your exercise books; is that

right?---I believe so, yes.

MR BUCHANAN: I tender the page, Commissioner. There were some questions that I asked Mr Annand about this. Commissioner, there are in exhibit 85, the calendar entries exhibit, some pages from Mr Annand on the same subject, and it is going to become more pertinent as the evidence proceeds.

10 THE COMMISSIONER: I don't know if it's relevant, but I had a look at the folder, and I don't know if the two other pages were part of the page you want to tender and, if they were, if they are relevant in any way?

MR BUCHANAN: From this distance, they look similar to what was in exhibit 85. Can I have access?

THE COMMISSIONER: Yes.

20 MR BUCHANAN: The material in exhibit 85 is similar, Commissioner, at pages 21 through to 33. If I might say so, respectfully, the material that you've identified is almost certainly from Mr Annand, having regard in particular to the material in exhibit 85 between those two pages, but I don't think it is necessary for the purpose of the tender. The purpose of the tender is more the workshop and the proposal itself rather than the drawings that Mr Annand provided in support of the proposal.

30 THE COMMISSIONER: That's fine.

Mr Stavis, can you recall when you had this meeting with Mr Annand, and Mr Montague was in attendance?---Not off the top of my head, I'm sorry, no.

40 The copy in the folder commences with that page, and then it has a workshop brief for Moxon Road on 2 December 2015 and then has a meeting with RMS on 2 December 2015. Does that suggest that it was probably at least before December 2015?---I can't say with absolute certainty, because from what I recall, that was a loose-leaf page. So I may have just put it in the folder as I saw fit.

Again, can I confirm this was the proposal that Mr Annand had written up and presented to you and Mr Montague?---Correct, yes.

THE COMMISSIONER: The proposal for a workshop in respect of the Campsie Centre and others in Canterbury prepared by Peter Annand and presented to Mr Stavis and Mr Montague at a meeting will be exhibit 214.

#EXH-214 - PROPOSAL FOR A WORKSHOP IN RESPECT OF THE CAMPSIE CENTRE & OTHERS IN CANTERBURY PREPARED BY MR ANNAND & PRESENTED TO MR STAVIS & MR MONTAGUE

10

MR BUCHANAN: Mr Stavis, I was asking you, when we concluded yesterday, about changes that you proposed to the approved development at 570-580 Canterbury Road that related to the DA for the additional two storeys. Do you recall those questions?---Yes.

20

We played a recording of a conversation between you and Mr Hawatt on that subject. Did you make a presentation of any sort or even just simply describe the nature of the changes to Mr Hawatt and/or Mr Montague?---I believe I did, yes, yes.

It's likely you would have?---Yes.

Particularly to Mr Montague, isn't it?---Yes. I also believe I did to Mr Hawatt.

30

Yes, thank you. And that was with a view to getting their support for requiring them of Mr Demian?---It was with a view to getting their support to actually make Mr Demian understand that what he was proposing was unreasonable, and they were simply suggestions of ways in which he could possibly address those issues.

So "requiring" is the wrong word. You weren't going to require them of Mr Demian?---No, no.

40

But you were proposing them so that his DA for the additional two storeys would have a prospect of being approved, because otherwise it wouldn't?---Correct.

And was that because the requirements of clause 4.6 really didn't stand a chance of being satisfied unless the changes you were suggesting be implemented?---At the very least, yes.

MR BUCHANAN: Can we play a recording, please, LII06790 recorded on 4 April 2016 commencing at 2.30pm. This is a relatively long recording.

RECORDING PLAYED AND TRANSCRIPT DISPLAYED

10 MR BUCHANAN: Commissioner, I tender the audio file and transcript for that recording.

THE COMMISSIONER: The audio file and transcript of the recording LII06790 recorded on 4 April 2016 at 2.30pm will be exhibit 215.

#EXH-215 - TRANSCRIPT SESSION 6790

20 MR BUCHANAN: There are two corrections I propose to our copies of the transcript, Commissioner. The first is on page 8. The second-last entry is wrongly attributed to Mr Hawatt and it should read "Stavis".

THE COMMISSIONER: Is that the entry, "It wasn't only for the top two levels"?

MR BUCHANAN: Yes.

30 THE COMMISSIONER: Any objection? All right.

MR BUCHANAN: The second is similar. It's on page 12, in the middle of the page. You can see, Commissioner, there are three consecutive entries attributed to Mr Hawatt. The middle of those three should read "Stavis".

THE COMMISSIONER: "Nothing - noth - it was no different"?

40 MR BUCHANAN: Correct.

THE COMMISSIONER: All right. We will note those two amendments.

MR BUCHANAN: Can I take you, please, to volume 5 of exhibit 52. One thing I overlooked, Mr Stavis. Can you confirm that the voices that we heard on that recording

were those of you and Mr Hawatt?---That's correct.

Thank you. In volume 5 of exhibit 52, page 303, at 624, just after halfway down the page?---Yes.

An entry on this schedule of text messages extracted from Mr Hawatt's phone of a text message on 7 April 2016 sent by you to Mr Hawatt, which reads:

10 *Hi Mike, I'd really appreciate it if you
 can speak to Jim and Pierre before you
 leave, just to reinforce your support for
 me re Charlie's job. Cheers mate.*

Do you see that text message?---Yes, sir.

Can I ask you about the passage indicating the purpose of you asking Mr Hawatt for him to talk to Mr Montague and Mr Azzi. You said:

20 *... just to reinforce your support for me
 re Charlie's job.*

Was that vis-a-vis Mr Montague or vis-a-vis Mr Demian or a combination of the two? Why did you need support, sorry, is the question I'm asking.---To ensure that Mr Demian actually listened to the fact that he needed to make changes to his proposal, and the only - my experience in dealing with Charlie Demian was that unless Pierre Azzi, the GM and Mr Hawatt actually spoke to him about the fact that he needed to make changes, he was always reluctant to do that.

30 I'm not for a minute quarrelling with what you've said there, but I just want to take you back to the message, which is a request for Mr Hawatt to talk to Mr Montague and Mr Azzi to indicate "your support" to them for you in relation to Mr Demian's DA. That suggests, doesn't it, that you needed clarity in Mr Montague's mind and Mr Azzi's mind that Mr Hawatt supported you in the changes you were seeking that Mr Demian make to the approved development so that his DA for the two additional storeys would have its prospects for approval improved?---I think that's fair comment, yes.

40 Just to tie that up, we've heard your telephone conversation with Mr Hawatt in which Mr Hawatt indicated

that Pierre took a dim view of what he understood you were proposing and you were trying to explain to Mr Hawatt two things: one is that it was, as it were, changes at the margin, not changes of the whole approved development; and, secondly, that Mr Demian and Mr Khouri were happy with the changes that you proposed?---Yes, I think that's fair.

10 But, as well, you needed clarity in Mr Montague's mind because he had to deal with Mr Demian too, not just Mr Azzi?---Correct.

That's all in relation to 570-580 Canterbury Road. Can I turn now to 538-546 Canterbury Road. This was a Jimmy Maroun site?---That's on the other corner, is it?

Yes.---Yes.

20 It was known as the Spoilers or the car wash site?---That's correct.

That's on the eastern side of 548 Canterbury Road?---I believe so, yes.

30 At the stage things were at when you arrived in March 2015, can I just ask you about another of Mr Maroun's proposed developments, because he did have another one that had been through council's books, I want to suggest to you. If you'd listen to this to see whether it rings a bell. At an address which might be 453 or 455 - I will take full responsibility if I have it wrong - to 459 Canterbury Road, Mr Maroun had in November 2014 lodged a DA but then came up against the requirement by the RMS for a traffic study to be done on the greater part of Canterbury Road that included that site, and he has told the Commission that he was asked by council to withdraw the DA for that reason and he did so. This was in January 2015. I just want to have some clarity for the purposes of the questions I ask you, that 538-546 wasn't the only proposed development that Mr Maroun had on Canterbury Road in which he was interested
40 when you were at council in 2015-2016; does that ring a bell?---It does.

And that he was, from time to time, making inquiries about how the traffic study for the RMS was progressing so that he could relodge his application for 453-459 Canterbury Road. Is that something that you recall?---I do, and I also think it had something to do with permissibility for

what he was proposing.

Permissibility?---Yes. I can't be a hundred per cent sure, because it's a long time ago.

Just tell us what your recollection is?---To the best of my recollection, there was also an issue of what he was proposing, particularly on the ground floor, whether or not it was permissible under the LEP as well.

10

This is in respect of 453-459 Canterbury Road?---Correct.

Not 538-546?---No. That's right.

Turning then to 538 Canterbury Road, the car wash site, the building height limit on that site was 18 metres, as it was for 548 and 570 Canterbury Road; is that right?---Correct.

20

There had been, had there not, a submission lodged on behalf of Mr Maroun during the RDS process, the residential development strategy process, for 538 to be included in the planning proposal for amendment of the LEP to increase the building height limit to 25 metres. But - I can take you to it - 538 was not included in the resolution that was passed on 2 October 2014. Does that ring a bell? If it doesn't, I can very quickly show you the documents.---Can you, please?

30

So far as the submission is concerned, volume 15, page 73 and going over to pages 74 and 75. You see that submission is dated 8 July 2014?---Sorry, I have volume 5. I'm sorry.

Do you have volume 15 there?---I do, sorry. Okay.

You see the submission?---I do, yes.

I'm just asking you to note it, that it is dated 8 July 2014.---Yes.

40

You can close that volume now and if I can take you to volume 11, page 223.---Yes.

I'm sorry, actually, 223 is not the right page. Page 227. If you just have a quick look down the list of properties, pages 227 to 228, you can see that 538 Canterbury Road isn't there?---That's correct.

If I can then take you to volume 16, please,
page 129.---Yes.

Can you see that that is part of the minutes of the meeting
of the city development committee held on 4 December 2014,
and agenda item 18 is 538-546 Canterbury Road, Campsie, and
it's the approval of a development application at that site
for the construction of a six-storey mixed use
development?---I see that, yes.

10

That's all in relation to that. So that was the state of
play at the time you arrived in early March 2015. You
dealt with 538 Canterbury Road. What was the first contact
you had on that site? Was it from Mr Maroun or Mr Montague
or Mr Hawatt or Mr Azzi? What's your first
recollection?---To the best of my recollection, it was
Mr Maroun. Ordinarily he would ring Eva, my PA, and leave
a message if I wasn't there, but I recall fairly early in
my tenure that he did make contact about that particular
site.

20

What was the gist of that contact? What was
he - - -?---Essentially, from what I recall, he wanted to
meet with me to show me a proposal for that site, and
I believe he turned up with his architect, maybe his
planner. I'm not really sure whether the planner turned
up.

30

And what was the proposal for?---The proposal was to
provide an additional two levels on his site.

You don't have a recollection of contact before Mr Maroun
contacted you with a view to arranging that meeting?---No,
sorry, I don't.

That's okay. If I can take you to volume 16,
page 158.---Yes.

40

Can you see that in the middle of the page, on 19 March
2015, at 4.09pm Mr Hawatt contacted you saying:

*Can you let me know progress for the above
addresses and whether a lodgment for 445
can be made with council. Regards,
Cr Michael Hawatt.*

Then if you go to the top of that page, you can see that

the addresses are 538-546 Canterbury Road, Campsie, "section 96", it says there, and 445 Canterbury Road, Campsie, "RMS issue". That's why I'll stand to be corrected if I got the address wrong for the other site that Mr Maroun was interested in. So you see that contact on 19 March from Mr Hawatt?---I do, yes.

And you responded the same day at 5.52pm:

10 *Dear Michael*
 I'll come back to you tomorrow with an
 update.

Hi Eva
 Please remind me to provide update tomorrow

Now, this was at a stage where, if I can just draw your attention to it, you were cc'ing in Ms Pettenon, who I think at that time was on Mr Montague's staff, and also
20 Mr Montague himself to communications of this type with Mr Hawatt?---Yes.

That isn't something you continued to do all the time, but it was something that you were doing at least in March 2015, you were cc'ing in Mr Montague to your communications with Mr Hawatt?---I can't say with any, I guess - I can't be a hundred per cent sure whether that's actually true, but - - -

30 That it was a practice?---Yes, yes.

I see. All right. Can you tell us why you cc'd in Mr Montague to that email?---That was probably because it involved a councillor making a request and that - that's the only reason I can think of, to be honest with you.

Was it because the councillor was Mr Hawatt that you cc'd in Mr Montague?---No, I don't believe so. I think that was fairly early in my tenure as well. I would have thought -
40 and I stand to be corrected - that when it came to councillor-type communications, that that's what I would have done, is to keep Jim in the loop, I guess. But, again, I can't be a hundred per cent sure.

At page 159, the next page in volume 16, in about the middle of the page, on 20 March, at 12.29pm, you emailed George Gouvatsos and asked him to prepare a response on

your behalf to Mr Hawatt's request. Do you see that?---I do, yes.

Mr Gouvatsos, at the top of that page, provided a response at 1.38pm:

10 *538-546 Canterbury Rd, Campsie is the subject of a submission to the RDS to increase the height limit from 18m to 25m. I understand that this planning proposal is still under consideration and will be reported to Council shortly.*

The applicant needs to wait for such a decision. Once a decision has been made we need to wait for the LEP to be imminent and certain before we can take it into account

20 Then he gives you a couple of sentences on 445 Canterbury Road; do you see that?---Yes, sir.

He concludes by saying:

Gill may be able to assist you with the status of the planning proposals.

30 Did you convey what Mr Gouvatsos had told you to Mr Hawatt?---That I can't be a hundred per cent sure of, I'm sorry. I don't recall if I did.

Is it possible that you rang Mr Hawatt and conveyed it to him?---It's possible, yes.

Now, you've told us that you received contacts from Mr Maroun at least through your staff?---Mmm-hmm.

40 Can I take you to page 160 in volume 16. Is that an example of that, on 23 March 2015?---Yes.

At that stage it looks as if Mr Maroun has already been in contact with you, because the message is:

Call for Spiro. Said he would know what it was about.

?---I think that's fair, yes.

Can I take you to page 161. That's another contact of the same type on 7 April 2015. Do you see that?---Yes, I do, sir.

Can I just ask you about the message. It's about regarding lodging a DA:

10 *He didn't want to give me any information
and wanted only to talk to Spiro.*

Do you have any understanding as to why at that point Mr Maroun wanted only to talk to you rather than any member of your staff about a proposed DA?---I'm not sure at that point, but as time evolved, Mr Maroun would only want to speak to the boss. That was just his nature. He didn't really have much regard for my staff - - -

20 Underlings?---Yes, yes.

If I can ask you to go to page 162, you can see that that is an email from Tony Jreige. You probably know how to pronounce it better than I do.---Yes.

He was an architect?---Yes, sir.

Working for Mr Maroun?---Yes.

30 And he said:

*Please see attached architectural drawings
for tomorrow's meeting as requested by
Mr Jimmy Maroun.*

Do you see that there are, following page 162, a series of drawings?---Yes.

40 That meeting took place on 22 April 2015, did it?---I can't be a hundred per cent sure, but I don't recall if it did.

I'll ask a different question.---Yes, sure.

You did tell us about a meeting that you had with Mr Maroun and his architect at a stage before any DA had been lodged?---Yes.

In other words, a pre-DA meeting?---More or less, yes.

About 538 Canterbury Road and adding two storeys to the approved development?---Yeah, very early in my tenure, that's right.

Would 22 April have fitted with that?---Yeah, that sounds about right.

10 Can I then take you, please, to volume 15, page 13.---Sorry, what page was that?

Page 13. This is minutes of the meeting of the city development committee held on 14 May 2015, agenda item 3, and the resolution was:

20 *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.*

And that the Planning Proposal be sent to the department for a Gateway Determination. Do you see that?---Yes, I do see it.

30 At the pre-DA meeting, had there been any discussion about a planning proposal being requested or determined or resolved upon by council?---If the dates that you showed me before are correct, that would have been before this decision was made?

Correct, correct.---I don't recall if that was discussed, to be perfectly honest with you, at that pre-DA meeting.

At that pre-DA meeting, was there any discussion about the need for a clause 4.6 submission?---Absolutely, yes, yes.

40 I mean, even if you didn't have a memory of it, you can tell that there must have been a discussion?---Absolutely.

You wouldn't have failed to have drawn it to their attention?---Absolutely.

In that context, was there any discussion about whether there would be a resolution of council that there be a planning proposal to increase the building height control to 25 metres that could be employed to make more acceptable

a clause 4.6 submission in respect of the site?---Not that I can recall, sir.

You knew, however, that a planning proposal was in the works, as it were?---It's likely that I did, yes.

Because Mr Gouvatsos had told you that Gill could brief you - - -?---Yes.

10 - - - on the status of the planning proposal.---Yes.

And at that point there was no planning proposal, so it must have been the case that she was looking after a proposal for a planning proposal?---I'm not sure of the timing, but, yes, it is likely that I probably knew that one was in the works.

20 There would have been, would there not, a report? Indeed, I can perhaps show it to you. If you go to page 3 of volume 15, you can see an officer's report for the resolution for the planning proposal, or for the motion for the planning proposal?---Yes, sir.

And the recommendation is on page 11, that a planning proposal be prepared to increase the maximum permissible building height to 25 metres?---Yes.

30 So it's possible, isn't it, that at the pre-DA meeting, you would have certainly known that a planning proposal was likely to be resolved upon by council in the not too distant future in respect of the site?---I can't say it was not possible, yeah, so it is possible, yes.

You can't recall there was any conversation about using a resolution for a planning proposal to advance a clause 4.6 submission in respect of a DA?---No, sir.

40 Can I take you to volume 16, page 201. It's the last page in the volume. On 19 May 2015 you received another request from Mr Maroun to speak with him?---I see that, yes.

It's identified as being in respect of 538-546 Canterbury Road, Campsie?---Yes, sir.

You don't have a recollection of what that was about?---No. I can only imagine it would have been about the extra

two floors on his site.

Can I take you to volume 17, please, page 1.---Yes.

We can blow it up on the screen to make it easier to read.
Can you see that this is a development application by Jarek Holdings Pty Ltd?---I do, yes.

10 The contact person being Jimmy Maroun, in respect of an address at 538-546 Canterbury Road, with a received stamp from council of 9 June 2015?---I see that, yes.

Going over the page, the proposed development is described as "additional two residential floors to already approved development application". Do you see that?---Yes.

20 Can I take you, please, to page 11. The DA was accompanied by a statement of environmental effects, commencing at page 11. Do you see that?---Yes, I do.

The date of the document in the bottom right-hand corner is 29 May 2015. The received stamp date is 5 June 2015. If you could just note those. Then if I could take you to page 14, in the first paragraph in the executive summary, the second sentence says that the DA is:

30 *... to respond to a Council resolution to prepare a planning proposal to increase the building height on the site from 18m to 25m ...*

Then it identifies the city development committee meeting date of 14 May 2015. Do you see that?---I do, yes.

It appears, again, on page 23, in the body of the document, under the heading "Description of Proposal", the second sentence:

40 *This is to respond to the recent Council resolution at the City Development Committee on 14 May 2015 that resolved to prepare a planning proposal to increase the maximum permitted building height from 18m to 25m on the site.*

You've prepared statements of environmental effects before, haven't you?---I have, yes.

For big projects?---I have, yes.

It is unlikely, to say the least, is it, that this document commenced to be prepared on 15 May 2015, the day after the city development committee meeting, given that the date of the statement of environmental effects is 29 May 2015?---If I may ask, when was the resolution made again?

10 The 14th, I think it has been identified as.---Sure.

14 May 2015.---I'm sorry, what was your question again?

It's unlikely, isn't it, that this statement of environmental effects commenced to be prepared on 15 May 2015, the day after the CDC resolution?---In my experience, in my former life as a consultant for developments of this scale, it normally takes a couple of weeks at least to actually prepare a statement of environmental effects, depending on the pressure you're under from the applicants.

20

You would have understood, wouldn't you, that this DA and statement of environmental effects would have been - and I've used the expression before - in the works, that is to say, in a state of preparation, before the CDC resolution to have a planning proposal prepared to increase the building height control?---I think that's likely, yes.

30

Was there any discussion about that, that is to say, that the development application was being prepared in anticipation of the resolution of 14 May to prepare a planning proposal to increase the building height control, of which you are aware?---In all probability, there probably would have been at some point a discussion, but I don't recall when that - if that occurred and when that occurred. But in all probability, I'm sure there would have been, because these things don't happen overnight. They take time.

40

Was there any cynicism expressed in your presence by any of your staff about the delivery of a development application so shortly after the planning proposal resolution had been passed by the CDC?---Not that I can recall, I'm sorry.

Cynicism on the part of people working in your division would have been justified, though, wouldn't it, by the delivery of a development application to council so shortly

after the resolution for the planning proposal?---I can't speak for them, but there was - as I gave evidence before in relation to the other one on the other corner, there were some staff who had expressed concern about that, yes.

10 But weren't staff entitled to be cynical about it, because wasn't essentially the planning proposal and the development application process - I'm trying to find the right word for it - being perverted by what was occurring here, that a planning proposal resolution was being prayed in aid in support of a development application where there was a significant variation from the building height control?---I lost the first part of your question, sorry, sir.

20 You don't think, or you didn't think at the time, that the planning process involving planning proposals, on the one hand, and development applications, on the other hand, was being perverted by the use of planning proposal resolutions to overcome building height controls?---It didn't surprise me, given what had transpired with other applications before. As I think I've given evidence before, ordinarily the process is that you go through a planning proposal and then lodge a development application thereafter. In my experience in dealing with these matters, there's no reason why you couldn't lodge a planning proposal and a development application at the same time. In terms of it being perverted, look, I can't speak for them, whether they felt that this was a way in which they could from a timing perspective gain some advantage, I guess, but there were 30 a few developments like this where that had occurred, yes.

And you didn't try to put a stop to it?---Well, as I said yesterday, you know, it's difficult. You can't stop applicants from lodging applications. You know, as a council, you've got to deal with the applications as they come in, and we try to do that to the best of our ability at the time.

40 You referred to the ordinary process of a planning proposal. The ordinary process would have been for the planning proposal to have been submitted to the department, for the department to consider whether or not to issue a Gateway Determination; if there were any conditions in the Gateway Determination, for council to endeavour to satisfy those conditions; and then for there to be a process of public exhibition; if there had been

a delegation to council, to short-circuit the process, then the matter going back to council for council to make the amendment to the LEP. That would have been the ordinary process, wouldn't it?---Correct.

10 It would have been after that that a DA could be determined by reference to the amended planning control?---No, there's no - look, when you're dealing with breaches of planning controls, that's what clause 4.6 was geared to do. It was effectively to - it was brought in to look at circumstances of a case and, where merit allows it, you can breach controls. That's why it was brought in in the first place. So it's not a fait accompli that you go through that process, but ordinarily so, you would go through a planning proposal process first, yes.

20 Clause 4.6 was never introduced in order to permit significant variations from existing planning controls before amendment to those controls was made, was it?---No, I disagree with that. There's any number of applications or proposals that have been approved in all other LGAs. From memory, Parramatta has allowed under clause 4.6 far more significant than two storeys above height limits.

30 But two wrongs don't make a right, do they?---I'm not suggesting they were wrong. I'm saying that that is a mechanism. In the advice that we got and also the - sorry, in the legal advice that we got and also the discussions I had with the department, there is no limit in terms of what the extent of a breach could be, and it's a matter for council to decide.

The decision had to be on reasonable grounds having regard to the criteria of the clause, didn't it?---That's exactly right, yes.

It wasn't open slather for councils?---No, no.

40 THE COMMISSIONER: Mr Stavis, can you remind me, when you referred to the legal advice, is that a particular advice that we've looked at during the inquiry?---Yes, yes.

Which one was it?---It was the Chris McEwen advice.

MR BUCHANAN: That advice was that the extent of the variation was a relevant consideration, wasn't it?---I don't have it in front of me, but - - -

What's your recollection, then?---As far as I'm aware, yes, it is, and it all depends on the merits in terms of environmental impacts and the like. So obviously the extent of the variation does play a factor in it, yes.

MR BUCHANAN: If I could just have a moment, Commissioner, before we pass from it, to see if we can identify it.

10 While that's occurring, can I ask you this: in relation to the development application supported by that statement of environmental effects for the additional two floors on 538 Canterbury Road, did you understand that Mr Maroun was lodging it, seeking a clause 4.6 variation, because it was faster to do it that way than waiting for amendment of the LEP - amendment of the planning controls in the LEP?---I believe so, yes.

20 Did you understand that he lodged it because he could use the planning proposal the subject of the 14 May resolution to justify a clause 4.6 variation?---That I can't recall.

Did you understand that Mr Maroun was lodging a DA with council seeking that variation because the DA process was controlled by council, whilst the planning proposal process was controlled by a different entity, namely the department?---I don't recall that at all.

30 That was the fact, though, wasn't it, that in this way, a developer like Mr Maroun could have a determination notwithstanding a significant breach of planning controls by council, whereas if he was waiting for the planning proposal to be, I'll use the word "determined", then he had to wait for the department to issue a Gateway Determination, at the least?---Yes.

40 Just thinking about it, if you wouldn't mind, you knew that Mr Maroun had Mr Hawatt and Mr Azzi on side?---I'm not sure at that point that I did, to be honest with you, but eventually yes.

You had nothing to indicate that Mr Maroun could control the department's decision in respect of a Gateway Determination?---No.

So to the extent that, as I think you have previously acknowledged you understood, Mr Hawatt and Mr Azzi

controlled the numbers on council, he was utilising a process to achieve what he wanted to achieve on that site via a mechanism - that is to say, a route - involving a decision-making process that was controlled by his mates as against a decision-making process of the department, which he had no control over; is that fair to say?---Yeah. As I said before, I'm not sure at that point whether I was aware that Mr Azzi and Mr Hawatt were in fact advocating for this application, but eventually, yes, that is correct.

10

Eventually that became apparent to you?---Yes.

If I can take you to volume 20, please, in exhibit 69, and if we can turn to page 3. Do you see that that's the front page of Mr McEwen's advice?---I do, sir, yes.

Do you see on page 10, at the bottom of the page, you highlighted that part of the advice that read:

20

Clause 4.6 only becomes relevant in the event of breach. Further, the magnitude of the breach may be taken into consideration but does not oblige a refusal of the application.

?---Yes.

Then for completeness, the next sentence as well:

30

Each case will depend on its own circumstances and whether the departure is justified in the context of the site and the impacts which the departure of the standard will [cause].

I think it is intended to convey.---Yes.

40

That's all in relation to volume 20. Can I take you to page 303 in volume 17, please. In the middle of the page of these extractions from Mr Hawatt's phone, item 62 is a text to you from Mr Hawatt on 17 June 2015. He has one of his shopping lists of matters that he wanted to raise with you. The second one is:

Can you arrange a meeting re Jimmy Maroun sites on Canterbury Road Campsie with Jim Montague as well?

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

On page 80 of volume 17, if we can just go back, I should have drawn your attention to the evidence of a section 96 application commencing on page 80. The received date is 10 June 2015. Can you see that the identity of the applicant is Jarek Holdings again?---Yes, sir.

10 The email address is consistent with it being Mr Maroun's email address, [REDACTED] ?---I do, yes.

I appreciate there's a Post-It note, but going over the page are you satisfied that this is an application for modifications of the approved development, and if you look at the top of page 82, modifications from levels 1 to 5, external facade, balconies and internal layout to apartments. Do you see that?---I do, yes.

20 Can I take you then to page 103, please. This is a memo dated July 2015 from Mr Farleigh in your planning team to Mr Flahive in your assessment team in relation to 538-546 Canterbury Road. Mr Farleigh made a number of points. In the first dot point:

30 *Even though there is a resolution to prepare a planning proposal for this site and the site on the corner of Canterbury Road and Chelmsford, it is yet to be submitted to the Department of Planning for a Gateway Determination.*

There is therefore no surety that it will receive a Gateway Determination, or if it does, the terms of any such Determination.

40 *Additional yield on this site will also impact on the current RMS study and until the results of this are known and implications assessed it would not be appropriate to approve this application.*

Despite what might be contended in the Statement, the use of clause 4.6 in the LEP to consider variations of the magnitude proposed is not appropriate. Again, at this point in time, there is no surety the

statutory height controls will change

If I can take you further down, there are also, underneath the words "From a design perspective", some criticisms of the design quality of the proposal. You saw this memo at some stage, I take it?---I really don't recall if I did, actually, to be honest with you.

10 You can see that it's similar to the memo we looked at yesterday from Mr Farleigh in relation to 570 Canterbury Road, although a little bit more detailed?---I do, yes.

It brings into play another argument, and that is the impact of the yield from the additional two storeys on the RMS study that was being conducted to try to satisfy the RMS about the other sites on Canterbury Road?---Yes.

Including, ironically, one of Mr Maroun's own sites?---Yes.

20 You don't recall this coming to your attention?---No, I'm sorry, I don't remember.

Having regard to the impact of the additional yield on traffic flow, it wasn't in the interests, was it, for the DA to be processed until that study had been completed?---Look, as best I can recall, the applicant prepared a traffic report that accompanied the DA, which looked at traffic impacts associated with the additional yield. I'm not sure how many extra units were proposed, to
30 be perfectly honest with you, in those two extra levels, so I would imagine that that report was, I guess, in support of the proposal, but we also obviously refer it to our own internal experts in that regard. That's ordinary practice to do so.

40 So was this DA referred to the people conducting the traffic study for council?---That I can't be sure of, but we had our own internal traffic guys who actually looked at - we had an internal referral system, and I would imagine this would have been referred to one of them.

But the traffic study was being conducted externally, wasn't it?---It was, and I'm not sure of the date, but I believe we had a - we may have had a draft report from the external consultant at that time. I'm not sure. I stand to be corrected on that.

If you had, then the risk was going to be that the result of the traffic study was going to be reduced in value if this DA was approved?---No, that's not right, because the brief to the traffic consultant, the external traffic consultant, was to look at all the DAs along Canterbury Road that were proposed at that time, to look at the potential yield, or uplift, I should say. From the best of my recollection, I believe that the draft report indicated that barring some traffic calming measures along Canterbury Road - sorry, barring right-hand turns and so forth, they were generally in support of the cumulative impacts that were as a result of what was being proposed along Canterbury Road.

But they wouldn't have taken into account the additional yield from this proposed DA?---That I can't be a hundred per cent sure of, but I remember that we did give them the brief of a lot of the ones that were proposed at that time. But I can't be a hundred per cent sure whether this one was included.

Did it come to your attention that staff were suggesting that this DA should not be processed until the planning proposal had been determined?---As I said before, I can't recall, but it's likely, yes.

Is it the case that in the event of that likelihood, you didn't accept that advice?---It wasn't so much I didn't accept their advice; it was more a case of looking at the merits of what was being proposed as far as a DA was concerned and satisfying myself that all the, I guess from a traffic perspective, things were okay and all the other design parameters that needed to be - the quality of the development that needed to satisfy, I guess, from a clause 4.6 perspective.

Would it be right to say that the reason you did not accept the advice along these lines that likely was given was because you were endeavouring to satisfy the demands being made on you by Mr Demian and Mr Maroun to bring their DAs for the additional two storeys to their respective approved developments to the point of approval as fast as possible?---There was pressure, yes.

Is that the reason why you didn't accede to the suggestion that, look, until the planning proposal has at least received Gateway Determination, it would be inappropriate

to process it because basically you'd have to refuse it?---I needed to be satisfied that it stood up on planning merit, and as long as I was satisfied with that, then I was happy to proceed.

But planning merit had to take into account the existing planning controls?---Absolutely, yes.

10 And if there was a significant departure from an existing planning control, then that was a major impediment to approval?---Well, the way - this was a corner lot, and, as I've said before in relation to the other corner, there was a capacity for additional height to be placed on the corner.

20 But you weren't amending the LEP, were you? You were the director of planning at council that was obliged to assess having regard to existing planning controls?---Of course, and that's what we did.

Can I take you, please, to - I do apologise. I think I've taken you to page 303 and message number 62 on that page before, but I didn't ask you, did you arrange a meeting with Mr Montague for Mr Maroun as requested by Mr Hawatt? This is his text of 17 June 2015, which is item 62 on page 303.---I can't recall in that instance whether I did, but I certainly did meet with Mr Maroun and Mr Montague at some point in time in relation to this application.

30 In council chambers?---Yes.

Can I ask you to have a look at item number 86 on the same page.---On the other page?

Volume 17, page 303. I'm sorry, yes, you're correct. On 16 September 2015, a text to you from Mr Hawatt at 6.49pm:

40 *Hi Spiro
The Jimmy Maroun site the old Robo at 445 to 459 Canterbury Road Campsie, he needs an urgent letter from council to State that the delay with regards to this site was due to RMS objection along Canterbury Road for all DAs before we can action the new B5 zone that council approved. B5 is for a mixed residential commercial zone.*

*Mr Maroun needs our assistance.
Thanks
Michael Hawatt*

10 Did you do anything in response to that text?---I vaguely remember - and it was not uncommon for property owners, or the like, to request the status of play or where things were at in relation to their applications. I stand to be corrected, but I vaguely remember that there was a letter that was drafted that was sent, possibly to Mr Maroun, giving an update on what the current position was in relation to that particular site in relation to obviously the RMS objection, and so forth.

Can I draw your attention to the expression "Mr Maroun needs our assistance"?---Yes.

20 Did you read that as a statement by Mr Hawatt that Mr Maroun needed the assistance of you and him in this regard?---I took it as council, but I didn't - I'm not sure what his thinking was in relation to that comment.

Can I take you to page 114 in this volume, pages 114 through to 120. If you can go to page 120, it indicates that it is a letter to the applicant from Mr Pratt, Team Leader, Planning, dated 20 August 2015. Can you see that?---I do, yes.

30 You would have been aware of this letter? It's a critique of the deficiencies as seen by council in the development application at that stage?---I don't recall seeing the letter, but at some point I probably was made aware of it, yes.

Can you see that on page 120, a bit over halfway down, in a paragraph commencing, "In light of the issues raised above" - I'll read the paragraph:

40 *In light of the issues raised above, in particular the excessive non-compliance with our statutory height limit, and the lack of justifications provided in the Clause 4.6 submission, and the poor urban design outcome which provides an eight storey street wall contrary to Council's DCP with no clear differentiation of a base and upper element, it is considered that*

this application cannot be supported in its present form. In this regard, the application should be withdrawn and the issues raised in this letter be addressed prior to resubmission.

If I can just take you to some particular aspects - on page 115, do you see the subheading "Clause 4.6 Submission"?---I do, sir, yes.

10

Can you see the material in the second-last paragraph:

A significant component of this assessment is demonstrating how the variation to the development standard leads to a better environmental outcome.

And over the page, page 116, the second sentence in the first paragraph:

20

It is not sufficient merely to demonstrate that the non-complying development remains consistent with the objectives of the particular development standard or the objectives for development within the zone.

Did you see a copy of this letter?---As I said before, I don't recall seeing this, no.

30

You didn't have any input into its drafting?---Not that I can recall.

Can I take you to page 145, please.---Yes.

That's a letter, if you look at page 146, to the applicant from Ms Kocak, dated 20 October 2015, which refers to the 20 August letter and says that if the information sought in the 20 August letter isn't provided within 14 days, the application will be refused. Do you see that?---I do.

40

Can I take you to page 147. This is an entry which suggests a meeting being organised possibly on 21 October 2015, but I'm going to take you to some material suggesting that it was the next day. The entry is addressed to Mr Gouvatsos, Ms Kocak and you, and it is in relation to 538-546 Canterbury Road, as well as 445. It identifies the other participants in the meeting as George Anton,

Tony Jreige and Jimmy Maroun. Do you see that?---I do.

If I take you then to page 148, can you see that it's a council form for the receipt of amended or additional plans?---Yes.

It's dated 23 October, but there's another date on the form itself that says 22 October 2015. Do you see the handwritten date?---I do.

10

Then over the page, I want to suggest to you that although there are amendments on them, these are amended plans that were received by council on 22 October 2015. If I take you then to page 159 as well, there is a document headed "4.6 Variation Statement (clause 4.3 building height)" that was, I suggest to you, received at the same time, albeit it doesn't actually have a date on it at all. Do you see that?---I do see it, yes.

20

Can I take you, then, to exhibit 210, a copy of exercise book notes. If you could go, please, to page 11, can you see that this is in your handwriting?---Yes, it is.

It has the date 29 October 2015 on it, and it's in relation to 538-546 Canterbury Road, Campsie. It has four names - Jimmy Maroun, George Anton, Tony Jreige and Katrina?---Yes.

What does that note tell you?---It's likely that it was a meeting that we had, yes.

30

That you were present at?---Yes.

Who was Katrina?---I don't know.

Not on your staff?---I don't believe so, no. No.

Can I take you back to volume 17 - - -

40

THE COMMISSIONER: I'm sorry, just before we leave that, did you take the note of the date, what it was concerning and the participants, or the attendees, at the time the meeting started? Was that your practice?---That was my ordinary practice, yes.

So you have your notebook there; you make those notes; but then you don't make a note at all about what was discussed or what was resolved or any action items? It just seems

rather unusual.---Yeah. If you know me, it wasn't unusual. As I've given evidence before, I wasn't vigilant in taking minutes. In some cases I did. I used to sort of put little notes about what needed doing, but not always the case.

So what was the point of recording just the date and that Messrs Maroun, Anton, et cetera, were there?---I don't know.

10

It seems pointless?---I guess with the benefit of hindsight, yes, but, I mean, that's just how it works. In some meetings, you sort of - you get caught up in discussions, so that you don't really take notes. That may have been one occasion, and that wasn't uncommon for me, yes.

20

MR BUCHANAN: Can I take you to a document that has a bearing on this. Back in volume 17, page 169, do you see that that's a memorandum to file written by Ms Kocak?---I do, yes.

In respect of 538 Canterbury Road?---Yes.

And that the date is 29 October 2015. Do you see that?---Yes.

It's headed "Meeting re DA 243/2015" and it reads:

30

Tony from Urban Link ...

Urban Link was the name of the firm of architects that Tony Jreige worked with?---That's right. That was him. He was Urban Link.

Then:

40

... explained amended plans including units earmarked for VPA.

That's voluntary planning agreement?---Yes.

Then:

Spiro advised they need to provide written submission addressing issues raised in council's letter.

Pausing there, that would be Mr Pratt's letter?---That one and probably Mine's letter as well, subsequent letter. I think she sent one that you showed me.

But that's one saying, "If you don't provide what's required in Mr Pratt's letter, we are going to refuse this"?---Yes.

10 So it must be Mr Pratt's letter?---Yes. In essence, yes.

Then there's a dot point:

No VPA will be submitted.

That must be a reference to what Ms Kocak understood was being said on Mr Maroun's side of the table?---I would imagine so, yes.

20 Then it reads:

Confirmed that this DA cannot be determined in 2015 as there are still outstanding matters + not enough IHAP meeting before end of this year.

Do you see that?---I do.

30 Now, do you have a recollection of Ms Kocak being at the meeting?---I believe she was at one meeting, but I don't know whether it was this one. At the very least, one meeting I remember she was there.

I'm just trying to suggest an alternative possibility, that she received information from someone else who was at the meeting, such as you, and made this note?---I'm not sure, to be honest with you.

40 Because it's strange, isn't it, that you made a note in your exercise book of the attendees of a meeting at which you were obviously present, but there's no reference to Mine being there?---It is, it is strange, but it's not beyond the realms of possibility that I just didn't put her name there. I remember she was at at least one meeting with Mr Maroun in relation to this application, but I'm not sure whether it was on 29 October.

The word "Katrina" in your exercise book entry isn't a typo for "Mine"?---No, I don't believe so, no.

Can I take you, please, to page 174. This is another email to you from your PA, this time on 22 December 2015, indicating that Mr Maroun wanted to talk to you on the phone?---Yes.

10 Can I take you then to page 175. This is an email to Ms Kocak by you on 4 January 2016 saying:

Hi Mine

I spoke to Jimmy Maroun just now.

*I said to Jimmy I **could not** [you emphasised "could not"] commit to a timeframe for determination until I knew whether the changes were supportable.*

20

Can you please review the amended DA and s.96 package as a priority as soon as you return from leave and see if the changes are supportable. I'm going to be away until 27 January but if you want to provide feedback to the applicant before I return please do.

Do you see that?---I do.

30

There's nothing in there asking her to review the clause 4.6 submission?---Well, I just assume that the clause 4.6 formed part of the amended DA package. That's just a planning reference we normally - we don't - - -

I see.---Yes, yes.

40

Was the clause 4.6 submission problematic, in your opinion?---The one that was originally proposed, I believe so. I think the original design, I believe, was problematic as well. So it stands to reason that obviously if the design is not appropriate, then the clause 4.6 is not appropriate.

By this, I mean the clause 4.6 submission provided at the time of the provision of the amended plans on 22 October 2015.---Sorry.

I just refer you back to page 159, that clause 4.6 variation statement, as it was called.---Sorry, I misinterpreted that as being the original application that was lodged.

10 That's all right. What I'm just trying to ascertain is whether, as at the time that you sent that email to Ms Kocak asking her to review the package, you had a view about the clause 4.6 submission that had been lodged in October 2015?---I don't believe I actually - and I apologise if I'm getting the timing wrong, but I don't believe that I actually reviewed this. That's why I asked Mine to do so.

20 When you say "reviewed this", you're talking about the 4.6 variation statement starting at page 159 of volume 17?---Yeah, I'm assuming that this was actually what was submitted. You took me to my email - sorry, I've lost the page now.

Page 175.---Yes. In my email, I say, "Can you please review the amended package as a priority", so I'm not sure if that clause 4.6 formed part of that amended package that I'm referring to in that email.

30 Do you have a memory of receiving a clause 4.6 submission after January 2016 in respect of this DA?---The answer is yes. There was an amended - I mean, again, these were - from memory, there were a number of amendments that went through the process, so I would imagine that there would have been clause 4.6 updates accordingly to correspond with those variations. I'm not sure if this is the final one that was actually submitted. That's all I'm just saying.

MR BUCHANAN: Commissioner, it's a little bit before 11.30, but this would be a convenient moment to have a break before moving to the next piece of evidence.

40 THE COMMISSIONER: All right. We'll have the morning tea break and resume at 5 to 12.

SHORT ADJOURNMENT

[11.33am]

MR BUCHANAN: Mr Stavis, if you could listen to this

recording, please, that will be played and watch the transcript of it as it appears on the screen. I can indicate to you that the recording includes some Arabic language. The Arabic language has been translated and appears in square brackets in the transcript.

Commissioner, if we could play, please, recording LII01518 recorded on 4 January 2016, commencing at 1.16pm.

10

RECORDING PLAYED AND TRANSCRIPT DISPLAYED

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

THE COMMISSIONER: The audio file and transcript of recording LII01518 recorded on 4 January 2016 at 1.16pm will be exhibit 216.

20

#EXH-216 - TRANSCRIPT SESSION 1518

MR BUCHANAN: Mr Stavis, did you recognise the voices of Mr Azzi and Mr Hawatt?---Yes, sir.

You don't speak Arabic, do you?---No.

30

Did you follow the conversation to the extent that it was translated and that the English language part of the recording was transcribed in the transcript on the screen?---I think I got the gist of it, yes.

Mr Azzi was talking about a telephone conversation with you. If you have a look at page 2 of the transcript, a bit over halfway down the page, Mr Azzi says:

40

[I spoke with uh because. Today Spiro called me and I was talking to him] ...

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

That was in Arabic and it has been translated in the transcript. I wonder if I can just give you the opportunity to read again page 2 to the top of page 4?---Okay.

If we could give the witness an opportunity to do that?---Okay.

After the first entry attributed to Mr Azzi on page 4 of the transcript, Mr Hawatt and Mr Azzi continue the conversation and they refer to a "he" and a "him", but I suggest to you it's plain they are talking about Mr Maroun, not you?---Yeah, I accept that.

10

Can I take you back, though, to the conversation that Mr Azzi recounted to Mr Hawatt that he had had with you on the telephone. Was Mr Azzi's account of what you said to him correct? I'll take you in particular to bits of it, just so that you have an opportunity to respond to each bit. On page 3, at the top of the page, Mr Azzi said:

[He opened up the subject of] the carwash.

20

That would be a reference to 538 Canterbury Road; do you accept that?---Yes.

Then if I can take you to the middle of that page, Mr Azzi said:

Yeah [he said to me, he said] "Pierre [he said to me, I want to do] review [on it]." He said, "but I have been waiting] for two months [and I spoke with that Danny Arrage and they spoke to him about the] 4.6 alright?

30

Just pausing there, did you know a Danny Arrage?---No, I don't remember a Danny Arrage, to be honest with you.

Thank you. But it seems that Mr Azzi is recounting words that he attributed to you to the effect, "Pierre, I want to do a review on it, but I have been waiting for two months". Do you see that?---I do, yes.

40

Then below that, Mr Azzi says:

[But he told them "you have to do something that is] community benefit or at least improve the unit [you understand how]?

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

In the context to the reference to 4.6 just before that by Mr Azzi, it would seem that he was recounting you telling Mr Azzi that Mr Maroun needed to do something to improve the 4.6 submission, or to improve the position of Mr Maroun in relation to clause 4.6, when it came to the assessment of the DA. Do you see that?---Yes, I do.

10 Now that I've taken you to that part, do you recall having a conversation with Mr Azzi and telling him words to that effect?---Yeah. As I've sort of given evidence before, Pierre Azzi didn't have a great grasp of planning, so I may have said other things as well that he may not have recounted.

Yes, certainly.---But I do recall speaking to Pierre Azzi about the deficiencies of that application, yes.

20 In respect of clause 4.6?---Clause 4.6 and also the design in general, from memory.

Then, towards the bottom of the page, Mr Azzi says:

[He said to me, "I spoke to them and they haven't replied to me yet].

- [he said to me] "but don't forget" Spiro [was telling me] ...

30 Going over to page 4 of the transcript:

[If they don't want,] if he doesn't get back to me, I want to refuse it. [I said to him,] "Spiro wait hang on, don't do anything until we get back to you. [He said to me], "alright."

40 So was there an exchange between you and Mr Azzi on the phone in which you indicated that there had been a failure of Mr Maroun or his architects to provide material that was sought and you were inclined to refuse the DA because the information wasn't being provided?---I believe - the best of my recollection is that they took considerable time to actually submit some amendments, yes.

So is it likely that you said to Mr Azzi that you're inclined to refuse the DA if they don't provide the

information?---It's possible, yes.

And is it possible that when you said something to that effect to Mr Azzi, he said words to the effect, "Spiro, wait, hang on, don't do anything until we get back to you"?---That was a very typical reaction from Mr Azzi, yes.

And is it possible that you responded to the effect of, "All right"?---I may have said that. It is possible.

10

When Mr Azzi is saying "until we get back to you", you would have understood, of course, he meant him and/or Mr Hawatt?---Yes.

Can I just take you back to page 2 of the transcript, where Mr Azzi says a bit over halfway down the page:

[I spoke with uh because. Today Spiro called me and I was talking to him] ...

20

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

Was it the case that from time to time you initiated calls to Mr Azzi?---Yes.

Why did you do that?---I think for reasons that I've outlined previously in my evidence, that it was practice for me that where councillors had taken an interest in applications, that I would call them and give them updates on the status of those applications.

30

Would it be fair to say, though, that the people you called in that respect were Councillors Azzi and Hawatt, to the almost practical exclusion of any other councillor?---Yeah. To a lesser extent Fadwa Kebbe as well.

Would it be right to say that you had regular telephone contact with Mr Azzi, in particular, and Mr Hawatt?---Yes.

40

But you didn't have regular telephone contact with Fadwa Kebbe, did you?---Not as frequent as the other two.

Nothing like as frequent, I suggest to you?---No, no. That's right. Yes, sorry.

Mr Azzi said, still on page 2, towards the bottom of the page:

... [I was speaking to him and I said to him] I want you [maybe tomorrow I will call him and he will come over to my place and we will have a drink. I said to him,] "Look Michael [is travelling] let's catch up before he goes. [I said to him we are not going to (unintelligible) now] we're gonna sit down and have a drink together.

10

Do you see that in the transcript?---I do. I do, yes.

Would it be fair to say that that was not uncommon, that is to say, Mr Azzi inviting you to come over and have a drink at his place?---Yes, I would accept that.

It was not uncommon for you to go over to his place and have a drink with him?---I would accept that, too, yes.

20

On those occasions, Mr Hawatt was often there?---Yes, yes.

I accept that you've given evidence that Mr Azzi didn't have a good grasp of planning and that it's likely you talked about other issues you had with the DA, apart from those which were recounted by Mr Azzi to Mr Hawatt in the conversation you had had with Mr Azzi, but you at page 4, towards the top of the page, I want to suggest to you, received a direction from Mr Azzi:

30

... "Spiro wait hang on, don't do anything until we get back to you.

And you acceded to that direction?---As I said before, that's possible, yes.

40

Would it be right to say that that sort of exchange was not uncommon - that is to say, you might express to Mr Azzi and/or Mr Hawatt, when you're dealing with them face to face and you had the opportunity to reflect upon issues that you're discussing with them, frustration with those issues and/or with the development proponent concerned, and that Mr Azzi and/or Mr Hawatt might indicate to you that you shouldn't take precipitous action unfavourable to the proponent until essentially they agreed in it?---I think it was more a case of, yes, them giving instructions not to do anything and it was more a case of them, I would imagine, talking to whoever the proponent was.

Yes, I'm not suggesting that that wouldn't have occurred as well, but I'm just focusing upon the exchange which occurs in those situations between you and Mr Azzi and/or Mr Hawatt, that essentially they try to dissuade you from taking precipitous action that would be unfavourable to the developer and for there to be an opportunity, say, for them to take it up with the developer and for them to then get back to you?---Yes, I think that's fair comment.

10

You, generally speaking, where you had expressed frustrations of that kind with Mr Azzi and/or Mr Hawatt in such circumstances, did not take precipitous action where you'd been asked not to do so by Mr Azzi and/or Mr Hawatt; is that fair to say?---It is, yes.

20

Why was that?---Because I knew that they were - as I've given evidence before, they had the, I guess, power in the council and at the risk of potentially risking my employment at the council, given what happened with the previous director, that's the main reason.

30

I appreciate that this is not something that one can infer from a third party's account of a conversation with you, but on the evidence that we've seen so far of your dealings with Mr Azzi and/or Mr Hawatt in respect of particular development proponents' applications or submissions, you do not appear to have been a reluctant person in dealing with them; you appear to have been a willing person dealing with them in relation to the particular matters that were discussed. Do you see what I'm asking you?---Sort of.

Do you accept that you were a willing person in dealing with them in respect of the matters that you raised with them and they raised with you?---Yeah, I was compliant in terms of their, I guess, instructions, if you want to call them that. I accept that, yes.

40

Is there anything you would like to say as to why you were compliant?---For the reason that I stated before, really. I mean, I was always concerned that they had influence on the council, obviously, and to some - to a large extent over the general manager as well, from what I saw. So that was probably the main reasons why.

An objective observer might think - and I put this to you and invite your response - that a person in your situation

wouldn't need to be willingly involved in the exchanges that you had with Mr Azzi and/or Mr Hawatt in relation to these matters and that they might be unhappy about being, as it were, conscripted into being the water carrier for these councillors, these two councillors, and for that reason be reluctant to be involved?---You're talking about me?

Yes.

10

MR PARARAJASINGHAM: Commissioner, could I just raise an objection. I think the witness might be struggling with this concept of "willingly". In answer to a question which did have that word, he came back with "compliant". I just wonder whether counsel assisting could perhaps rephrase that aspect of the question. It appears to me that the witness is having some difficulty understanding that in the context of the question that's being asked.

20

MR BUCHANAN: You know what I mean by "willing", don't you, Mr Stavis?---Not really. From that point of view, no, sorry.

Oh, I see. You were an enthusiastic partner with these two men in the exchanges you had with them about the matters that you raised with them and they with you, weren't you?---I wouldn't say I was enthusiastic, no. No.

30

You happily went along, didn't you, with the arrangement whereby you provided them with both information and the service of directing particular matters within your control, didn't you?---I wasn't happy going along. I was compliant, really, to be honest with you, for reasons that I previously stated.

You were obviously happy; you were laughing in a number of these conversations with Mr Hawatt, weren't you?---Yeah, but that's how - that was my way of keeping them on side.

40

There's nothing in the conversations which we've heard evidence of so far that suggests the slightest bit of reluctance on your part to do their bidding?---I disagree. I think - - -

What was there that you can tell us about?---Well, I heard me expressing concerns with applications in conversations with Mr Hawatt.

You're telling them what the issues are?---Correct.

Yes.---Yes.

We've been through this already. You knew, didn't you, that if these issues weren't addressed, then you wouldn't be able to justify an approval being granted for the applications; that's fair, isn't it?---I accept that, yes.

10

So what you're doing is you're telling them, "Look, if you want these guys' applications to be approved, then they're going to have to play ball"?---I was trying to find solutions, exactly.

You weren't, were you, letting those applications proceed to the point of refusal for want of material that you could see was needed if they were to have a veneer of respectability in being approved?---Sorry, can you ask the question again?

20

If there was to be apparent justification for approval, then you could see that there were problems, that there were holes in their applications that needed to be covered over?---I wouldn't use the words "covered over". They needed to address the issues for me to be comfortable with putting a recommendation up.

Can I take you now, please, to volume 17, which should still be there in front of you, page 186. You can see that that is a memo by you, apparently, to Ms Kocak, dated 6 January 2016, in respect of 538 Canterbury Road; is that right?---Yes, it is, yes.

30

You say to Ms Kocak:

I was asked to give my initial thoughts on the DA & S.96. I've marked up in "red" what changes I think need to be made - your thoughts would be appreciated on my return from leave on 27/1/16.

40

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

By whom were you asked to give your initial thoughts on the DA and section 96?---It was probably the proponent or the proponent's representatives, possibly in relation to

a meeting where they handed me some, I guess, drawings or the like, yeah.

Well, some amended plans had been lodged in October 2015. Were you being asked by early January 2016 for your initial thoughts on them?---I can't be a hundred per cent certain of that, to be honest with you.

10 If I could take you, then, to the material on the bottom half of page 186, it appears to be from Ms Kocak:

** changes marked in red noted & agreed that such changes will assist in cl.4.6 argument for additional floors - the original DA changes including: increased front setbacks, & communal open space & increased landscaping.*

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

Can I take you to page 177. It's in very tiny print. It's a few pages back, and it's a series of plans that have annotations in red ink. Can I just check that you have a colour copy?---I do, yes.

Do you see on page 177, the first of those pages, some red ink annotation?---Yes, I do.

30 Is that your handwriting?---I believe so, yes.

There's also a blue ink annotation with the numerals "43" in a circle. Is that your annotation?---That I can't be a hundred per cent certain of, sorry.

Thank you. If you could turn over to the next page, do you see that there's a quantity of red ink annotation on that page. Is that your annotation?---Yes.

40 Going over to the next page, there's some more red ink annotation. That is yours as well?---Yes.

And likewise on the next page?---Yes.

And the next page?---Yes.

And the next page?---Yes.

And the next page?---Yes.

But not, as I can see it, on page 184 or page 185, unless I've missed it?---No, I can't see anything, either.

10 Was Ms Kocak's opinion that she expressed on 25 January 2016 recorded on page 186 of volume 17 correct, that is to say, that your changes would assist in the clause 4.6 argument for additional floors?---I'm not sure if these plans are actually showing the additional floors, because I think these plans are the original approval for the six floors.

Yes, but are they changes to the original six floors which would assist in the clause 4.6 argument for the additional floors?---Part of it, yes. Part of the argument, I would imagine, yes.

20 The argument would be the applicant's argument; correct?---These notations were, I guess, me trying to clarify, I guess, what I interpreted to be a better planning outcome that would assist the applicant. It's not to say that these are hard and fast, I guess, requirements on my behalf of the applicant. But that whole argument about better planning outcome that we discussed yesterday - this was just my way of showing, I guess, a way of addressing part of that argument.

30 The better planning outcome criterion for clause 4.6?---Yes, sir.

Can I take you, then, to volume 15, which might still be in front of you, page 14. I think we looked at this yesterday in the context of 570 Canterbury Road, but just to remind you that council on 6 November 2015 sent to the department the planning proposal to amend the LEP in respect of 570 and 538 Canterbury Road. You can see that commences on page 16.---Yes.

40 I think we looked at it also yesterday in the context of 570 Canterbury Road. Can we go to pages 58 to 59, please, in this volume. Do you remember that this is the email from Louise Starkey of the department on 14 December 2015, so this is shortly after that planning proposal was sent to the department, advising that a preliminary assessment had been undertaken and that to continue with the assessment, the department requested the clarification/information in

respect of the seven matters itemised in her email; do you recall that?---I do, yes.

You were made aware of that email; do you recall that?---I do, yes.

And ultimately you talked to the department about it?---I did, that's right.

10 Can I take you back to page 58?---Yes.

At the top of page 58 is the email from Mr Farleigh of 14 January 2016 in which he spoke to Mr Gouvatsos about the email from the department and said:

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

20 *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 for their consideration thereof in relation to any Gateway Determination.*

30 It was partly, was it, in response to Mr Gouvatsos passing that on to you, if you go to page 57, in his email to you of 4 February 2016 that ultimately led to you talking to the department?---That's right, yes.

There you can see that Mr Gouvatsos, if I can just remind you, told you that the department has raised some initial concerns and requested further information:

We are working through this. Note that this one...

40 And it's a case, I think, of both sites, but it's the planning proposal he's talking about:

... 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.

Can I suggest to you that you would have read Ms Starkey's email as showing a concern that the planning proposal had the potential to be used by developers to justify a clause 4.6 submission lodged in respect of a DA?---Sorry, that I would, or - - -

10

Yes.---No, I don't accept that.

What could Ms Starkey's motivation or interest or concern have been that would have caused her to ask for details of current or pending DAs in respect of the sites otherwise?---Well, as I tried to explain yesterday, probably to put it in context of what was to be informed of what was actually being proposed.

20

But one needs context to understand the significance of what's being proposed, which was in this case the planning proposal; correct? What she's saying is, to use your words, that the DAs were a part of the context in which the planning proposals needed to be understood?---Look, I'm only speculating that that would have been her reasons, but, yes, I mean, look, it gives it more context, obviously, for consideration.

30

That is to say, the plain inference is a concern that the planning proposals are being used by developers as a way of getting around planning controls which their DAs would otherwise be unable to meet?---Look, I think I tried to explain yesterday, in a DA situation, planning proposals are not a relevant head of consideration when you're doing an assessment.

40

But if you're doing a clause 4.6 submission assessment, then you know that planning proposals and resolutions for them were taken into account by your department whilst you were the director?---I don't have the planning reports in front of me, but to the best of my recollection they were used - that was just to inform the reader whether there was a resolution for a planning proposal in place or whether a planning proposal had been proposed. But in terms of when you're assessing a development application, they're irrelevant. It has to stack up on its own merit - the proposal, that is, the DA.

Against the existing planning control?---Correct, correct.

10 I want to suggest, Mr Stavis, that's a different approach from the approach that we've seen in the evidence to date. That is to say, on the evidence that we've seen so far, it would seem that the officers' reports that have recommended acceptance of a 4.6 submission have suggested that where there has been a resolution for a planning proposal, that is not only a relevant consideration in considering whether a 4.6 submission should be accepted but in fact a factor that should be given considerable weight?---Oh, I don't agree with that.

Is there anything else you want to tell us on that?---No, just that the clause 4.6 provisions are clear in terms of what you need to look at when assessing a breach of a control.

20 So are you telling us that at no stage while you were director was it your view that the fact of a planning proposal or of a resolution for a planning proposal should influence the question of whether a clause 4.6 submission should be accepted?---Look, if you take the strict interpretation of clause 4.6, from what I remember, it should not. We did place some weight on it, obviously, to contextualise, I guess, the history, but unless you are able to demonstrate the actual compliance with the provisions in clause 4.6, then really that's all that matters, yes.

30

I just want to be clear about this, Mr Stavis. You are saying that under your directorship, clause 4.6 submissions were recommended to be accepted on the basis, amongst others, that there had been a resolution to vary the relevant planning control?---I don't recall that, no. No. To the best of my recollection, they were used to inform the reader of the history of a particular site and what the council obviously were thinking at the time.

40 What's the relevance of what the council were thinking at the time to an assessment of whether a clause 4.6 submission to vary a height control should be accepted?---Very little, as I said. Very little. Really, as I said, at the risk of repeating myself, it's the provisions of clause 4.6 that should be the main things that you look at - or the only things, really.

Just to check that I'm not missing something here, are you saying that the approach of your division was that clause 4.6 submissions could be accepted or should be accepted having regard to council resolutions for planning proposals to vary a planning control by taking it into account in respect of the criteria that are required to be taken into account under clause 4.6?---No.

10 You're not saying that?---No.

In that case, I'm not going to do it now, but I am going to have to take you to a quantity of material that I want to suggest that the Commission has that clearly shows a pattern whereby under your directorship - indeed, reports that were under your name - the council officers recommended that clause 4.6 submissions be accepted on, amongst other bases, the fact that there had been a resolution of council for a planning proposal to vary the planning control concerned?---In those cases, it would be a very minor factor.

20

I don't think those words appear anywhere in the officers' reports - anywhere at all.---Okay. I take your word for it. I'm just telling you what I think.

That, in that case, never got reflected in the officers' reports that went out in your name?---I don't have copies of those reports in front of me, sir, I'm sorry.

30

By early 2016, you knew that the DAs for 538 and 570 Canterbury Road were DAs that Mr Hawatt and Mr Azzi wanted to see progressed to approval?---I think that's fair comment, yes.

Were they DAs that Mr Montague had indicated he wanted to see progressed to approval?---Yes.

40

Would it be right to say that you wanted to progress the 538 and 570 DAs to approval because you knew that they were DAs that Mr Hawatt, Mr Azzi and Mr Montague wanted to see progressed to approval?---I think that's fair, yes.

Can I take you to page 187 in volume 17, please.

THE COMMISSIONER: Sorry, what page?

MR BUCHANAN: Sorry, Commissioner, page 187.

THE WITNESS: I don't believe I have that, volume 7.

MR BUCHANAN: I'm sorry. Volume 17 in exhibit 69.---Volume 17, yes. Page, sorry?

10 Page 187. I just take you to it so that you can see what was happening. This is 4 February 2016, an email by you to Mr Gouvatsos:

Please refer the [538 and 570] DAs to Michael Brewer at Willana.

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

20 Then can you see on 5 February, the next page, 188, that Ms Rahme took a call from Mr Maroun, who wanted to speak with you urgently about the status of the 538 application?---I see that, yes.

Then at page 189, the same day but after that message from Ms Rahme, you emailed Mr Gouvatsos. The heading is "536 Canterbury Road DA". I'm now going back to the body of the text:

30 *Change of instructions. Give this one back to Mine to prepare the report. Mine and I have spoken about the changes previously and we both agree that the proposal is now supportable given the improvements made in relation to the existing approval as well. Must go to March meeting.*

570-580 Canterbury Rd DA can go to April CDC meeting and I'd like an external planning consultant to do.

40 Stopping there, are the numerals "536" in the subject header a typo for "538"?---I believe so, yes.

In that email to Mr Gouvatsos, you said in bold, "Must go to March meeting." Why did you say that?---I believe the only reason I would say that would be mainly because I would have got instructions mainly from the GM, I'd say.

Do you have a recollection in this particular

respect?---Yeah, I'm not sure if it was that particular - - -

The car wash site?---Yes. I remember the car wash site and the other one on the other corner, 570 Canterbury Road.

The carpet shop site?---Yes, that Jim wanted those to go ASAP - Jim Montague.

10 Before we leave that email, can I just take you up on the third sentence:

Mine and I have spoken about the changes previously and we both agree that the proposal is now supportable given the improvements made in relation to the existing approval as well.

20 Are you sure that Ms Kocak agreed with you that the proposal was now supportable?---I do. I recall her saying so, and I believe you showed me a memo from me to her with her comments at the bottom as well.

That's quite correct, but all that said was that the changes that you proposed to the plans would assist the applicant in his clause 4.6 argument; it didn't say that she supported the DA?---Look, if - in planning terms, that means she supported the DA.

30 If I indicate to you that the evidence Ms Kocak has given to the Commission is that she agreed with Mr Farleigh's opinion that the matter should not be progressed until there was some certainty in relation to the planning proposal, what would you say?---I don't recall her ever saying that to me, sorry.

40 Can I take you then to page 190, please. That's an email dated 5 February 2017 from you to Mr Gouvatsos, responding to an email from Mr Gouvatsos to you on 5 February at 12.59pm:

I hope we have all the referrals for this to happen. Mine can advise you.

Then you responded:

If not we will have to do what we did last

time, delegate to GM to issue approval once received.

Why did you say that on this occasion in respect of this site?---Because of the urgency that - or the instructions that were given to me by Jim Montague in terms of the necessity for these applications, or this application, to go before the CDC.

10 Did you take legal advice on the question of whether to delegate to the GM to issue approval, once received, in respect of this DA?---I don't believe I did. I think I relied on the fact that if you applied the same logic in the other DA that we spoke about yesterday, then it stands to reason that you would apply the same logic with this application.

20 When you're saying "the same logic", are you referring to your evidence that you had a conversation with Pikes & Verekers Lawyers?---Yes, sir.

Where you say the advice you were given was to the effect that the device of delegating to the GM to issue a consent once approvals were received was lawful?---Yes.

30 Was the opinion that you expressed to Mr Gouvatsos in this email an attempt to get around the requirements of the SEPP (Infrastructure) 2007 in respect of the consent authority not approving a development application that triggered the necessity for approvals from the RMS or Sydney Trains?---No, sir.

Can I take you to page 198, please. This is the business papers for the IHAP meeting scheduled for 29 February 2016, and at the front of it can you see that starting on page 198, there were summaries of reports?---Yes, sir.

40 The first one was in respect of the section 96 application?---Yes, sir, yes.

Then going to page 199, the second one was in respect of the DA for the additional two floors?---Yes, sir.

Can I ask you about dot point 3 on page 199 in respect of 538 Canterbury Road. It reads:

A condition of consent has also been

imposed to reduce the apparent bulk of the building on the proposed top two floors to enable a more proportional corner element, reducing the overall bulk of the building. This is in line with recent discussions between the applicant, our officers and Director City Planning.

10

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

Did you draft that?---That dot point?

Yes.---I don't know if I did. I don't believe so.

What discussions was it referring to?---I can't be certain, sir, I'm sorry.

20

Is it possible that there were discussions involving you and not Ms Kocak with the applicant?---I don't think it is possible, because Ms Kocak prepared the report based on the latest information. This appears to be a condition requiring further changes to be made to the latest submission that was lodged. But, yeah, so - yeah. That's the best I can do in relation to that, I'm sorry.

MR BUCHANAN: I note the time, Commissioner.

30

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

LUNCHEON ADJOURNMENT

[1.00pm]

40