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INDEPENDENT COMMISSION AGAINST CORRUPTION

PATRICIA McDONALD SC
COMMISSIONER

PUBLIC HEARING

OPERATION DASHA

Reference: Operation E15/0078

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 9 OCTOBER, 2018

AT 2.00PM

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

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

<SPIRO STAVIS, on former oath

[2.00pm]

MR BUCHANAN: Commissioner, if we could play, please LII 11706, recorded on 17 June, 2016. Excuse me a moment. Commencing at 5.27pm.

AUDIO RECORDING PLAYED

[2.01pm]

10

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

THE COMMISSIONER: The audio file and transcript of the recording LII 11706, recorded on 17 June, 2016, commencing at 5.27pm will be Exhibit 231.

#EXH-231 – TRANSCRIPT SESSION 11706

20

MR BUCHANAN: Mr Stavis, you recognised the voices of yourself and Mr Hawatt in the playing of that recording?---Yes, sir.

And if we could go, please, to page 2 of the transcript on the screen, looking towards the bottom of the page you say that, "Their focus", that is to say, Bankstown's focus, "has been processing times, processing times so it's easy to take that approach because you say, you don't comply, see you later, refused, so it's not good, it's not good customer service. Whereas we've been, you know, obviously we've been, you know, taught differently, you know, the culture's been different, you know, we help people try and sort it out blah, blah, blah, so," and that's you essentially telling Mr Hawatt what you told the Commission before luncheon adjournment, wasn't it?---Yes, sir.

30

Basically the approach that you took of providing developers with solutions lengthened the time it took to process their development applications.---Yes.

40

And you knew that at the time.---I don't know whether it was consciously something I knew at the time. Our main focus was customer service and trying to find solutions.

Now, can I take you, please, to another topic, ■■■ Ridgewell Street, Roselands. Commissioner, I tender a folder of documents. The folder is headed Ridgewell Street and the volume number is 31.

THE COMMISSIONER: The volume of documents headed Ridgewell Street, volume 31, will be Exhibit 232.

#EXH-232 – FOLDER TITLED RIDGEWELL STREET (VOLUME 31)

MR BUCHANAN: Excuse me a moment, Commissioner. Before embarking upon my examination on this subject, Mr Stavis, you understand that a direction has been given forbidding the publication of the details of people's addresses?---Yes, sir.

10

Because we're going to be talking about your address and I just want to assure you that that direction extends to the evidence about your address. ---Yes, sir.

And that address was [REDACTED].---Correct.

And that was the property immediately south, slightly to the east of [REDACTED] Ridgewell Street, Roselands.---That's correct.

20

Can I ask you to go in this bundle of documents, volume 31, Exhibit 232, to the first page. This is – would you just excuse me a moment. Commissioner, I just want to do some logistics and get myself something to put that up. I apologise for the hiatus. Page 1 of volume 31 is the first page of a development application with a received stamp of 18 September, 2014, for the application made by A2, the numeral 2, Concepts. They were a firm of architects.---I believe so.

And the principal or the contact person at that firm was Ahmed Mahdi. ---I believe so, yes.

30

And you can see that the address the subject of the application is [REDACTED] Ridgewell Street, Roselands.---Yes, sir.

The owners' consent section is signed by Fadi Zreika and Bilal Zreika. Do you see that?---Yes.

And they were directors or they set themselves out as directors of Talus, T-a-l-u-s, Developments Pty Limited. Do you see that?---I, I, I do, yes.

40

In section 6 on page 2 the applicant described the proposed development as, "Demolition of existing structures and the construction of a new residential dual occupancy development Torrens Title subdivision," and that it would be used for residential purposes. Do you see that?---Yes.

Now, if you can go, please, to page 4 and can you see there three pages of plans, obviously more plans than this would have been lodged, but there are three pages here of those plans. Do you see them?---Yes.

And if you can just have a close look, please, on page 4, if we turn to landscape orientation you can see Ridgewell Street on the top right-hand corner, the proposed development set out on the property within the property boundaries and to the south or south-east a double-storey dwelling brick red roof with a shelter being at [REDACTED].---I believe that says tiled roof.

10 Thank you. And so far as these plans are concerned, there are elevations indicating the proposed development, including on page 6 the southern elevation at the top of the page there. Do you see that?---Yes.

Could you just take your time now and tell the Commission what happened in respect of that development application?---Okay. I was, myself and my wife reside at [REDACTED] - - -

20 If you'd just keep your voice up, please.---Sorry. And we received a, a notice from the council that had a, I believe, and I'm not sure whether the, these plans were attached, but it was ordinary for those plans to be attached. So, we had a look at the proposal. We also, and then, basically I explained to my wife what the nature of the proposal was and we decided to make an objection to the proposal. Yeah, I'm not sure how far you want me to go with all this, but - - -

Through what happened in the processing of the application.---Okay, and so that, that was before, way before I even started or even made an application, I think, to council for the directorship, I believe.

30 Yes, the application has got a receipt date of 18 September, 2014.---Yep. So after that, I, I guess, what happened after that was we, I think I started at, commenced work at, at Canterbury Council and during my initial stages of my tenure, the, I mean, the application was referred because of the fact that I was now a, a director. The application was referred to an external consultant, obviously upon advice and, and discussions with my manager at the time, George Gouvatsos, and I believe Andrew Hargreaves, and I'm pretty sure it was policy that that was to occur. And there was, somewhere during the process there was some amended plans that were submitted and there was, I guess, an assessment that was being done at the time, and I believe the external consultant was a gentleman by the name of Steven
40 Layman, but the person who had carriage over the application, I think there were a couple of people at council who looked after the application and one of which was Fran someone or other, but I can't remember her name exactly, and also Andrew Hargreaves. Those amended plans, I had a look at the amended plans. We still had concerns, my wife and I still had concerns with the proposal and it primarily related around the privacy and also potential overshadowing impacts, being that out property was to the south. And also the fact that we've got a, a swimming pool and sort of an entertaining area in very close proximity to what was being proposed. So

we, I'm not sure if we made a further submission outlining concerns that we still had and there was probably, I'm not sure if there was another set of plans that were ultimately submitted but it, and again, we had an opportunity to review those documents and make further, I guess, suggestions. We weren't against the proposal but in the form that it was in, it was still unsatisfactory. Then I believe I got, so there was a bit of, there was a letter that went out I recall at some point in that process, probably early on-ish, about issues – that was I think from the consultant, the external consultant, to the applicant – outlining a lot of issues that they, or he saw that the application was deficient, and there was a fair bit of toing and froing as I understand it. Then I, given that we were very concerned because it was our home – I've got teenage kids, a daughter as well, you know – I kept talking to the external consultant and also to the staff about our concerns, and it became a bit of a process, if you like. And then I believe at some point in time the applicant or his representative contacted Mr Hawatt I believe, who in turn contacted me about the proposal, and what happened, and then there were, I think I was still relaying concerns, and the main concerns at that point towards the end of the process was our privacy, mainly the placement of windows and, and the quantum of windows overlooking us, and that was the main issue it had come to, and I think there was suggestion made – I'm not sure if I had made or my wife and I had made that direct with the owner or whether it was through the consultant – but we basically said we still had concerns, so the issue became whether to lower the building and remove a number of windows or provide some sort of screen. The application got to a point where I believe it had to go through a process that I, through a process that would go to council I think for determination and then I, but there was, the policy was that if there were objections and if those objections were not existent, withdrawn, then the application, provided it was compliant in terms of under the delegations that we, we had, which was I think within 10 per cent of any non-compliance, then that could be determined under delegation, which I think ultimately that's what happened, yeah, so I mean that's it.

There were a series of amended plans?---I believe so, yeah.

And each time the amendments favoured you, favoured [REDACTED] ?
---I, I think that's fair, yes.

The amendments increasingly favoured [REDACTED] ?---I think that's fair.

What was it as you understood it that impelled the proponent or the owner to lodge amended plans on each occasion?---I'm not sure what his thinking was, but I know that at some point in time through a discussion with Mr Hawatt that the owner became aware that I was director of planning at Canterbury, but I'm not sure what his thinking was in respect of that, but yeah.

Did you at any stage use your position as director of city planning to further your private interest in [REDACTED] in your dealings with this DA?
---Look, I think probably the, the, the, given that it was such an emotive, emotional issue that started obviously as an owner rather than a director, I think at, at some point in time I guess the boundaries got blurred for me.

In what way?---Well, I mean, I'm happy to admit that I probably should have let the application run its course in, in the manner that had been, I guess, suggested or required at the time.

10

And what happened that was different from that?---Well, only because under the policy, if, if a, if an objection is withdrawn, then it doesn't, it doesn't have to go to that process, I guess. It, it can be dealt with under delegation.

But you're saying you should have let it run the course of being assessed by an external consultant, indicating that it didn't. What was it that happened that meant that it didn't run the course of being assessed by the external consultant?---No, sorry I was - - -

20

What was it that went wrong?---Sorry, I wasn't referring about whether the external consultant, I was talking about the actual processing of the application itself, but as far as I best can recall, the external consultant continued to assess the application and he, he shared a lot of the views that, or concerns that - - -

Well, I just need to understand then what was it that you tell the Commission should have happened but didn't happen?---I guess when I started as a director I probably should have distanced myself a lot more than what I did.

30

And what did you do that you shouldn't have done?---Getting involved in making suggestions, acting as, as an owner, really.

And using your power as director of city planning to do so?---I didn't look at it that way, sir, to be honest with you. You know, with the benefit of hindsight I would have done it differently, but at the time it was more of a, an emotional issue for us.

40

Were you aware at any stage that the owner, Mr and Mrs Zreika, needed a quick determination of their DA, of their architect's DA?---I don't, I don't recall that at all, no.

You don't recall ever learning that they would like, as quick as possible, a determination of the DA and that that was a negotiating tool that could be used as leverage to advance your interests?---No. I, I don't recall that.

And you had a pecuniary interest in the determination of this DA, didn't you?---No. The house is not owned by me.

You had no interest in [REDACTED]---I don't own the property but my wife owns it.

Did you have an interest in [REDACTED]?---Can you explain what you mean by interest? I'm just trying to - - -

10 Well, can you tell us what interest you had in [REDACTED]---I lived there, I live there, I live there.

Yes. And what sort of, did you have a leasehold, did you have a freehold, was there a mortgage?---There's a mortgage.

Whose name was on the title?---My wife.

Not you?---No.

20 But you live there with your wife?---Correct.

And you gained the advantage of living there with your wife?---Yes.

You plainly had a pecuniary interest in that property, didn't you?

THE COMMISSIONER: Were you contributing to the mortgage payments?---I, yes, yes.

30 MR BUCHANAN: Did you lodge a declaration of interest, of pecuniary interest that you had in the determination of this DA?---I don't, I don't believe I did, sir, no.

Why not?---I didn't think about it, to be honest with you.

You knew it was council policy that you should lodge a declaration of pecuniary interest if you have a pecuniary interest in a matter under decision at council.---Yes.

40 Why didn't you comply with that policy?---As I've said, the only explanation as I sit here today is that I, I didn't think of it in that, in that term. I was thinking of it in terms of a, you know, an owner of the land or someone that lived there, I should say.

Can I take you then to some of the documents. If I could ask you to assist us with them, please.---Sure.

If you can go to page 32. That is the first page of the first of your two objections.---I, I believe so, yes.

And it's dated 21 October, 2014.---Yes, sir.

And it's a very detailed objection, isn't it? It goes through to, tell me if I'm wrong, page 55, where you sign yourself as Spiro Stavis, town planner and owner.---Yes. Yeah, it was probably the owner bit was wrong but, yeah.

THE COMMISSIONER: You also assert you're the owner on page 32.
---Sure.

10

MR BUCHANAN: Now, you said on the first page of your objection of October 2014, "As discussed with Mr Gouvatsos, we are extremely concerned with the proposed development and believe it is totally unacceptable." Can you tell us, please, about the discussion that you had with Mr Gouvatsos to which you refer there?---Look, I, it, it, it was just that. I remember having a discussion with him early in the piece and I recall that I'd expressed concerns about, about the proposal and which I've listed in summary.

20

And how did you identify, as at 21 October, 2014, Mr Gouvatsos as the person to whom to speak?---Because I, in my capacity as a consultant planner in the past, I had dealt with Mr Gouvatsos on behalf of proponents, so I knew, and George has been with the council a very long time, and I actually, I knew him through, sort of indirectly through relatives as well.

Excuse me. At this stage, 21 October, you would have been aware that the position of director of city planning at Canterbury was vacant and that council was soliciting applications to fill it?---I'm not sure of the exact, whether I was aware of it.

30

THE COMMISSIONER: It was advertised on 16 October. Did you see the ad in the newspaper?---No, I think, as I said before, I think it was brought to my attention – rather than me sort of looking at the ad – whilst I was at Botany Council.

40

MR BUCHANAN: I'm not going to ask for it to be shown to you, but if you can accept from me that the position was advertised on a website called CareerSpot by Judith Carpenter & Associates – that's at volume 3, page 45 – commencing 16 October and indicating a closing date of 27 October, 2014. So you don't think you would have been aware by this stage that the position was vacant and council was trying to fill it?---Not that I can recall, sir.

Now, if I can just very quickly take you through some features of your objection. A concern was a very large tree located to the rear of [REDACTED] Ridgewell Street. Do you see that on page 32 of volume 31?---Yes, sir.

And it's shown in all the plans of the property, isn't it?---I believe it, it was, yes.

Yes. And you were concerned that it not be removed. Is that right to say? ---Yes.

10 Then if I can take you to page 33, the first dot point. "The proposal is sited only 1.2 metres from our rear northern boundary for a building length of 24 metres running full length of our rear boundary, thereby presenting a bulky unarticulated built form elevated 1.2 metres from the existing ground level, accentuating the visual bulk and scale of the development and creating adverse impacts in terms of overshadowing, loss of privacy and visual impacts." You talked about impact on solar access in the next dot point. Do you see that?---Yes, sir.

20 And the proposed – this is the fourth point, being a proposed patio on the southern side of the proposed dwelling being very close to your rear boundary, facing your swimming pool and entertaining area. Do you see that?---Yes, sir.

30 And you said in the third-last dot point in that section, "The overall height of the development is totally unacceptable and should be reduced. The proposed ground floor should not be elevated above the existing ground level. The overall height of the southern dwelling can be reduced in height by at least a minimum of two metres." The next dot point, "The proposed lapped and capped timber fence along our boundary will not provide adequate mitigation against noise and visual impacts of the development and it is recommended that a 2.5-high masonry fence along the full length of our rear boundary should be constructed to assist in mitigating against these impacts. Do you see that?---Yes.

Can I take you then to page 54 and you set out changes that you sought, A to G on that page. Is that correct?---Yes.

Starting with in A, "Retention of the existing mature tree located at the rear," and concluding at G with, "Construct a 2.5-high brick masonry wall and appropriate screen landscaping."---Yes.

40 Now, we know that you applied to be appointed director of city planning in an application dated four days later, 25 October.---That sounds - - -

Is that correct?---It sounds about right, yes.

Can I just take you to page 67, please. The officer in the assessment section was Diep Hang, H-a-n-g, D-i-e-p Hang, a woman. Is that right?---Yes.

And we see on page 67 an email acknowledgement of your submission to council and that email is dated 27 October, 2014. Do you see that?---Yes, sir.

Can I take you then to page 66. You replied by email, dated 28 October, 2014, "I want to be intimately involved in the assessment process. Please keep me informed throughout." When you wrote that, what did you mean by, "I want to be intimately involved in the assessment process"?---Just that, just that. That I wanted to be informed of the progress of the application.

10

Did you have in mind the fact that you might, if your application for appointment as DCP was successful, be her boss?---No, sir. That was the furthest thing from my mind.

Could you go, please, to page 60. This is a, one of those letters that was sent by your assessment section, where it was considered that the proponent needed to address a number of issues on a preliminary assessment of the application. Do you see the first page?---Yes, sir.

20 Addressed to A2 Concepts, the applicant?---Yes.

On the last page, at page 63, and it's signed by Ms Hang on 11 November, 2014. Do you see that?---Yes.

And it seems that Ms Hang has taken up, certainly, your overshadowing point in the second last paragraph of the first page of your letter.---Yes.

And the visual privacy point in the middle of page 61. Correct?---Yes.

30 And page 62, she discloses that your objection had been received and endeavoured to summarise the matters raised, including 2.5-metre-high masonry fencing suggested. Do you see that?---I do but I also note that on page 61, point 4 was an issue that I had raised as well, in relation to height.

Oh, thank you. Can I take you then to page 64. At page 66 at the bottom is your email of 28 October in this email conversation with Ms Hang, where you said you wanted to be intimately involved in the assessment process, "Please keep me informed." You then sent an email in November 2014, "Just following up on my emails. Can you advise on status?" She
40 responded on 18 November, "Council is awaiting information for reassessment." Going over to page 65, you had a conversation with her about amended plans and notification, re-notification, sorry. And then going over to page 64, the bottom of page 64, on 16 January, 2015, you asked Ms Hang, "Has there been any update regarding your email below?" Do you see that?---Yes, sir.

By this stage of course you had been offered the job of director of city planning by Mr Montague, but he had indicated that he proposed not to

honour the offer. Is that right?---That sounds, the dates sounds about right, yes.

10 And 20 January, Ms Hang said, “No further updates.” She was currently awaiting amended plans, and then on 20 January, 2015, you wrote to Ms Hang, cc to Mr Gouvatsos, “The applicant has had ample time to submit amended plans. Seems to me that if amended plans aren’t received this week, then a reasonable case exists to refuse the DA. In my experience, a quick refusal in such circumstances is best.” Do you see that?---Yeah, but the email was directed at Ms Hang.

Yes.---I think you meant, you said that it was directed at Mr Gouvatsos.

I thought I said cc’d to Mr Gouvatsos.---Sorry, my apologies.

20 And was that your experience, that a quick refusal where there was a delay in the submission of amended plans was best?---It, it really I guess depends on the circumstances and particularly the proposals are so far out of kilter, I guess.

I’m sorry, I can’t hear.---I’m sorry. Look, the short answer is yes.

That was not a policy that you followed scrupulously once you were DCP, was it?---Me personally, no.

30 And we’ve seen that that was a departure from your true belief that occurred a number of times in respect of developers for whom Mr Hawatt and Mr Montague and Mr Azzi were advocating.---No, look, no, not, I don’t agree with that. There were circumstances where it’s best to try and work with people. That would be my view. I guess I was answering as a, as an owner or a person who resided rather than as a, I guess, a director.

Because we’ve seen, haven’t we, that you might be exasperated by it but you nevertheless did not direct the refusal of a DA because the Chanines or Mr Demian were dilatory in providing materials that you had indicated were required before there could be a favourable outcome on the DA.---That’s fair.

40 Page 104 is, at the bottom of the page, an email from Alex Mahdi as it’s written there, but was it your understanding that Ahmed used the name Alex from time to time?---Sorry, no, I wasn’t as I sit here, but I’m sure it’s the same gentleman.

And the email is to Ms Hang. It’s on 23 March, 2015, which is after you’ve started as director of city planning, and he says, “Since submitting the requested information on 26 February, 2015, it’s now been three and a half weeks. You informed me that once I submitted the amended plans that you were in a position to finalise the assessment. Can I please get an update?”

My client is consistently putting pressure on me. Can I please get an update?" You see that?---Yes, sir.

And so it seems that amended plans were lodged by the applicant.---Yes.

10 And Ms Hang's response that same day, at 4.00pm, is at the top of the page. She indicated that a submission was received, that the objector had recently become an employee of council as the director of city planning, and that in that regard the DA couldn't be determined under delegation. It had been directed that the DA be reviewed by an independent planner and that the DA be reported to the Independent Hearing and Assessment Panel for determination. "This is standard practice regarding DAs that involve council employees (as applicants, property owners or objectors). In this regard it is anticipated that the independent review of the proposal will be completed in time for the next IHAP meeting on 4 May, 2015 for their review and recommendation, and then to the following 14 May, 2015 City Development Committee meeting for determination." Do you see that? ---Yes, yes.

20 But what I was taking you to in the first instance, just to go back to the chronology, is that it appears that amended plans were lodged on 26 February, 2015 from what Mr Mahdi says in his 23 March, 2015 email. Right?---Yes.

Then if you could go to page 72, this is the first page of an officer's report which goes from page 72 to 96, and it's by Ms Hang. You've seen this document, haven't you?---Bear with me for one sec.

30 The last page is 96 and it identifies Ms Hang as the assessing officer. ---I believe I have, yes.

When did you first see this report?---I'm just trying to think. I'm just having a look at the date. Sorry, I retract that. I can't be certain that I've seen this.

It would have been on the file, wouldn't it?---Perhaps, sir, but I don't recall seeing this version.

40 You certainly saw the file, didn't you?---I believe I did, yes.

What I want to suggest to you is that in 2015 there was only one report and it was this report.---I, I doubt that.

And are you saying that you didn't see this document at all when you were director of city planning?---I don't recall seeing it, I'm sorry.

You would have been very, very interested in the contents of it, wouldn't you?---I, I can't say with any certainty that I saw it, so - - -

But if you knew that there was an assessor's report on the file you would have leapt at it in order to read it, wouldn't you?---I, I'd be interested, yes.

Now, in the ordinary course this report would have been reviewed by the team leader for development assessment?---In the ordinary course, yes.

And if it had been satisfactory then a recommendation – I withdraw that. You can see that – excuse me a moment – recommendations commence on page 85 and that was that the development application be approved subject to conditions.---Sorry, on what page was that?

85.---85. Yes.

And if on review by the team leader this report had been approved, then a decision would have been made under delegation to approve the development application subject to the conditions recommended in the report. That's correct, isn't it?---That would be the ordinary course, yes.

20 The document has at the top of it in handwriting in red, "Final Assessment," and then some initials. Do you see that?---Yes.

This is on page 72.---Yes.

My suggestion is the initials are DH, consistent with Ms Hang's initials. ---Yes.

And so she wrote on the document, "Final Assessment," that is to say until the matter went off to an external consultant, this was going to be the report that went to the team leader as delegate.---It appears so, yes.

30 Now, can I just take you through just two features of this report. Page 83. It refers to a submission having been received and then sets out in far more detail than Ms Hang's email to the applicant the objections that you had raised in your earlier objection. You see that? It goes through to page 85. So in fair detail it sets out your objection.---Yes.

40 And including at page 85 against the Roman numeral VII, "Fencing considered is to be inadequate to mitigate noise and privacy. 2.5-metre-high masonry fencing suggested." And it goes into detail there, saying, "In order to mitigate acoustic and visual privacy concerns raised, a condition of consent has been imposed for the construction of a new 1.8-metre-high lapped and capped timber or Colorbond boundary fence with 0.6-metre lattice on top in consultation with the adjoining property owner," who was you and your wife, correct?---Yes.

And just so that for the record the matter can be cleared up, the tree objection that you had was accepted by Ms Hang at item 52, at the top of

page 93, and also on the previous page the tree number was T1, the tables of trees.---Yes.

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

And the condition as to 600 millimetres of lattice being provided on top of the southern boundary fence at the applicant's cost is page 88 of volume 31. Do you see that?---Sorry, what page was that one on?

10 At page 88, item 10. Condition 10.---Yes. Yes.

And can I ask you, conditions 20 and 21, page 89 of volume 31, were they also conditions which you had sought? "Provide a surveyor certificate prior to the walls being erected more than 300 millimetres above the adjacent ground surfaces to indicate the exact location of all external walls in relation to the allotment boundaries, and then provide a surveyor's certificate prior to the pouring of concrete, indicating the finished floor level to a referenced benchmark, and that these levels must relate to the levels indicated on the approved architectural plans and/or the hydraulic details."---I'd have to
20 check. Are you talking about in my submission?

Yes. Do you remember that addressing a concern of yours?---No.

That you weren't happy with the plans and their indication of boundaries?
---Vaguely, but I can confirm it if I look at it, if you want me to.

No, I don't. Thank you. Apart from that, however, your objection was not implemented at least as to the construction of a 2.5-metre masonry wall between the properties.---Yes.
30

Not in this report.---Yes.

Now, can I ask you to go to page 97, please. So that report bore a date of 3 March. On 4 March you wrote an email to Mr Gouvatsos at 10.20pm, this is two days after you'd started work, "Can you please show me the amended plans tomorrow?" and the subject heading is ■■■ Ridgewell. Do you see that?---Yes, sir.

40 And on the next page is an email from you to Mr Gouvatsos, 10 March, to George, "Please note, I'd like to review the conditions of approval before they are ratified." Do you see that?---Yes, sir.

Going back to the email, 4 March, before you sent that email had you had any contact with George Gouvatsos once you had started work about this DA?---It was very early in the piece but I did, but I, I can't be certain that it was, you know, the day before this email was sent.

Well, certainly if you'd had a conversation with Mr Gouvatsos before 10.20pm on 4 March, 2015 about the application, that would explain the severe abbreviation in the subject matter of the property, and you baldly launching into your request, "Can you please show me the amended plans tomorrow." It assumes some knowledge or understanding on the part of Mr Gouvatsos of an interest or concern you have about the matter.---Well, I think he knew about that before I started anyway, by virtue of submission that I put in. Yeah.

10 This is pretty abrupt communication though, don't you think?---No, I don't think so.

So why did you sent it?---Again, I wanted to see what, what the amended plans were.

Yes. Did you tell Mr Gouvatsos, look do I need to put in a declaration of pecuniary interest on this or how should we handle it?---I, I don't think I said, I said to him anything about the pecuniary interest. I do remember having a discussion with him at some point early in the piece about, because
20 he was the one who brought it to my attention, about the process.

Was it before or after this email?---I, that I can't be sure of, I'm sorry.

So what did he bring to your attention?---Well, that the, the policy was that, with employees, that, I guess, where applications directly affect employees that it had to follow that process of going through, I guess, IHAP and, and so forth.

Did he show you a document or reference a document?---No. I, I don't, I
30 can't remember.

Did he reference a council policy document?---At some point in time he would have but I don't know whether it was before that.

And so do you say that it's possible that after Mr Gouvatsos said, oh, look we've got this policy of a need to avoid a conflict of interest, you say, a policy to that effect?---Yeah, he made me aware of it, yes. I just don't know
- - -

40 Well, made you aware of it?---Yes.

You say it's possible that after he made you aware of it, you said, "Can you please show me the amended plans tomorrow"?---Look, I don't think it was that early in my tenure that I became aware of it because it, you know, was only like a day or two days that I was into the job.

Yes.---So, I don't know, I don't, I don't think it's conceivable that I would have had that discussion within those two days prior.

Surely it's not conceivable that having had your attention drawn to a council policy about the need to avoid a conflict of interest on your part in a case such as this, you didn't straight away – peremptorily, I suggest to you – demand to be shown the amended plans.---No, I didn't think of it like that.

So, isn't it more likely that that conversation with Mr Gouvatsos was after 4 March?---It's, given the timeline, I would say so, yes.

10 Now, nevertheless, on the third day of your employment there – and it could have been earlier if that email is an indication of an earlier discussion – you had got stuck into sorting out this DA using your powers as director of city planning.---I didn't see it that way.

But you did, didn't you?---No, I didn't get stuck into anything. I, as I said, I was concerned, concerned for my family and how this was going to impact us.

20 And you were requiring a subordinate to provide you with material so that you could review it, that is to say, the amended plans?---Yeah, did I ask him for me to have a look at the plans? Yes, of course.

You were exercising powers you had as director of city planning to interfere in a matter in which you had a pecuniary interest - - -?---I didn't - - -

- - - as early as 4 March, 2015?---As I said, I didn't realise. I didn't think of it that way.

30 But that's what you were doing, wasn't it, Mr Stavis?---Well, I, I, I accept that but it wasn't, that wasn't in my mind at the time.

So what did you understand to be a conflict of interest generally speaking as at 4 March, 2015? What was your understanding of what a conflict of interest was?---I guess naively in relation to looking back now, in relation to this application I thought that the, I guess the conflict of interest was negated by virtue of the fact that we had an independent person or external consultant looking at the proposal.

40 Not as at 4 March you didn't.---No, but I didn't think about it, as I said before, at the time.

Well, what I'm, that's why I'm asking you, what did you think a conflict of interest was as at 4 March, 2016?---I didn't think - - -

2015.---I didn't think about it, in all honesty.

I think by your failure to answer my question you're acknowledging that you knew it was a conflict of interest, you know it's a conflict of interest

and you proceeded irregardless.---I didn't know it at the time. As, as I sit here - - -

How could you not have known?---Well, as, to the best of my recollection, at the time I did not think of it as a conflict. Today, yes, I agree. As I sit here today I think it should have been, as I said earlier, it should have gone through a different process.

10 On what basis as at 4 March, 2015 did you see it as being not a conflict of interest?---What I'm saying is that I didn't look at it in those terms. It didn't even enter my mind is what I'm - - -

Did you care whether it was a conflict of interest, is that what you mean? ---No, sir. No, I'm not saying that at all. It just did not enter my mind at the time.

20 But you couldn't have not been aware of the fact that you had an interest in it, could you? You knew you had an interest in it. That was the reason that you were asking to have a look at the amended plans.---Yes, I accept that.

It was obvious to you, wasn't it, that you were engaging in a serious conflict of interest straightaway within three days of starting work?---No, it wasn't obvious to me at the time, no.

Then on 10 March, this is page 98 of volume 31, you emailed Mr Gouvatsos, "Please note I'd like to review the conditions of approval before they are ratified." Do you see that?---Yes.

30 There's no reference there to an external consultant.---Yes.

Had there been a discussion by 10 March, 2015 involving you and Mr Gouvatsos about the policy that he drew to your attention?---I, I, I can't say to be honest with you. I don't know.

Why did you write that email to Mr Gouvatsos?---Because he was, he was my manager at the time.

40 THE COMMISSIONER: And the conditions of approval are the ones that Ms Hang set out in her report?---It must be, Commissioner, I, I just can't confirm it, sorry, but it must be.

MR BUCHANAN: What did you mean by "Ratified?"---Well, finalised I guess.

That is to say before the power of determination under delegation was actually exercised and while the conditions were being determined? ---Yes.

And who did you understand would be the person who would exercise the power of determination under delegation as at this stage?---Well, the, it normally would have been Mr Hargreaves I think from memory or, or George.

Had you had a discussion with Mr Gouvatsos to find that out?---No, I can't recall, sorry.

10 Can I ask again though, why did you send this email, why did you want Mr Gouvatsos to know that you would like to review the conditions of approval before they are ratified?---Because I wanted to see if they, my, I guess our concerns, my wife's and I concerns were taken on board.

And if they were not, what did you propose to do about it?---I didn't think about it, to be honest with you. As I sit here today I can't recall ever thinking like that.

20 Well, you proposed to intervene, didn't you?---Again, as I sit here today I don't recall what I thought at that point in time.

You're laying the ground with this email to intervene, aren't you?---Well, I, I, I didn't think about it in those terms at the time.

You see, you keep on saying that, but at the moment I'd just like you to focus on what I'm asking you - - -?---Sure.

30 - - - and that is what you were actually doing was preliminary to an intervention by you. You were laying the ground for you to intervene to ensure that the conditions advantaged you or did not disadvantage you. ---Again, in the context of what I said before, yes, I accept that, what you're saying.

Excuse me. Commissioner, I'm moving on to another document now. Would this be an appropriate time to just take a five-minute break?

THE COMMISSIONER: Yes. We're just going to take a very short five-minute break and we'll resume just before 20 past 3.00.

40 **SHORT ADJOURNMENT**

[3.13pm]

MR BUCHANAN: Mr Stavis, can I ask you to go to page 99, please, of volume 31, which is Exhibit 232. This is an email by you to Mr Gouvatsos on 12 March, 2015, "Hey George, any update on the draft conditions?" Can you see that?---Yes.

You were trying to get information from a subordinate in order to pursue a private interest of yours, weren't you, not the public interest?---I didn't think about it in those terms but I guess you're right, yes.

And you were asking the subordinate, essentially, to exercise the powers he had as a council officer, to provide you with the information you were requesting?---Oh, sorry? By providing information, sorry what was your previous question? Because I don't think I understand it correctly.

- 10 You were asking Mr Gouvatsos to provide you with information to assist you in pursuing a private interest, not the public interest, weren't you? ---Sorry, I don't understand the, the, the question because I didn't think about it in those terms.

Forget about, for the moment, what you were thinking about.---Sure.

You were exercising the powers you had to require a subordinate to comply with directions you gave, weren't you?---Yes.

- 20 And the interest you were pursuing, whether you thought about it or not, was a private interest, not the public interest, isn't that the case?---Yes.

Now, had you by this stage had that conversation with George Gouvatsos in which he raised the question of a council policy to deal with conflicts of interest in situations like this?---I, I don't, I can't recall. Sorry.

- 30 It perhaps is unlikely, can we infer, that you had, because if you had then you would have been defying that policy full frontal by exercising your power to require a subordinate to provide you with information about a matter in which you had a private interest. So it's unlikely he had that discussion with you about the council policy on the subject. Can we infer that reasonable conclusion?---I think it's probably a reasonable conclusion, yes.

Now, what was the update you were expecting?---Basically following on from the previous email which was being - - -

Right.---Yeah.

- 40 Had you not been provided with the conditions of approval by the time you sent your email of 12 March?---Probably not, otherwise I wouldn't have asked for it. I mean I can't be certain but - - -

Can I ask you to go to page 105. This is an email from Ms Hang on 16 March, 2015 to Mr Mahdi at A2 Concepts, saying, "I have not received the report back from review. Will update you accordingly once received." Do you see that?---Yes, sir.

And then can I, I'll take you to some other emails in a moment, but can I take you back now to page 103, and can you see at about point 3/4 on that page there's an email to Mr Montague from Mr Gouvatsos on 19 March, 2015 at 11.05am?---Yes.

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

10 And you can read it – I withdraw that. You've read these documents in recent times I take it after the documents were made available to parties on the restricted website?---I have, yes.

20 But this document explained to Mr Montague that they, the section had a DA for a dual occupancy at [REDACTED] Ridgewell Street which adjoined Spiro Stavis's home at [REDACTED]. "Spiro lodged an objection in October 2014 to a number of the design elements of the proposal that would affect his privacy. The matters raised have been taken into account as part of the assessment, and the planner, Diep Hang, has now completed her report recommending approval with a number of conditions requiring changes to the design to address Spiro's privacy concerns. The issue we now have is that Spiro is no longer just a neighbour lodging an objection, but an employee and more importantly our director. We therefore feel that we cannot now determine the DA under delegation as there could be a perception that we may have been influenced by his position. I suggest that we refer the DA to an independent planner to assess and report the matter to IHAP and then CDC for determination. This will be the most transparent way in processing this application which avoids any perception of collusion." Do you see that?---Yes, sir.

30 Were you aware that Mr Gouvatsos was going to send that email?---That I can't be sure of.

Were you aware that he sent it?---Not that I recall, I'm sorry.

What happened between you and Mr Gouvatsos on this subject before he sent it, before 11.05am on 19 March?---I really, I really can't tell you. I'm not sure what happened.

40 Well, you've told us about a memory of a conversation with Mr Gouvatsos in which he pointed to a policy to deal with conflicts of interest - - -?---Yes.

- - - where an objector was a council employee.---Yes.

Had you had that conversation with Mr Gouvatsos before he sent this email or was the conversation do you think after he sent this email?---I, I, I don't recall, I'm sorry.

Does it come as a surprise to you – I appreciate you read it recently, but does it come as a surprise to you to see this email from Mr Gouvatsos to Mr Montague on 19 March?---No, not really, no.

Because? Why not?---Well, because I'm not sure when I became of it but I did become aware that this was the process, so in reading this it didn't surprise me.

10 Well, my question has to be why did Mr Gouvatsos write this email and not you?---That I, that I'm not sure about.

Well, one thing we can apparently exclude is that it occurred to you that you should notify the general manager that there was a conflict of interest – namely yours – with the applicants in the case of this DA. We can exclude that possibility, can't we?---I'm not sure if I was aware of it when he sent this email so I can't comment on that. I'm not, I can't give any insight.

20 But why didn't you write to your superior saying, look, there's a conflict of interest here, we've got to take steps to deal with it?---It didn't occur to me as I've said before.

You appreciated though, obviously, that you had this private interest in the DA?---Yes.

And you knew that you were meant to be exercising your powers in the public interest?---Yes.

30 And it never occurred to you that there was a conflict between those two things - - -?---I know it doesn't - - -

- - - when they're on the same subject?---I know it doesn't sound right but it didn't occur to me at the time, sorry.

There was a response from Mr Montague on 23 March – if we could just see that while we have the page open – at 12.21pm. A very short email to Mr Gouvatsos saying, “I agree.”---Sorry, what page is that on?

40 I'm sorry. Page 103, the page we were looking at a moment ago.---Oh, yes. Sorry. Yes.

Do you see that at the top of page 103?---Yes, sir.

But can we just go back in time, please, now. Volume 31, page 101. That email from Mr Gouvatsos is at 11.05am on 19 March at – excuse me a moment – 3.20pm on 19 March. Ms Hang wrote to Mr Layman the email that's set out there seeking, it's asking for what is called a peer review but in fact requests an independent assessment – this is the third paragraph – of the proposal to be completed. The assessment report completed by council will

be forwarded to you to assist with your assessment. And then it talks about the need to comply with an internal deadline for the IHAP meeting on 4 May, 2015. Do you see that?---Yes, sir.

And Mr Layman responded on 19 March, this is page 100, the bottom of the page, about a fee proposal. Do you see that?---Yes.

10 And then Ms Hang responded at 4.11pm on 19 March to Mr Layman in which she forwarded the plans and the application and in particular do you note she included the final assessment report [REDACTED] Ridgewell Street.docx?
---Yes.

And then at page 110 for completeness we can see that on 25 March Ms Hang retained Mr Layman on behalf of council to proceed with what she described as the independent assessment of the DA and submission received, referring to your objection. Do you see that?---Yes.

20 Had there been any discussions in which you had been involved or of which you were aware that allowed you to track that this was occurring at the time?---I believe that Mr Gouvatsos probably would have, as I said before, would have brought it to my attention about the fact that it needed to go through a different process so, yeah.

And did you say, "That's a good idea"?---Well, yeah. I mean I saw no reason - - -

Well, did you argue with him?---No, I didn't argue with him, no. Not at all, not at all.

30 So, tell us what you told Mr Gouvatsos when he raised that with you?---I don't recall the exact words but it was - - -

What was the tenor of it?---It was basically, okay, that's, that's fine. If that's the process that need to follow then, then that's fine.

Did you understand that he sought the GM's consent for that course to be taken?---I, I can't recall that at that point in time, no.

40 Did you ever learn that the GM had, in effect, given a direction that that was what was to occur?---Not that I can recall.

You were never aware that Mr Montague had agreed with that course being taken?---Not that I can recall as I sit here today.

So, when you read these documents recently and today, it comes to you as a surprise, does it, to find that there was that exchange between Mr Gouvatsos and Mr Montague?---No, not really. No. No, it doesn't.

Why do you think Mr Gouvatsos wrote to Mr Montague then?---Obviously to, to point out that there is a, there was a process that needed to be sought and wanted him - - -

But why does he have to send that letter to Mr Montague instead of someone who does the cleaning in the building?---Well, he's the general manager obviously.

Yes.---Yep.

10

Why does he send it to the general manager?---I'm not sure I understand the question.

The general manager's your superior, isn't he?--- Yes.

And if there's a conflict of interest involving you, then who is Mr Gouvatsos to report to?---Oh, sorry, to someone above me, yes.

20

And that person is the general manager - - -?---That would be the general manager.

- - - wasn't it?---Yes.

And you were unaware of anything like that occurring, is that what you tell us?---As I sit here today, I don't recall that at that point in time.

Is it possible you were aware and you've since forgotten?---I can't recall. I'll be honest with you.

30

Well, no, the answer is either, yes, it's possible I was aware of it at the time and I since forgotten or, no, it's not possible, I would have remembered something like that.

MR PARARAJASINGHAM: I object, Commissioner. He doesn't remember. There's not more that he can really say on the matter.

MR BUCHANAN: I press the question, Commissioner. I think, with respect, we're entitled to understand what the witness means when he says, "I don't recall."

40

THE COMMISSIONER: I'll allow the question.

MR BUCHANAN: You see, there's different things that "I don't recall" can mean and it sometimes depends on the subject matter of the question of the possible recall, and what I am asking you is, is it possible that you were aware that Mr Montague was involved in the decision to send the assessment of ■ Ridgewell Street DA out to an external assessor and you have since forgotten it? Is that possible?---I don't recall, sir, I'll be honest.

I'm not asking you that. What I'm asking is, is it possible that you were aware of it at one stage and you have since forgotten? Or are you saying, look, it's a matter of so little concern to me, I don't know if I was ever aware?---Well, I just don't remember, I don't recall. I, I don't know how else to answer that question.

10 But you don't think that the change of the locus of decision making in the body in which you were working – about the assessment of a DA in which you had an interest – from an assessment officer to the team leader, on the one hand, being shifted all the way up to the general manager giving a direction as to how it's to be done, you don't think that was a matter of any significance to you at the time?---The only thing that I remember in regards to that was George telling me about it.

Telling you about what?---About the, the, the, the, the policy, the process.

20 And did he indicate to you, oh, look, the matter will have to be reported to the general manager?---Not that I can recall, no.

And you didn't suggest to him that it should be reported to the general manager?---It did, did not occur to me, sir.

Why didn't it occur to you to report it to the general manager in the circumstances of what he was telling you?---Because I accepted his, his advice that that's what the policy was.

30 Yes, but it then meant something had to be done and the question was, who was going to make that decision, were you not interested in that?---I just didn't think of it in those terms.

All right. So the thing, the takeaway message though is you at no stage ever were aware that the general manager had in effect given a direction that the assessment be conducted by an external assessor. Is that right?---I just don't recall if I was ever aware of it.

40 You see, what I suggest is that cannot be right, that you don't recall. If you had been aware of that, I just with respect, probably impermissibly injecting my own option, cannot understand how you could forget it, that the general manager had directed it.

MR PARARAJASINGHAM: I object, Commissioner. Just if my friend is relying on what is at page 103, all that appears is that Mr Montague says, "George, I agree." Now, if that's the basis to suggest that that is a direction, in my submission that doesn't arise from the face of this document, so it's not fair to put that in the question to this witness.

MR BUCHANAN: Well, I'll withdraw the question and I'll reframe it. Do you see on page 103 that there's a report by Mr Gouvatsos to Mr Montague in relation to the matter?---The email?

Yes.---Yes.

And that a recommendation is made with the word, "Suggest," in the second-last paragraph?---Yes.

10 And do you see that the general manager agreed?---Yes, sir.

That was a decision by the general manager as to what should occur in those circumstances, wasn't it?---Yes.

That was a direction by the general manager as to how the DA should be assessed in the circumstances of which he'd been informed by Mr Gouvatsos, wasn't it?---Yes, sir.

20 How could you be unaware of the fact that the general manager had given such a direction if you had ever become aware of it? That's what I'm asking. The significant of that I suggest is such that if you had been aware of it you would not have forgotten it.---I don't agree with that sir, I just don't recall.

Do you think it's an important thing that the general manager made a direction about how the DA should be assessed in which you had an interest, was that a matter of importance?---Yep, of course it is, if he gave a direction it's - - -

30 So do you understand then the difficulty that ordinarily a person might have in understanding how you could have forgotten if you were ever aware? ---I'm not saying I forgot, I just don't recall ever being made aware of it is all I'm saying, because as I've said consistently, to the best of my knowledge I was made aware of that policy through George Gouvatsos.

THE COMMISSIONER: But sorry, you're aware of the policy but at a general level or specifically?---Well, the process.

40 And sorry, when you say the process, what do you mean?---That it, just the way George has described it in that email in terms of his, his recommendation be assessed by an independent planner, report follows to IHAP and CDC for determination. I'm not, I mean generally as I sit here today recall a conversation around that with George.

MR BUCHANAN: But nothing else?---No.

No suggestion that that should be what happens?---Well, I think that the inference was, yes, that that – I, I don't recall the exact words but I do remember him explaining what I just said earlier.

And are you saying to us that you assented to the proposal as explained to you by George Gouvatsos?---I agreed with it, yeah.

And Mr Gouvatsos never told you that Mr Montague had agreed with the proposal?---As I said, I don't recall.

10

And Mr Montague never said anything to you about it?---I don't, I don't recall him ever raising that.

Can I take you to page 104, please. At the bottom of that page can you see that there's an email from Mr Mahdi to Ms Hang reciting the history of his communications with her as to progress with the matter, and in the paragraph commencing "Secondly," he says, "Secondly, since submitting the requested information on 26 February, 2015 it's now been three and a half weeks. You informed me that once I submit the amended plans that you were in a position to finalise the assessment." And we looked earlier at that and the email above, 4.00pm the same day from Ms Hang to Mr Mahdi, explaining what had happened. Do you see that?---Yes, sir.

20

Now, were you told what was being done by way of communication with the applicant as a result of the proposal Mr Gouvatsos had told you about? ---I, I don't recall being told that, I'm sorry. I don't recall.

What's your next recollection of the matter?---Having a look at, I guess, amended plans. I mean, as I sit here today, yeah.

30

Now, we've already seen this, but Exhibit 52, page 141 of volume 5, you were trained in council's code of conduct and you signed a statement of understanding of the code. Do you remember giving us that evidence before?---Yes.

And that code, of course, provided chapter and verse about not preferring a private interest to the public interest and the need to ensure that the public interest was kept firmly at the front of one's mind, particularly in development assessment. Do you remember that?---Yes, sir.

40

And also the need to disclose pecuniary interests.---Yes, sir.

Having been trained in the code of conduct on 25 March, 2015, you still didn't lodge a statement of pecuniary interest, did you?---No, it didn't occur to me, I'm sorry.

Surely it occurred to you once you read in the code of conduct about the need to lodge a statement.---I can't honestly say that I read that chapter and

verse. In my experience in the other councils that I've worked in it was, like, just signed it. I can't say hand on heart that I went through it in chapter and verse.

You were trained in the code of conduct, weren't you?---I, I believe we were given a, almost like a short course in, yeah, yeah.

Yes. A face-to-face course?---I believe so, yes.

10 And you paid attention?---I would imagine so, yes.

But you didn't read the whole of the code of conduct, is that what you're telling us?---I, I, I can't say with any certainty that I did is what I'm telling you.

Why didn't you read the whole of the code of conduct?---I don't know why. As I said, it was mainly because I thought it was just part of the protocol of, because that's what normally you would get when you start a job at a, with a, a council.

20

Why do you think that a council has protocols like that?---Well, look, as I sit here today, I mean, obviously to look at making sure that processes are transparent and in the public interest I guess, yes.

And relevantly to ensure that the public interest is the determining factor in decision making in local government, correct?---Yeah.

You understood that at the time, didn't you?---Not that I, well, I can't say that I fully comprehended it at the time, no.

30

Why can't you say that?---Because I don't remember thinking along those terms at, at that point in time when that document was signed.

Well, did you think that, let's take an extreme example, your appointment as director of city planning was an opportunity for you to enrich yourself at the expense of - - -?---No.

- - - the municipality?---No, sir.

40 No. Why not?---Because it's the wrong thing to do, yeah.

Yes. And what is the right thing to do when you're an officer of the governing body?---To, you know, look at things on balance and to ensure that the public interest is maintained.

Can I take you then to page 111 in this volume. Can you see that it's an email from Mr Gouvatsos to you on 13 April, 2015? "Spiro, the planner is

Steve Layman. He can be contacted on”, and then he provides two telephone numbers, “thanks, George.” Do you see that?---Yes, sir.

Why did George send that to you?---I'm not sure to be honest with you.

Well, can you assist us with your best guess?---Maybe to inform me that that's who is now dealing with the application. That's my best guess.

10 Is another possibility that it was in response to a request you had made to him?---I, I, I don't know. It's, it's possible but I, I can't remember that.

That's likely, in fact, isn't it? That that email, bald as it is, was sent to you by George, knowing that you were not meant to be involved in the decision making process, and if someone knew that George knew that, responding to an enquiry you had made to him?---No, I don't, I don't, I can't say that that was the case, I'm sorry, I don't recall that.

Why not?---Because I don't recall it.

20 Is it possible that you made an enquiry of him?---I think it's possible that he, he made, he, he gave me that information, I think that was more likely.

No, no, no, no, no. It's not possible, you can see it, we can all see it in front of us. What we're trying to find out is what was the stimulus for this email being sent to you?---I, I don't recall, sir.

But what do you think is likely?---I, I don't recall. I, I don't know.

30 What do you think is likely? You were the one involved in these matters.

THE COMMISSIONER: See it's not only - - -

MR BUCHANAN: What do you think is likely?

40 THE COMMISSIONER: It's not only a name, it's also contact numbers, isn't it? It's not just information, it's gone to an external consultant whose name is X. It's nominating a name plus a landline and mobile number. On its face it suggests that there had been an enquiry of Mr Gouvatsos along the lines of “Who's the planner and how can I contact him?”---I can't say that with any certainty. I don't recall that, ever saying that to George, is what I'm trying to get across here.

MR BUCHANAN: But that's not the question I'm asking.---I understand. I understand. So - - -

We're trying to, we're just at the moment descending to the level of likelihood.---Sure.

It's likely, isn't it, that that was sent to you because you had asked for that information to be given to you?---It, it, look, it's not impossible that I did that.

Did you talk to Mr Layman?---At some point in time I did, yes, and I met with him and the assessing officer onsite, that was part of the protocol. When I say onsite, as an owner or a resident they came to see my side from my perspective I guess, or from our perspective.

10 What was your first contact with Mr Layman?---I can't recall.

Was it a telephone call?---I don't recall, sir, I'm sorry.

Did you call Mr Layman on the telephone ever?---Just thinking back, I, I don't recall, sir.

What did you do with the information that Mr Gouvatsos provided you in this email of 13 April, 2015?---I really don't know. I mean it was a long time ago.

20

THE COMMISSIONER: And when you said that you met onsite with Mr Layman and the assessing officer, that was Fran - - -?---Yes.

- - - Dargaville?---Yes.

MR BUCHANAN: So if we can turn to page 112 it's an email from Mr Layman to Fran Dargaville, D-a-r-g-a-v-i-l-l-e, on 20 April, 2015 at 9.41am. Do you see that?---Yes, sir.

30 And it reads, "Attached please find my draft assessment for the DA," and he then gives a number. "I have recommended deferral. I think that modification of the design to retain tree 1 is required, among other things. If deferral is not considered appropriate then my recommendation would be refusal." Do you see that?---Yes, sir.

And an attachment is identified which has the DA number on it?---Yes.

Underneath that in this volume commencing at page 113 is a draft report. Do you see that?---Yes, sir.

40

And did you see this document?---I, I can't be certain. I don't, I don't remember, to be honest with you.

Would it have been in order for it to have been provided to you as the objector?---In terms of the actual assessment report itself?

In the ordinary course.---In the ordinary course, no, not the, not the actual assessment, draft report.

Now, just in order to trace through a couple of themes in your objection to this DA, page 123, it appeared that unlike Ms Hang, Mr Layman, looking at the compliance table or part of the compliance table at the top of page 123, had identified changes to the design of the building which were required in order that tree 1 be retained. Do you see that?---Yes.

And that was what he was referring to in that email, wasn't it, that the plans had to be amended in order to accommodate the retention of tree 1?

10 ---I believe so, yes.

If I can just pass over to the recommendation commencing at the bottom of page 126, going over to page 127, is it right that all of the features in respect of which amended plans were required, favoured you?---I wouldn't say all of them. Some of the neighbours had expressed to me concerns about the loss of the tree themselves, but they, I don't think they put in a formal objection and also - - -

20 That's not the question I asked you. What I'm asking is, is it right that if you read those dot points they all favoured [REDACTED]?---Well, not all of them. Point dot number 3 talks about the visual dominance of garages in the streetscape, so I can't see how that would favour me or [REDACTED].

But to reduce overshadowing of adjoining land in respect of proposed dwelling [REDACTED]? That's your land, isn't it?---Yeah.

30 [REDACTED] would be the southernmost of the two dwellings proposed.---Sure, I accept that, yes.

That report bore the date 18 April, 2015. You don't have a recollection of that report coming to your attention?---I, I don't, sir, I'm sorry.

Page 129. You sent an email on 16 June, 2015 to George Gouvatsos which read, "Can you please update me on this? I understand that they have not responded to our concerns. If so, please ask the consultant to finalise the report for the next CDC meeting. I await your advice." Do you see that? ---Yes, sir.

40 Why did you send that email to Mr Gouvatsos given what he had told you about the policy that the report be referred out, the assessment of the DA be referred out in cases where a council employee was the objector?---Why I did it? I, I guess I had my owner's hat on.

Sorry, you had your - - -?---My owner's hat on.

Yes, but you didn't send it from your email address at home. You sent it from your email address at Canterbury Council, didn't you?---Sure, yes.

And signed it off using your director of city planning signature.---Sure, I accept that.

That was an abuse of your power, wasn't it?---Sir, I didn't think about it that, like that. With the benefit of hindsight, as I sit here today, I should have done it different, yes. I accept that.

10 Well, it was an abuse of your power, wasn't it?---How do I, I mean, it, it, I didn't see it that way at the time.

Sitting there now you can see, can't you, that in the circumstances it was an abuse of your power to send that email.---Okay. I accept that.

20 Going then to page 128. Ms Dargaville sent an email on 17 June to you and Mr Gouvatsos at 8.53am. "I have contacted the applicant eight times over the last month and still haven't received the amended plans. I'll ask Steve Layman," sorry, "Steven Layman," that's with a V, "to finalise the report." You then said to Ms Dargaville at 9.51am the same day, "As George," but I think you meant to type "Ask George whether he thinks we should send him one final email giving 14 days to lodge. Do you accept that amendment?"
---Yes, sir.

And then Ms Dargaville responded at 10.33, "I have spoken with George and am sending the applicant a 14-day email today."---Yes.

30 Now, that was on 17 June. On 23 June, at page 130, you sent an email to Ms Dargaville, "Hi, Fran. Can you please give me a copy of the amended plans tomorrow." I'm sorry, did I say – I do apologise. I got the date wrong. The email is dated 23 July, 2015 and it's from you to Ms Dargaville. "Hi, Fran. Can you please give me a copy of the amended plans tomorrow." You see that?---Yes.

40 THE COMMISSIONER: Can I just take you back to 129 just before Mr Buchanan progresses. This was your email to George requesting an update, and you say, "I understand that they have not responded to our concerns. If so, please ask the consultant to finalise the report next CDC meeting." Your use of "our concerns", who is "our"? Who are you referring to?---I, I think in that context I was thinking, I guess muddying the waters between my, our concerns as a family and, and there were concerns from obviously Mr Layman in terms of amended plans being lodged.

So, a mixture of those two?---I, I think so. I think that's fair to say.

Now, you've referred to it was a mixture of your concerns and Mr Layman's concerns. That suggests that you've read the draft Layman report at least by that time?---That's quite possible. I, I just can't recall if it was the case. I'm sorry.

MR BUCHANAN: In what circumstances did you get access to it?---That I, that I'm not sure of, sir.

Did you have access to it on your computer automatically or did you have to ask someone to give you access to it?---Normally, you'd, I'm just trying to think whether you, you could actually access it via computer, but there were two ways, I believe.

10 Just keep your voice up, please.---I'm sorry. I'm sorry, sir. I, I'm pretty sure you could get access to it on computer.

On your computer at your desk?---Yeah, at any one. Like, any one in the department. So that's one possibility, or the other possibility is that it was shown to me by one of the staff.

20 And if it was shown to you, that would have been pursuant to you asking to be shown it?---That I can't confirm because they, at that point, probably would have known I was, I guess part of the, the process but I, I just don't recall ever asking for it.

Is Ms Dargaville a friend of yours?---No.

There's no particular reason why she should have slipped you a copy, as it were?---No, no. Well, no.

30 Can I ask how you had discovered that amended plans had been lodged? I'm sorry, I withdraw that question. I'm going back now to page 130 and it's the email of 23 July, 2015. My question is, can I ask how did you know that amended plans had been lodged?---That I'm not, I, I can't be certain, I don't recall how, sir.

What were your, what were the potential sources of information that you had at the time?---From the applicant.

Are you talking about Mr Zreika or Mr Mahdi?---At that time, I'm not sure if Mr Zreika was involved but, so possibilities were through the applicant, Mr Zreika or through my staff, I guess.

40 Had you asked to be kept informed by your staff of progress in assessment? ---I think we established that before in an earlier email you pointed to me that I did.

And you regarded that as a continuing obligation on the part of your staff to keep you informed?---I, I, I think so, I think that's fair.

You wanted to see a copy of the amended plans, looking at this email of 23 July, 2015, in order to pursue your private interest, didn't you, not the public

interest?---Again, I, I didn't think of it in those terms, I'm sorry. But in answer to your question, yes.

Can I ask you to go, please to page 131. It's an email from Mr Mahdi to Ms Dargaville, cc'd to Fadi Zreika, "Dear Fran, I have attached the amended architectural plans as requested", and then you can see a series of plans going through to page 138. Is that right?---Yes. Yes, sir.

10 Now, I appreciate that the legend is very small, but if you look at the block on the bottom right-hand side it can be seen that this is version D of the plans dated 24 July, 2015.---Yes, sir.

Now, if I can ask you to go to page 139, please. You asked Ms Rahme at 8.06pm on 24 July to chase up Ms Dargaville and your request to be given a copy of the amended plans as Ms Dargaville had not responded.---Yes, sir.

Yes. You shouldn't have done that either, should you?---As I sit here today, probably, probably not, sir.

20 Turning to page 140, it's an email from Ms Dargaville to you dated 28 July, 2015. One of the attachments is, "Amended Plans for [REDACTED] Ridgewell Street, Roselands msg." Do you see that?---Yes, sir.

And she says, "Please find attached amended plans." There is then attached email from Mr Mahdi to Ms Dargaville dated 24 July and it's version D of the plans, so we know it's the version that council had earlier received. Can you just confirm that for me, from page 142 onwards?---Yes.

30 142 to 148. So this is the version that you were provided with. Is that right? ---I'm not sure if that's the version but - - -

Well, it seems, what I'm just inviting you to do - - -?---Sure.

- - - is to note that the attachment - - -?---Yep.

- - - to Ms Dargaville's email to you at 140 says, "Amended Plans for [REDACTED] Ridgewell Street."---Sure.

40 And then when you look at it, it's the very email that we saw earlier dated 24 July from Mr Mahdi to Ms Dargaville, cc Mr Zreika, and then the very plans that we saw that had been sent by Mr Mahdi to Ms Dargaville. So these are the plans that you were given.---Yes, sir.

Now, can I take you then to page 149 and 150 and 51. This handwritten document was prepared by you. Is that right?---Yes.

It's signed by you and your wife.---Yes.

And it's got a couple of different received stamps, well, it's got received date of what could be 28 August, but there's another one underneath it of 21 August and your handwriting dates the document at 20 August, 2015. Do you see that?---Yes, sir.

And I see there's another stamp underneath, a receipt stamp of 21 August. If I could just take you briefly through a couple of items that you drew attention to that you described as being, "Still outstanding," that's the fourth line of the first paragraph of your objection. "A 2.5-metre," sorry, this is
10 item 3, "A 2.5-metre masonry wall should be erected on the common boundary between [REDACTED] Ridgewell Street and our property ([REDACTED]), to protect our privacy and assist with noise attenuation." Item 5, "Delete living room," sorry, "Delete living and dining room windows on ground floor southern elevation, two in total, to remove the perceived privacy impacts." 3. "Delete the bedroom 2 window in the southern elevation," sorry, it's a reference to the second bedroom with the en suite I think, "In the southern elevation on the first floor to improve privacy and remove perceived privacy impacts." Is that right?---Yes.

20 Have I read that correctly?---Yes.

Seventh item, "The bathroom in bedroom 2, southern section, shall be opaque and high level to improve privacy." Number eight, "The bedroom without en suite – between bed 2 with en suite and the master bedroom – contains a recessed window in the southern elevation on the first floor. This window shall be reduced in size and be high level." Do you see that?---Yes, sir.

30 You were essentially drafting conditions, weren't you? They have the imperative. The verbs are in the imperative form as conditions for a development consent tend to be.---I don't think so. I think I was just acting as a, speaking in town planning jargon, I guess.

Can I ask you then to go to volume 5. Do you still have that?---No.

If we go to page 281 in volume 5. Now, if you could just leave that open in front of you, 281, and turn to me. How did Mr Hawatt become involved?
---To the best of my recollection I believe he called me to advise me that he had had a phone call from, sorry, a phone call from the adjoining owner at
40 [REDACTED] Ridgewell and that he had pointed to the owner that I was the, I guess the, the owner of, at least they thought I was the owner of the property. That's the best of my recollection.

Yes. What happened next in relation to Mr Hawatt's involvement? Did he say anything about what the owner had said or what he, Mr Hawatt, thought needed to be done or did he ask you anything? What happened?---Oh, he did say, I'm not sure if it was in that conversation, but that the owner expressed concern of how long the application was taking, and a lot of the

issues that were raised he didn't agree with. Certainly that was the way it was expressed to me anyway from, by Mr Hawatt.

And was anything else said?---I can't recall if there was anything else said.

What was the outcome or how did it end? Was there an agreed plan as to what anyone would do?---I, not sure if I, I, I certainly am aware that I expressed, at some point in time I had conversations with, I think it was Mr Fadi – actually, it may not have been at the time. I'm just trying to think.
10 But I did indicate to Mr Hawatt what my concerns were as a, as an owner, particularly around privacy and so forth, and, and I guess, I guess the net result was that there were, can't be a hundred per cent certain but there were amended plans that were lodged as well after that.

We'll come to that.---Sure.

What was the outcome of the call? That is to say, at the end of the call, what was the impression you were left with as to whether someone was going to do something or not? You, Mr Hawatt.---Sure. Well, I think he
20 said to me that he was going to talk to the owner about my concerns. I just don't recall any other sort of, if there was a resolution. At that point I don't think there would have been because obviously he would have had to have spoken to the owner.

And what was your understanding as to why Mr Hawatt rang you about this at all?---He, as I said before, he rang, he, he told me that the owner, Mr Fadi, had contacted him direct about his concerns he was having with his, his application.

30 Yes. What was your understanding, though, as to why Mr Hawatt rang you?---Well, as was normally the practice, he would call me if he had a problem with an application or had inquiries in relation to an application.

So what was the role that he was performing?---I guess as an advocate.

For whom?---For, for Mr Fadi.

And did you engage with him as Mr Zreika's advocate?---With Mr Hawatt?

40 Yes.---Yes, because most of the, I believe most of the telephone calls and so forth for that property did come through Mr Hawatt.

So there were a number of calls in relation to the property from Mr Hawatt to you?---I believe so.

About how many?---That, sir, I can't be sure of. I really don't know.

Now, you knew that there was an external consultant that had been retained.---Yes.

You knew that that was being done in implementation of a council policy. ---At that point in time, yes, I think that's fair to say.

That was your understanding? This is what George had told you.--- Yes, yes.

10 Correct?---Yes, sir.

So did you indicate to Mr Hawatt, "Look, I can't really talk to you as the director of city planning because I'm not involved in the matter. It's in the hands of an external consultant"?---That I can't recall. Sorry.

Was there any discussion between you and Mr Hawatt about the question of a conflict of interest that you had?---No, sir. I don't believe so.

20 Mr Hawatt didn't suggest to you you had a conflict of interest? You didn't suggest to him that you had a conflict of interest?---Not that I can recall.

And did you in effect, whether in that call or subsequently, engage Mr Hawatt as your advocate?---No, sir. I don't believe so.

Did you expect that Mr Hawatt would convey your views to Mr Zreika? ---Only because he approached me initially, yes.

30 You didn't try to use Mr Hawatt as your advocate?---No, I don't believe I did.

Wasn't this a heaven-sent opportunity for you to achieve the goals you wanted to achieve to protect the privacy, for example, at [REDACTED] of having Mr Zreika change his plans at the urging of Mr Hawatt?---I didn't see it that way. I'm sorry, sir, I didn't.

But you wanted the plans to be changed in your favour.---Sure.

You knew that Mr Hawatt was going to talk to Mr Zreika.---Yes.

40 You told Mr Hawatt what your concerns were.---Yes.

You expected them to be conveyed to Mr Zreika by Mr Hawatt.---Yes.

You must have at least hoped that as a result of Mr Hawatt talking to Mr Zreika, Mr Zreika would agree to (not transcribable) his plans accordingly. ---No, I didn't think of it like that at all, sir. At all. Because I thought of it as, I didn't think it was an opportunistic, it was opportunistic for me or my family to use Mr Hawatt in that way.

But ultimately you did, didn't you?---No. I don't believe I did. I mean, I was, he, he, he rang me enquiring about this and, as I - - -

That started the ball rolling?---Yeah. So, I just thought about it in, in, in the way that I considered the communications were, had happened between myself and Mr Hawatt in relation to other applications that he had, I guess, an interest in.

10 Did you, either in that call or subsequent call, discuss with Mr Hawatt the process by which the DA was being assessed?---That I can't recall.

Well, you're likely to have, aren't you?---I, I, I, I can't recall.

Wouldn't Mr Hawatt have wanted to have known what the process was by which it was being assessed?---I don't think so. In the sense that, conversations with him were really not that detailed, and I think the questions of me when he did ring me was all about trying to find a, I guess a medium, or a solution between the two parties.

20

Did you ever get the impression from Mr Hawatt that Mr Zreika was anxious to have a determination of his DA as early as possible?---From Mr Hawatt?

Yes.---As I sit here today, I, I, I can't recall that being expressed to me by Mr Hawatt.

Mr Hawatt didn't convey to you that Mr Zreika had said anything to him about being concerned how long it was taking?---Yes.

30

And the burden that that imposed upon him, Mr Zreika?---I don't know about the burden but I, I know that, I knew that Mr Zreika had expressed concern about the, the, the length of time the DA was going through, through other means as well.

But Mr Hawatt conveyed to you his understanding of Mr Zreika had that concern, didn't he?---I just don't remember him saying that to me, to be honest with you.

40 Never indicated to you that Mr Zreika had a concern about it?---It's possible.

Well, it's likely, isn't it? Thinking about the relationship between the two, Hawatt is Zreika's advocate, Zreika is concerned about how long it's taking, why wouldn't Hawatt have been making an inquiry about why is it taking so long?---Well, ordinarily if an applicant was or an owner was to contact a councillor there would obviously be some concern about, in relation to an application, there would be some concern as to the application, but in terms

of, in terms of do I recall him, Mr Hawatt telling me at some point in time in terms of the urgency, I just simply can't recall. Possible.

Every other time - - -?---It's possible.

Every other time a development proponent came to you through Mr Hawatt with a concern about how long things were taking, that was a concern that was conveyed to you, wasn't it?---Most of the time, yes.

10 And you were expected to provide Mr Hawatt with an explanation as to why it was taking so long.---I accept - - -

Weren't you?---I accept that.

And what you did was, you explained what the process was and where things were at and the factors impinging upon the decision-making process, didn't you?---I accept that.

20 You did that in this case too, didn't you?---I just don't remember doing that, that's all.

No, no, no, no.---But I may have.

Why wouldn't you do that in this case too?---No reason why I wouldn't.

No. Thank you. I note the time, Commissioner.

30 THE COMMISSIONER: All right. We'll adjourn and resume at 9.30 tomorrow morning.

THE WITNESS STOOD DOWN [4.29pm]

AT 4.29PM THE MATTER WAS ADJOURNED ACCORDINGLY
[4.29pm]