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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 WEDNESDAY 10 OCTOBER, 2018

AT 9.45AM

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

THE COMMISSIONER: All right. I'm sorry about that. I understand there was some IT glitch.

MR BUCHANAN: Apparently, Commissioner, we're hoping that it's solved.

THE COMMISSIONER: Okay, fingers crossed. Any administrative matters to be raised?

- 10 MR BUCHANAN: No, Commissioner, other than it occurred to us that it might be convenient to all, including the witness, if we could have a short adjournment around 11.00, or indeed the morning adjournment at 11.00, rather than 11.30.

THE COMMISSIONER: Look, that was raised with me. I think it's a little bit more civilised, having the morning tea break at 11.00, so it kind of breaks before lunch into roughly an hour and a half each session. All right. Mr Stavis.

THE COMMISSIONER: Mr Buchanan.

MR BUCHANAN: Yesterday, Mr Stavis, I was asking you questions about your contact with Councillor Hawatt in relation to [REDACTED] Ridgewell Street, Roselands, and you told us that Councillor Hawatt contacted you, he initiated the communication between you and him in relation to that DA, is that right?---I, I believe so, yes.

Can I ask you to have a look, please, at volume 5 in Exhibit 52, page 281. It is a page in the extraction of text messages from Mr Hawatt's phone, and on page 281 there is item 304. Item 304 is a text message from you to Mr Hawatt on the 22<sup>nd</sup> of September, 2015, at 5.09pm. "Mike, please call me when you're alone. Spiro." Do you see that?---I do, sir, yes.

The next text message is number 305 on the same page from Mr Hawatt to you and it's the next day, the 23<sup>rd</sup> of September, 2015, and it's at 8.54pm and Mr Hawatt says, "Can we meet at 12.00pm in front of [REDACTED] Ridgewell Street, Roselands on Saturday re your neighbour. Michael Hawatt." What I want to suggest to you is that in the circumstances on 22 September, 2015 at 5.09pm, your text asking Mr Hawatt to call him when he was alone was with a view to talking about the Ridgewell Street DA.---I don't believe so, sir. As I said, the best of my recollection was that he was the one who contacted me about that.

Yes. Well, there's two possibilities. One is that your recollection is faulty and that you initiated the contacts with Mr Hawatt. Another is that he did indeed initiate the contacts with you about Ridgewell Street and that was at a time before 22 September, 2015 at 5.09pm, and that your text at that time was simply a continuation of that contact.---As I said, as far as I best recall, he was the one who initiated the contract in relation to the - - -

Yes. Well, if that's correct then - - -?---Yep.

- - - you'd accept that your text message at 5.09pm on 22 September, 2015 is likely to have been to talk to him about Ridgewell Street?---That I don't know, I'm sorry.

Well, do you see that – I withdraw that. There weren't many times that you asked Mr Hawatt to talk to, to call you when he was alone, were there? ---Not that I can recall, no.

And that sort of request suggests that you wanted to ensure that there would be no one who would overhear what Mr Hawatt was talking to you about. ---Look, I, I, I really don't know what that text was about, sir.

But you'd accept, wouldn't you, that a request to a third party to call you when they are alone is consistent with wanting to talk to that third party about something which you didn't want anyone to overhear?---Possibly, but this could have been in reference to some, some other matter, I'm not sure. I just don't recall.

10 Why would you have, why would you have in that case wanted Mr Hawatt to call you when he, Mr Hawatt, was alone?---Look, as I said, sir, I really don't know. Perhaps it was something else that it was a previous conversation or communication that he had with me about some matter. I just don't know.

You see, is it possible that you had a guilty conscience about your involvement in the Ridgewell Street DA and were particularly concerned that the involvement of Mr Hawatt in communications between you and Mr Zreika might be, shall we say, a sensitive matter?---Absolutely not.

20 On 23 September, as I point out at item 305, at 8.54pm, so it's the next day, there's a request by Mr Hawatt to meet with you out the front of [REDACTED] Ridgewell Street the day after that, that is to say 24 September. Do you see that?---Yes, sir.

That would suggest that there had been telephone communication between you and Mr Hawatt about Ridgewell Street between your text of 5.09pm on 22 September and Mr Hawatt's text at 8.54pm on 23 September.---That I don't recall, I'm sorry.

30 All right. But you'd agree that that would seem likely to be the case?---No, I don't. That, that could have been him instigating a meeting to discuss that matter.

Out of the blue?---Well, no. As I said before, he was the one who initiated the, the inquiry in relation to that matter but he may, that may have been done before that. I'm not sure.

40 And if it was done before that, then the likelihood is that you wanted, on 22 September, to speak with Mr Hawatt about the matter when the circumstances were that no one would overhear what Mr Hawatt was saying?---Sir, as I said before, that could have been in relation to another matter. I, I really don't know.

What I'm asking you about is the likelihood of what occurred, having regard to the material before us. Plainly, before 8.54pm on 23 September, there had been communication between you and Mr Hawatt about the Ridgewell Street matter, had there not?---Prior to that, possibly, yes.

Well, inevitably.---Yes.

Now, you responded to that request of Mr Hawatt's saying, "No probs."  
This is item 306 on page 282 in volume 5 at 9.10pm on 23 September. Do  
you see that?---Yes, sir.

And then seven minutes later, at 9.17pm, you sent this text, item 307, to Mr  
Hawatt, "I have to be careful though 'cause I've got an independent  
consultant assessing it and I don't want me to be accused of influencing the  
decision. Hope you understand. I'm sure we can work it out though." You  
sent that text, didn't you?---Yes, sir. It looks like it.

10

And that suggests that you were indeed sensitive to the implications of you  
being involved in the Ridgewell Street DA.---Well, at that, at that- - -

More than as just a neighbour.---At, well, at that point in time that would  
suggest that, yes. I, I - - -

And you were in fact fully aware, that text shows, doesn't it, that it would  
be improper, an abuse of your power for you to be influencing the  
assessment decision in respect of the Ridgewell Street DA, doesn't it?

20

---Yes, but I, honestly, as I said yesterday, I confused my rights as, I guess,  
as an owner with my responsibilities at the time as a director, I accept that.

Well, no, Mr Stavis, what text number 307 shows is that you hadn't  
confused them. You were well aware of the need to keep separate your role  
as director of city planning, the decision making around the processing of  
the Ridgewell Street DA, from your role and your interest in that DA as an  
adjoining neighbour. You were well aware of these conflicting interests,  
weren't you?---Sir, I, I, look, in reading this in detail, I, in all honesty, I  
don't, I don't draw that conclusion. I was saying that, "I've got an  
independent consultant assessing it and I don't want me to be accused of  
influencing a decision. Hope you understand. I'm sure that we can work it  
out though." I mean, for me, in that context, I don't, I don't agree with what  
you just said.

30

And when you said to Mr Hawatt in that text, "I'm sure we can work it out  
though," what you meant was, I'm sure we – that's to say you and I, Mr  
Hawatt – can achieve an outcome which is favourable to my interests  
notwithstanding the fact that there is a DA in my division being processed  
and I can't be seen to be involved.---No, I, from my reading of that, the  
"we" was me as an owner and the adjoining neighbour as an owner.

40

THE COMMISSIONER: Sorry, which "we"? Oh, the, "I'm sure we can  
work it out"?---Yeah.

MR BUCHANAN: That's not the thrust of the text though, is it? Rather  
what you're doing is cautioning Mr Hawatt that there is a potential for a  
conflict of interest and you don't want to be seen to be influencing the  
decision in assessing the DA, but you nevertheless want to ensure that your

interests as the adjoining neighbour are advanced and protected.---I don't agree with that, sir. I'm, I'm, I'm saying there I've got an independent consultant assessing it. I don't want to be accused of influencing the decision. Hope you understand. I'm sure we can work it out. And that "I'm sure we can work it out" is a reference, I believe, between myself and the adjoining owner.

10 Were you in fact saying by sending that text to Mr Hawatt, "Don't let anyone know that I am influencing the decision on that DA"?---No, sir.

What did you tell Mr Hawatt before you sent that DA about your involvement in the processing of it?---Before I sent the DA?

I apologise, before you sent that text.---Yep.

What did you say to Mr Hawatt or what did he say to you on the subject of your involvement in the processing of the DA?---I, I really don't recall. I really don't.

20 So you can't give us any assurance that you conveyed to Mr Hawatt before you sent that text an explanation as to the potential for conflict of interest and the importance of avoiding impropriety?---I, I think I said yesterday when you asked me a very similar question was, I, he, to the best of my recollection Mr Hawatt had already said to me when he initiated the contact that he had been approached by the adjoining owner and then he said, "I found out that it was your property." So he knew obviously from before that, at some point in time. Now, I'm not sure when that conversation happened but obviously it probably was prior to this text.

30 But that isn't an answer to my question.---Sure.

My question is, from what you tell us, you can't give us any assurance that you raised with Mr Hawatt - - -?---Sure.

- - - the potential for conflict of interest and the importance of avoiding impropriety in your involvement in the matter.---Not that I can recall, sir.

40 Mr Hawatt responded to you at 9.20pm on 23 September, this is SMS number 308 on page 282. "I can explain your issues. Let me know how to resolve them and what they are." Do you see that?---Yes, yes, sir.

It doesn't sound as if there had been very much contact between you and Mr Hawatt about this matter before these texts commencing on 22 September. ---I don't believe there was much contact, no.

You'd accept that in that text Mr Hawatt was indicating that he can act as your agent in negotiating with Mr Zreika?---Hmm, it, it appears that way reading it, but I didn't take it that way.

But ultimately he did act as your agent, didn't he?---Well, I thought he was advocating for the, as a conduit in the normal way that he did.

Yes, an agent for both parties, acting for both parties.---If you want to say that, yeah.

10 But in fact he showed or indicated to you that he was favouring your interest over the interest of Mr Zreika ultimately, didn't he? Just thinking back on it now, not so much looking at these texts.---Sure, sure.

Thinking back on Mr Hawatt's involvement, it's right to say, isn't it, that he demonstrated to you through his conduct that he was favouring your interest over the interest of Mr Zreika?---I think if I had to, if I had to be fair about that, I'd say yes. Yep.

20 Excuse me a moment. So the text messages continue, number 309, from you to Mr Hawatt at 9.29pm, "Mike, can you come and see me tomorrow at 1.00pm and I'll explain." Number 310, to you from Mr Hawatt at 9.30pm, "I can't make it at 1.00pm but around 4.00pm or maybe after council meeting." You responded, item number 311 at 9.31pm, "4.00pm is good. At council." And you meant in the council building, didn't you?---I believe so, yes.

30 Yes. And then can I just ask you about the next day, 24 September, there was to be a meeting at 4.00pm. I can indicate there's a calendar meeting entry in Exhibit 85 by you consistent with that, but there had been an arrangement for the two of you to meet at 12.00pm that day, in front of [REDACTED] Ridgewell Street. You remember? This is item 305 on page 281.---Yes, yes, sir.

Did that meeting occur?---I, I don't believe so. I don't recall ever having such a meeting.

Did you ever have a site meeting with Mr Hawatt?---I don't believe so, no. Not that I can recall.

40 So what happened to cancel – I withdraw that. There had been an arrangement made – this is your text at 8.54pm on the 23<sup>rd</sup> and Mr Hawatt's text at 9.10pm – there had been an arrangement made to meet at 12.00pm in front of Ridgewell Street on the 24<sup>th</sup>. What happened to that arrangement? ---I, I really don't know, sir. I'm sorry.

There's no text cancelling it.---Yeah. I'm not, I'm not sure. I don't, I don't actually recall ever meeting him and the neighbour on-site.

Well, I'm not suggesting the neighbour was necessarily there.---Sure. Or even just - - -

Just simply asking, did you have a meeting with Mr Hawatt at the site?  
---Not that I can recall, no.

Did you ever have a meeting with Mr Zreika and Mr Hawatt?---Not that I can recall.

10 So what occurred at the meeting at council chambers at 4.00pm on 24 September with Mr Hawatt?---I, I, I really don't remember to be honest with you. I mean it was three years ago, sir. I, I, really don't.

Yes, but did you brief him?---At some point in time, and I'm not sure if, if it was then, but at some point in time he, I highlighted the issues or concerns, where's the family at, yes.

You must have provided him with documents or plans or copies of plans.  
---Possibly, yes. Possibly.

20 Well, you must have provided him with copies of plans, mustn't you?---I'm not, I, I, I can't confirm that because I don't remember exactly but it's likely that I would have.

You would have indicated to him the features of the proposed development to which you took objection and the features that you wanted substituted.---I would have raised with him the issues that I had, yes.

Now, did you have any contact with any other councillor in relation to Ridgewell Street?---I'm just trying to think. Not, not that I can recall.

30 Did you speak with Councillor Azzi about it?---I honestly don't remember, no.

I'm sorry?---I honestly don't remember. I don't recall if I did.

I'm not suggesting you did, I'm simply asking - - -?---No, no, I'm just - - -

- - - did you speak with Councillor Azzi?---I don't remember.

40 Did you speak with Councillor Saleh?---I don't remember, sir.

Do you remember any involvement on the part of Councillor Saleh in the [REDACTED] Ridgewell Street DA?---No, not as I sit here before you.

Well, can I ask you, have you got volume 31 there, or we'll put that in front of you.

THE COMMISSIONER: 232.

MR BUCHANAN: Thank you, Commissioner. 232, Exhibit 232. If you could go to page 152, please, and - - -

THE COMMISSIONER: Have we got another problem?

MR BUCHANAN: We do on the screens. Oh, just on our row I'm told. Okay.

10 THE COMMISSIONER: Sorry, it's Mr Pararajasingham who has the difficulty.

MR PARARAJASINGHAM: Yes, I can't see.

MR BUCHANAN: It's possible to read - - -

THE COMMISSIONER: Do you have your own copy?

20 MR PARARAJASINGHAM: I'll just pull up the - I've got the physical copy.

THE COMMISSIONER: Are you okay with that?

MR PARARAJASINGHAM: Yes.

THE COMMISSIONER: Thanks.

30 MR BUCHANAN: In the middle of that page, sir, is an email from Eva Rahme at 2.47pm on 23 September to Andrew Hargreaves. Do you see that?---Yes, sir.

“Can you please provide Spiro with an update on the above DA for demolition of existing structures and construction of an attached dual-occupancy with Torrens Title subdivision. Councillor Saleh has requested the information before a meeting that he's attending tomorrow.” What can you tell us about that email?---I, I, I really, I really don't know. I don't recall that at all.

40 Did you have a meeting with Councillor Saleh about Ridgewell Street?  
---No, I don't recall ever having a meeting with him, no.

Did you ever have a conversation with Councillor Saleh?---Not that I can recall, sir.

About Ridgewell Street I mean?---Yeah, not that I can recall.

Ms Rahme would have sent that email to Mr Hargreaves on your instructions, wouldn't she?---I would, I would say so, yes.

Can you assist us as to why you gave her those instructions?---I, I, I really don't recall, sir.

THE COMMISSIONER: Mr Stavis, could you remind me, Councillor Saleh, where did he fit in? Was he Labor or Liberal or Independent?---Do you know, in all honesty I don't remember.

I think we did go through this a while ago.---Yeah.

10 Ms Alderson, could you - - -

MS ALDERSON: We understand Labor, Commissioner.

THE COMMISSIONER: Labor. Thank you. Now, you lived within the council, didn't you?---Yes, yes, ma'am.

Was he your councillor, did he represent your particular - - -

20 MR BUCHANAN: Ward.

THE COMMISSIONER: Ward. Thank you.

THE WITNESS: I can't remember who were the, what the make-up was of the wards to be honest with you.

THE COMMISSIONER: Okay.

30 MR BUCHANAN: Can I ask you to go to page 156 in this exhibit, 156. Can you see that that's an email from you to an email address that commences S-a-l-e-h, Saleh?---Yes, sir.

40 Cc'd to Ms Rahme and it's at 4.29pm on the same day, 23 September. And you say, "Dear Karl, this DA is proposed next door to my house. My wife and I have lodged an objection. The DA is therefore being assessed by an external planning consultant. We expect to receive a draft report from Steve by the end of this month with a view that it will them," "then" I think is what you intended, "be referred to the next available IHAP meeting on 2 November. Following IHAP, it's expected the DA will be considered by the CDC on 12 November." Do you see that?  
---Yes, sir.

It reads as if you're providing him with information rather than in that email asking him to do anything.---Yeah, I, I, I get that tone as well, yes.

So does that assist you in recalling whether you received a request for information from Councillor Saleh?---The only way I would have instigated an email like that, the best of my recollection, most of the time where it involved Karl Saleh would have been if there was a request for information.

Do you now have a recollection of any contact with Councillor Saleh apart from the email you sent to him at 4.29pm on 23 September?---No, sir. Sorry, I don't recall.

So you're not able to explain it at all?---No, no. I might say, other than just that it's likely that he would have asked for the information to be provided to him.

10 Was there a discussion between you and Mr Hawatt about involving Councillor Saleh?---Not that I can recall, no.

Does it assist if we go back to page 152 that, at the top of that page, you forwarded Ms Rahme's email to Andrew Hargreaves and added, "Fran knows about this"? This is at 2.53 on the 23<sup>rd</sup> of September, shortly after Ms Rahme's email to Mr Hargreaves.---Other than Mr Saleh likely asking for information about the matter, that's about all I can remember, really. If that's the, I mean, that, just going off the emails that you've shown me and based on what I said before. I think that's the only likely situation as far as I  
20 can remember.

Can I take you to page 153, please. It's an email from Ms Dargaville to you on 23 September, at 3.09pm. This is all before your meeting with Mr Hawatt, you'll recall, at council chambers. "Spiro, owners identified on form are Fadi and Bilal Zreika, but no contact details for the owners are provided on the DA application form. The contact provided on the form is Ahmed Mahdi at A2 Concepts," and then she provided a phone number. That email would have been sent to you pursuant to a request by you to Ms Dargaville to provide that information to you?---That's likely, yes.  
30

Did you want that information in order to pass it on to Councillor Hawatt? ---That I'm not sure about. No, I, I, I don't believe so. Well, to be honest with you, I, I, I don't know why.

Well, isn't there a possibility that that is the reason you wanted that information, was to convey it to Councillor Hawatt at the meeting you were going to have with him?---No, because as best I can recall from what you've shown me earlier, I think the initiation from Mr Hawatt to me via the SMSs was that he had already made contact with the owner or the owners. I stand  
40 to be corrected.

Certainly - - -?---I stand to be corrected but - - -

Certainly but this is information about the DA application form and what it disclosed.---Yes, but there, it's referencing the owner's contact details.

And the applicant's contact details and indeed the identity of the applicant. ---Sure, yep.

So can you give us any explanation as to why you asked for that information from Ms Dargaville, other than to provide it to Councillor Hawatt?---Not that I can recall, sir, sorry.

Well, I'm not asking you to recall. I'm asking you to take into account all the facts that are known to you, including what's in your recollection, and assist us with an answer to the question. Is there any explanation that you can provide for you making a request to Ms Dargaville, pursuant to which she sent you that email, other than you wanted that information to provide to Councillor Hawatt?---I, look, I really don't know.

The answer is you can't think of any other explanation, can you?---I mean, perhaps I wanted to get in contact with the owners and the, and the applicant, I'm not sure. I mean, that could be a possible explanation. But I - - -

At a time when you had, and it's not putting too fine a line on it, is it, to say engaged Councillor Hawatt to advocate for you with Mr Zreika?---Well, the, the timeline's certainly around that time, yes. Yep.

So you didn't want, and besides you knew how to contact Mr Zreika. You walked around the gate into his, into the premises, didn't you?---No, because he, I, I don't believe he lived there.

Oh, okay.---Yeah, yeah.

But you did have contact with him about this matter, didn't you?---At some point in time, I did.

How did you do that?---Via telephone, it would have been. Yeah. I, I just don't recall the timeline, exactly when that was.

Well, don't worry about that for the moment. I'm just simply asking what was the nature of the contacts you had with Mr Zreika about the Ridgewell Street DA. Was it by telephone, by email, face-to-face?---Normally it was by telephone.

Did you have a face-to-face meeting with him or more than one?---I had, certainly had face-to-face with him. I remember having the after the DA was determined but I can't recall whether I did before the DA was determined.

Do you mean by that, you can recall meeting Mr Zreika face-to-face after the DA was determined and you have no recollection of having a face-to-face meeting with him about the DA before it was determined?---And the reason - - -

Is that what you mean?---Yeah. And the reason for that is because, you know, we were talking about colours of the fence and, and so forth. So, we obviously had to communicate about that.

But this is after the DA was determined?---As far, as best, yes, it was after, yeah.

10 Now, can I ask you to turn to page 154, please. This is an email from Andrew Hargreaves to you, cc'd to Ms Rahme, again still on 23 September at 3.55pm. Do you see that?---Yes, sir.

And it's headed, "Response to CLRQ about update for DA," and then the DA number is provide, "at [REDACTED] Ridgewell Street, Roselands." And it attaches a CLRQ request for update. Do you see that?---Yes, sir.

Did CLRQ stand for councillor request?---You know what, I really don't remember. That was very rarely used, that terminology, but it's possible, I just don't recall.

20 Mr Hargreaves says, "Hi, Spiro. This DA is being assessed by an external consultant (Steven Layman). We expect to receive a draft report from Steve by the end of this month with a view that it will then be referred to the next available IHAP meeting on 2 November. Following IHAP it's expected the DA will be considered by CDC on 12 November. Thanks." That has the tone of being information provided in response to a request from you. Is that right?---It's possible, yes.

30 Now, excuse me a moment. So this is again before the 4.00pm meeting with Councillor Hawatt in a meeting room at council chambers.---It appears so, yes.

You wanted that information to provide to Councillor Hawatt, didn't you? ---I don't know what that information was. I don't know what CRQ request for update, where that came from or what that actually means, so I can't say with any certainty.

40 Well, for the moment leave aside the heading, leave aside the title of the attachment and just look at the content of the email. The content of the email is a timeline for the processing of the DA, isn't it?---Yes, sir.

And that's the sort of information that it was important be provided to Councillor Hawatt if he was able to act as your agent in negotiating with Mr Zreika, wasn't it?---I, I don't believe he was acting as my agent, to be honest with you, I didn't see it that way, as I said before, but - - -

Well, why were you talking to him? Why were you having a meeting with him?---Because he was the one instigated and was making inquiries on behalf of the owner.

Yes, and you could have told him to go away.---I could have.

Why didn't you?---But I didn't.

Why not?---I, I just don't know why I didn't do it, sir, right.

10 Oh, Mr Stavis - - -?---It was a usual practice, it was what I was used to in dealing with the councillors and in particular Mr Hawatt, that it was a process where they, where they were advocating for certain people, I provided information for them. That's just the way it was.

And do you mean that in the meeting that you then had with Councillor Hawatt you didn't provide him with the information that you thought or hoped would advance or protect your interests as the adjoining property owner?---I can't be certain about that, as I said before, but it's, it's possible that I would have provided him some.

20 Well, it's inevitable that you would have, isn't it?---Well, I don't know. I, I, I, I can't say it's inevitable because I don't actually remember doing it. I'm saying it's likely that I would have passed on some information to him, yes.

You don't remember having this, was it the first meeting you had with Councillor Hawatt about a DA that affected your personal interests?  
---I, I really don't remember, sir.

You don't have a memory of it?---No, I don't.

30 It's very difficult to accept that that is the truth.---Sir, it was three years ago.

Whether it's three years ago or 15 years ago, you remember this DA, it affected your personal interests, you're providing information to Councillor Hawatt in order for him to negotiate with Mr Zreika. Correct?---Well, for, for him to pass on my concerns, our concerns as a family.

So that plainly then means that you, a purpose of that meeting was for you to provide Mr Hawatt with material that would advance and protect your personal interests, doesn't it?---I didn't see it that way. I - - -

40 That's not what I'm asking you at the moment.---Okay.

What I'm asking you is, from your answer in saying what you wanted to do and what you did – provide him with material in relation to your concerns – that means that you were providing him with material that would advance and protect your personal interests in the property at [REDACTED] doesn't it?---I, I said it was - - -

That's what it means.---I, I accept that.

Yes. And it was important – you knew from the way Mr Hawatt worked – for him to know what the timeline was for the decision-making process on the DA, wasn't it?---No, no, sir. I don't recall that at all.

How could it not be important for Mr Hawatt, doing what you knew he was doing or going to do, not to have some understanding of the timeline for the decision-making process?---I really don't recall.

10 Right. My question is different from your recollection. What I'm asking about is, you knew how Mr Hawatt operated. You've already told us. ---Sure.

You saw this as essentially part of a seamless set of conduct on the part of Mr Hawatt and yourself in the relationship you had with him. You knew how he operated. He needed to know the timeline for the decision-making, didn't he?---You're asking me if he needed to know?

20 Yes.---That's inferring, the way I take that question, that I told him that that's what the timeline was going to be.

That's not the question I'm asking you at this stage.---Okay. Sorry, can you ask the question again, please.

30 In all your other dealings with Mr Hawatt about other properties where you and Mr Hawatt and also Councillor Azzi worked to try to achieve favourable outcomes for selected developers, what was frequently discussed was who was going to make the decision or who were going to make what sort of decisions – be it a recommendation or a determination – and when those decisions would be made, particularly when they would be made, wasn't it?---Yes.

And you were constantly having to deal with Mr Montague, Mr Azzi and Mr Hawatt on the subject of when a DA would have to go to IHAP, when the papers would have to be ready to go to IHAP, and when the CDC or council would consider it after IHAP had considered it. That happened all the time, didn't it?---Yes, sir.

40 And this is just an illustration of it happening in the case of your - - -? ---Sure. I, I, I accept that.

- - - where you had an interest in a property.---I accept that in that context, yes, I do.

Now, again this is an example of you using your office of director of city planning to advance your personal pecuniary interests in favour of the public interest, isn't it?---It is. But as I keep saying, at the time I didn't think of it that way.

Excuse me a moment. Can I take you then to 24 September, which is the day when the meeting with Mr Hawatt is to take place, and to page 157 in Exhibit 232. This is an email from you to Ms Rahme with a number of attachments, including attachments labelled [REDACTED] Ridgewell Street Plans.pdf, [REDACTED] Ridgewell Street Submission.pdf. Do you see that?---Yes, sir.

10 This is at 1.13pm on 24 September, and you say to Ms Rahme, "Can you please print out plans on A3 and letter on A4. I have a meeting with Hawatt at 4.00pm." Is that right?---Yes, sir.

You were getting her to provide you with material in order to advance your personal interests, in this instance the briefing of Mr Hawatt as to your concerns in relation to the [REDACTED] Ridgewell Street DA. That's right, isn't it? ---Yeah, I asked her to give me a printout of the copies of the plans obviously, so that I could meet with Mr Hawatt, yes.

20 Well, what I want to show you, just keeping a finger on page 157 of volume 31, and just noting you provided the attachment, [REDACTED] Ridgewell Street Plans. You see that?---(No Audible Reply)

If you have a look underneath.---Yes.

Volume 31, page 158, 159, 160 through to page 164, they are black and white copies of version D of the plans, annotated by you, correct?---Yes, sir.

30 And then commencing at page 165 is a copy of your submission or the, it might be called the second objection that you had lodged, albeit I want to suggest to you that you failed to scan the second page because it was a three-page document, and you provided Mr Rahme with the first page and the third page but not the second page.---Okay. I don't know why that would have happened, but yeah.

No, no. It happens to everyone.---Sure, yeah.

And that's not important but I'm just trying to make sure there's a record of it.---Sure.

40 The annotations on pages 158 through to 164 were largely identifying changes that you wanted made to the plans, is that fair to say?---Yes, sir. I think that's fair.

And although there are question marks, for example, on page 158, against three of the items, they were nevertheless concerns that you had that you wanted addressed?---Yes.

Now, certainly, so far as I'm concerned, the concerns as you've written them there are self-explanatory. Can I just clarify, on page 159, in the middle of

the page, this is in landscape format, you wrote, "Remove stairs." There's then a line and a little cloud around "stairs from the ground to the southern patio", is that right?---Yes.

And so that indicates you're talking about those stairs?---I, I believe so, yes.

10 And the three arrows you've got, one is to the tree number 1, one is to those stairs and then the one on the right-hand side refers, if I'm correct, to what you've described as "2.5-metre-high masonry wall on boundary". Is that right?---Yes.

And on the next page, 160, this is the second level or you might call level 1, it's above ground level in any event, on looking at the southern side. Is that right?---Yeah, it's the - - -

Where you have a little cloud and it says "delete" you wanted that window deleted?---Yes.

20 And then when you had a little cloud around the smaller window and the word "high level" you meant you wanted the sill for that window to be raised so that the window commenced at a higher level. Is that right?---Yes, sir.

And the same for the window between that en suite and the master bedroom. That is to say the bedroom in between the two bedrooms.---Yes.

30 And page 164, at the top of the page is the southern elevation and you indicated there a living room window and then a dining room window but you had a cross against dining room window. Does that indicate that that was a window you wanted deleted?---Probably, yes.

And you gave these plans and the copy of your submission of 20 August, 2015 to Mr Hawatt at your meeting at council chambers at 4.00pm on 24 September, 2015. Is that right to say?---It's likely sir, but I really don't remember that actual encounter.

40 You say you don't remember it, but you can see, can't you that on page 157 you asked for the plans to be printed and the letter to be printed saying, "I have a meeting with Hawatt at 4.00pm."---Yes.

You already had those plans with your writing on it and your submission, so you didn't need another copy unless it was to give it to somebody else, did you, and that somebody else was Mr Hawatt.---Yes.

Now, did you have this meeting with Mr Hawatt with a view to, as it were, interposing him between you as director of city planning and Mr Zreika, the owner of the property the subject of the DA?---I, as I said, I mean I was

thinking more as a, as an owner of the land, so when you say interposing, what exactly do you mean by that?

Well, you were the director of city planning.---Yes.

This was a DA that was being processed in part in your division.---Sure.

10 Mr Zreika was the person who was making the decisions about the DA because he was the owner. The applicant was just his architect. Correct?  
---Sure.

And you knew that there was a conflict of interest if you used any of your powers as director of city planning in respect of the processing of the DA, given your interest in the determination of the DA, didn't you?---I didn't think of it in those terms at the time, I'm sorry.

20 Can I ask you this. If a person is going to negotiate something, frequently maybe crudely the method of negotiation is to use carrots or sticks. That's the way it's sometimes discussed, isn't it, negotiation with somebody, a bit of give and take?---Give and take, yeah, but I wouldn't say carrots or sticks.

Was there any discussion between you and Mr Hawatt about what carrots or sticks he should use or could use in negotiating on your behalf with Mr Zreika?---Not that, no, I don't believe so, no.

How do you know?---Well, because I don't operate that way. I mean, I normally, as you've seen in previous evidence, I mark plans up readily. So this for me was no different.

30 But you marked plans up with a view to the applicant adopting your proposed or suggested changes, don't you?---Well, yeah.

40 And with a view to conveying to them that unless these changes are made, they're not going to get a favourable determination any time soon.---No, that's not true. I wouldn't put it in those terms. No, we, I think I've said before that there's more than one way to skin a cat when it comes to – they were suggested changes. Now, in this particular case, you know, I was probably clouded by the fact that I was the owner of the land and, but I operated in what I would normally do. I didn't see any difference, to be honest with you, sir.

Think about 23 Willeroo Street.---Yes, sir.

You made changes to those plans in writing, your handwriting, didn't you?  
---A while ago now, but I'll take your word for it, yes.

Yes. Remember that was the one that was in the conciliation conference in the Land and Environment Court and - - -?---Yes, sir.

- - - and you were talking directly with the owners or the proprietors, the, the applicants.---Yes, sir.

The proponents, I should say. And that was because Mr Hawatt had got you involved in the matter, wasn't it? Do you remember that?---I do, yes.

10 And you made it clear – I want to suggest abundantly clear – to both the proponents in that case and their solicitor that unless the changes that you required were made, then this matter would go to litigation.---I don't recall ever saying that it was specifically those changes that needed to be made. There were issues that we identified and those, to the best of my recollection, the evidence that I gave before, it was suggested changes for them on the issues that we had concerning regards to setbacks and so forth. So, yeah.

20 THE COMMISSIONER: I think Mr Buchanan's getting at in those circumstances you put forward suggested changes, but you either said to them, or it was implicit in the process that you were involved in, that if the suggested changes weren't taken up to some degree, it meant a court case. ---Yeah, I agree with that, but I think it was, if I can add that they were suggested changes, so they could have done it other ways, yeah. Yeah, but I accept that.

But I think Mr Buchanan's looking more at the procedure.---I accept that, yeah.

30 And I think coming back to his original question about give and take. ---Sure.

You know, I make the suggested amendments. If you give in, taking those into account and implementing them, you also get the benefit that we avoid a lengthy court process.---Sure. I accept that.

40 MR BUCHANAN: Think of the changes that you drew on the plans that had been, the amended plans that had been provided by Mr Demian's architects for the additional, for the DA for the additional two storeys on 570 Canterbury Road, the approved development on Canterbury Road, but you wanted the changes made to the approved development. Remember those changes?---I do.

MR PARARAJASINGHAM: I object.

THE WITNESS: Sorry.

MR PARARAJASINGHAM: If the witness is going to be taken to earlier developments – he has been in the witness box for some 16, 17 days now – I think in fairness he ought to be taken to things that he said if that's what's

being put to him, rather than the effect of it being summarised. I'm just conscious that he's been asked a lot of questions over a number of days, and in fairness to him he should be taken to the evidence that it's said that he indicated on a particular topic.

10 MR BUCHANAN: In my submission, Commissioner, that's not necessary. The witness recalls the matter. It's a general question at the moment about what the purpose was and what the consequences were for an applicant of changes made by the witness to their plans when they had an outstanding application before council.

THE COMMISSIONER: Right. Mr Pararajasingham, I'm going to allow it at this general level but of course my understanding of Mr Buchanan's forensic purpose is to put it at this general level about how Mr Stavis dealt with other applications and dealings with applicants at a general level, to try and bring it back to his role with Ridgewell Street. Now, if it becomes – and, sorry, my impression is Mr Stavis is coping with that at the moment. If it becomes more specific or you think that, as a matter of fairness, something needs to be specifically either put to or shown to Mr Stavis, we'll  
20 revisit it, but given what Mr Buchanan's, as I said, forensic purpose is at the moment, I don't think it's unfair to Mr Stavis.

MR PARARAJASINGHAM: Certainly at the level of generality I don't wish to be heard, but it's when – and so far Counsel Assisting has taken Mr Stavis to the Willeroo property, it was I think 570 Canterbury Road – if we descend into that level of detail, I'd ask in fairness to the witness that he be taken to things said on those topics.

30 THE COMMISSIONER: Look, I intend to allow Mr Buchanan to continue but if you if you become concerned again, please raise it.

MR PARARAJASINGHAM: Thank you.

MR BUCHANAN: Excuse me, Commissioner. You recall that you had issues with Mr Demian about the DA for the additional two storeys he sought to the approved development at 570 Canterbury Road?---Yes, sir.

40 You recall that you made changes or indicated changes that you sought in respect of the plans that had been lodged for the approved development, in order for the subject DA to be approved, and in fact we'll show you an email that you caused to be sent to Mr Demian on 4 April, 2016 at 9.54am. Volume 23, page 110. If I can share it with my friend, perhaps. It's from your secretary, "Dear Charlie, Spiro asked me to forward you this email. These are the changes that are required to get this over the line." What did you mean when you said that?---Well, I, I meant that, that he had to make some changes.

In order to what?---In order for us, or for me to actually make a recommendation or for the application to be progressed, I guess.

So it was your practice, wasn't it, from time to time, where you considered it necessary or desirable, to annotate plans of applicants and put those annotations to them with a view to then adopting those changes, amending their plans accordingly in order for them to get a favourable outcome on their DA, didn't you?---Yes.

10 That was your practice?---It was. But not, as I've been saying ad nauseam, they were not intended to be changes that had to be made. It was in the spirit of changes that concerned, in regards to addressing issues that we had with, with - - -

What you did was - - -?---Sorry.

I'm sorry, go on.---No, no. I was just going to - - -

20 I didn't mean to interrupt.---Sorry. I was just going to say that as I, in relation to that application, in order for us to achieve the better planning outcome, test under clause 4.6 at the time, he needed to improve the approved building and so at that stage I had put to him things that I thought that possibly that he could do. Now, he may not have wanted to adopt those exact things so, and I think I've said this plenty of times before, yeah.

30 You were using a combination of your powers as the director of city planning in relation to this practice and the suggestions that you made for changes to plans of applicants as a stick, weren't you, or it could be seen indeed as a carrot. If they want a favourable outcome on their application they should adopt the changes that you proposed?---Or similar or some, or addressing issues.

Now, let's come back to ■■■ Ridgewell Street. Was there any discussion with Mr Hawatt at any time – but thinking in particular of the meeting at council chambers at 4.00pm on 24 September, 2015 – about what Mr Hawatt could use as either carrots or sticks in discussions with Mr Zreika in order to protect and advance your interests?---Not that I can recall, sir.

40 You could theoretically have through Mr Hawatt offered Mr Zreika an inducement to amend the plans in order to favour your property, in a way that favoured your property by offering expeditious approval if he did so, couldn't you, theoretically?---Theoretically, yes.

You could on the other hand threaten Mr Zreika through Mr Hawatt that if the changes you wanted were not made that there would either be an unfavourable assessment or determination or a delayed assessment or determination, couldn't you, theoretically?---Theoretically, yes.

Was anything said at that meeting on 24 September or any other time between you and Mr Hawatt to the effect that if the changes you wanted weren't made then Mr Zreika's development could be delayed?---No, sir.

Or that there could be some other unfavourable outcome?---No, sir. I don't believe so, no.

10 Do you know if Mr Hawatt ever indicated anything like that to Mr Zreika?  
---No, sir.

Was there anything ever said between you and Mr Hawatt that the involvement of the IHAP and consequently the CDC could delay determination of the DA?---Not, not that I can recall, no.

Just thinking now - - -?---Sure.

20 I just want you to be careful about this if you wouldn't mind. We're just talking now not about Mr Zreika but just you and Mr Hawatt.---Yes.

Thinking about it, a determination under delegation would be, all things being equal, likely to be more expeditious than a determination by council or the CDC after it had been through the IHAP process, wouldn't it?---Yes.

30 So was anything discussed, having regard in particular to that timeline that you got Ms Rahme to provide – sorry, I could be wrong about that. That timeline that you – thank you – that you obtained from Andrew Hargreaves, page 154 in Exhibit 232, was there no discussion between you and Mr Hawatt that the involvement of the IHAP and the CDC would be likely to delay determination of the development application?---Not that I can recall, sir.

I note the time, Commissioner.

THE COMMISSIONER: All right. We'll adjourn for morning tea and resume at 20 minutes past 11.00.

40 **SHORT ADJOURNMENT** **[11.01am]**

THE COMMISSIONER: Now, Mr Pararajasingham, has your monitor been fixed?

MR PARARAJASINGHAM: It doesn't look like it, Commissioner. No, it's alive now.

THE COMMISSIONER: Terrific. All right. Mr Buchanan.

MR BUCHANAN: Commissioner. Mr Stavis, before the morning adjournment, I was asking you whether there was anything ever said between you and Mr Hawatt about the fact that the involvement of the IHAP and of council or the CDC in the determination of the Ridgewell Street DA would delay determination, as against determination under delegation and you said - - -?---Yeah, yes.

You agreed with that proposition in theory.---In theory, yes.

10

Was there any discussion between you and Mr Hawatt about that?---Not that I can recall, sir, no.

You would have provided Mr Hawatt, though, with the timeline that you were provided by Andrew Hargreaves?---In all likelihood, yes.

20

Was anything ever said between you and Mr Hawatt that if the process of determination could revert to determination under delegation, that it would speed things up a bit or that the applicant would have a greater likelihood of a favourable outcome?---I don't remember discussing that with him at all.

Was anything ever said between you and Mr Hawatt that if the owners agreed to the changes that you wanted made and had indicated on the plans that you organised to be printed off, then you would withdraw your objection and the DA could be determined under delegated authority? ---Again, I don't recall having that discussion with him.

30

When did you – I withdraw that. Was there a stage at which you appreciated or thought, one or the other, I'm not saying whether it's correct or not - - -?---Sure.

- - - that if you withdraw your objection, then the DA could be determined under delegation?---I don't remember thinking that as I sit here today.

Well, just jumping ahead a bit, you know, don't you, that it was determined under delegation?---Yes.

40

And yet you know from the material that we've seen already that the timeline as at the time of these negotiations around 24/25/26 September, 2015 was that the determining authority would be council after receiving a recommendation from the IHAP?---Not sure of the times that you quoted but I accept those times if - - -

Well, no, no, I'm just talking about who the determining authority was. At one stage - - -?---Yep.

- - - it was going to be council - - -?---Yes.

- - - after it went past IHAP, and at another stage it became a determination under delegation.---Yes, sir.

When did it first occur to you that the determination could be under delegation rather than going through IHAP and council if your objection was withdrawn? When did that first occur to you?---In all honesty I don't remember when it first occurred to me.

10 Can I ask you this. Around this time did you have an opinion as to whether it was correct that if there was no objection by you, an affected party, then there would be no conflict of interest and so the matter could be determined under delegation, the delegate being one of your subordinates? Did you think that was correct?---Look, I'm, I'm sure I did at some stage prior to that date.

THE COMMISSIONER: What, think about it and - - -?---Well, not - - -

20 - - - reach the view that that was an okay way of proceeding?---No, I'm just talking in general terms. Unless I don't, I misunderstood the question.

MR BUCHANAN: Well, I can reframe it to make sure.---Please, yeah.

Did you always think that if a DA was being determined by the council only because an objector was a council employee or the like, that if the objection was withdrawn, then the DA could be determined under delegation, provided all other conditions for the delegation being exercised were met? ---Eventually I did, obviously, but I'm not sure if I, I don't recall actually knowing that around that time, to be honest with you.

30 Well, at what stage in the processing of this DA did you, let's use the word, appreciate that? Let's assume it's correct for the moment. At what stage in the processing of the DA did you appreciate that if the objection was withdrawn it could be determined under delegation?---I'm just trying to think back. The, to the, the best I can do is very late in the process.

Well, what was happening at that stage?---Oh, I don't know exactly but you asked me about when I appreciated it. As I sit here today I believe it was late in the process of the application.

40 Well, at some stage you did withdraw your objection, didn't you?---I think I did, yes, yes.

Well, you know you did, don't you?---Yes, yes.

And thinking of the occasion when you withdrew your objection, did you then, we'll use the word appreciate, did you then appreciate that consequently the DA could be determined under delegation, rather than having to be reported to the IHAP and to council?---Yeah. Look, I don't

recall exactly when but as I said, I would have, it would have come to my, yes, I would have appreciated it.

And you don't have a recollection of having appreciated it at any time before your objection was withdrawn?---No, I don't, sorry, as I sit here today.

10 It is a rather neat tool, though, that could be used in a negotiation – whether you call it a carrot or a stick – with a DA applicant, that if there's no objection, then there's likely to be a better and faster outcome because it could be determined under delegation rather than having to go through the hoops of IHAP and council, isn't it?---It, it is but that policy, as best I understand is, was in place way before I started at the council.

20 That might be the case, but you must have appreciated at some stage that a negotiating tactic or tool, whatever word you use, that could be used with Mr Zreika to advance your interests would have been the withdrawal of your objection and consequently an expedited determination of the DA.---I, I don't recall thinking that at the time.

But you must have appreciated it, though, mustn't you? Forget about whether you remember it.---Sure.

You must have appreciated that, mustn't you?---At some stage, I, yes.

And do you mean to say that you at no stage canvassed with Mr Hawatt, the person who was negotiating on your behalf, deployment of that tool?---I can't recall that, no, sir.

30 Why wouldn't you have discussed with Mr Hawatt him raising with Mr Zreika a withdrawal of your objection as a way Mr Zreika could obtain the outcome of an expedited approval?---I guess the only way I can explain is that I was thinking more along the lines as an owner of the land and not in terms of the process, really.

40 But why wouldn't you discuss something like that with the person you know is going to negotiate on your behalf? In fact, you've asked him to negotiate on your behalf.---I don't believe I, I asked him to do that. Why wouldn't I? I don't, I don't know. I really don't.

And you mean, are you telling us you never discussed negotiating tactics with Mr Hawatt?---I, I don't recall at all.

What tactics do you understand Mr Hawatt intended to use?---As far as I was aware he was acting, I guess, on behalf of Mr Zreika and I was passing on information to him in terms of my wife's and my concerns about the application. To the best of my recollection, that, that was, as I sit here today, that's, that's how I recall it.

How did you expect Mr Hawatt to succeed where you had not succeeded to up to that point?---I, I'm not sure. I've, I really don't, didn't think of it in that way to be honest with you.

But you'd had plenty of discussions with Mr Hawatt up to that point, whereas, to your knowledge, he'd been involved in negotiations with applicants and with third parties in order to achieve outcomes desired by the applicants, hadn't you?---Yes, I did. Yes.

10

And what sort of tactics – I withdraw that. And you knew, didn't you, that Mr Hawatt used tactics of different sorts, depending upon the circumstances of the case. He didn't just write a letter, did he?---No. Oh, well, I don't know if he did but no.

You knew he talked to people?---Yes. Yes, I accept that.

This meeting that was held at council chambers, commencing at 4.00pm on 24 September, 2015, did you make a record of what was said or agreed at that meeting?---I don't recall doing so. I - - -

20

Did you provide a record of the meeting for Ms Rahme's records of contact with councillors in relation councillor enquiries?---In, in relation to this matter?

Yes. In relation to this meeting, sorry.---Oh, sorry.

In relation to this meeting you were having with, or you had had with Mr Hawatt.---Correct me if I'm wrong but I believe that she knew that I was having that meeting.

30

Yes.---Yeah, so - - -

But was there a record of the outcome?---Not that I can recall, no.

So no record was put on council files as to the outcome of the meeting? ---Well, I can't confirm that, I'm not sure, to be honest with you, as I sit here today. Obviously those plans that I'd marked up would have been put on the file at some point.

40

Well, that was an input into the meeting.---Yeah.

What was the output of the meeting, what was the outcome of the meeting? ---I don't recall. I mean I don't recall the meeting, to be honest with you.

Were you satisfied with the meeting?---I, like I said, I don't recall the meeting itself.

Do you recall being upset that you didn't think it was going to achieve anything to have Mr Hawatt involved on your behalf?---No, I don't recall the meeting so - - -

You've accepted that you had a conflict of interest as DCP and yet at the same time an affected party. Correct?---I accept it now, yes.

10 Given your conflict of interest, wasn't this meeting with Mr Hawatt even more sensitive than other contacts you'd had with Mr Hawatt and Mr Azzi in relation to the processing of applications at council?---It was emotive and emotional for us, yes.

Well, it was sensitive because of the potential for a conflict of interest, wasn't it?---Look, I didn't think of it in those terms at the time.

You intended to just bore through and achieve an outcome as favourable as possible to yourself without thinking of the consequences for council decision-making?---I didn't think of it in those terms.

20 You just didn't think of it. Is that your evidence?---Not in those terms, yes, I didn't think of it.

What did you think of? You're using the words, "In those terms." I'm happy for you to tell us the terms in which you thought of it.---Like I said, I, I was concerned about the impacts on our property and I guess I blurred the lines and I was concerned about how this was going to impact our property so - - -

30 You didn't think that because of the potential for a conflict of interest that this was a meeting with Mr Hawatt that more than the other meetings you'd had with him and with Mr Azzi, a record needed to be kept of it to ensure that there could be transparency that it was above board so far as council was concerned?---No, not at the time, but I do wish that I had done that.

Well, your failure to keep a record, I want to suggest, is consistent with you not wanting for there to be a record of the meeting on council files lest it reflect unfavourably upon you.---No.

40 Isn't it?---No, I don't accept that, sir.

Can I take you, please, to a text, volume 5, page 282, number 314 on that page. This is at 10.41pm on 24 September, so it's the night of the meeting that you'd had at council chambers with Mr Hawatt, and it's from you to Mr Hawatt. "Hi, Mike. Tell him I'd like a 2.5-metre-high brick or similar fence along the whole of my rear boundary on" - - -

THE COMMISSIONER: Hold on for a sec.

MR BUCHANAN: I'm sorry.

THE WITNESS: I'm sorry.

THE COMMISSIONER: Have you got it?---No, not yet.

MR BUCHANAN: I'm sorry. It's about two-thirds of the way down the page, page 282.---Yep.

10 So it's item 314 on the left-hand side.---Sorry, what page was it?

Page 282.---Oh, 282, sorry. Yep. 314, yes.

And that's at 10.41pm on 24 September. Can you see that?---Yes, sir.

And the message reads, "Hi, Mike. Tell him I'd like a 2.5-metre-high brick or similar fence along the whole of my rear boundary on the boundary. I think I put it on the plans. Cheers." You sent that as a reminder to Mr Hawatt, is that fair to say?---Likely, yeah, yeah.

20

You would definitely have spoken to him about the fact that that was what you wanted in the meeting you had with him at 4.00pm, wouldn't you, given that the 2.5-metre-high fence featured prominently in your amendments to the plans?---That's likely. I don't remember the meeting, to be honest with you.

And so the "2.5-high brick or similar fence" text, would it be fair to say that you sent that because that feature was the one which concerns you most?

30 That is to say, it was the one thing you wanted over and above everything else.---No, I think, I, I really don't, I can't really give you any insight why I highlighted that. All I know is that privacy in general was a concern for us as a family and I guess this was one way of trying to achieve a degree of privacy. So privacy in general I think was our main concern.

And the effect of the 2.5-high brick or similar fence would have been to have most effectively addressed that concern as against all the other little things about deleting windows and raising the sills of windows and the like, wouldn't it?---No, because I, and I'll go back to the plans, there were some windows that directly overlooked our entertaining and pool area as well, which obviously were a concern to us, but it, it, certainly a high fence would be, would go a way of, you know, addressing those concerns, yes.

40

Go a long way.---Oh, it would, yes.

Can I take you please to Exhibit 232, page – excuse me a moment. Excuse me a moment. Can I take you to the end of Exhibit 232, and at page 395 - - -?---Sorry, what's Exhibit - - -

232 is the volume dealing with [REDACTED] - - -?---Volume 31?

Yes, volume 31, correct. And it's a table commencing at page 395. It's on the screen in front of you if it's easier to read. You actually might find it easier to read on the screen. It's a matter for you.---No, I've found it, yeah.

Thank you. This is the first page of a set of call charge records. You're familiar with the format of this kind of document by now, Mr Stavis, are you not?---Ah - - -

10

I'm going to go through it with you.---Yeah.

But just to establish, you know the sort of document that we've got here?---Yes. Yes, sir.

And you can see that the heading is Contact Between Spiro Stavis, Pierre Azzi, Michael Hawatt and Fadi Zreika, Ridgewell Street. Do you see that?---Yes, sir.

20

And just looking, if I can ask you to read it from left to right, and the headings, the left-hand column is sequential numbers of the rows of data, then there's the name of the person in whose name the phone is registered for phone service 1. Do you see that?---Yes, sir.

We go across to phone user 2. That is the person being called, and the name in which the phone service is registered that is being called. Do you see that?---Yes, sir.

30

Start date is the date on which the contact, be it an SMS or a call, started. And then if I can ask you to just skip over the greyed-out column in relation to daylight savings, and just go to the heading of Start Time, that's the time the contact started, and then there's a column for duration. Do you see that?---Yes, sir.

And there's a column on the right-hand side for caller location but you don't have to pay attention to the data in that, unless I take you to it.---Okay.

40

Can I ask you if you can have a look, please, at item 36 on page 396 and it's the third row in the second page of this table and it's a call from Mr Hawatt to Mr Zreika on the 26<sup>th</sup> of September, 2015, commencing at 11.21am and the line is open for 26 seconds. Do you see that?---Yes, sir.

And subsequently to that, item 37 at 4.39pm, there's an SMS from Mr Hawatt to a phone number, the user of which is identified as Spiro Stavis numeral 2. Do you see that?---Yes.

Do you recognise the phone number under the heading Phone Service To? Is that your wife's phone?---I'm trying to see. Sorry, what, what item number is it?

Item number 37.---Yep. Phone Service To.

THE COMMISSIONER: It finishes in 1-8-9-2.---No, that's, that's mine. That's my number.

10 MR BUCHANAN: That's your number?---Yeah.

Did you have two mobile phones that you were operating in 2015?---I believe so, yeah.

Was there a reason why you were using two mobile phones?---I think, sorry, so what date was that?

The date is 26 September, 2015.---September, October. I'm just, had I, I had started at, at the council.

20

THE COMMISSIONER: Yeah.---Yeah. We had a business phone and a, and a, I had a private phone as well.

MR BUCHANAN: Right. This particular number, ending in 1-8-9-2 - - -? ---Yes.

- - - which phone was that? The one that was your council phone or the one which was your personal phone?---No, that's, that's, that's my personal phone.

30

That's your personal phone. Thank you. So, can I just ask you first of all just to note the contact between Mr Hawatt and Mr Zreika for 26 seconds at 11.21am on 26 September and then in relation to the SMS to you from Mr Hawatt at about 4.39, can I ask you to go back to volume 5 in Exhibit 52, page 282.---Yes.

Have you got page 282?---Yes.

And on item 315.---Yes.

40

And you see that that is an SMS extracted from Mr Hawatt's phone to you on 26 September at 4.39pm. And the text read, "All done and agreed to. He will submit changes next week." Do you see that?---Yes, sir.

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

You responded at 4.54pm, this is item 316, "Well done, Mike."---Yeah.

You understood, therefore, what Mr Hawatt was referring to?---Well - - -

In his text message at 4.39pm.---I - - -

You obviously did then, didn't you?---I, I would have, yes.

Yes.---Yeah.

10 Now, "Well done, Mike," is consistent with congratulations to Mr Hawatt on achieving something, isn't it?---That's a fair comment, yeah.

And "All done and agreed to," the last contact that's in this record of texts was you on 24 September asking Mr Hawatt to tell Mr Zreika that you wanted a 2.5-metre-high brick or similar fence. Mr Hawatt responds on the 26<sup>th</sup>, "All done and agreed to. He will submit changes next week." You knew that that was Mr Zreika talking to Mr Hawatt, and Mr Hawatt conveying to you what Mr Zreika had agreed to, didn't you?---I, I don't recall but it's likely that - - -

20 But as you sit there now, sir, you appreciate that's exactly what was occurring, don't you?---I think, I think, I think that's a fair comment, yes.

Did you have any contact with Mr Hawatt at around this time in which he conveyed to you what had transpired between him and Mr Zreika to arrive at the outcome, "All done and agreed to. He will submit changes next week"?---Not that I can recall, sorry, yeah.

30 As you sit there now, do you have any understanding of how Mr Hawatt achieved that outcome?---I assume he would have shown the plans to the owner, yeah. I, I don't know, to be honest.

And why, what was there in what you understood was going to occur or had occurred with Mr Zreika that would have persuaded Mr Zreika to say, "Oh, well, if that's what he wants, I'll agree"?---What was the question again, sorry?

40 What was there, as you understood it, to persuade Mr Zreika to agree to the changes that you had indicated in that copy of the plans that you'd provided to Mr Hawatt? As you understood it.---I'm not sure I'm understanding the question, so forgive me.

Can you assist us as to why Mr Zreika would have agreed to the changes that you wanted?---No, sorry, I don't. I can't.

Is that a mystery to you? Are you being frank with us?---I am, sir. I, I, I just - - -

A complete mystery to you as to how Mr Zreika could possibly have been brought around?---Just, I, well, I'm not sure what, because I wasn't with, I guess - - -

MR PARARAJASINGHAM: I object, Commissioner. The witness is being asked to provide an explanation for what was in the mind of Mr Zreika in the context of a conversation between Mr Zreika and Mr Hawatt. We are now an additional step removed from this witness being asked to speculate what was in Mr Hawatt's mind. In those circumstances, in my  
10 submission, we are truly entering in the realm of speculation.

THE COMMISSIONER: I didn't take it that the question asked about speculation in minds. My interpretation of the question was trying to get Mr Stavis to remember whether in terms of tactics or putting things to Mr Zreika that may have prompted him to – it gets back to the carrot-and-stick questions that Mr Buchanan was asking before the morning tea break. Mr Buchanan, is that where you're aiming?

MR BUCHANAN: Yes, it's the knowledge of this witness. Does he have  
20 an understanding or even a belief as to what it was that occurred that caused Mr Zreika to agree.

THE COMMISSIONER: Yes. Do you understand, Mr Stavis, so we're not asking you to speculate what was in different people's minds, but we're trying to jog your memory as to whether anything was said to you by Mr Hawatt along the lines of, you know, "I said to Mr Zreika X" or "It's in your interest for these reasons," or something along those lines.---Sure, sure.

So if you think back, can you remember, because it does appear that there  
30 was a stalemate, Mr Hawatt becomes involved, you make the amendments to the plans which are given to Mr Hawatt and then we have Mr Zreika agreeing to it. And Mr Buchanan, what he's exploring is whether we can jog your memory as to whether Mr Hawatt reported this is what I put to him or this is how I persuaded him.---In all honesty, not that I can recall, no.

MR BUCHANAN: I just want to pick up on your answer. You say in all honesty, not that you can recall. I'm actually not after your recollection right now, albeit it might be a recollection that informs your answer.---Sure.

40 What I'm after is the knowledge you have, as you sit there now, of what it could have been, and I'm not asking you to speculate, but what happened, given your knowledge of the matter, that caused Mr Zreika to agree to the changes you sought.---I don't know. I, I, I, other than maybe he finally understood the issues I guess. That's the best I can offer.

In any event, you sent that congratulatory text, "Well done, Mike," at 4.54pm on 26 September, 2015.---Yes, sir.

You were pleased with the outcome.---Yes, I was.

You had – I withdraw that. Mr Hawatt had contacted the owner. I'm just going over what had occurred. Mr Hawatt had contacted the owner of [REDACTED] Ridgewell Street to obtain his agreement to the changes that you wanted made to his plans. Correct?---I believe so, yes.

10 You sought those changes in order to advance and protect your private pecuniary interest in [REDACTED] hadn't you?---Yes. I didn't think of it that way at the time but as I sit here, yes.

Getting Mr Hawatt to do that for you put you under obligation to him, didn't it?---Not really, sir, I didn't think of it like that, no.

He'd done something for you, hadn't he?---Well, I don't know what he did between him and Zreika, but from my perspective, yes, he brokeraged, I guess he opened the lines of communication and in that respect, yes.

20 And to use the vernacular, you owed him one, didn't you?---I didn't think of it like that, no.

You owed him a favour or a number of favours?---No, sir, I didn't - - -

Or was it just part of the ongoing relationship that you had with Mr Hawatt whereby you were part of the circle – which comprised Hawatt, Azzi, Montague and yourself – that favoured selected developers in respect of their applications at council?---I didn't see it that way, sir.

30 You also were under obligation to him, weren't you, for his intervention being kept quiet, not being something that would go on council records for example?---Well, it was on council records in the sense that the plans were on council records, the staff knew about the plans.

But Mr Hawatt's intervention to achieve the outcomes that you wanted - - -? ---Sure.

- - - was not a matter that was on council records, was it?---Um, not that I can recall.

40 And we've agreed that that was a sensitive matter, given your conflict of interest, given that you ran the planning and development assessment teams. Correct?---Yes.

You were additionally under obligation to him by virtue of him having achieved this outcome for you that favoured you on a basis that he understood it was a sensitive matter and to use your words in the text on page 282, item 307 on 23 September at 9.17pm, "I have to be careful though 'cause I've got an independent consultant assessing it and I don't want me

to be accused of influencing the decision. Hope you understand. I'm sure we can work it out though."---Sorry, I lost track of the first part of your question. I'm sorry, sir.

Fair enough. You were under obligation, I want to suggest to you, to Mr Hawatt for achieving a favourable outcome and doing so on a basis that kept this under wraps, that kept the negotiation whereby the owner gave you favourable outcomes in relation to the DA was kept under wraps?---I, I didn't think of it like that.

10

You were not meant to be involved, were you, at that stage, in how the DA was handled?---I accept that. I think I, I, I, I think accepted that in my previous evidence.

And you didn't want Mr Hawatt going around council saying that he had achieved that outcome for you, did you?---I didn't think of it in those terms, sir. Not at all.

20

And instead of you being directly involved in what the DA looked like, how it was determined, you were, weren't you, circumventing council's assessment and determination process for this DA by having Mr Hawatt negotiate with the owner, amendments to the plans which were favourable to you?---I, I didn't think of it in those terms.

But as you sit there, that's what you did, isn't it?---Can you repeat the first, sorry, sir.

30

Yes. You were circumventing council's assessment and determination process for this DA by engaging Mr Hawatt to negotiate an outcome with the owner that was favourable to you?---I, I didn't think of it in terms that he was negotiating my behalf.

But he did, didn't he?---Well, certainly he, he communicated what our concerns were to him, yes.

You asked him to negotiate on your behalf.---I don't believe I used the word negotiate with them but I did ask him, oh well, sorry, you know, I gave him some information to highlight - - -

40

And what did you expect him to do with it?---Well, I accept that, I accept that he was going - - -

What did you expect him to do with it, sir?---To relay that to the owner.

And?---And ultimately, obviously, come up with an amicable solution.

That was favourable to you.---Yes. I accept that.

And in those other cases that we've talked about – examples of which are 23 Willeroo Street, 570 Canterbury Road and there are plenty of others – you negotiated directly with the applicant and provided your drawing for amendments of the plans in order to achieve the outcome you sought and a favourable outcome for them, the applicant?---No.

Didn't you?---No. Not always, no. I mean, Councillor - - -

But frequently you sat down with the architect, correct?---Yes.

10

How many meetings did you ever had with Mr Demian about his plans?  
---Too many to count.

Exactly. But this time you interposed Mr Hawatt in that process and the difference is that it was a DA in which you had a direct pecuniary interest. That's correct, isn't it?---I didn't see it in those terms, sir. I'm being honest with you.

20

As you sit there now, though, that's what you did, isn't it?---Well, I didn't enlist Mr Hawatt to do anything other than open up the lines of communication, I guess, as, as a property owner and I accept that I should have distanced myself from the process. I accept that.

Can I ask you to look at page 283 of the table of SMS's extracted from Mr Hawatt's phone and item 325. This is a text from Mr Hawatt to you on 28 September, 2015 at 6.05pm. Do you see that?---Yes, yes.

30

And it reads, "Message from owner in Ridgewell Street re his agreed amendment as discussed." New paragraph. "Hi, Michael. Revised plans have been emailed through to Fran Dargaville. Please provide me with any updates." Do you see that?---Yes.

And when you saw that you understood Mr Hawatt's "his agreed amendment as discussed" as being the amendments that Mr Zreika had agreed to, of which Mr Hawatt had informed you?---I'm just a little bit confused by that text because it says "message from owner". So that, this is addressed to me, correct?

40

Okay, well, just take it from the beginning. First of all, it's a text extracted from Mr Hawatt's phone, so it's either to or from Mr Hawatt. Secondly, it says "To Spiro Stavis", so it's from Mr Hawatt to you. Okay. It's in two parts and the top part says "message from owner in Ridgewell Street" and the bottom part says, "Hi, Michael." Do you see that?---Yes.

So I want to suggest to you that the first paragraph was a text message written by Mr Hawatt and the second paragraph is a text forwarded by Mr Hawatt that had been sent to him apparently by Mr Zreika.---Okay. I, I can't confirm that, but I accept that if that's - - -

Well, you have seen these documents recently, haven't you?---Yeah, but I haven't, I mean, I, I have, yes.

And you know that revised plans were sent through, don't you?---Yes, I do. Yes.

10 So knowing that, what do you think is being discussed?---No, no. The point I was trying to make is I don't know, I, I can't confirm that that was extracted from or forwarded from an email that Mr Zreika, or, sorry, Mr, Mr, Mr Zreika had provided Mr Hawatt.

Well, we'll come back to that. But can I just take you to the words in Mr Hawatt's first paragraph of his text "his agreed amendment as discussed". Can I just ask you, what did you understand was meant by that, "his agreed amendment as discussed"?---I presume it was the plans that I had forwarded to Mr Hawatt.

20 Well, it says "his agreed amendment". That means that some third party is making amendments or has, sorry, has agreed to make amendments. You don't think that's a reference to Mr Zreika?---Yes. Sorry.

And it does say "message from owner in Ridgewell Street".---Yes.

30 So can I just ask, it's the words "as discussed" that I'd like to focus on. One reading of that expression is that he, Mr Hawatt, is saying he has had discussions with you about Mr Zreika's agreed amendments or agreement to make amendments. Had there been a telephone discussion or a face-to-face discussion by this date, which is Monday, 28 September, 2015, between you and Mr Hawatt about what Mr Zreika had agreed to?---Not that I can recall, sir.

Weren't you interested in knowing?---I, I thought that we had established before in the other SMS that, from Mr Hawatt, that that had already been agreed to, so - - -

You didn't ring Mr Hawatt to say, "So he's agreed to it all, has he?"---I don't recall doing that, I'm sorry.

40 But the likelihood is you did discuss with him what went down when Councillor Hawatt sat down with Mr Zreika and went through the changes you wanted to Mr Zreika's plans. The likelihood is you found out what had happened in that negotiation, isn't it?---I mean, that could be in reference to - - -

Sir, I'm asking you a different question.---Oh, sorry, sorry.

That's the likelihood, isn't it?---I don't recall having a discussion but, with him about it after I'd given him the drawings.

10 But it's likely you did, isn't it, because it was very much in your interest to get all these changes made, and surely you wanted to know what the, as it were, opposing party had said and what had needed to be done to get him to agree. Isn't that likely to have been the case, that you had such a discussion with Mr Hawatt?---I, I don't accept it, the only reason being that I got that SMS saying that it already had been done. I can't confirm it, sir. I don't know how else to express myself.

You had a definite interest though in the details of the amendments that Mr Zreika had agreed to, didn't you?---Yeah.

And you're telling us that after congratulating Mr Hawatt you did nothing to find out what that detail was?---Not that I can recall, but, because I, and the reason for it is that I gave him the drawings.

20 Excuse me a moment. Can you go back then to the call charge records, please.---Sure.

Page 396 in Exhibit 232. Can you see on that page that commencing at row 38 there are 13, sorry, 12 contacts between you and Mr Hawatt on 28 September, 2015, of which, plucking a figure out of the air, 10 preceded that SMS about "message from owner in Ridgewell Street re his amendment as discussed"? And those contacts comprise almost entirely SMSs.---I can see that, yes.

30 Yes. What was the content of those SMSs?---I really don't know, sir.

Well, surely you recall what the contact was, knowing as you do now that there's a record that there was around 10 SMSs on 28 September before you were given this message from the owner in Ridgewell Street, that there was a good deal of contact between you and Mr Hawatt after the time he said that, "All done and dusted."---I have no recollection of it, I'm sorry, sir.

Well, what do you think that you and Mr Hawatt were talking about in your SMSs - - -?---I have - - -

40 - - - on 28 September?---I really have no idea.

You can't, as you sit there now - - -?---Sure.

- - - assist the Commission as to what is likely to have been the subject matter of those contacts, if not the content of them?---I wish I could, but I, I, I can't, hand on heart.

Well, the likelihood is, I need to give you an opportunity of responding to this, that you were having these contacts with Mr Hawatt about the [REDACTED] Ridgewell Street DA, isn't it, given the context?---So can – and I'm sorry to be a pain, but can you give me that context again and then I can answer that.

Well, had there not been a text to you – this is volume 5, page 282 – at 4.39pm on Saturday, 26 September, where Mr Hawatt said to you, “All done and agreed to. He will submit changes next week,” to which you responded, “Well done, Mike”?---So that was the 26<sup>th</sup>?

10

Yes.---Yes.

The next day is a Sunday. There could be reasons for there being not very much contact between the two of you on a Sunday. And then on the Monday there's numerous contacts between the two of you comprising SMSs. You don't think that they're contacts between you and Mr Hawatt about what had happened with Mr Zreika and what might happen thereafter?---I, I really can't, I really can't confirm.

20 But you'd agree it's likely that that was the subject matter and content?---So the actual text, sorry, the, the notification from Mr Hawatt happened after those SMSs that you're referring to?

Well - - -?---Or before.

That text was at 6.05 on the 28<sup>th</sup>. And look at all the SMSs before that. There's on line, on row 47 one at 6.04, before that at 3.59, 3.27 – I'm just going up the page in the column headed Start Time and so forth – all of this starting, this exchange of texts, at 12.29pm on the 28<sup>th</sup>.---I don't recall there being that many discussions.

30

Yes, I understand that's your evidence.---Yeah.

I'm asking you a different question now.---Sure, sure.

Don't you agree that it's inevitable that you and he were talking to each other via text about the [REDACTED] Ridgewell Street DA and what had happened in Mr Hawatt's negotiations with Mr Zreika that he reported on earlier?---That, that, my concern with that assumption is that, or that, the likelihood of that is that there's a lot of SMSs over such a, I guess, a simple thing. So I - - -

40

THE COMMISSIONER: Mr Buchanan, can I just, sorry, confirm. You're looking at page 396 and you're concentrating on item 38 through to about 49, is that correct?

MR BUCHANAN: 47 is the last one before the text at 6.05 of which we have evidence in volume 5, page 283, from Mr Hawatt to Mr Stavits.

THE COMMISSIONER: If you look at pages 282 and 283, I think some of those text messages are there.

MR BUCHANAN: Commissioner.

THE COMMISSIONER: And there might be some other topics being raised.

10 MR BUCHANAN: Yes, I need to apologise to you, Mr Stavis. If we're looking at page 282 through to 283, the Commissioner is pointing out that the text of at least some of those SMSs is at row 317 through to 324 in that table of extractions. So the Commissioner is pointing out that they're not on the subject of Ridgewell Street. So I apologise to you - - -?---That's okay.

- - - for the suggestion that it's inevitable - - -?---That's okay.

- - - that they would have been in relation to Ridgewell Street. Can I ask you, though, about the volume, Exhibit 232, page 396. That's this, the call charge records, item 49.---Yes.

20

Can you see that item 49 is a phone call that Mr Hawatt made to you at 6.08, which is shortly after he sent you the text saying, "Message from owner in Ridgewell Street re his agreed amendment as discussed."---Yes, sir.

In that phone – the line is open for 35 seconds. Do you see that?---Yes, sir.

What was discussed in that exchange?---I, I really have no idea to be honest.

30 When you got the text from Mr Hawatt, "Message from owner in Ridgewell Street re his agreed amendment as discussed", did you have any contact with him or curiosity about the message that appeared to be from Mr Zreika to Mr Hawatt?---Not that I can recall.

Can I take you please to Exhibit 232, page 167.---Sorry, what volume is that, sir?

167.

40 THE COMMISSIONER: Volume 31.---31, thank you.

MR BUCHANAN: Yes. Now, can you see that although there are some printer artefacts on the bottom of page 162 to 168, nevertheless what can be seen there is an email from A2 Concepts, that's Mr Zreika's architect, to Fran Dargaville, cc to Fadi Zreika, at 5.07pm on Monday, 28 September. ---Yes.

And it appears that attached were these plans, which are amended plans. I'll just take you to how that can be worked out in a moment. Just if you could

go over the page to pages 169 through to page 174, and if you have a look at the legend in the bottom right-hand corner you can see that it's version E, these plans are version E, dated 28 September, 2015.---Yes.

And that's the date of the email in the middle of page 167 from A2 Concepts. Do you see that? It's about point 4 on page 167. Do you see that's headed Forwarded Message? Page 167 on - - -?---I, I'm not page 167, yes.

10 Yes. Does it, is there an email there? Are there two emails there?---Yeah, no, well there's, there is, yes. There's one from A2 Concepts.

That's right. That's the first one I've drawn your attention to.---Yep.

And then the second one is after that, well, yes, it is after that on 29 September, 2015 at 3.49, as the time is represented here, from Mr Zreika to you, cc Michael Hawatt.---Yes, sir.

20 And it says, "Hi Spiro, FYI attached." Do you see that?---Yes.

And it's sent to you at your council email address.---Yes.

And the attachment is identified as Architectural Plans and then there's a date, 28/09/2015.pdf. Do you see that?---Yes, sir.

Can I take you then to page 175. That's an email dated 29 September but this is at 9.34, which we can assume is 9.34am.---Yes.

30 Can you see that?---Yes, yes.

And it's from you, it's addressed to Michael Hawatt, and it says, "Hi, Michael. Almost there. I've marked up final notations on the plans (see attached). Can you please get the architect to amend his plans accordingly and we can progress quickly." Do you see that?---Yes.

And do you see that there's an attachment which has got a series of numbers commencing in 2015/09/29?---Yes.

40 And that after that in this exhibit, page 176 to 178, is a copy of version E. Again there's a bit of loss of resolution, but if you have a look on any of the plans and pages 176 to 179, have a look at the legend on the bottom right-hand side, you can see that it's version E.---Yeah. It's blurry but - - -

Well, it is indeed difficult to see the letter E, but you can see that it's something after D.---Yep, yes.

And the rest of them are A, B, C?---Yes.

So it must be E?---Yep.

And what is on these plans is annotations by you. That's right, isn't it?  
---Yes, sir.

And these are further changes that you wanted made?---Well, yeah, yes, I accept that.

10 So you took the amended plans that had been sent to you by Mr Zreika earlier that morning, made changes to them and then sent them back to Michael Hawatt. Is that, do you see that?---Yes, sir.

20 Given that Mr Zreika had communicated directly with you in sending you the amended plans, why did you send those plans on which you made notations as to the further changes you wanted made to Mr Hawatt, saying, "Hi, Michael. Almost there. I've marked up final notations. Can you please get the architect to amend his plans accordingly and we can progress quickly?" Sorry, my question is, why did you send it to Mr Hawatt rather than Mr Zreika?---I, I, I don't know why I didn't send it to Mr Zreika and, and, and, and to Mr Hawatt. I'm sorry, I don't know.

Isn't the reason that Mr Zreika – I do apologise. Isn't the reason that Mr Hawatt was acting as your agent in dealing with Mr Zreika?---No, I didn't see it that way. I don't know why I did it. Perhaps it was an oversight. I'm not sure why.

30 But obviously Mr Hawatt was acting as your agent, wasn't he?---Well, he was communicating my concerns. I, I, I don't see it as an agent, sir. He was communicating my concerns to the owner.

Is there a label that you would use in preference to agent in the circumstances of that case?---Ah, no.

There's no other label you can come up with other than agent?---No.

Now, you were asking Mr Hawatt to convey a message, weren't you, in this email?---In, in, yes, probably.

40 And the message is, "Can you please get the architect to amend his plans accordingly and we can progress quickly." That's the message, isn't it?  
---Yes.

Why did you use the words "and we can progress quickly"?---I guess process the application quickly, assess the application, I'm not sure what I meant by that exactly.

Well, you used the first person plural "we". "We can progress quickly."  
---That would be council I, I would imagine, us.

Yes. Which is your division.---Yes.

So you were saying that there can be quick progress if the architect amends his plans according to the notations you'd made on the version sent through, version E, weren't you?---I, I accept that, yes.

That's a carrot, isn't it?---Yeah, but I didn't think of it that way, but yes, I accept that.

10

And you were using that carrot in your capacity as director of city planning, the person who controlled what we can do in the processing of this DA, weren't you?---I didn't think of it that way, sir.

But that's what you were doing, wasn't it?---Yes. As I sit here today, yes.

And that was an abuse of your position, wasn't it?---Well, look, again, I didn't think of it that way at the time.

20

Do you accept now that it was?---Look, I do accept I should have done it differently, yes.

And why should you have done it differently?---Because I shouldn't have, look, I, I just should have done it differently. I don't know why.

Now, you had sent the plans with your annotations to Mr Hawatt under cover of your email that's reproduced on page 175. Did you have a conversation with Mr Hawatt after sending that email?---Not that - - -

30

Or before for that matter, in which you discussed his approach or approaches to Mr Zreika?---Not that I can recall, sir.

Did you discuss with Mr Hawatt the carrot, the negotiating carrot of a quick progressing of the DA if the changes that you wanted were made to Mr Zreika's plans?---Not that I can recall.

Why wouldn't you discuss that with Mr Hawatt, given the role that he was playing?---I just don't remember.

40

No, no, no. Sorry, my question is, is there a reason you can assist us with as to why you wouldn't have discussed this with Mr Hawatt?---No.

Given the role he's playing.---No, there's no reason.

And would you accept then that the likelihood is you did discuss it with Mr Hawatt?---It's possible.

Well, it's likely, isn't it? It's a negotiating tool to say I get something, you get something. I get the changes that I want made to the plans, you get a quick determination of your DA.---No, I didn't, I don't recall that conversation or that discussion taking place at all like that in that context.

10 And nothing like that was intimated by you in your discussions with Mr Hawatt?---All I remember is, and, and I think I've said this before, earlier this morning, at, at some point late in the, in the, in the, in the assessment process, I guess, of this application, I made Mr Hawatt aware about the, what the protocol was in terms of the matter going to a CDC. Yeah, committee meeting. Now, it's, it's likely that I, at some point around then, I would have said to him about the, the, the quick process, I guess, in terms of ---

The alternative?---Yes, yes. But I just don't remember when but I do remember it was really late.

20 The alternative with a quick outcome being a determination under delegation?---Yeah, yeah.

Which, as you understood it, could occur if you withdrew your objection? ---Yes.

You see, the words you used in your email to Mr Hawatt "and we can progress quickly" is a signal to him, wasn't it, as to the negotiating tool he should use?---No. I, I, as I said before, I interpret that as actually assessing the application quickly. I, I, that's what I would have thought I would have meant by that.

30 You would have learned at some stage, wouldn't you, that Mr Zreika was anxious about unnecessary delays to the processing of the DA?---Yeah, look, I think really late in the piece, I, I'm not sure but I recall very, very late in the piece that I did have a conversation with him about, and he sort of had a conversation with me about that, concerns he had - - -

40 You knew -- I'm sorry.--- - - - about how long the whole process was taking even before, obviously before I started. So he did go through, we did have a discussion very late in the piece about his experiences with council in the past and how long it had taken to get to this point.

And are you telling us that at no stage earlier than very late in the piece did you understand that Mr Zreika was anxious about unnecessary delays to the processing of the DA?---I, I, I don't know. I may have but I just don't know.

You know that that was a concern on the part of practically every commercial developer, didn't you?---Yeah, I did.

And would it be right to have characterised this proposed development as a commercial development, being a dual-occupancy residential development, demolition and dual-occupancy residential development?---My understanding was that he was going to reside there.

In one of them.---Not sure. One or two. But if I had to class it, yes, I would.

10 And there'd be no reason to take Mr Zreika out of the category of owner/developers who wanted a quick determination of their DA in order to avoid incurring unnecessary costs.---Correct.

Now, you see that that email is on 29 September, 2015. That's the one on page 175 on Exhibit 232?---Yes, sir.

Can I just ask you, the call charge records, if I could take you back to them, please. If I could take you to 29 September, 2015, page 396.---Sorry, what volume are they again?

20 I'm sorry. This is the same volume. It should be the same volume right at the back. It's page 396.---Yes.

And do you see that there are telephone contacts between you and Mr Hawatt, row 51, on 29 September? That's at 9.36.---Yes.

So two minutes after the email that you had sent him asking him to provide your annotated copy of the amended plans to the architect and "then we can progress quickly". Two minutes later.---Yes, sir.

30 What did you talk about with -- I do apologise. That's a text message. But there are then, at row 52 and following, a number of telephone calls. Do you see that?---Yes.

And before Mr Hawatt contacts Mr Zreika on 29 September, which is a highlighted entry at row 56, you had a number of telephone conversations with Mr Hawatt concluding at 2.03, the last one being for two minutes and 24 seconds. That's item 55. You see that?---Yes, sir.

40 What did you and Mr Hawatt talk about in those telephone conversations? ---I really, I, I don't know, sir. I don't recall.

As you sit here now, the likelihood is that you discussed what you had asked Mr Hawatt to do. Would you accept that?---It's possible. I just can't, I just don't recall it.

Can I ask you to go back to page 179 in this volume. This is an email, do you have it there?---Yes, sir.

Page 179. From Mr Hawatt to Mr Zreika, headed [REDACTED] Ridgewell Street Amended Plans. You can see from the numerals in the title of the pdf attached that it's the notated plans that you had sent Mr Hawatt.---Yes, sir.

Mr Hawatt says, "Hi, Fadi. See attachment FY appraisal. The height as we discussed needs to be dropped to one step instead of the current three as discussed." Do you see that?---Yes, sir.

10 Do you understand what that's a reference to?---I do recall that there was an issue with the height of the building and the levels of the building – the extent of the building – had been raised.

But does the word step, is the word step consistent with referring to the levels in which the building was to be constructed, or is it perhaps more a reference to the stairs attached to the patio on the southern side of the proposed development, changing it from three to one?---It's, it's, it, it's probably one way of achieving that drop, yes, so it's probably in reference to the actual steps.

20 Thank you.---Yeah.

Can I take you to the next line, please. "I am told," Mr Hawatt tells Mr Zreika, "I am told once you make the changes it should be ready for approval." Can you assist us in understanding, in your understanding as to what Mr Hawatt was telling Mr Zreika there?---Probably in reference to the, I guess, was it the SMS, I can't recall, where, or email where I said that we could, or, well, assess the application or whatever the terminology I used, quickly.

30 So that's the carrot?---I guess so.

Now, if I can ask you to go to page 184, please, and this is a couple of emails from Mr Zreika to Ahmed Mahdi, his architect, one on – I'm sorry, I'm looking, there are in fact three on that page, I acknowledge that, but I'm looking at the one at 2 October in the middle of the page from Mr Zreika, "Hi, Ahmed." Do you see that?---Yes, sir.

40 And then on the top of the page, "Hi, Ahmed," again, but this time it's on 6 October, 2015.---Yes.

And on Friday, 2 October, Mr Zreika says, "Please don't make any changes as yet, other than neighbouring boundaries. I'll get back to you soon." But then he says on 6 October, "Please make the following changes and resubmit amended plans to myself to forward to Canterbury City Council." And then he itemises four changes, or I apologise, he itemises three changes and the third one is, third item is, "Please do not touch any heights to the actual dwellings." Do you see that?---Yes, sir.

In this volume we then have a version G, commencing on page 187, and that is to say if you have a look at the legend in the bottom right-hand corner of page 187 you can see G, amended DA drawings and the date is 7 October, 2015?---Yes, sir.

10 And just looking at it, can I ask you to go over to page 188. Can you assist us, please, just on a couple of aspects of these drawings. If we look at the drawing and landscape, this is a plan at ground level. Can you see against the word “boundary” in bold, in small type but indicating a feature which extends for a fair way along the boundary, “Privacy masonry wall, 3000 millimetres high.” Can you see that?---Yes.

20 Do you know how it came to be that in that drawing the wall was represented to be three metres high, rather than what had previously been sought at 2.5 metres?---I don't recall exactly but I do recall, it was either conveyed by myself to either Fadi direct, because he had some reluctance in lowering the building itself and I believe it had to do with drainage issues and so, I, I can't remember if he suggested it or I suggested it but the compromise was that he would build higher fence to obviate - - -

And not alter the levels?---Correct. So that he could, he could still achieve the gravity-fed drainage.

And that was in a conversation you had with Mr Zreika, was it?---I think so, I believe so.

30 Can I take you then, please, to page 192 and looking at the southern elevation we can see that indeed, am I right in saying, an indication that the masonry wall is to be three metres high, is that right?---No, it doesn't show it like that. Oh, sorry it does but it's not drawn that way because he's got the, the actual dimension, it starts from the ground floor, RL57, and then goes up three metres, is up to RL60 but the actual wall is not drawn all the way up, if that makes sense.

It's an anomaly in the plan?---It must be, yeah.

40 And we can see that the window, the sill of the window of the bedroom in between the main bedroom and the bedroom with the en suite has been raised?---Yes, sir.

Thank you. The wall has also been lengthened compared to version E on page 176, hasn't it? If you just look at 176 and keeping your finger in page 192, the wall's been lengthened considerably.---Yeah. It looks like that.

How did that come to pass?---I, I, I don't recall - - -

It's to your benefit, isn't it?---Well, it would be because it obviously extends further down the site, yeah.

Did you seek it?---I can't remember, sir, to be honest with you.

Was it offered to you in exchange for you giving up on another change that you'd sought?---Possibly.

THE COMMISSIONER: Mr Buchanan, page 176.

MR BUCHANAN: Commissioner.

10

THE COMMISSIONER: The handwritten note does speak about "across the entire rear boundary".

MR BUCHANAN: Thank you. Yes.---Oh, yeah.

Thank you. Do you see what the Commissioner is pointing to on page 176?---I do. I do. I do. I apologise.

20

So that would seem that it was a modification that you sought.---I apologise, yes.

And that it needed to be shown on the plans and elevation.---Yes, sir.

Now, there was another – I'm sorry, no. Can I take you then to – pause for a moment. There was another set of plans which are set out at page 197, which is version H. It's dated 7 October, 2015. Is that right?---Yes.

30

And finally there's a version I at page 216, dated 8 October, 2015.---What page was that, sir?

Page 216.---Yeah.

So there are a couple more iterations.---Yes, sir.

Can I take you back, please, to 7 October and to page 183.

That's an email conversation that commences on page 185, but relevantly can I take you to 7 October on page 183, the bottom of page 183.---Yes.

40

And Mr Zreika has here an email on 7 October at 10.05 to you and to Michael Hawatt, cc'd to his architect. "Hi, Spiro/Michael. Please refer to amended plans with changes made as requested. Awaiting for DA approval by the end of this week." So it's clear that Mr Zreika was anxious for a quick determination, isn't it?---It appears so, yes.

But you knew that before 7 October, didn't you? We can tell from the email you sent to Michael Hawatt on page 175, this is on 29 September, when you said, "Can you please get the architect to amend his plans accordingly and

we can progress quickly.” Correct?---Yeah, like I said before, I, at some point in time Fadi Zreika did point out to me, and it was very late in the process, so it’s, it’s possible that that, I knew about that, yes.

Well, it’s not very late in the process, is it?---Well, sorry, late in the process of processing of the application is what I meant.

Commissioner, I note the time.

- 10 THE COMMISSIONER: All right. We’ll take the lunch adjournment and resume at 2.00pm.

**LUNCHEON ADJOURNMENT**

**[1.00pm]**