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INDEPENDENT COMMISSION AGAINST CORRUPTION

PATRICIA McDONALD SC
COMMISSIONER

PUBLIC HEARING

OPERATION DASHA

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON FRIDAY 17 AUGUST 2018

AT 9.46AM

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

THE COMMISSIONER: Mr Stavis.

<SPIRO STAVIS, sworn

[9.47am]

MR BUCHANAN: Commissioner, before Mr Stavis resumes his evidence, could I tender a document, and we can, I think, bring it up on the screen.

10

THE COMMISSIONER: Yes.

MR BUCHANAN: This is an extract from the business papers of the meeting of council on 21 March 2013 in respect of an agenda item, "Review of Delegations". The pages through to the top of page 7 comprise the officer's report, and then at page 7 and following is the resolution as to delegations, which applied at the time under examination in this inquiry. For example, schedule 3 on page 8, at the bottom of page 8, identified two committees. If we go over to page 9, one of those committees was the city development committee. This provides evidence of the scope of the delegated authority which the city development committee had. In my submission, it is desirable to have the full resolution before the Commission because from time to time questions about delegations have arisen.

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THE COMMISSIONER: The extract from the business papers of the council meeting held on 21 March 2013, consisting of the officer's report on review of delegations and the council's resolutions, will be exhibit 222.

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#EXH-222 - EXTRACT FROM COUNCIL MEETING BUSINESS PAPERS DATED 21 MARCH 2013 THAT DEALS WITH A REVIEW OF DELEGATIONS

MR BUCHANAN: Commissioner, I also tender a bundle of papers which, on the front page, start with an extract from the minutes of the city development committee held on 5 December 2013. At the bottom of the first page is an agenda item "Design Review Panel" and a resolution appears there. Commissioner, I will take you through the various papers that comprise this bundle, but they all concern the question of a design review panel at Canterbury City Council and it could be identified as a bundle of papers relating to design review panel.

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THE COMMISSIONER: The bundle of papers concerning the issue of a design review panel at Canterbury City Council, commencing with the city development committee resolution on 5 December 2013, will be exhibit 223.

#EXH-223 - BUNDLE OF DOCUMENTS RELATING TO DESIGN & REVIEW PANEL COMMENCING 5 DECEMBER 2013

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MR BUCHANAN: If we could provide Mr Stavis with a copy of the exhibit before I take the Commission through the components of it. Just exhibit 223.

Mr Stavis, if you wouldn't mind following me as I take the Commissioner through the contents of this document just to identify each component?---Sure.

20

The pages are paginated, Commissioner, on the bottom right-hand side. So the first document is a resolution, and underneath that at page 2 is a report by the Director City Planning to that meeting of the city development committee on 5 December 2013 concerning a design review panel. That concludes at page 4. At page 5 and concluding on page 21 is a copy of SEPP 65. It's an historical copy. If you see in the middle of the first page, that is to say page 5 of the bundle, it indicates that its currency was October 2011 to July 2015.---October 11th or the 1st of October?

30

1 October 2011 through to 16 July 2015.---Yes.

40

Then if we go to page 22, please, you can see on page 22 an extract from the minutes of the meeting of council held on 24 September 2015. In agenda item 11 is "Urban Design Review"; a resolution appears there. On page 23 is the officer's report for that agenda item. It commences on page 23 and concludes on page 40. Turning to page 41, that page is an extract of the minutes of the meeting of council held on 29 October 2015, and agenda item 6 was "Independent Hearing and Assessment Panel Review", and there's a motion and there's a resolution which appear on pages 41 and 42. Then on page 43 is a report by the Director Corporate Services to that meeting of council on the Independent Hearing and Assessment Panel review. That report concludes on page 45E. Turning to page 46, page 46 is an extract of

the minutes of the meeting of council held on 25 February 2016. Agenda item 15 was "Urban Design Review Supplementary Report" and a resolution appears there. On page 47 is a copy of the officer's report from the Director City Planning on that agenda item to that meeting of council. That report copy concludes on page 55 of the exhibit, and page 56 going over to page 58 is simply a document from Sutherland Shire Council headed "Design Review Forum (DRF) formerly Architectural Review Advisory Panel". Mr Stavis, if I could take you to page 1, please?---Yes, sir.

When you arrived at Canterbury Council in March 2015, you became aware, did you, that there was under way at that time a process of considering the introduction at council of a design review panel, and I'm looking at the third line of the resolution on page 1, the introduction of a design review panel:

20 *... to support ... advice early in the development assessment process on significant development proposals ...*

Do you see that?---It's at the bottom?

Agenda item 3 is "Design Review Panel".---Yes.

There's a resolution underneath that heading.---Yes, yes.

30 Do you see that the third line of the resolution reads:

... to support the principle of the introduction of a Design Review Panel to provide advice early in the development assessment process on significant development proposals...

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

40 Were you aware, or did you become aware, that council had --

MR PARARAJASINGHAM: Commissioner, would I be able to get a copy of this?

THE COMMISSIONER: Yes.

MR BUCHANAN: Were you aware or did you become aware that council had supported the introduction of a design review panel in principle?---I was, and I believe it was in my KPIs as well to action, yes, so I was.

You subsequently did work on that project?---Yes, sir, as I've given evidence before, yes.

10 You identified, did you, the officer's report to that meeting of the city development committee on 5 December 2013 by your predecessor, which commences at page 2 of exhibit 223?---That I'm not sure about, I'm sorry.

Well, you would have, wouldn't you?---Either myself or Gill Dawson at the time would have, yes.

What was Gill Dawson's role in relation to that project?---That came under her jurisdiction.

20 So the material which informed council's resolution on 5 December 2013 would have been the officer's report?---Yes, yes.

Can you see that in the last two paragraphs on page 2, it is said that, looking at the last sentence on the penultimate paragraph:

30 *To this end, many Councils that experience significant levels of large scale development, have engaged the assistance of design review panels to provide independent input into design issues relating to development applications.*

I'll read on:

40 *Design review panels provide independent and expert advice and assist Councils to achieve high quality design outcomes that can potentially add value and benefit to the applicant as well as to local neighbourhoods and precincts.*

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

Can I take you to page 3 of this report. In the third full paragraph, Mr Occhiuzzi said:

10

Typically, the DRP considers applications for residential and commercial development that is three storeys and above. DRPs normally consider not only the planning instrument and policies of Council, but also the 10 Design Quality Principles contained in State Environmental Planning Policy 65 - Design Quality of Residential Flat Buildings.

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

That SEPP is copied, commencing at page 5?---Yes.

20

Can I take you, then, to page 22. Do you see there an extract of the minutes of the meeting of council held on 24 September 2015, and agenda item 11, "Urban Design Review"?---Yes.

Can you see there's a resolution, moved Councillor Hawatt, seconded Councillor Azzi:

That the matter be deferred for consideration at the next Council meeting to be held on 29 October 2015, to allow Councillors to receive further information.

30

?---Yes, sir.

If we go to page 23, this is the first page of your report to that meeting of council on the agenda item "Urban Design Review"; is that right?---It appears so, yes.

Now, did you write this report?---No. I believe it was written by the external consultant that we had employed to take carriage over this project.

40

And who was that?---Oh, her name escapes. I think it was Naomi - Naomi.

First name Naomi?---I think so, yes. Yes, sir.

Second name?---Oh, I don't remember.

And what discipline did the woman called Naomi bring to bear to the question?---She was - I believe she was an

urban designer that had experience in - I think she worked at the Department of Planning as well, from memory. But she was a consultant.

Did she have expertise in governance or just urban design review?---I don't believe she had any expertise in governance, no.

10 In officer's reports on development applications where the assessment report has been, in the first instance, drafted by an external consultant, you often caused to be inserted in the report a statement to that effect, that it had been drafted by an external consultant, didn't you?---Yes, sir.

I could be wrong, but I haven't found a statement to that effect in this report.---I take your word for it. I haven't read the report. I'm sorry, I haven't refreshed myself with the report, but I take your word for it.

20 It's not in the first dot point, which is where it often appeared in the DA officer's reports.---No. That's correct, yes.

Was there any reason why the fact that there had been input from an external consultant wasn't identified in this officer's report?---No. Most of - the carriage over this particular project was mainly run by Gill Dawson at the time, and I've got no answer why we didn't actually put that statement in here, to be perfectly honest with you.

30

Did you approve the retaining of an external consultant to provide input into the information to be provided to council?---In terms of doing the project and so forth?

Whatever it was that the external consultant did.---Absolutely, yes.

You did?---I did, sir, yes.

40

Who chose the consultant?---I believe that, from memory, Gill and I conducted - Gill Dawson and I conducted interviews about who would, I guess, take carriage over it, but ultimately the decision was mine, obviously.

And how was the shortlist for the interview panel arranged?---That I can't recall, I'm sorry.

Who identified the candidates for the shortlist?---I don't think it was me. I pretty much left that up to the staff to arrange.

Did you take much of a role in the urban design review panel project at council?---An overseeing role sort of at the high level, yes.

10 Did you approve the officer's report, which commences on page 23, that went to the council meeting of 24 September 2015?---I probably did. It's likely that I did, yes.

Was the external consultant a Naomi L'Oste-Brown?---That sounds familiar, yes.

Was she then director of a consultancy called UrbanScope?---That I'm not sure about.

20 Did you have any association with her before she was retained for the work to be done on this project?---No, sir.

Now, did you discuss with Ms Dawson and/or Ms L'Oste-Brown the three options which were presented in the officer's report of 24 September 2015 - I'm sorry, I should reframe that question. I apologise. Do you recall that in this officer's report, three options were provided to council with a recommendation for one of them, and if I can take you to page 27, that might make it easier?---Yes.

30 I vaguely remember that there were a number of options that we presented, yes.

You don't remember that there were three at this point?---It looks like there were three, yes. But, I mean, in terms of the detail - it was a long time ago. I don't really remember the detail of it. But I do remember that we did present a number of options.

40 Do you remember that one of them was recommended to council, namely, option 1? Sorry, if I can assist you, page 23, second-last dot point and last dot point.---Yeah, I do vaguely remember that, yes. Yes.

How was it that option 1 was chosen as the option to recommend to council?---It was a lot of - it was a lot of debate and discussions internally, and we resolved that that would probably be the best option for what we were

looking at.

And when you say "we resolved", you make it sound like a team effort?---It was.

10 Who comprised that team?---Look, I'm not sure, because I know that Gill Dawson - I'm not sure when she left, to be honest with you, but I certainly was in discussions with Naomi in regards to this and quite possibly Gill Dawson as well.

The project continued after the meeting of council on 24 September 2015, didn't it? Do you remember a fourth option was prepared and provided to council?---I don't recall that, sorry.

20 Do you have a recollection of who took over the project in terms of management after Ms Dawson left?---Well, Ms Dawson's replacement was Mitch Noble, I believe.

Yes.---Yes. So I assume it was Mitch Noble.

Can I just ask you about a couple of features of this report. If I take you to page 24, can you see at the top of page 24, under the heading "Background", there is reference to the report by your predecessor and the fact that it was considered by council, or the CDC, it says here, on 5 December 2013?---Yes, sir.

30 And the resolution was quoted. That's in the next couple of paragraphs. Do you see that?---Yes, sir.

And do you see then that there is a paragraph that commences just a bit above the middle of the page:

40 *On 11 December 2014, Council resolved to form a working group of interested councillors to conduct a comprehensive review of the Canterbury Local Environment Plan ... and the Canterbury Development Control Plan ... with a view to addressing the following urban design issues ...*

And then three dot points appear. Do you see that?---I do, yes.

Did that working group of interested councillors - that is

to say, that were to conduct a review of the LEP and the DCP - have input into this report?---I really don't remember, to be honest with you. I'm just trying to think. So this was on 24 September 2015. I don't recall, to be honest with you.

10 Can I ask it another way to see if it assists. Was a draft of this report shown to members of the working group of interested councillors in the review of the LEP and the DCP before the report went to the full council?---That wasn't ordinarily the practice to do that, no, so I would imagine no.

Who were the members of the working group? Who were the councillors who were the members of the working group?---I really don't recall, sorry.

20 It would have included Councillors Azzi and Hawatt, wouldn't it? That's inevitable.---I believe so, yes.

Do you know who the other councillors were?---No, sir, I - - -

30 Were there other councillors?---I don't even know - to be honest with you, I have no recollection of who the members of the working group were. But if - ordinarily councillors that were interested in development were those two councillors that you mentioned, the mayor, obviously - and, look, the others to a lesser extent, yeah.

There's a reference to the first LEP/DCP working group meeting being held on 7 July 2015.---Yes.

Did you attend that meeting?---I did.

Did Ms Dawson attend that meeting?---That I'm not sure about. She may have.

40 Did anyone else from your department attend that meeting?---Apart from possibly Gill - - -

You and Ms Dawson.---I don't believe so, no.

And it's stated in the second-last paragraph:

At that meeting ... Two key issues emerged during the discussion: flexibility in

*planning provisions and controls; and
certainty in assessment outcomes.*

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

10 Can I ask why those two paragraphs about the working group for the review of the LEP and the DCP appear in this report?---I think that was as a result of feedback we got from the working group, I guess. I remember we prepared a presentation to the working group on the LEP and DCP - - -

The LEP and DCP - - -?---Yes, and it's probably as a result of the feedback we were getting from the working group, that that appears there.

20 Can I just ask you about those two key issues, as they're called, that emerged during the discussion of the working group meeting on 7 July 2015. Flexibility in planning provisions - that's in the application of planning controls, isn't it?---I believe so, yes.

Which means it's really code for tolerance of variances, isn't it?---Yes, I believe so.

And it's about the clause 4.6 issue, basically?---No, not necessarily. It's also - yes, I accept that, but it's also about the DCP controls as well.

30 And the second key issue is identified as "certainty in assessment outcomes". From whose point of view?---I don't recall, but I would imagine that would be from council's point of view.

40 Why? Sorry, why do you imagine it would be from council's point of view?---Only because at that point in time, if you recall - I think I've given evidence before that there were concerns about the, I guess, LEP and DCP not working together in terms of the controls and what have you, so I would imagine that that's a statement about adopting changes to the LEP or DCP to provide more certainty in assessment outcomes. I mean, that's just - as I sit here today, that's probably the way I would interpret it.

Can I suggest an alternative way of reading it?---Sure.

That the people who profit most from certainty in

assessment outcomes are development proponents?---Look, I don't see it that way. I think certainty from an assessment officer's point of view - because I recall that there were issues with our assessment planners expressing to me and also to George Gouvatsos about certain planning controls not talking to each other. So, yes, I accept that, and I also accept the other point of view, that it's probably from a council officer's point of view as well.

10 Except that you weren't a member of the working group?---I was there.

Yes, I know you were there, but you weren't a member of the working group?---Look, I don't - - -

Isn't that correct?---I assumed I was, because I was there.

It says "a working group of interested councillors"?---Sure.

20 You would have serviced that working group?---Sure.

But you weren't a member making decisions, were you?---No.

So when it says "two key issues emerged during the discussion", the sources of those two key issues would have been the councillors attending, wouldn't they?---Well, they were the two issues that stick to mind that came out of those working groups, yes.

30 Are they two issues that were expressed by Councillor Azzi and/or Councillor Hawatt at that meeting of 7 July 2015?---Yes.

The next paragraph reads:

The purpose of this report is to address the CDC's resolution on 5 December 2013 and the comments made at the ... working group meeting on 7 July 2015.

40 So that suggests - the way this report is written with that paragraph following upon the identification of the key issues by the councillors working group, being flexibility in planning provisions and controls and certainty in assessment outcomes - that those two philosophies, if I can call it that, informed the direction that this report

took?---So you're talking about the two key issues that emerged?

Yes, yes.---Yes.

Page 56, at about the middle of the page after the dot points, there's a paragraph commencing:

10

Where variations to planning provisions and controls are proposed, an assessment of the above urban design issues by qualified urban design specialists would provide Council with advice on the merits of variations in terms of achieving necessary urban design outcomes.

MR PARARAJASINGHAM: Page 56?

20

THE COMMISSIONER: Page 25.

MR BUCHANAN: I'm sorry, thank you. Page 25, yes.---Yes.

Do you see that almost middle paragraph there:

Where variations to planning provisions and controls are proposed ...

Et cetera?---Yes, sir, yes.

30

If you go over the page to page 26, the second full paragraph reads:

As discussed above, urban design review provides a mechanism for Council to ensure that proposed variations to planning provisions and controls are assessed in relation to achieving necessary urban design outcomes.

40

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

Then if I can take you to the last sentence of that paragraph:

Certainty in the assessment of variations would also be provided to applicants and the community as a consistent urban design

assessment would be undertaken of all development proposals using the same urban design criteria.

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

10 It suggests that the desirability of certainty in assessment outcomes was, as far as the drafters of this report were concerned, to be viewed from the vantage point of development proponents, doesn't it?---To provide certainty in terms of early on in the process, yes, I agree with you. From what I recall, the issue was that we - that the IHAP system, if you like, was towards the end of the assessment process, and they quite often recommended changes. So this was probably a way of - and I know this; it was expressly stated by a number of councillors, that this should have been provided - that advice should be provided early in the process. Yes.

20 Can I just ask you, that paragraph there, commencing, "As discussed above", does not appear in any way, shape or form in Mr Occhiuzzi's report to the 5 December 2013 CDC meeting. Is there anything you want to say as to how this value, as it were, emerged at this stage when you were leading the process?---There were a number of councillors who expressed concern, as I said before, about the process of IHAP expressing - suggesting changes right at the end of the process. So that was made clear to me, that whatever system we adopted in terms of urban design, in terms of an urban design review panel, it would be a system that would happen early on in the piece. So that came largely from discussions that I had with the councillors.

30

But, Mr Stavis, I just draw your attention, and, if you like, please do read the paragraph - take your time to read the paragraph in full.---Sure, sure.

40 But my suggestion to you is that it's all about accommodating variations to the planning controls on the part of non-complying DAs?---I think the tone of that talks about providing some degree of flexibility, but it does actually say that, you know, a high proportion of significant development applications currently received by council propose variations. But then it goes on to say:

Urban design review is therefore a much needed tool for Council in achieving

*appropriate flexibility in the application
of planning provisions and controls.*

That is to say, with a view to increasing tolerance of exceedances of planning controls?---I think it was more a statement towards providing the flexibility, and I think that's probably more attributable to the DCP rather than the LEP in that regard, because there were a lot of inconsistencies in the DCP at the time. You know, obviously flexibility for developers, yes, there is - if there is a degree or a tolerance of flexibility for developers, yes. I mean, that provides an architect more opportunity to try to design things. But, look, I don't necessarily agree that it's in favour of - solely in favour of the developer.

And my original question was, if you could assume that the values discussed in that paragraph of providing appropriate flexibility where variations are proposed is not referred to in Mr Occhiuzzi's report, is it just a coincidence that it appears in your report at a time when your consideration of the matter is informed by a meeting of the LEP/DCP working group, which we've agreed undoubtedly comprised, amongst other possible councillors, Councillors Azzi and Hawatt?---No. They've expressly - I've had numerous discussions with them over the past regarding that, yes.

Now, I'm going to take you to the table on page 27, but first of all I'd like to, to assist you, because I appreciate you haven't seen this for a long time, just take you through the rest of the report. So you have this table that appears at the bottom of page 27, going over to page 28. Do you see that?---Yes, sir.

Then you have option 1 - Internal Urban Design Review Service?---Yes.

And there are various dot points in relation to it?---Yes.

That consider various aspects of it. Do you see that?---Yes, sir.

Going over to page 32, can you see option 2 - Design Review Board?---Yes, sir.

There are dot points in the succeeding pages that address the various aspects of that option?---Yes.

Then option 3 - SEPP 65 Constituted Design Review Panel. Then in the succeeding pages, there is consideration against dot points of various aspects of that option?---Yes.

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

10 Then finally on page 37 there is consideration of legislative framework, insurance matters and then finally evaluation of urban design review options?---Yes.

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

It goes through seven of them against dot points. Then on page 38, just above the middle of the page, it reads:

20 *On further review of the pros and cons table, Option 1 is recommended over Options 2 and 3 for the following reasons ...*

Then there is a series of dot points concluding at the bottom of page 39. Then on page 40 appears the conclusion recommendation. Do you see that?---Yes, yes.

30 What I wanted to do was, I hoped, focus on the options as they appear in the table headed "Summary of options" commencing on page 27.---Yes.

Can I just deal with option 3. Could you assist the Commission as to what a SEPP 65 design review panel was? It was a design review panel provided for by SEPP 65?---Yeah, it's, for the lack of a better word, a constituted panel under the Act. That's the best of my recollection at the time, yes.

40 Basically the SEPP allowed for the constitution of a panel by consent authorities where they chose to do so?---That's correct.

But the features of the panel were determined, certainly as to the principal features, by the provisions of SEPP 65?---Look, in any option, in any urban design review, SEPP 65 is always considered, but - and I stand to be corrected, but I also think that they - actually, I withdraw that. Sorry. You're correct in saying that

SEPP 65 criteria was a key focus of that panel, yes.

10 There wasn't much difference between option 2 and option 3 in this table, or in this paper, I want to suggest to you, other than that option 2 was for what was described as a design review board which would not be a SEPP 65 constituted design review panel. That is to say, the types of development considered tended to be the same. The constitution of the board or panel tended to be the same, it was to be serviced by someone at council, and the advice of the board, the same as the panel, would be made publicly available. Just as to that last feature, so that you can find it, do you see on page 28 the third-last dot point under option 2?---Yes.

In respect of option 3, the fourth-last dot point. Do you see that?---"Council establishes board based on own requirements", that one?

20 No, sir. It's "Advice provided made publicly available"?---Yes.

Sorry, yes, option 3, the right-hand column.---Okay, sorry.

The fourth-last dot point, "Advice provided made publicly available"?---Yes.

30 And can I take you to option 1, just so that I can deal with that. That is there in the third-last dot point for option 1 as well, just while we're on this part of the table?---Yes, sir.

I was taking you to those features of the options with a view to asking you, there wasn't much difference between option 2 and option 3 other than that option 3 was specifically constituted under SEPP 65 and would therefore have had the features mandated for a SEPP 65 design review panel?---Correct.

40 Option 1 was different, though, because it was, as it says in the heading on page 27 in the table, "Internal Urban Design Review Service". Do you see that?---Yes, I do.

Just taking you quickly through it, the first dot point:

Internal referral similar to other assessment issues (e.g. engineering,

building, etc.).

The next dot point:

Leading external urban design specialists engaged to review major significant development proposals.

Then dot point three:

10

Almost twice as many proposals reviewed for less cost as an internal urban designer reviews minor significant development proposals.

MR PARARAJASINGHAM: Commissioner - - -

MR BUCHANAN: I've got it wrong?

20

MR PARARAJASINGHAM: No, no. Could I just raise this, and the witness may not take up this opportunity, but he's being asked questions about this fairly dense document. He's seeing it now perhaps for the first time in over three years or close to three years. If the witness requires perhaps five minutes or so just to familiarise himself with the document, because he is being asked questions of a comparative nature, that may assist him in giving the answers.

30

I'm just conscious that this is a dense document and he is being taken to various parts of it and things are being put to him, and so far he's agreeing with them, but I just don't know whether he is totally, or even across this at all as he sits there now. That's my concern. As I said, the witness may not want that opportunity, but I just raise that.

THE COMMISSIONER: Mr Stavis?---So far so good.

40

Okay. Can I suggest that we proceed, if that's your answer, but if at any stage you think, "I would like to read this particular document", please raise it.---Okay. I will. Thank you.

MR BUCHANAN: The fourth dot point under option 1 on page 27:

Internal urban designer coordinates top-tier external specialists for meetings held every three weeks.

The fifth dot point:

External specialists at each meeting to comprise an urban designer, architect and landscape architect.

10

The next dot point:

Advice confirmed to planner via an electronic internal referral document.

The next dot point:

Internal urban designer would attend IHAP. External specialist to attend IHAP for the more complex sites.

20

The next dot point:

Council establishes service based on own requirements and sets procedures.

The next dot point:

Advice provided made publicly available.

30

The next dot point:

Cost approx. \$190,000 P/A.

And the last dot point:

Able to recoup costs at pre-DA stage and for planning proposals.

40

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

In respect of cost, that question was considered for both options 2 and 3, if you just look to the right in that table?---Yes.

The approximate cost was identified in each case?---Yes, sir.

With it actually being the same in the case of options 2 and 3?---Yes.

Can I just ask about the cost recouping dot points after that. In the case of option 2, it says:

Able to recoup costs at pre-DA stage and for planning proposals.

10

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

Then for option 3, there was a specific provision as to what council could charge for certain DAs. Was that arising from SEPP 65?---I believe it was under the Act, yes.

But then there is a dot point:

20

Able to recoup costs at pre-DA stage and for planning proposals.

?---As well, yes.

30

Now, can I just ask you to sit back and think about the question of costs that were being considered for these options. Does what appears there in those final dot points for each option in that table indicate that the costs of each option could be entirely recouped?---Well, it does say in the last dot points in all the three options, "Able to recoup costs at pre-DA stage and for planning proposals." There was quite a big debate about this with Naomi. And, look, please, I stand to be corrected, I believe Gill was part of that process as well. If not Gill, it was Mitch Noble. But she did a body of work about trying to work out what it would cost us to facilitate and have a position created, for example, for option 1, for someone to coordinate all that. Now, that - I'm not sure if that \$190,000 was reflective of that itself or maybe it was something a bit more than that. But the whole idea was to try and get value for money and, I guess, to examine what would be - when you do a cost-benefit analysis for each option, what would be the best option for council.

40

Now, in terms of option 1, can I just take you to the bottom of page 29. There is more detail provided there. There would be three top-tier external specialists

appointed to review major significant developments, and they would be taken from, looking at the bottom of the page, a pool of nine leading external specialists, comprising three specialists from each field - that is to say, three urban designers, three architects and three landscape architects. Do you see that?---Yes, sir.

10 On page 30, just below halfway down, the dot point headed "Relationship of Internal Urban Designers to the Independent Hearing and Assessment Panel" reads:

20 *As discussed above, IHAP provides a final assessment and recommendation to Council. Whilst IHAP provides design advice from time to time, this consideration would be assisted by comments on the internal referral document completed by the internal urban designer or external specialists that has already had regard to those aspects of the proposal.*

Which sort of reflects the issue that you've identified earlier and today of the desirability of having urban design input before the end of the process?---Yes, sir.

30 I can take you to the reasons provided later as to why option 1 was recommended, but do you recall why options 2 and 3, as you sit there, were not preferred?---To the best of my recollection, there were - this was debated between myself, Naomi and I believe Gill Dawson at the time. I think it was more of us having - treating it as an internal referral process on an as-need basis under the terms of what was stipulated in the report, because I vaguely remember that it was - it would have been more onerous to go down the other spectrum and have a more - - -

40 Bureaucratic model?---Yeah, exactly. Only - you know, and you've got to remember we were under pressure to try and improve our processing times as well. So that would be the main reason. I think it was more a time issue than anything else.

Did the consultant draft the report?---I believe so, yes.

Did you give guidance as to the direction the report should take?---We had - yeah, I had input into it. Yes, absolutely. We discussed it and debated it at length.

Was there any disagreement between you and Ms Dawson as to the direction the report should take?---Not that I'm aware of, no.

An outcome of option 3, as identified at the top of page 38, fewer changes requested by IHAP - do you see that?---Yes, sir.

10 Further:

An urban design review undertaken by experts before proposals reach IHAP will result in less significant changes to a DA at the late stage in the assessment process when the IHAP considers DAs.

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

20 Can I ask you this: by September 2015, had you had conversations with Mr Hawatt or Mr Azzi or both of them in which they had indicated some hostility to the IHAP?---I'm not sure at that time frame, but certainly during my tenure at council, yes.

Did Mr Hawatt or Mr Azzi have any input into this report beyond their membership of the working group on the LEP and the DCP?---That I can't - I don't believe so, no. I'm not sure, to be honest with you.

30

Did you have any conversations with them about this report or about the direction the report should take?---We had numerous discussions about - because I needed some clarity in terms of how that original 2013, I guess, resolution, how that came about. So I remember having discussions about that, yes.

And was that with Mr Hawatt or Mr Azzi or both of them?---Mainly Mr Hawatt.

40

Before the report was finalised, did you have any discussion with Mr Hawatt or Mr Azzi about the recommendation in the report?---That I can't recall, I'm sorry.

Is there a possibility that you did?---It's possible, yes.

Now, I'll just remind you that pages 38 and 39 set out reasons why option 1 was recommended. Do you see that?---Sorry, I don't see that.

Page 38.---Yes.

In the middle of the page, a bit above the middle of the page:

10 *On further review of the pros and cons table...*

?---Yes, yes.

So with the Commissioner's permission, would you just read to yourself, please, what appears under that sentence, so that you can familiarise yourself with what appears in the report as to the reasons why option 1 was chosen?---Okay. Yes, sir.

20 I wanted you to read those dot points as to the reasons why option 1 was recommended because I'm going to ask you questions about what the outcome of preferring option 1 over options 2 and 3 would be and I don't want you to think that I'm saying that these are the only outcomes.---Sure.

For example, speaking for myself, I would have no argument with you about an estimated lower cost of option 1.---Sure.

30 But would it be fair to say that to adopt option 1 over options 2 and 3 would have been to result in less transparency in the decision-making process when assessing DAs from an urban design point of view?---From my recollection, those urban design comments for all the options would have had to be made public, in any case, from memory, anyway - from what you took me to before, earlier.

40 But the urban design review service was going to occur - if I can take you to the top of page 39, there's a dot point under the heading "Assessment timeframes" - that's at the bottom of page 38?---Yes.

And it says:

An internal urban design review service (Option 1) can occur concurrently with administrative tasks and other referrals

without the need for the completion of compliance reports. As discussed above ...

This is at the top of page 39?---Oh, 39, sorry. Yes.

The first full sentence?---I see that, yes.

And it continues:

10 *As discussed above, informal discussions and meetings will be able to be held under Option 1 nullifying the need for such reports. Potential impacts to the Department of Planning and Environment's performance monitoring results for DAs are therefore likely to be less under Option 1.*

20 At the end of the day, that means less transparency, doesn't it? It's being dealt with in-house?---I think that comment, just reading it, it allows the flexibility as opposed to, say, option 3, which is the constituted urban design panel, for advice to be provided to applicants at a pre-DA stage. I think that's what it's saying here, "As discussed above, informal discussions and meetings will be able to be held under Option 1 nullifying the need for such reports." I remember that option was preferred after discussing it internally, because of that fact, that you could actually get that advice really early and not go through the formal process of trying to, you know, in terms
30 of timing, put applications to a constituted panel.

An internal urban design review, though, would be controlled by, at the end of the day, you, wouldn't it?---Well, me as the boss, ultimately, yes.

40 And just as your staff received direction from you from time to time as to how matters should be dealt with, be they planning proposals or development applications, so too the urban design review person could receive directions from you and would be obliged to comply with them?---No. I mean, because as you pointed out to me previously, that would be - it would still be a panel of consultants, and the way we envisaged that, that would be a rotating system of some sort. So it's not like we would have had one urban designer or one landscaper or one architect. I don't - I can't agree with that, no.

Option 1 gave you more control over the urban design which would occur pursuant to the panel option?---It gave me more control over the time line, yes.

Can I take you, then, to the third dot point on page 39, under the heading "Consideration of other assessment issues"?---Yes.

The first sentence reads:

10

Design experts can sometimes be expert in their particular field with limited experience in other assessment issues. The result of this may be proposed design amendments by a board or DRP (Options 2 and 3) that cannot be supported. An internal urban design review service (Option 1) would allow urban design issues to be assessed with all other issues (engineering, building, etc.) And staff can discuss the implications of any design changes with the urban designers without going back through a formal board/DRP process (See discussion above regarding informal briefings and discussions with urban designers).

20

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

30

So, at the end of the day, looking at that second sentence, it was a proposal that was identifying, wasn't it, that it would be possible under option 1 to set aside opinions or proposed design amendments which, to use the words of the paper, cannot be supported? That's what option 1 facilitated, didn't it?---No, I don't agree with that, I'm sorry.

40

Why not?---I'm not sure what's meant by that statement, to be perfectly honest with you, "The result of this may be proposed design amendments by a board or DRP (Options 2 and 3) that cannot be supported." I don't know what that statement is meant to say or meant to inform. The whole preface for having an urban design review system was to try and get some urban design advice early on in the piece, and we were merely exploring options in terms of what would be, I guess from a cost-benefit analysis and from a timeline perspective, best for council at the time. But in all

honesty, I don't know what that statement actually means.

In the context of the next sentence, doesn't it mean that it would be possible, with option 1, to massage results which are unfavourable to proponents? Staff discussions of implications of design changes with urban designers without going back through a formal board process?---Yeah, I think that - the background to that, I think, is from a time perspective.

10

That might be the reasoning, as far as you're concerned, but it allows for results which are unfavourable to proponents to be changed, in conjunction with staff, through discussions?---It allows flexibility. It allows staff the opportunity to raise issues, or the urban designers in this case, to raise - continually work with the applicant. So from that perspective in terms of flexibility, yes, I accept that.

20

Can I take you, please, to page 41. This is the extract of the minutes of the meeting of council of 29 October 2015. Agenda item 6, "Independent Hearing and Assessment Panel ... review". Can you see that there was a motion moved Councillor Azzi, seconded Councillor Saleh, which - and I'll take you to the contents of it later - was changed because there's an amendment moved. Do you see that?---Yes.

30

The fourth-last line?---Yes, I do.

And then a resolution moved Councillor Hawatt, seconded Councillor Vasiliades?---Yes.

The report to which that agenda item spoke commences on page 43?---Yes.

40

It is headed "Independent Hearing and Assessment Panel ... review", and it's by Mr Sammut, I think. Is that right?---Director of corporate services, yes, that was Andy Sammut.

Do you recall having any input into the review of the IHAP which was considered by council at its meeting on 29 October 2015?---No, I can't say I do, no.

If I can take you to page 44 in the exhibit, the report has a subheading "Design Review Panel", where it discusses the

issue of design review being conducted by the IHAP, and it goes on to say in the second paragraph:

10 *IHAP notes there are instances where Council does not accept IHAP's design changes, even though these changes have only been recommended where there are serious amenity issues for the proposed development (and/or its neighbours) and based on the Panel's collective experience of the standard of other developments across Sydney.*

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

Can I just take you back. There's just something I think I need to - I need to take you, I think, to page 43. In the middle of the page, under the heading "Report", subheading "Review of IHAP", do you see it reads:

20 *The IHAP has prepared its annual review report of its operations ...*

Et cetera?---Yes, sir.

So when Mr Sammut says "IHAP notes", we can take it that the source of that statement or comment is IHAP itself? Do you see what I mean?---Yes, I do.

30 Rather than Mr Sammut?---I believe so, yes.

Returning to page 44, the third paragraph:

40 *Any major changes required to the Plans should be identified at the beginning of the planning process. Therefore the IHAP supports the introduction of a Design Review Panel (DRP) at the pre-development application stage. The Panel is of the view that a DRP would add value to the development process and would avoid, to a large extent, last minute changes to plans which sometimes occur at IHAP meetings.*

Then it has a quote from one of the panel members, the chairperson, in fact, as to the advantages of a design

review panel. Do you see that?---Yes, sir.

Then the IHAP provided advice, which is italicised in the next three paragraphs, that is to say, two paragraphs on page 44, going over to the top of page 45, to council on establishing a DRP. Do you see that?---Yes, sir.

10 I think I should perhaps give you the opportunity of reading those three paragraphs. My question is going to be that the preference of the IHAP was basically for an option 2 rather than an option 1, having regard to the models the subject of your paper to the earlier meeting of council.---Okay.

If you wouldn't mind having a read of those three italicised paragraphs, please?---Yes, sir. Okay, sir.

20 There is no mention of a SEPP 65 panel there in terms, is there? Oh, sorry, I'm wrong.---There is.

There is in the second paragraph at the bottom of page 44?---That's right.

30 It's not the establishment of a SEPP 65 panel but, rather, a similar panel?---Well, I sort of disagree because they say in the opening paragraph - the last paragraph, "The terms of reference of the DRP could be modelled on similar Panels operating elsewhere in Sydney, but under the umbrella of recent amendments to State SEPP 65".

But it's not a panel under SEPP 65; it's simply modelled on similar panels, isn't it?---Yes, I don't know what he was referring to there. I actually took it as being under the umbrella of SEPP 65 and therefore constituted. But it doesn't expressly state that for a fact, so I take your point.

40 What I want to suggest is that if you go to the top of page 45, there is consideration of option 1:

An alternative approach would be to appoint a permanent architect/urban designer to Council's staff (or on contract to act as required) and to operate in concert with other professional staff in the assessment of development applications.

Then they go on to a third alternative, which I suggest is a sort of option 2-plus. Do you see that?---Yes, I would agree with that, yes.

10 But the preference would appear to be for the option discussed in the first two paragraphs which are italicised, that is to say, at the bottom of page 44? Do you see the commencing words, "In the view of the IHAP, the process would be best advanced by"?---I do. Yeah, it doesn't actually say - and I'm sorry if I'm misinterpreting your question. Are you saying that that paragraph - are you suggesting that paragraph is a constituted SEPP 65?

No.---Okay, all right. Do you mind repeating the question?

Yes, certainly. If you look at the words used by the IHAP, "In the view of the IHAP, the process could be best advanced by"?---Yes.

20 And the next paragraph, "The terms of reference of the DRP could be modelled on"?---Yes.

The next two sentences are about alternatives - that's on the top of page 45?---Yes, yes.

30 So they spend their time on the model that they discuss in the first two paragraphs, that is to say, at the bottom of page 44, and simply identify two other models at the top of page 45?---Yes. I agree with that.

Then the IHAP offered to provide input on the establishment of the DRP based on the working and advisory experience of its architects/urban designers. Do you see that?---Yes, sir.

Was that offer taken up?---I really don't recall, to be honest with you.

40 Do you recall sitting in a room with the members of the IHAP and canvassing the various options or features of a preferred option for a DRP?---No.

Was there a reason why the offer wasn't taken up?---I have no idea.

Well, you would have read this paper, would you not?---In all likelihood, probably not, because it wasn't my paper.

But I do recall having discussions with Andy Sammut about informing him about the work we were doing about the urban design review panel and also with Brad McPherson, I believe.

10 Why would you not consult members of the IHAP on the subject of a DRP?---Because this paper was prepared by Andy Sammut. It had nothing to do - IHAP was under his jurisdiction. It wasn't under mine. So, I mean, in all honesty - I mean, we were preparing an urban design review panel, or trying to formulate one or recommend one, and this report was prepared by Andy's department. And as you can see, it comes under his jurisdiction. So I don't know why. I don't have any answer to that.

20 Well, is an answer that for whatever reason, you were yourself hostile to the IHAP?---I had frustrations with IHAP because of the time frame. And we were largely to blame for that, to be honest with you. It took us a long time to assess an application, and once it got to a stage where it was ready for IHAP, then obviously IHAP recommended certain changes that needed to be made at - pretty much at the end of the process. So that was my frustration - not with IHAP itself, but it was with the time frame it took to get there.

30 Well, if you weren't frustrated with the IHAP itself or its members, why wouldn't you consult them, given their experience in the very areas with which you were concerned when considering a DRP?---I don't believe it was my position to consult with them. I mean, that was under Andy Sammut's jurisdiction. This was a separate process to IHAP, so we were keeping IHAP as it was and we were looking at getting urban design advice early on in the piece.

Were you aware that the IHAP offered to provide input into the establishment of a DRP?---I can't say - until you brought that to my attention now, I can't, no.

40 It is difficult, if I might say so with respect, Mr Stavis, to understand why, if you genuinely wanted to ensure that a good outcome, one that served the public interest, was achieved by the establishment of a DRP, why you wouldn't consult the people with whom council dealt and whom council had established and was paying fees to to assist on the very subjects that a DRP was meant to consider?---You're talking about IHAP?

Yes.---I saw it as a separate process.

Yes, I appreciate that. I understand that. But it was meant to complement that process?---Yes.

10 And more to the point, what I'm asking you is, were those people in the IHAP not experienced in the very subjects that you wanted the DRP to consider?---I'm not sure if we had an urban designer on board, but I believe we had an architect. In general terms, what we were looking at from an urban design, I guess, advice early on in the piece was just that - urban design. And the IHAP panel members were actually made up of lawyers and architects and landscapers and the like. I saw it, as you rightly pointed out, as complementing the process. As far as consulting with them, until you brought that to my attention, I didn't realise that that was their view.

20 Could I take you to page 45B in this exhibit?---Sure.

Can you see starting on the bottom of page 45A, the membership and their qualifications of the IHAP is identified, starting with the chair, Mr Hudson?---Yes, sir.

Then going to page 45B, Mr Graham?---Yes.

30 A planner with, it would appear, considerable experience and standing in the planning community. Do you see that?---I don't know Mr Graham, but I take your word for it.

Well, do you see that he has held the positions of deputy town planning commissioner for the department of town planning in Western Australia and deputy chairperson of the metropolitan region planning authority?---Yes.

40 And a degree in town planning and a masters in economics?---Yes, sir.

He's a man who's likely to have known a little bit about planning?---I have no reason to doubt that.

And if I can take you to the fourth dot point, a Mr Hedstrom is a member of the urban design review panel for Botany Bay, Ryde, Gosford, Wyong and Liverpool Councils?---Yes, sir.

Over 25 years' experience in operating his urban design/architecture business, registered with the New South Wales Board of Architects for over 40 years. Do you see that?---Yes, sir.

10 Do you think he might have been able to contribute some useful input to the design of a design review panel for Canterbury Council?---Look, I don't doubt that, no, not at all.

And the reason that these people weren't consulted and the IHAP wasn't taken up on its offer, I want to suggest, is an implacable hostility to the IHAP on your part, informed by the hostility to the IHAP on the part of Mr Azzi and Mr Hawatt?---I don't agree with that at all.

20 Is there anything else you want to say on that subject? I'm just giving you the opportunity, is there anything you want to say?---Sure. At the risk of repeating myself, there was a degree of hostility from certain councillors about IHAP. My frustrations was that IHAP was at the end of the process rather than at the beginning of the process.

Can I take you to another possible source of frustrations on your part.---Sure.

30 On page 45 in the IHAP report, after the middle of the page, the heading is "Exceptions to development standards". Do you see that?---Yes, sir.

It says:

40 *The Panel has noted the increasing use by applicants of Clause 4.6 of the LEP (Exceptions to Development Standards). Under Clause 4.6, an applicant can make a written submission to Council as to why compliance with a development standard is unreasonable or unnecessary for the DA, and that there are sufficient environmental planning grounds to justify contravention of the development standard. In granting development consent that contravenes a development standard, the Council must nonetheless be satisfied that the proposed development will be in the public interest*

because it is consistent with the objectives of the particular standard, and the objectives for development within the zone in which the proposed development is located.

You wouldn't take exception to any of that, would you?---No.

10 With the description of clause 4.6?---No, no. That's fine.

Would you take exception to the panel noting the increasing use by applicants of clause 4.6? Wasn't that something that was occurring under your tenure as DCP?---Look, I accept that there were a number of applications that proposed to exceed controls under the LEP, I do accept that. But under my tenure, there were many more applications that weren't seeking to do that.

20 The IHAP went on, in the last paragraph on page 45:

The IHAP is of the view that local planning policy and planning controls contained in the Canterbury LEP and DCP should not be easily put aside because they have been through a statutory process involving public exhibition and the consideration detailed and extensive of public comment. The Panel notes that DA applicants may seek concessions on LEP requirements for floor space ratio and building height, and DCP requirements such as minimum frontage, building setbacks, building separation, open space etc. IHAP states that it is difficult to see how the public interest can be served when a range of such concessions are sought by an applicant and that better planning outcomes will be achieved as a consequence.

30

40

Was your attention not drawn to that expression of opinion on that subject by the IHAP?---Not as far as I'm aware, no.

And no staff member drew it to your attention? Mr Sammut didn't draw it to your attention? No IHAP member drew it to your attention?---I didn't have anything to do with any IHAP members.

Did Mr Sammut draw it to your attention?---I'm just trying to think. To the best of my recollection, it was - I know that IHAP - obviously I received the reports once the meetings were held by IHAP.

The IHAP reports?---Yes, yes. So to that extent, I was aware what their views would be. But I don't recall whether Andy mentioned that to me at all.

10

And he didn't copy you a copy of this report to council?---He may have, sir. He may have, but I don't remember.

You tell us you have no recollection of seeing this report ever before today, don't you?

MR PARARAJASINGHAM: I object. That wasn't his evidence.

20

MR BUCHANAN: I withdraw that.

Do you tell us that you have never seen this report before today?---No, I'm not saying that at all. I'm saying that I don't recall seeing the report, to be honest with you.

Can I take you to the top of page 45A:

30

The IHAP draws this important matter to Council's attention in order to avoid a situation whereby applications for exemption from development standards are seen as "common practice" rather than "exceptions". The Panel understands that some exceptions to development standards may be justified. However, the Panel would not like to see a gradual erosion of Council's rigorously determined development standards to the detriment of the public in general, and having an adverse impact on neighbouring properties, leading to a reduction in liveability for the purchasers/occupants of individual apartments, in particular.

40

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

You don't recall having seen that matter before?---I just

don't recall. I'm not discounting the fact that I - I've seen the report, but ordinarily my common practice was not to read other directors' reports, to be perfectly honest with you, but - - -

You knew, didn't you, that the IHAP provided an annual report to council?---Sorry, what was that?

10 You knew, didn't you, as Director City Planning, that the IHAP, Canterbury IHAP, provided an annual report to council?---I'm just trying to think. Yeah, I believe that was the case, yes. Yes.

And you never endeavoured to acquaint yourself with the contents of any of them?---Not that I can recall, I'm sorry.

20 Not even the one that was delivered whilst you were Director City Planning?---Not that I can recall, sir.

Why wouldn't you have been interested in what the IHAP had to say?---I really don't know, to be honest with you. I mean, I was a very busy person at that point in time and I didn't necessarily read other departments' reports vigorously, to be honest with you.

30 In retrospect, sitting there as you do now, do you agree that it's a shame that you didn't read this report of the IHAP so far as it concerned its consideration of a design review panel?---Look, from my perspective, I mean, I had staff that were working towards a model, as well as I was. I don't recall anyone expressing to me views of IHAP while we were drafting that initial report. Now, I'm not even sure that report actually made it to council, the one that we drafted, the urban design review panel recommendation. But - - -

40 Sir, it's in the business papers for the meeting of council of the - - -?---Okay, I stand to be corrected, but I guess the point I'm trying to make to your question was that my view was that after discussing the resolution of council with relevant people, that we would establish, I guess, a best fit urban design review panel for council to complement IHAP. It wasn't to replace IHAP. So we tried to do that at the beginning of the process and allow flexibility for that to occur.

You don't think, with the benefit of hindsight, that the consideration of those involved in trying to design a design review panel would have been assisted by the opinions expressed on this subject by the IHAP in this report, in hindsight?---To be honest with you, no, because we saw them as separate entities, I guess.

10 Do you think that your work would have been assisted, in hindsight, by being informed as to the IHAP's opinions expressed on pages 45 and 45A about exceptions to development standards and clause 4.6 of the LEP?---No, because the urban design review panel was not - it was not an IHAP panel. It was meant to provide design advice.

20 I'm sorry, sir, whilst the material on the design review panel does appear under a subheading on page 44, the report on page 45 has moved on to different subheadings. Do you see, page 45, "Review of Finalised Developments", "Meeting with Councillors", "Transition Between High and Low Density Residential Development", and then "Exceptions to Development Standards"?---Yes, sorry.

So it's a different subject. What they're doing is they're going through a series of different subjects in their annual report, and they've come to exceptions to development standards?---I accept that.

30 I've read to you, and you've read, the contents that appear under "Exceptions to Development Standards". Do you not think that your work as Director City Planning would have been assisted by considering the opinions expressed on that subject and clause 4.6 by the IHAP in this report?---Work in relation to the urban design review panel or just in general?

40 In general.---Not really, sir, because I was aware what they were - by virtue of the fact that they were supplying reports on various applications, what their views were in relation to clause 4.6.

You've seen now, on a couple of development applications at least, that you took a view that a significant variance from a planning control was something that could be justified under clause 4.6?---Yes.

The IHAP was saying, "Listen, that's not going to serve the public interest if this becomes a matter of common practice

rather than an exception." Do you see that?---I do, yes.

Do you agree with that?---I think you need to assess an application on its merit.

Does that mean that you don't care whether a significant variance from a planning control becomes accepted as a matter of common practice rather than as an exception?---No, sir.

10

What is the case, then?---I think, as I said, you need to look at the circumstances of each case on a case-by-case basis.

And the result of that was that it became a common practice for planning controls, as it were, to be set aside and people to be allowed to build whatever they liked, despite the planning control, that's all right by you?---No.

20

Why not?---Because planning is a - there are certain criteria you need to go through to make sure that an individual proposal meets the relevant provisions, not only in terms of clause 4.6 but also in terms of the EP&A Act. And there's numerous case law out there that you look at each case individually on planning merit. So it's not a one size fits all for everyone. Every site is different.

30

Is there any lesson to be learned, though, if the application of clause 4.6 turns out historically to be a matter of common practice rather than an exception?---I think that's wrong, yes.

You say that it shouldn't become a matter of common practice; is that what you're saying?---I agree with you.

And that's a matter to take into account, then, that it shouldn't become a matter of common practice?---You - absolutely.

40

And did you do anything to implement that opinion?---Yeah. I circulated to all my staff - we came up with a checklist of how to assess clause 4.6, and I expected them to adopt that when they were assessing.

I want to suggest to you that you were happy to endorse recommendations to council that clause 4.6 submissions be accepted notwithstanding significant variances from the

planning controls in circumstances where they were plainly not justified, if only because the IHAP said so?---I disagree.

MR BUCHANAN: Commissioner, I apologise, we've gone a little over time. Would this be a convenient moment?

THE COMMISSIONER: Yes. We'll adjourn for morning tea and resume at 5 to 12.

10

SHORT ADJOURNMENT

[11.35am]

MR BUCHANAN: Mr Stavis, you were a member of the executive of Canterbury City Council; is that right?---Yes.

The executive comprised the directors and the general manager?---Correct, sir.

20

Before meetings of council occurred, there was a meeting of the mayor and the executive to go over the agenda and the papers for the meeting; is that right?---That's right, sir.

You attended those meetings?---Most of them, yes.

You didn't see Mr Sammut's paper containing the IHAP annual report, as it were, that went to the council meeting of 29 October 2015 at such a meeting?---The one that we were looking at before?

30

Yes.---Not that I can recall, but it's likely that I did, yes.

If you could go back to that paper, please?---Sure.

I think more accurately I should call it a report. On page 45E, do you see that there's a "Conclusion" subheading?---Yes, sir.

40

The first two sentences read:

The IHAP is designed to improve transparency, integrity and confidence in the development assessment process. It meets these objectives at Canterbury.

Sitting there as you do now, do you agree with that opinion as at October 2015?---Yeah. I don't disagree with it, no.

And if I can take you to the middle of the page, can you see there's a paragraph commencing:

The Canterbury IHAP has operated for eight years and has been very successful in improving the development assessment process at Canterbury.

10

As you sit there now, are you able to tell us whether you agree with that statement?---My - I think it was a flawed process from the point of view from a timing perspective, as I said previously. In terms of their input, I mean, I don't - I see that they did add some value in terms of the design of proposals in certain circumstances, yes.

20

Is it fair to say that their recommendations, by and large, advanced the public interest in the consideration of the development applications concerned?---I think in the majority of cases, yes.

And what about the minority of cases?---There were certainly circumstances where I believe that they - I didn't necessarily agree with their recommendations.

30

But nevertheless they advanced the public interest in the assessment of development applications?---Well, I don't know whether that is actually completely true, because they certainly had their own individual views about development, particularly in terms of urban design, which may not have necessarily been, I guess, in the public interest as you put it. I don't think that they - that the - when you're dealing with various consultants and experts, everyone has their own views on what a design should entail. But in general terms, I don't disagree that they were necessarily not in the public interest.

40

What were the views on urban design which were not in the public interest as far as you can tell?---Oh, look, I can't think of anything specifically, but all I know is, I mean - and I've dealt with IHAP panels in the past, I've dealt with design review panels in the past.

You mean before Canterbury?---Before Canterbury, yeah, at

various councils, and they always - there are certain members of the panel that actually put their - I guess their views in terms of how a proposal - what form a proposal should take. But that's not always necessarily right, I guess.

10 What is the criterion for judging whether the view that certain members take of design aspects of a proposal are right?---I think one should have regard to, obviously, the controls that apply for the specific areas. But it was not unusual for me to experience, prior to Canterbury, certain design review panels and IHAP panels where they, I guess, prosecuted their views on what a design should take.

20 THE COMMISSIONER: So even though it complied with the controls, IHAP still - these particular IHAPs had difficulties or issues with the proposed design?---Yeah, I mean, one example that comes to mind is with our particular IHAP, they - and this is - really, it wasn't so much a case of whether they were right or wrong, but it was because it happened really late in the process that they would impose their own design, I guess, attributes or views on how - what form a building should take, which culminated in amendments required to be lodged, which are not necessarily, I guess, prosecuting the case for SEPP 65, in some circumstances, anyway.

30 MR BUCHANAN: The IHAP, though, was independent, wasn't it?---It was, sir, yes.

And it was meant to make decisions based on the public interest?---I believe so, yes.

The alternative was views informing decisions which were made in the proponent's interest?---The alternative to IHAP views?

40 Well, the alternative to an IHAP which, to use your views, has views that it imposes that inform its recommendations?---I wouldn't necessarily say the proponent's views. I would also include in that category the council officers' views as well.

In the category of views that are implementing the public interest, is what you mean, is it?---Yes, sir.

The model for a design review panel wouldn't have really

changed that situation at all, would it, because at the end of the day both the internal design staff member and the external experts who would be retained would be applying their own views that they would be meant to be taking into account the public interest?---It's a very subjective field, sir, so I don't discount the fact that even with the establishment of an urban design review panel that they would have their own ideologies, I guess, which may or may not differ from members of IHAP. But I don't agree that the urban design review panel, whatever form that would have taken, would have necessarily not been in the public interest in terms of what input they were providing.

10 No, I understand that. What I'm just simply asking you is how would a design review panel have been different, given your critique of the IHAP? The only difference would have been it would have been at an earlier stage in the process?---Pretty much, yes.

20 Can I ask you to have a look, please, at page 45E in exhibit 223. At the bottom of the page, do you see that there's a recommendation?---Yes, sir.

And do you see that there are four items in that recommendation?---Yes, sir.

And if you could just have a look at the third and the fourth items:

30 * *A day be set aside annually for Councillors, staff and IHAP members to view completed developments and to discuss planning issues.*
 * *Community forums be held as deemed necessary to explain to residents changes in planning practices.*

Can you see that?---Yes, sir.

40 Can I take you back now to page 41 in this exhibit, and can you see that the motion, moved Councillor Azzi, seconded Councillor Saleh, was to adopt that recommendation, certainly as to items 3 and 4?---Where are we looking?

Can you see agenda item 6?---Sorry, at the bottom?

Yes.---Yes.

Agenda item 6, sorry, I should have taken you to it, "Independent Hearing and Assessment Panel review", motion, Councillor Azzi, seconded Councillor Saleh. There's four items, and specifically the third and the fourth are the same as recommended - as they appear on page 45E?---I agree with that, yes.

10 And can you see that the resolution differs from the motion moved. The resolution, moved Councillor Hawatt, seconded Councillor Vasiliades, differs to items 3 and 4. If you turn to item 4 on page 42, it says:

Community forums be held as deemed necessary by the General Manager to explain to residents changes in planning practices.

Rather than, back on page 41, item 4:

20 *Community forums be held as deemed necessary to explain to residents changes in planning practices.*

Do you see that change?---Yes, sir.

30 The day to be set aside as recommended by the IHAP annually for councillors and staff and IHAP members to view completed developments and discuss planning issues appears to have disappeared altogether from the resolution?---I see that, yes.

Do you know what the process was by which those changes occurred?---No, I don't recall.

Can I take you, please, to exhibit 85, the calendar meetings folder, at page 16. Do you see that it's on the screen in front of you?---Yes.

40 Do you see that it's an entry in the calendar for a meeting headed "Urban Design review Panel" for 21 October 2015, organised by Ms Sutcliffe, with the attendees being Mr Montague, Mr Stavis, Mr Azzi and Mr Hawatt?---Yes.

That meeting would have been after Mr Sammut's report became available but before the meeting of council held on 29 October 2015; that's fair to say, isn't it?---Yes.

Was Mr Sammut's report considered at that meeting here to be held on 21 October 2015?---I don't recall, to be honest with you, if that meeting actually - I don't remember that meeting, to be honest with you.

Yes, but what I'm just drawing your attention to is that it's eight days before the council meeting - - -?---Yes.

10 - - - where Mr Sammut's report was considered and where the motion which adopted the recommendations of the review was amended at the instance of Councillor Hawatt, amongst others?---Yes, certainly by that date, if that meeting did in fact occur, the report would have been available, yes.

Did the general manager provide to the meeting held on 21 October 2015 a copy of Mr Sammut's report for discussion or review?---I don't recall, sir, sorry.

20 Was it discussed or reviewed?---I actually don't remember the meeting, to be honest with you.

You can't assist us as to whether there was any criticism of the contents of the IHAP review when that meeting occurred?---No. I just don't remember the meeting.

You can see that Mr Sammut's report, page 44, had a good deal of material in it on the design review panel. Do you remember? We went through this before.---Yes, yes.

30 The recommendations of the IHAP itself about a design review panel and an offer to assist in its establishment. Was that discussed at the meeting for which the subject heading was "Urban Design review Panel" on 21 October 2015?---As I said before, I don't recall that meeting.

Is there a likelihood that it was discussed?---If it had occurred, the meeting, and this paper was presented, yes, yes.

40 The fact that the IHAP review contained recommendations about the design review panel and an offer to assist in its establishment doesn't spur a memory in you now about that being discussed at all or adverted to at all at a meeting of you and Mr Montague and Mr Azzi and Mr Hawatt beforehand?---No. Sorry.

Did you have any forewarning that there would be an attempt

to amend the recommendations of the IHAP review panel when they came before the meeting of council on 29 October 2015?---Not that I can recall, I'm sorry.

Can I take you, then, to page 46, please. Can I ask you to just put a finger there on page 46 and just take you back to page 22?---Yes.

10 You can see the extract from the minutes of the meeting of council on 24 September 2015 at item 11, urban design review, that it was resolved on the motion of Councillor Hawatt, seconded Councillor Azzi, that the matter be deferred for consideration at the next council meeting to allow councillors to receive further information. That was after the presentation of your report about options 1, 2 and 3 for a design review panel. Do you see that?---I do, yes.

20 So going now to page 46, where we have an extract of the minutes of meeting of council on 25 February 2016, was there contact between you and Councillor Hawatt between those dates about the options that had been set out in the report that you had provided to the meeting of council on 24 September 2015?---I believe there was.

30 What was that contact?---At some point - and I'm not sure, but it was around that period, I guess, he expressed certain views about, I guess, the form that the urban design review panel should take. And it was - I mean, as far as the details go, I'm a bit sketchy on that. I just can't recall exactly what was said, but I remember he had - it was a general discussion about those options.

And what was the gist of his criticism?---I believe - well, I know that he didn't think that the constituted urban design review panel - - -

40 The SEPP 65 constituted urban design review panel?---Correct, wasn't appropriate, and I believe his reasons for that were from the point of view of the bureaucracy around that. I just can't recall - I think he was - look, he was generally supportive of what was recommended in my report, or my section of this report, just in general terms, yes.

Did Councillor Hawatt indicate to you that he preferred to keep the work of an urban design review panel and the urban

design review work done by your staff more under the control of council?---I think that's fair comment, yes.

10 So if we go to page 46, you can see there that the resolution of the meeting of council on 25 February 2016 - this is item 15 - was that the internal urban design review referral as outlined in the report as option 4 be endorsed and implemented. I'll come to the other aspects of that resolution later, but if you turn to page 47 the report appears. That's the first page of it, in any event, and it's a report by you. Can you see that?---Yes, sir.

Was the external consultant involved at all in the preparation of this report?---I believe so, yes, I believe so.

20 What was it that she contributed or how did she contribute?---She had carriage over it, so her role was to - I mean, she was effectively the project manager of this particular project, yes.

So did someone convey to her why a further report was needed?---In all honesty, I don't recall, but if the report - this report followed, I believe, as a result of that previous resolution you took me to, which said that the matter be deferred for - - -

30 Pending the provision of further information?---Yeah, yeah, so it's probably as a result of that.

This report comes up with an option 4, and the question I'm asking you basically is where did option 4 come from?---I don't recall.

Well, if this was drafted by the external consultant, she must have been provided with instructions?---Probably.

40 Who would have provided those instructions?---It's likely that I did.

But Ms Dawson had gone by this stage, hadn't she, by February 2016?---I take your word for that, yeah. I'm not sure, but I don't doubt that.

Did Mr Noble take over carriage of this project?---He would have been - well, he was the direct boss of Naomi. But whether he had any input in this I'm not sure.

THE COMMISSIONER: Had he started by then?

MR BUCHANAN: People are shaking their heads at me, Commissioner, is the honest answer.

THE COMMISSIONER: My recollection is that there was a gap between Ms Dawson leaving and Mr Noble starting?---There was. There was. There was a gap.

10

MR BUCHANAN: May 2016. So I misled you if I suggested that Mr Noble might have taken over carriage of the project.---That's okay. That's okay.

Who would have taken over carriage of the project in between Ms Dawson and Mr Noble?---It would have been Naomi, but I - she would have been - - -

Reporting directly to you?---Reporting to me, yes.

20

So is it likely that what happened was that Mr Hawatt told you what he thought needed to be the features of the appropriate model for a design review panel; you provided those instructions to the consultant, Naomi; she drafted a report accordingly; you reviewed that report and settled it?---If that meeting that you showed me earlier had in fact occurred, it's likely that this option 4 came as a result of that meeting.

30

And you're thinking, are you, of the 21 October 2015 meeting with the general manager, Mr Azzi, Mr Hawatt and yourself?---Yes.

That was headed "Urban Design review Panel"?---Yes.

So can I take you, then - I apologise if I'm asking you to repeat your evidence, but dot point 3, second sentence:

40

It was requested that we prepare a fourth option with less financial implications.

?---Are we on the same page?

Page 47.---Yes.

Dot point 3.---Yes. Oh, yes.

Second sentence.---Yes, okay. Okay, yes.

Who requested?---Well, I only assume that it was as a result of that meeting that we spoke about before.

Were any written instructions conveyed at all to the external consultant?---I can't remember, I'm sorry.

10 The likelihood is there would have been written instructions, wouldn't there?---I really - I don't remember.

Not necessarily, is what you're saying?---Maybe not, yeah. It may have been - because I did have face-to-face meetings with Naomi quite regularly.

20 Did you take notes at a meeting such as a meeting that is recorded in the calendar on 21 October 2015, exhibit 85, page 16 - did you take notes?---I can't recall if I did, but it's possible.

Were any notes given to you by Mr Hawatt or the general manager?---Not that I can recall.

30 Can I just go to the aspect of costs. There's another comparative table which summarises the options commencing on page 50 and going over to page 51. Can you assist us to understand what the difference was in what is set out there in the last row as to the ability to recoup costs for option 4 as compared to the other three options?---Do you mind if I read that quickly?

40 Please.---Yes. The only thing that I can see is that if you turn to page 51, option 4 has a cost of approximately \$98,000 per annum, whereas the other options are significantly higher. And then in terms of "able to recoup costs", there's a figure of about \$49,000 down at the bottom of that option 4 column, depending on proposals - of proposals at pre-DA stage, or receipt of proposals at pre-DA stage.

But why was \$49,000 approximately the maximum that could be recouped when the cost the exercise was significantly less when compared to the other options where the costs were significantly more and there's an unqualified ability to recoup costs?---I think because if we go back to page 50 - no, hang on - yes, page 50, if you look at

option 4, it actually says - it has less urban designers on call, I guess, because it says - oh, maybe not. Hang on.

Well, that would be an explanation as to why it's cheaper?---Yeah.

10 But what it doesn't explain is why the ability to recoup costs would be confined to an approximate maximum of \$49,000 for that option?---I don't - I don't know. I don't recall. I remember Naomi was doing most of these figures. I have no answer to that, I'm sorry.

20 Was it intended that there be a cap on what development proponents be levied for this exercise and that cap be in the vicinity of \$49,000? Is that the explanation?---No. I don't recall that at all. I do recall that there was, I guess, a value in terms of when these - when this urban design review referral was to occur, and it was largely the larger developments. But as far as the cap - a cap on a developer or applicant, no, I don't think that was the intention of that.

But otherwise you can't assist us as to why the maximum recoupable amount would be approximately \$49,000 in the case of option 4?---No, but I'm sure it's on the file, because I remember she - she went quite at lengths to try and - and to produce these figures for the various options.

30 I want to take you to page 49, where it says in the first full paragraph:

On 25 September 2015, Council resolved to defer consideration of the matter. Further consideration of the options has been undertaken by staff and a fourth option with less financial implications has been prepared.

40 ?---Yes.

On what we have read, the only person for whom it has less financial implications is the development proponent. Otherwise, it's more expensive for council, on what we see in the right-hand cell, in the last row of the summary table, on page 51?---Look, I don't think so. I think this was worked out on the basis of what we estimated we - the number or the quantum of applications we would receive.

But, again, look, I'm sure it's on the file somewhere where she's worked out, because she did go at some length to try and qualify and work out these costs.

Can I take you to page 53?--Yes.

A bit below halfway down the page, there's a subheading "Recoupment of Costs"?---Yes.

10 And it says:

There is no legal mechanism for a Council to recoup costs for the referral of a DA to an urban designer during the assessment process.

Then it goes into a little bit more detail, and then it says:

20 *However, urban design review offered at the pre-DA stage can be financially assisted through the levying of additional fees to applicants.*

Then it proposes fees at the pre-DA stage. Can you see that?---Yes, sir.

Then at page 54, at the top of the page:

30 *If Council requires all proposals to be referred to the urban designers for review at the pre-DA stage, it could [emphasise "could"] recoup approximately \$49,000 (based on major significant development applications received in the 2014/2015 financial year). However, there is no legislative framework whereby Council can require the submission of all proposals at the pre-DA stage prior to submission of*
40 *a development application.*

There is a feature of this fourth option of the exercise being conducted at pre-DA stage. I'll just take you to page 52, under the heading "Role of Urban Designers and Review Process". If you skim down that, you can see the suggestion or discussion of the exercise of urban design review taking place at a pre-DA stage?---Yes.

But if I take you, then, to the summary table on page 50, the fourth column is option 4 and it says at the bottom dot point:

To assist the understanding of Councillors, monthly briefings on proposals reviewed at pre-DA and DA stage to be given by Director City Planning.

10

So it would appear that there is - well, yes, there's contemplation both of pre-DA reviews, that's in the fourth dot point in the right-hand column on page 50?---Yes.

And also DA stage, in the sixth dot point:

Internal referral back to specialists of all major significant developments at DA stage.

20

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

Another change from option 1, if I can take you to the top of page 50, is that the remit of the panel would be confined to reduce costs to major significant development proposals. Do you see that?---Sorry, can you point out where you are?

30

Yes, the top of the table, on the top of page 50, right-hand side is the option 4?---Yes.

It says:

Only major significant development proposals reviewed to reduce costs (and no internal urban designer).

?---Yes.

40

Whereas option 1 was an internal review similar to other assessment issues being referred to, for example, engineering and building and the like?---Yes.

However, if I can take you to page 51, under the subheading option 4, "Internal Urban Design Review Service", the second sentence reads:

The review would operate in a similar manner to the internal referral process that is undertaken for other specialist input on DAs such as engineering, building, biodiversity, health, etc.

?---Where are you reading that, sorry? Option 4?

10 Do you see the subheading option 4?---Oh, sorry, down the bottom, yes.

I'm sorry, we're out of the table now?---Sorry.

Into the body text of the paper?---Yes.

Option 4, "Internal Urban Design Review Service", and I'm taking you to the second sentence, which starts on the third line:

20 *The review would operate in a similar manner to the internal referral process that is undertaken for other specialist input on DAs such as engineering, building, biodiversity, health, etc.*

?---Yes.

30 If I take you to page 52 under the heading at the top of the page "Role of Urban Designers and Review Process", it talks about the three leading urban designers who would be appointed to review major significant developments?---Yes.

Then it says under the section "Appointment of urban design specialists" in about the middle of the page:

- A pool of three leading urban designers would be formed.

40 *- Each urban designer would be appointed to individually undertake reviews.*

So that was a difference from option 4, wasn't it? It confined the review to a review by one expert as against a panel of experts?---That was different from option 1?

Yes.---I'm not sure if it was. I thought that option 1 was to establish, I guess, a panel of some sort, and then you

would choose on a rotating basis - - -

Can I take you to the summary table, page 50?---Yes.

If you're on page 50 - - -?---Yes.

- - - the third dot point in the middle of the page, which reads for option 1:

10 *Internal urban designer coordinates top-tier external specialists for meetings held every three weeks.*

Next dot point:

External specialists at each meeting to comprise an urban designer, architect and landscape architect.

20 That implies, doesn't it, that the panel would conduct the reviews, whereas option 4 is essentially a review by a designer selected from a panel?---No. I thought that option 1, we were going to employ an internal urban designer that would coordinate the process of referrals and pick from a panel of, in this case three, urban design experts, to circulate referrals as needed. That was my understanding. I haven't read the report in detail.

30 It's just that the passages to which I've taken you to on page 50 in respect of option 1 talk about meetings?---Yeah, and they were meetings held - that would have been held with - between the internal urban designer with the various panel - - -

Sorry, Mr Stavis, if you could just have a look at the dot point that is the fourth dot point on the left-hand column of the table as it appears on page 50:

40 *External specialists at each meeting to comprise an urban designer, architect and landscape architect.*

That plainly implies that the review would be conducted by a panel comprising an expert in each of those disciplines?---Based on that dot point, yes.

So would it be fair to say that option 4 was a slimmed-down

version of option 1?---Yeah, I - I mean, can you define what "slimmed-down" means? I mean, for me, I think that - look, I accept that, yes.

10 The resolution of council, page 46, was that option 4 be endorsed and implemented, funds were appropriated, and an expression of interest process or similar for urban designers be instigated and preferred urban designers be reported to council for endorsement. Do you see that?---Yes, sir.

Did that happen?---I don't believe it did, no.

Is there a reason why it didn't? This is February 2016.---Yeah. I think it was probably a case where shortly thereafter, the council amalgamated, didn't they?

20 In May.---Was it May? Okay. Three months for it to go - or to be implemented, it's probably more - you probably need at least that to actually put out to tender and invite tenderers to actually make an application. But I can't think of any reason why - I'm not sure if it wasn't instigated in the sense that - or at least started the process. But you're only talking about really three months between when this resolution was - came about and when the council was actually ultimately amalgamated.

30 There wasn't a change of heart about the desirability of implementing this resolution or this proposal on the part of Mr Montague or Mr Hawatt or yourself?---Not that I can recall, no.

Could it have been that it was this resolution in February 2016 which Mr Annand thought was a call for expressions of interest to be a member of a panel that was being put together by council?

40 MR ANDRONOS: Objection. How do we know Mr Annand has even heard of it?

MR BUCHANAN: I withdraw the question.

Did you talk to Mr Annand about the fact that the constitution of a panel of experts to perform the function of urban design review was being considered by council?---Not that I can recall, no. Sorry.

THE COMMISSIONER: Do you recall an email when Mr Annand was giving evidence in which - and I'm sorry, I'm vague about this, but he emailed you and said something about, "Urban design panel, do I have to apply?"---Oh, yes.

THE COMMISSIONER: I might just look over this side.

MR BUCHANAN: And rightly so, Commissioner. Just at the moment, I can't find my note on that subject.

10

MR ANDRONOS: I'm not sure if my recollection is going to be any better than anyone else's, but my recollection of the evidence was that that was in response to some form of advertisement or public notice, whereas my friend's question was directed to the resolution, as I understood it.

MR BUCHANAN: My question was directed to a conversation in which the witness had said anything to Mr Annand on the subject.

20

MR ANDRONOS: Yes, that's right.

THE COMMISSIONER: And I suppose I was just trying to clarify that email exchange with Mr Annand, what was the basis of Mr Annand expressing the - your solicitor might have something there.

MR ANDRONOS: Volume 14, page 201.

30

THE COMMISSIONER: Thank you.

MR ANDRONOS: Which is April 2016.

THE COMMISSIONER: I'm sorry?

MR ANDRONOS: April 2016 is the call for tenders.

MR BUCHANAN: Thank you.

40

It's on the screen in somewhat larger font than is on the paper, Mr Stavis, now.---Yes.

This is where you told Mr Annand, "You can" on 29 April 2016. Do you see that?---I do, yes.

Did you talk to Mr Olsson about council being in the course

of forming a panel from which urban designers could be chosen to conduct reviews of development applications?---Not that I can recall, no.

I want to ask you, Mr Stavis, about a different subject now.---Sure.

10 And I have touched upon it before, but was it the case that at one stage in about 2015 your division had about 30 planning proposals on its books?---There was a lot. I can't remember the exact number, but there were a few, yes.

20 The processing of those to implementation would have resulted in what could fairly be described, couldn't it, as ad hoc, piecemeal amendment of the LEP?---They involved - there was - they did involve individual sites, from memory. But there was also other amendments that were proposed to the LEP that didn't necessarily relate to any specific site.

A significant number were in the Canterbury Road corridor?---There were, yes.

30 Would a better approach from a planning point of view, and from the point of view of resources available to council, have been to conduct a study of that corridor generally with a view to developing a planning proposal for the whole LGA?---Ordinarily, yes.

We'll bring up on the screen an email conversation that I'd like to take you to in March 2016. Looking at the bottom of the page, there is an email from you to Mr Montague of 23 March 2016 at 8.11am, which reads:

Jim.

Here is the draft resolution as requested;.

40 *"That as a matter of urgency an investigation be undertaken to identify opportunities to increase the high control for sites in the B2 and B5 zones along Canterbury Rd, to 25m.*

That the findings of this investigation be reported to the next available Council

meeting, with suitable site specific recommendations for consideration to increase the height controls and prepare a planning proposal to effect these changes".

10 Do you recall a discussion with Mr Montague, the outcome of which was that you were to draft a resolution along those lines?---Yeah, that culminated in a discussion that I had with Mr Montague about, I guess, the ad hoc way that planning proposals were being received by council, and on the basis of what the councillors, in particular Michael Hawatt and Pierre Azzi, had expressed obviously to me, but I also believe to the general manager, that there was, I guess, a need to look at upzoning Canterbury Road. So this draft - I haven't seen the draft resolution, but this would have been a culmination of those discussions, yes.

20 Is it possible that what fed into those discussions was a proposal by Mr Annand to conduct a study to that effect?---I think I've given evidence before about a meeting that Mr Annand had with myself and the general manager about his views - Mr Annand's views - about how - the fact that he had issues with the master plan along Canterbury Road, and he also mentioned about the various town centres, and the gist of those - that meeting was him saying to us that, "Look, you know, I'd like to be able to do this body of work" and - but nothing really happened as
30 a result of that, yeah.

Now, I'm not suggesting at all that you haven't accurately described what Mr Annand was proposing. My suggestion to you is that that is slightly different from the content of the resolution that you proposed in this email of 23 March 2016. Mr Annand, as you indicated, was proposing looking at the controls as they existed as to whether they should be loosened, as it were, in areas at a certain distance from particular centres of population; is that right? Is
40 that fair?---It is, but he also did mention to me - to us at that meeting about Canterbury Road itself.

Right.---Yeah.

By reference to the B2 and B5 zones?---No, I think it was more general than that.

10 So why was it that this resolution nominated the height controls for sites in those zones rather than the height controls at a certain distance, say 800 metres, from the centre of existing urban centres?---Well, because it was generally accepted that Canterbury Road corridor was treated differently to the urban town centres, particularly along - within an 800 metre radius of railway stations. And in terms of why that resolution was drafted, I can only assume it was because of the resolutions in the past of council looking at Canterbury Road and so forth. But as far as this email goes, I don't really remember exactly.

I just want to give you another option or possibility.---Sure.

20 Was there overlap between the way you framed it, the B2 and B5 zones along Canterbury Road, and the zones - I shouldn't use the word "zones" - and the precincts that were centred on the urban centres and might radiate 800 metres in each direction? Is there some degree of overlap between the two?---Only where Canterbury Road is within the 800 metre corridor, I guess, or radius. But the best of my recollection is that Canterbury Road was a different beast altogether than the town centres.

30 MR BUCHANAN: Commissioner, I note the time. Could I just tender this, before I forget, please, an email conversation between 23 March and 25 March 2016 relating to a proposal to increase height controls along Canterbury Road.

THE COMMISSIONER: The email exchanges dated 23 March to 25 March 2016 concerning proposals to increase the height controls along Canterbury Road will be exhibit 224.

#EXH-224 - EMAIL CHAIN FROM JIM MONTAGUE TO MICHAEL HAWATT RE: DRAFT RESOLUTION - INCREASE HEIGHT CONTROL TO 25M IN BUSINESS ZONES ALONG CANTERBURY RD DATED 25 MARCH 2016

40 MR BUCHANAN: This might be a suitable time, Commissioner.

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

LUNCHEON ADJOURNMENT

[1.03pm]