

DASHAPUB04584
12/10/2018

DASHA
pp 04584-04644

PUBLIC
HEARING

COPYRIGHT

INDEPENDENT COMMISSION AGAINST CORRUPTION

PATRICIA McDONALD SC
COMMISSIONER

PUBLIC HEARING

OPERATION DASHA

Reference: Operation E15/0078

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON FRIDAY 12 OCTOBER, 2018

AT 9.30AM

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

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

THE COMMISSIONER: Now, for today we will be sitting the usual hours commencing obviously now, but finishing at 25 minutes, around 25 minutes past 4.00. The difference today is that we'll be taking breaks at different times. What I propose is we start now and we have the morning tea break at around 11.15, we then recommence at 11.40 and go through to 1.30, we then take the lunch break, and from 2.30 through to 4.25, and depending how we're going, maybe our five-minute back-stretching break. So that's the different way we'll conduct the hearing just for today. All right. Any other administrative matters?

10

MR BUCHANAN: No, thank you, Commissioner.

THE COMMISSIONER: All right. Mr Stavis.

THE COMMISSIONER: Right.

MR ANDRONOS: Thank you, Commissioner. Mr Stavis, if you could, if you have volume 5 of the bundle there, if you could turn to page 260, actually 259 is the place I'd ask you to go. Now, Mr Stavis, yesterday afternoon I asked you some questions about some text messages that you were sending to Mr Montague in the period after the interview when Mr Montague was away on leave, returning to work on 24 November. Do you remember that?---Yes, sir.

Now, you had an exchange of communications with Mr Montague on the evening of the 25th. Do you remember that? That's when you received a text from Mr Montague saying, "Call me tomorrow," or setting up a meeting the following day.---Um - - -

Perhaps I'd better take you back to that.---If you don't mind, thank you.

Perhaps if you just keep that open, volume 5, if you could also get out volume 3 at page 165, perhaps even 164. Do you see at the top of the page of 164 you receive a text from Mr Montague at 10.14pm on Tuesday, the 25th?---Yes, sir.

Saying, "Call me now if you can." Now, if we go on through these texts, you respond, it's not clear what time you respond, but sometime perhaps that night or the following morning, and there may or may not have been a telephone conversation in the meantime, but sorry, it would have been the same night. You say you have a councillors' briefing meeting at around 7.00pm tomorrow which will go for an hour, "But I will meet you any time convenient for you. Spiro." So it's correct that these texts are directed towards setting up a meeting?---Yes, sir.

Yes. And then the following day in the morning you inform Mr Montague, this is the third text, that your meeting has been brought forward so perhaps you will be able to attend a bit earlier. That might be a fair reading of what your text says?---Yes, sir.

And Mr Montague comes back with the suggestion that he'll call you later. ---Yes.

Now, in the course of your, in the course of your career, both in the public sector and privately, you will have been involved in many interview processes, wouldn't you?---Yes.

Either as an interviewee or an interviewer?---Yes, sir.

And you're familiar with the concept of first and second-round interviews, aren't you?---Yes, sir.

It's where you might have a first-round interview with a large number of candidates and a second-round interview with a smaller number of candidates.---Yes, sir.

And if the pool is large enough, you might even have a third round.---Yes.

10 And each time the nature of the questioning changes because different issues come into play, correct?---Correct.

The first interview might, the first round might be directed towards establishing a basic level of skill and the second round might be either drilling down further into that level of skill or trying to work out whether or not the person is a good fit for the organisation.---Yes, I agree.

20 Yes. Now, if I take you to the meeting, well, firstly, you accept, don't you, that you did meet with Mr Montague at the café, Giorgios, on the late afternoon or early evening of Wednesday, 26 November?---Yes.

Yes. And you must have understood it at the time, Mr Stavis, as being in effect a second-round interview.---Yeah, didn't think of it any, I guess, in any, any differently, I guess.

But you thought you had come through the first round, being the panel interview and you were still in play as a candidate?---Yes. As far as I - - -

30 And you were meeting with Mr Montague again to advance your candidacy?---Yes.

Yes.

THE COMMISSIONER: Can I just ask, the question you thought it was something like second-round interview, was that before you attended the interview or was that the view after you had met with Mr Montague?

---Well, this was after the, the actual interview itself, the panel interview.

40 Sorry, I suppose I should have asked you, Mr Andronos, is your question of if you considered this to be something akin to a second interview, was that supposed to be asking Mr Stavis his option after the interview or at the time of contact?

MR ANDRONOS: Yes. Well, I can ask both. Between the exchange of text messages on the 25th, on the Tuesday, and the meeting Mr Montague probably at 6.30 on the Wednesday, did you think that what Mr Montague was doing was inviting you to participate in a second-round interview?---I didn't actually think of it in those exact terms, I just attended the meeting

that he asked for me to meet. I guess, if I had to think back now, yeah, probably.

Now, the interview, that meeting itself, Mr Stavis, I'm going to suggest to you the topics that were discussed.---Sure.

And that nature of the meeting. Mr Montague was interested in what sort of person you are, wasn't he?---Yes.

10 Yes. He asked you questions about your family and your hobbies and your interests?---He did, yes.

He asked you about your career aspirations?---That I'm not, I'm not too sure about.

You talked generally about planning?---We did, yes.

And you talked generally about how to run a department?---Yes.

20 Yes. So you had the sense, didn't you, that what Mr Montague was doing on the 26th was trying to satisfy himself that you would be a good fit for the job?---I can't put any other sort of spin on it, yes.

And he was trying to work out whether or not he would like working with you, wasn't he?---I, I don't know his state of mind but I would imagine so, yep.

And he was giving you an opportunity to see what he is like as well?---Yes.

30 And you formed a favourable impression at that meeting?---Yeah, absolutely.

THE COMMISSIONER: Can you remind me, Mr Stavis, did you know Mr Montague before?---No. I think I had met him once before but that was many years prior in relation to an application that I had on behalf of a client, but, no, I didn't, had nothing to do with him really.

MR ANDRONOS: Now, when you met with Mr Montague on the 26th, were you aware that anybody else was still in the running for the job?---I
40 don't think I was, looking back now, no.

At the meeting did Mr Montague say to you words to the effect that he'd be making a decision sometime over the following week or thereabouts?---To be honest with you, that I can't recall.

But when the meeting finished up you didn't come away with an impression that you either had the job or didn't have the job?---No.

You came away with the impression that there hadn't been a decision made.
---Correct.

Yes. Now, did you discuss Mr Occhiuzzi at that meeting?---Not in, I don't believe he used the person's name but he discussed the fact that they were, there were concerns with the former director from memory and just that, yeah, that the person was having problems.

10 Well, he went a bit further than that, didn't he? Didn't he say that the previous occupant of the role had been pulled from pillar to post?
---He, he did say that. I recall him saying things along the lines of that he had felt pressure. I don't know the words pillar, being pulled from pillar to post were expressed, I can't remember that, but he did express it.

But do you recall Mr Montague ever using those words or words to that effect in connection with the experience that Mr Occhiuzzi had at council?
---Not, not as I sit here today, I'm sorry, no.

20 Now, when Mr Montague raised the experience of your predecessor with you at that meeting, he was quite sympathetic to the plight of Mr Occhiuzzi, wasn't he?---He was.

He was.---I must admit. He didn't, he didn't, he wasn't disparaging in any way, shape or form, yeah, yeah.

He thought it was a bad thing, what had happened to Mr Occhiuzzi, didn't he?---I can't remember if he actually said that, to be honest with you.

30 But he wanted to make sure you were forewarned so that if you did get the job you would know what you were getting into, didn't he?---He did express
- - -

THE COMMISSIONER: Well, was that the impression – I'm sorry, are you saying did he say this or is this just the impression that - - -

MR ANDRONOS: I'll take it as the way you've put it, Commissioner, the
- - -

40 THE COMMISSIONER: The impression that - - -

MR ANDRONOS: The impression you formed.---Of, sorry, can you - - -

The impression you formed at that meeting that Mr Montague – sorry, I'll start that again. You formed the impression at that meeting that when Mr Montague raised with you the experience of your predecessor he did so to forewarn you about the conditions you might expect to face if you get the job?---He did say that it was a demanding job and he did say that the

previous director was, you know, obviously had, had some degree of pressure on him, so in that respect, yes, I agree.

And you came away from that meeting knowing that if you got the job it would be demanding and difficult and you'd face political pressures from councillors, didn't you?

THE COMMISSIONER: Well, hold on, can we say difficult and demanding?

10

MR ANDRONOS: Difficult and demanding.---Difficult and demanding, yes. I, I, I don't know whether, I can't recall whether there was any mention of political pressures, to be honest with you.

But there would be pressure, direct pressure from councillors that you were at risk of being faced with.

THE COMMISSIONER: Did he mention that?---Not that I can recall, to be honest with you. Not at that meeting. Certainly sort of after, but at that initial meeting I don't remember him saying that.

20

MR ANDRONOS: Perhaps not in those words but the effect of Mr Montague telling you about Mr Occhiuzzi's experience has to have raised that in your mind, doesn't it?---It, it, it certainly raised, I guess it, it sort of planted a seed in that regard, yes.

Right. Now, can you please now go to volume 5, the pages that I took you to before. If you've forgotten it's 259 and thereabouts.---Yes.

30 THE COMMISSIONER: And, sorry, can I just confirm, the meeting at the café, it was with Mr Montague by himself?---By himself.

No other member of the panel was there?---No, no.

Okay.

MR ANDRONOS: You knew by this stage that Mr Montague was the decision-maker, didn't you?---Sorry, sir?

40 You knew by this stage, if not all along, that Mr Montague was the decision-maker in terms of whether or not you would get the job?---Yes, yeah.

Yes.---I believe that.

Yes.---Yeah.

So I think you've been asked about some of these already and I apologise in advance if I'm going to go over ground that's covered, but I do want to get to, starting at text number 7 on page 259. These are all texts, I think you're already aware, between you and Mr Hawatt in November 2014. So at number 7 you're asking, you're asking on the 24th, so that's the Monday, and first thing in the morning, before you send your first text to Mr Montague, the, "Hope you had a good break, Jim," text to Mr Montague, you've sent this to Mr Hawatt and said, "You know when you're meeting to finalise?" And then at number 8 Mr Montague responds, "Know this week definitely." Sorry, Mr Hawatt responds. I'm sorry if I said something different. And then you respond again, this is the sequence at 7, 8, 9 which goes through to 10, "Sorry to keep bothering you, just anxious. Have a great day. No problem." So there you're just trying to sort, trying to find out from Mr Hawatt whether there's any news or whether you just have to sit tight and wait.---I, I think that's fair comment, yes.

Now, the next, the next communication is at 9.41pm on the Tuesday night where Mr Hawatt sends you a one-word text. "Good." And then you respond at 10.41, so this is after, this is after your text with Mr Montague, which is at page 164 of volume 3, so if you just want to confirm in your own mind that that sequence is correct.

THE COMMISSIONER: Sorry, can you say the sequence again on the 25th?

MR ANDRONOS: On the 25th at 9.41 Mr Hawatt says - - -

THE COMMISSIONER: "Good."

MR ANDRONOS: Sends this text which says, "Good." At 10.14 Mr Montague says, "Call me now if you can. Jim."

THE COMMISSIONER: Ah hmm.

MR ANDRONOS: Then at 10.45 Mr Stavis sends a text to Mr Hawatt saying, "Hi, Mike, is it what I think?" And then Mr Hawatt responds, "Yes." So they're all the communications we have for the evening of the 25th, together with, although we don't know the time, your text to Mr Montague at page 164, "Have a councillors' briefing meeting tomorrow," which must mean that it was sent on the Tuesday night.---Yes, I see the sequence, yes.

So is this a fair way to understand that, that Mr Hawatt indicates to you that there is some good news coming. Mr Montague then tries to contact you and you probably do have a communication of some sort and then you indicate to Mr Montague that you can meet him the following day and either before or after that communication you say to Mr Hawatt, "Is it what I think?" And he says, "Yes." Now, you were asked some questions about

this by my friend, Counsel Assisting, about what you thought when you said is this what I think what you thought it was, and I think you said that you had the job. Now, I suggest what it actually means is that you were going to be interviewed again and you were still in the running. Is that likely to be what you were thinking at the time?---In all honesty, I think, I thought it was more positive than, than that. So, I - - -

But on what basis would you think it's more positive than that?---I just thought it was. To be honest with you.

10

Well, let's go to the next two texts. Now, these are on, these are the following day at 8.35 and 8.43pm. So, this is after you've met with Mr Montague, is that correct?---What number is it, sorry?

14 and 15.---Okay. Yes, sir.

And you should probably also, as a matter of fairness, look at 16 and 17 on the next page because they appear to be part of the same sequence of texts. ---Yes.

20

You see. So the first of this series, the one at number 14, "Did the GM have coffee with you today?" An enquiry from Mr Hawatt, to which you respond, "Yep, went well I think, fingers crossed." You see that?---Yes, sir.

Now, fingers crossed obviously means, you're hoping for good luck, doesn't it?---Absolutely. Yep.

And you don't need good luck if you've already got the job, do you?---No.

30 No.---No.

You need good luck if you're still a candidate in a competitive process.---I think that's a fair comment.

And so, by the time, up to and including the time you finished your meeting with Mr Montague on the 26th, you knew you were still in the running but you had no belief that you actually were going to get the job as a matter of any certainty, did you?---No, not as a matter of certainty, no.

40 No.---No.

But you thought you were still in with a good shot?---Absolutely.

Yes. Because the interview went well on the 17th?---Yes.

And the meeting with Mr Montague on the 26th went well?---Yes.

You had done the best you could to persuade Mr Montague that you were the right person for the job?---I believe so, yes.

Now, if we stay in volume 3 and turn to page 165. Looking at the, this of course replicates some of what's at page 164 because we have, on the Wednesday you tell Mr Montague that your meeting's been brought forward, he says he'll call you later. You say, "No problem." The, "No problem", text is replicated on 165, and then Mr Montague says, "Hi Spiro, meet at Giorgios on Kingsgrove Road at 7.00-ish? Jim." Now, if this
10 evidence has already been established, forgive me for asking you again, but doesn't that indicate that this was the first time that you met with Mr Montague at Giorgios, because he wouldn't need to tell you where to meet and where it is if you had met there before?---Look, I think I've said that I've, I've met Mr Montague, I, at, twice. This is certainly one of those times. Whether it was the first time, I can't be a hundred per cent sure, I'm sorry.

But I'm suggesting to you that it is the first time, and that's an inference that the Commission is entitled to draw from this text message. Do you have
20 any comment on that?---Look, I mean, the fact that he's giving me the address, it's possible.

He's not saying Giorgios. He's saying Giorgios on Kingsgrove Road.
---Yeah, yes, I see that.

And he's not saying meet you the same place as before.---No.

He's giving you what appears on its face to be a new venue for a meeting.
---Yes.

30 So can you think of any reason why the Commission shouldn't infer that this was the first meeting?---Nothing comes to mind.

Now, that night, moving to the bottom text on that page, that night you send Mr Montague a thank-you text, "Thank you so much for meeting me. Much appreciated. Reinforce we're on the same page. Looking forward to speaking soon. Cheers, Spiro." Now, you sent that firstly as a matter of politeness I assume?---Yes.

40 Secondly because you were still very much in sell mode, if I can put it that way.---Yes.

Trying to demonstrate how keen you were and what a good fit you'd be.
---Yes, because he'd been, yeah, I, I figured we, we were on the same page as my text said.

And if you had met with Mr Montague before, there'd be another one of these texts following that meeting, wouldn't there?---Before this you mean?

Yes, yes.---As probably it would have been the nature of the person that I am, yes, probably.

Yes, yes. Now, you tried to contact Mr Montague again the following evening. Do you recall that?---I, I don't really but it's, it, it wouldn't surprise me.

10 Well, again, just in terms of what inferences we can draw from the chain of text messages, at 166 of volume 3 Mr Montague sends you a text in the evening saying, "Hi, Spiro. Sorry, please call me tomorrow. Jim." That would be consistent with a missed call, wouldn't it?---Yeah, I don't believe, based on that text that I spoke to him, no.

Now, Exhibit 60 doesn't go as far as that date, so we can't see any other objective record – I'm not asking it to be brought up by the Commission staff – so there's no other way we have presently to establish whether or not there was a call, but it does seem likely, doesn't it?---Yes.

20 And then you respond, "No problem. Have a good night. Spiro."---Yes.

So that would be the sum total of your communications on that date, wouldn't it?---It appears so.

30 And the following morning you send the message at the bottom half of page 166, "Hi, Jim. Nothing urgent. Just curious about the Canterbury Bowling Club redevelopment," and you go on to read about, to discuss an article and you wish him well for the weekend. Now, this was still part of your campaign, as it were, to persuade Mr Montague how good you would be for the job, wasn't it?---Yeah, I was trying to endear myself to him. Yes, yes.

Yes, yes, I'm certainly not criticising you for it. It's something that people do. And when you were trying to demonstrate how keen and interested you were, you were being genuine.---Yes, sir.

40 Now, if we go over the page, your text to Mr Montague of 7.46pm on Friday, the 28th, you say, "Hi, Jim. Sorry to bother you. Want to tell you, Judith called today to reinforce what we discussed." Judith is of course Judith Carpenter.---Yes, yes, sir.

And then going back to the text, bottom line, "I know it's expected and I will not let you down if I get the job, sir. Cheers, Spiro." So in this text, you had obviously received or made, you obviously received a call, I think, from Ms Carpenter on that day.---I believe so, yes.

And you and Ms Carpenter, according to your text, discussed the same issues that you discussed with Mr Montague.---They were very similar, yes.

They were very similar.---Yes.

There was nothing in your discussion with Mr Montague that you felt you had to conceal from Ms Carpenter, is there?---No, no.

No.---No.

10 And the extent to which loyalty came up in the course of your meeting with Mr Montague, that was something that you had no problem in disclosing to Ms Carpenter?---No, not at all.

Do you recall discussing loyalty with Ms Carpenter?---In all honesty, no, I can't recall.

20 No, no. That's all right. Now, going back to your text to Mr Montague, in the last two full lines you say, "I will not let you down if I get the job, sir." Using the words "if I get the job" makes it obvious, doesn't it, that you knew you were still a candidate in a competitive process at that point? ---Yeah, I wasn't, I wasn't assured of the job, no.

You weren't counting any chickens at that point?---No, no.

If you go to the next page of 168, oh sorry, of volume 3, page 168. Now, I think you've given evidence that you'd had a conversation with Mr Montague on Thursday, 4 December, and your understanding was that Mr Montague basically told you that you had the job as at that point. Is that a fair reflection of your evidence?---I believe so. Yes, sir.

30 Now, do you recall whether or not that was telephone conversation or a meeting or some combination of the two that you were referring to?---I think it was a telephone conversation from memory.

And it might have been more than one because in the third line you refer to conversations, plural.---Yes.

40 And then you go on to say, "I want to make it clear that my loyalty is and always will be with you. Have a great day, cheers, Spiro." Now, this is the second time, is it, that loyalty came up in a communication between you and Mr Montague?---Based on what I've seen so far, I believe so. There was, I think in the two meetings that I had with him, he, sorry, in terms of the text messages, yes.

Now, there's one other matter I forgot to mention in connection with the meeting on the 26th. When Mr Montague talked about loyalty, at any time – and I mean not just at the meeting of the 26th, but any time – were you aware that Mr Montague was concerned about having senior staff undermine him?---I, I, I, I don't recall, in the, initially but certainly eventually he did disclose that to me, yes.

Did he talk to you about an experience that had had some years ago where a director had actively tried to undermine him with council?---Not in those initial meetings, from the best of my recollection.

But did at some stage you become aware that that was a concern that he had?---Yes, yes. I, I didn't, I don't recall the details of it but I remember him mentioned something like that to me at some point later.

10 THE COMMISSIONER: Mr Stavis, when you said, you were asked, "He spoke about loyalty because he was concerned with senior staff undermining him?" And you said, "Eventually he disclosed that to me." When you said eventually, was that before you took up working at the council or before or when?---That I can't remember exactly.

You just recall that he did mention it to you.---Yes, yes.

MR ANDRONOS: It's more likely, isn't it, that you and he discussed it sometime during your tenure?---Absolutely, yeah.
20

And that was an experience he had many years ago, I think it might have been in the early 2000s or the 1990s. Does that sound familiar?---Yes, it does.

Yes. And he was concerned that he didn't have senior staff who would replicate the experience he had suffered back then.

MR BUCHANAN: I object only to ask - - -

30 MR ANDRONOS: Whether that was communicated?

MR BUCHANAN: Yes.

THE COMMISSIONER: Yes.

MR ANDRONOS: He, he, he - - -

MR BUCHANAN: Whether the witness understood that.

40 MR ANDRONOS: Yes, yes, my friend is completely correct. You understood that he was concerned not to replicate that experience with any other senior employees of council?---During my tenure, yes.

Now, Mr Stavis, you've given some evidence at about this time – and I'm talking November 2014 when you were still in the application process for the position – that a number of people appeared to you to have influence in the council with the general manager. Do you recall giving evidence along those lines?---Around that time?

Yes.---Yes, yes,

Well, that Mr Hawatt appeared to you to have influence with Mr Montague.
---Yes, yeah.

Yes. And you recall also saying that Mr Khouri appeared to have influence perhaps at the very least on council?---Yes.

10 And even Mr Vasil you thought demonstrated that he had some influence.
You recall - - -

THE COMMISSIONER: On?

MR ANDRONOS: On, on council. Do you recall giving evidence to that effect?---Yes, I do, yes.

Now, just looking at the position of Mr Hawatt and whether he had any influence, may I suggest to you if he had, well, firstly what do you mean
20 when you say influence? And I'll just throw some possibilities out there and you can tell me whether any of those are correct or whether I've misunderstood.---Sure.

Does influence in your mind, in the context of Mr Hawatt vis-à-vis Mr Montague mean that he was able to persuade him to his point of view, he was able to force him to accept his point of view, or something else?
---Um - - -

THE COMMISSIONER: Sorry, persuade or force or something else?
30

MR ANDRONOS: Yes.---Well, using the word persuasion with forcing I think is a bit of an extreme.

Well, I put them to you as alternatives.

THE COMMISSIONER: Yes.

THE WITNESS: Yeah, yeah, probably, in terms of maybe persuading, I'm not sure. I mean I, it was not a, it was not something that I thought about at
40 the time in terms of any great detail in that regard, but it appeared to me that he had some sort of influence over the general manager.

MR ANDRONOS: It appeared he had some sort of influence, but you had obviously not seen the two of them together so you - - -?---No.

- - - didn't have any direct knowledge.---No, exactly.

So you were just drawing an inference from Mr Hawatt either telling you - -
-?---Yes.

- - - or him expressing a view and Mr Montague later expressing the same
view.---Yes, sir.

It would be something like that. It's an inference you drew.---It's an
inference I drew, yes.

10 THE COMMISSIONER: Sorry, Mr Andronos, is this, are you asking about
Mr Stavis's perception at the time that he's being considered for the job?

MR ANDRONOS: Yes. He gave some, he was asked some questions on
this before so I'm revisiting that.

THE COMMISSIONER: Okay.

THE WITNESS: That's what I understood.

20 THE COMMISSIONER: Yes. Good.

MR ANDRONOS: Yes, yes. At the time you applied for the job. Now this
question of what influence he had. It would stand to reason, wouldn't it, that
if he were able to compel Mr Montague to accept his view, there would
have been no need for him to provide you with the questions prior to the
interview, would there?

MR BUCHANAN: I object.

30 MR ANDRONOS: Well - - -

MR BUCHANAN: In my respectful submission, these questions, the
answers to questions like this would have no weight at all. It's pure
submission and argument. The witness has given his evidence. Is my friend
saying, "I don't accept that as true evidence"? If not, then it's purely
submission.

THE COMMISSIONER: Mr Andronos?

40 MR ANDRONOS: Well, I'll withdraw that question and I'll ask this one.
Why do you think Mr Hawatt provided you with the questions prior to the
interview panel?---Well, I didn't think they were the actual questions at the
time. I thought they were the suggested questions, I guess. But obviously
because I thought he, he thought that I was a good candidate for the job, I
guess.

But what did you think he wanted you to do with them?---I guess prepare
me for, so that I have a knowledge base, I guess, in terms of, yeah.

Now, your understanding that he thought you were a good candidate, are you sure that that's correct, that that really was your understanding?---Sorry, say again, sir.

You said your understanding was that he thought you were a strong candidate, and you've given that evidence before.

MR BUCHANAN: No, no, "a good".

10

THE COMMISSIONER: A good candidate for the job.

MR ANDRONOS: On an earlier occasion Mr Stavis used the words "strong candidate". I can take you to the transcript.

MR BUCHANAN: Well, I think a transcript reference might assist just so that we can see the context.

MR ANDRONOS: Okay. This will take a moment. Well, I can ask the question with "good candidate" anyway. It's 3336, line 46 to the end of the page, and then over the page. Perhaps I can just, while we're waiting for it to come up on the screen, I should reframe the question in fairness to you.

20

THE COMMISSIONER: Sorry, Mr Andronos, the mic.

MR ANDRONOS: Sorry. "I should reframe the question in fairness to you. What was your understanding at the time as to why you were being shown the sample questions?" "I believed because, you know, that I was a pretty strong candidate." And then, "Yes, yeah, that's probably what I thought anyway." So you've given evidence, and I don't think there's actually much difference between being a good candidate and being a strong candidate for this purpose, but you thought that they thought you were a good enough candidate at the time that they should give you the questions. But for them to want to give you the questions, what did you think they expected you to do with it?---Well, I guess help me have the best possible chance of actually being successful.

30

And I suggest that in saying that you accept, don't you, that if it's going to help you to have the best possible chance, it's going to help you to perform better than other candidates in the same process. You must have understood that.---Not at the time, I didn't. I didn't really think anything. I, I don't recall, as I sit here today, thinking anything about that aspect of it.

40

Isn't this the case? That at the time you thought that you had possibly the support of Councillors Azzi and Hawatt but they thought you were not necessarily the best of the candidates at that time.---I really don't know, to be honest with you.

Now, you also gave some evidence about understanding Mr Khouri had some influence. My suggestion to you, Mr Stavis, is that you can't have drawn that inference from the fact that he was in effect prepping you for the interview.---I draw that inference from the fact that he actually said to me in that initial meeting in the café that – and I think it was Mr Vasil actually said it but they were both there – that they'd been, the general manager had asked them to put the feelers out of potential candidates. That's, that was, at that point in time that was the only I guess inference I drew.

10 It's only from, is this a correct understanding of your evidence, that the fact that one or both of them had been asked by Mr Montague to make some enquiries as to who is available and perhaps, in their view, appropriate for the job, you saw that as a demonstration of influence that they had with him?---Well - - -

THE COMMISSIONER: Sorry, can I just stop you. You originally put to Mr Stavis that Mr Khouri had influence on council, which I took differently to influence on Mr Montague. Are these questions actually on Mr Khouri's influence on Mr Montague?

20

MR ANDRONOS: I think I should clarify.

THE COMMISSIONER: Yes.

MR ANDRONOS: Thank you, Commissioner. When I'm asking you about the influence of Mr Khouri, I should have said, and now would ask you to confine your answers to what you perceived to be any influence that Mr Khouri had over Mr Montague. Do you understand that?---Sure, yes.

30 Now, if we get back to the answer I think you just gave, which is that you drew the inference because Mr Khouri had told you at that first interview in late October that Mr Montague had asked him to put out the feelers?---Yes, sir.

Is that the only basis?---At that point in time, yes.

Thank you. Mr Stavis, I'm now going to move forward to the period after the offer had been made to you.---Sure.

40 And then withdrawn.---Sure.

The withdrawal of the offer was obviously a traumatic time for you?
---Absolutely, yeah, yeah.

You had left one job in the expectation of another, the second job evaporated and you were in some dire straits at that point, weren't you?---I, I was definitely, I wouldn't say dire straits in terms, in those terms but I was definitely emotional, concerned for, for my family, really.

And it was Mr Montague who did this to you, in your view, wasn't it?
---Well, he was the one who, yes, withdrew it, yes.

He made you the offer and then he withdrew it?---Yes.

This was the man to whom you promised your loyalty a week before, wasn't it?---Yeah, it was, yeah.

- 10 You must have felt immediately discharged from any obligation of loyalty to Mr Montague at that point, mustn't you?---I don't remember feeling that to be honest with you. I was more concerned about, I was dumbfounded to be honest with you and I was more concerned about trying to get some information about what, what was going on.

Well, you wanted information not out of pure academic interest. You were trying to work out whether or not you had a job to go to, weren't you?
---Yeah, sure.

- 20 And you enlisted the help of Mr Vasil?---Well, well, no, I wouldn't use the word enlisted. They were I guess initially involved when I had that, if you like, mini meeting with them at that café in Kingsgrove. So, there was a bit of consistency there right through up until that point in terms of contact and the like.

When I say, "they", who do you mean by "they"?---Oh, mainly George Vasil but obviously Mr Hawatt and, they were the main two I, I would imagine, yes.

- 30 Now, you recall – I'll take you back to the text if it would assist but you might just remember it.---Sure.

You sent Mr Hawatt a text saying, "I know you're on my side, but please, I need this job." It's volume 4. Or is there another version of it? My reference is page 61 of volume 4, but there might be one in volume 5 as well. Volume 5, 261, if you've already got that volume out, but it shows up in one or two different places in the bundle.---261.

261, item 35. So you'll see on 23 December, item 35 - - -?---Yes.

- 40 - - - "Hi Michael. I'm sick to my stomach, mate, for what he's done to me." Now, he of course is Mr Montague. There's no doubt about that, is there?
---I believe so, yes, yes.

And being sick to your stomach is the emotional impact that the withdrawal of the offer is having on you at the time.---Yes, sir.

“I know you’re on my side, but please, I need this job.” So just two things about that last sentence. You knew he was on your side. That meant, didn’t it, that you knew that Mr Hawatt still was keen or was keen – I’ll withdraw that. You knew that Mr Hawatt, as at 23 December, was keen for you to take the job as director of planning?---I, I think that’s fair comment, yes.

10 And you were asking him to intercede in some way to help you secure the position that you had been offered?---Well, no, I don’t know if I, if I draw that inference from there. It was more a case of crying out I guess for help, because at that point in time I did not understand, nothing was communicated to me by the GM about why this had been withdrawn, at that point in time anyway.

At that point.---Yeah, yeah.

But to say, “Please, I need this job,” the use of the word please indicates that you were asking him to do something, doesn’t it?---No, I don’t think so. I was just emphasising the fact that I need the job.

20 Well, just for the abundance of clarity - - -?---Sure.

- - - I suggest that when you say, “Please, I need this job,” you are pleading with him to intercede on your behalf so that you get the job.---In all honesty, sir, I didn’t think of it that way at the time.

30 Okay. Knowing that he was on your side showed that Mr Hawatt was demonstrating loyalty to you, didn’t it? That’s what you thought at the time?---I, I thought he was on my side on the basis that he wanted me for the job, yes.

He was being loyal to you but Mr Montague was not being loyal to you. ---I didn’t think that Mr Montague was not being loyal to me, I was trying to, at that point in time, trying to get some answers on, on why it had been withdrawn, to be honest with you.

Well, I’ll make the suggestion, which you can reject if you want.---Sure.

40 But the suggestion I’m making is that by no later than this time the extent to which you felt any loyalty to Mr Montague had been – I’m sorry, I withdraw that. By no later than 23 December, any loyalty you felt you owed to Mr Montague was gone and you shifted, by no later than that date, your loyalty to Mr Hawatt. Do you agree with that?---No, sir.

If the same page could be brought up again, there’s a text message on, number 37, number 37, a Christmas Day text. “Merry Christmas.” No, sorry, number 36, I’m sorry. I was reading the wrong one. “Merry Christmas to you and your family. Thanks for everything. Spiro.” That’s a text that you sent to Mr Hawatt.---Yes, sir.

In the early hours of Christmas morning. What were you thanking him for?
---I really don't know, to be honest with you.

Well, you must have been thanking him for something.---Yeah, but I, I don't recall.

10 And the only things that he had done which were in your favour up till that point had been provide you with interview questions prior to the meeting on the 17th of November and support you as against Mr Montague in your application for the job as director of planning. Is that right?---Yeah. Well, I can't think of anything else, no.

So you must have been thanking him for those things, mustn't you?
---Probably, yeah.

Mr Stavis, I'd like to move to a different topic now.---Sure.

20 Obviously you've been asked a number of questions about the period between Christmas 2014 and March 2015, when you commenced work, and I believe the date is 2 March, the Monday of that week, you start at Canterbury Council in your new role.---Yes, sir.

And you had obviously gone through, as we've already discussed, the trauma of having the offer withdrawn, and you would have known from the very withdrawal of your offer that Mr Montague had some reservations about giving you the job. It's obvious, isn't it?---Yeah, by virtue of the fact that he withdrew it, yes.

30 Yes, he had wanted to give you the job and then he changed his mind and he had since changed it back.---Yes, sir.

But there was a period in the middle, after the first change of mind, where he had obviously formed the view, as you understood it, that he no longer wanted you in the job.---Yes.

40 Now, you were asked some questions earlier this week about whether or not you had a conversation with Mr Montague where he said that he was not satisfied you were appropriately qualified and that he had reservations. Do you remember those questions?

MALE SPEAKER: Transcript (not transcribable)

THE WITNESS: Yeah, can I - - -

MR ANDRONOS: Perhaps it would be easier and fairer to you, Mr Stavis, if we go to the transcript. It's pages 470, sorry, 4277 and it goes through to

4279. So perhaps – do you have a copy of the transcript there or are you waiting for it to come up on the screen?---Waiting for it to come up, yeah.

Commencing at line 30 on 4277, my friend Counsel Assisting asked you, “Did Mr Montague ever indicate to you that he was not satisfied that you were an appropriate person to be appointed director of city planning?” And then skipping over the objection. The last two lines on that page, Mr Buchanan put the question again, “When did he”, well, firstly before we get to that, the third last line, you say, “Yes.” So skipping over the objection, in answer to the question whether Mr Montague had ever given you that indication, your answer was, “Yes.” Then Mr Buchanan asks you, “When did he indicate that?” And you say to the best of your recollection you believe it was very early, you think it was after you started, after you were appointed, very early in your tenure, “Can’t give you an exact date.” Now, if I could skip down to line 10, you were asked, “And what were the circumstances in which Mr Montague told you this?” “Well, we, I mean, we, we had a, I remember having a meeting with him in his office and he, I distinctly recall him saying, ‘Look, we’re about to go in and introduce you to the staff. I just want you to know that we’re, I’ve got, I’ve got, I’ve got every confidence in you despite what happened’ and so, yeah, words to that effect.” So, just pausing there, the recollection as you put it at lines 10 to 16 of page 4278, is that your best recollection of what was actually said?---10 to 16, I, I don’t have, what’s on the screen is 10, 20, 30.

Oh, well, that first paragraph that commences at line 10.---Sure.

THE COMMISSIONER: Sorry, just looking at it, it does go on. In fairness
- - -

30 MR ANDRONOS: Well - - -

THE COMMISSIONER: Or am I interrupting your forensic sequence.

MR ANDRONOS: I wouldn’t bother about that, Commissioner, but there are a number of different issues and I just want to deal with them seriatim and the first one is that particular passage, the witness, what I’m exploring is whether the witness’s best recollection are the words used, remains those words.---Yes, sir. I, I mean, that was the, the, the, that’s my best recollection, yes.

40 Now, those actual words spoken by Mr Montague, you must have taken that as an expression of confidence in you, mustn’t you?---Yes, sir. Yes.

And that what he was effectively saying was let’s let bygones be bygones.
---Yes.

You’re here now, let’s get on with the job.---That’s exactly right.

So, you didn't feel at the time, sorry, you didn't feel that as at March 2015 Mr Montague was not satisfied that you were an appropriate person to be appointed director of city planning, did you?---No, sir.

The only time that you thought he held that view was in December and January, 2014/2015, wasn't it?

MR BUCHANAN: Well, if I can just draw my friend's attention to questions a bit further down the page on 4278.

10

THE COMMISSIONER: Yes.

MR ANDRONOS: Well, I'm treating that as a distinct issue. I'm going to ask those questions next. Perhaps I'll do all this at the end. Perhaps I'll do all that at the end. Now, as my friend Mr Buchanan correctly points out, there's more to this conversation. So, if we go back to the transcript of the questions you were asked on Monday, and it must be correct, mustn't it, that this would have occurred if not on your first day, then very close to your first day?---Yes.

20

Because it was just before Mr Montague was going to introduce you to the staff.---That's, that's exactly right.

And that would be one of the first things that you do?---Yeah. We sat in his office, I recall, and we had an exchange and that was part of the conversation, yes.

And you had this "let's let bygones be bygones" conversation?---Yes.

30

But then part of the same conversation is what's about to follow. "And what was it he said on the subject of" – this is line 22 on page 2478. "And what was it he said, though, on the subject of an opinion he held, if he indicated it, that you were not appropriately qualified to be the director of city planning?" "I, I don't recall him specifically saying that." Yes, so just pausing there.---Sorry, where - - -

He never said to you that - - -?---Sorry, can I just interrupt. I'm just losing track of where - - -

40

Yes, sorry, it's difficult to keep track of this I know. It doesn't help with me getting the numbers wrong. Page 4278, line 20.---Yes, okay.

Okay. So after line 20 there's a gap, then the next line commences, "And what was it he said though?" Have you got that?---Yep.

"On the subject of an opinion he held, if he indicated it, that you are not appropriately qualified to be the director of city planning." And you say, "I, I don't recall him specifically saying that, yeah, so." So just as a matter of

fairness, go to the next two lines as well. “So at any stage did Mr Montague indicate to you that he was thinking you were not appropriately qualified for the position?” “Yeah, yes.” Now, if we go, you can perhaps read to yourself the next five or six questions and answers until we get to the question just before line 40. “And what was it he said on that subject?” “Just that, that obviously he, he had reservations about my appointment”
- - -

10 THE COMMISSIONER: Hold on for a sec. Have you read - - -?---I’ve got to, I’m up to 40 now.

Okay. Good.

MR ANDRONOS: Yeah. Okay. Thank you, Commissioner. Mr Stavis, if I’m going too fast or confusing you, please let me know. “So what was it he said on the subject?” “Just that, that obviously he, he had reservations about my appointment and it wasn’t very, it was a very general conversation but I distinctly remember him saying that.” And then you’re asked some
20 questions about context and you answer that you don’t recall him giving a reason, and you’re asked if it was more than once and you said, “Maybe a couple of times in general conversation.” And then, this is on page 4279, the question is, “And wasn’t there a context to it? I’m not suggesting this was the context, but did he say something like, ‘And so I’m looking to you to demonstrate that you can actually do the job’?” And your answer is, “No, he didn’t say it in that way, no.”

MR PARARAJASINGHAM: I think the witness is – I don’t think a line was given for that.

30 MR ANDRONOS: Sorry.

MR PARARAJASINGHAM: I think it’s line 4.

MR ANDRONOS: It’s lines 1 to 6 on page 4279.---I mean, can, is it too much to ask if I could have a hard copy?

THE COMMISSIONER: No, we’ll get that for you. We’ve got a spare copy.---Sorry, I apologise, it’s just very difficult to follow on the screen. Thank you. Okay, I’m ready. Sorry.

40

MR ANDRONOS: Please, if you want to read it to yourself and then let us know when you’ve read the passage.---Yeah. Okay.

Now, Mr Stavis, my suggestion to you is this, that when Mr Montague – sorry, I’ll withdraw that. My first suggestion to you is this, Mr Montague never said to you words to the effect that he, as at March 2015, had reservations about your qualifications.---No, I agree with you there. What it was, it was a conversation about what had happened in the past and, and

then it followed that by the end of it he said that – using your words, not mine – let bygones be bygones. But he, he did express that view that he had reservations previously in my role, yes.

That wasn't news to you because the whole trauma between December and March was the result of that.---Yes.

10 Thank you, Mr Stavis. I'd now like to ask you some questions on a different topic so I can let counsel staff know that we're moving on to a different topic as well. The issue of the development at, the proposed development at 998 Punchbowl Road. Now, just by way of background, to put this in context as much for my benefit as anyone else's, Mr Stavis, when you arrived at council in March 2015, there was already a planning proposal on foot in relation to 998 Punchbowl Road?---Yes, sir. I believe so.

Council had already submitted a proposal to the department seeking an FSR of 2.2:1 and a maximum height of 15 metres.---I believe so, yes.

20 That was in accordance with a council resolution from October 2014, well before your time.---Yes.

And you also learned on or shortly after your arrival that the department had responded to council's submission for a Gateway Determination with a request for further information to justify the FSR of 2.2:1 and I think the height of 15 metres, but that falls away as an issue very early on, doesn't it? So what you were faced with when you arrived in relation to 998 Punchbowl Road was an extant council resolution.---Yes.

30 Which of course reflects council policy in relation to that site.---Yes.

And a process, an incomplete process, where the council is liaising with the department to establish that the council policy ought culminate in a successful application for a planning proposal.---Yes.

Now, just some of the personnel who were involved in this particular matter. Tom Foster had primary responsibility when you arrived.---Yes, sir.

40 Peter Annand had already been retained by Gillian Dawson to provide an independent report.---Yes, sir.

You weren't involved in any of this.---No.

Mr Annand came back with – sorry, I withdraw that. Am I right to assume that you would have looked at this file shortly after your arrival?---Yeah, that's, that's, that's probably the case, yes.

Probably, but you seem not to have had much actually to do with it until about June. Would that be right?---Can't be exact with the time but it was within the first sort of quarter of my tenure, yes.

Now, you received a copy of Mr Annand's June report. Perhaps this could be brought up on the screen and Mr Stavis could be provided with volume 12 of the bundle. The report you received on 18 June at page 171. It's attached to an email at 170.---Yes, sir. I have that.

10 Now, Mr Annand expressed his conclusion at 176. There are the, in the middle of the page, the dot points, well, the second, third and fourth dot point. The second deals with the height issue and that seems to go away as a result of that finding. Then the FSR findings, Mr Annand expresses the view that 2.1:1 is an overdevelopment. 1.8:1 would be more appropriate. And then he goes on to say 2.1:1 and a height of 15 metres do not appear to be achievable.---Yes, sir.

So, that's the situation that you are faced with in June 2015, when you start to have a greater involvement in this particular file.---Yes, sir.

20

Now, stating the obvious, but 1.8:1 isn't going to satisfy the Department of Planning, the State Department of Planning, as to the adoption of council policy, is it?---Sorry, can you ask that again?

Well, council's policy as per the resolution was 2.2:1.---Yes.

And the best Mr Annand said could be achieved in fulfilment of that policy was something rather less at 1.8.---Correct, correct.

30 And so, what Mr Annand had done by way of this report was not going to be able to be used to persuade the state department about council policy.---Correct.

And that would have been obvious to you at some point when you looked at the report and compared it to what council had already resolved.---Correct.

40 So if the Planning Department were to be able to fulfil council's policy, leaving aside the personalities involved and leaving aside the identity of the developer, for the Planning Department to be able to fulfil council's policy it would be necessary to reevaluate Mr Annand's advice and see whether 2.2:1 were achievable, wouldn't it?---Correct.

Now, my suggestion to you, Mr Stavis, is you were still fairly new at council at this stage.---That's true.

Less than four months in the job.---That's true.

You had portrayed yourself through the interview process as a solutions-driven person, as a can-do sort of planner.---Yes, sir.

Somebody who'd be able to think outside the box and resolve planning problems in a creative and constructive way.---Yes, sir.

10 All right. You must have seen this as a challenge in which you could demonstrate those capacities, is that correct?---Yeah, look, I, I remember wanting to actually explore whether or not the findings of Mr Annand were actually, could be tested and at the back of my mind I had the council resolution in mind as a policy, I guess, that, that perspective. Sorry - - -

But my suggestion to you is that there were at least two, at least two drivers of your interest. One was the council policy and another one was your own self-perception as a can-do, solutions-oriented planner faced with a difficult problem.---That's fair enough, yes.

20 THE COMMISSIONER: Can I just confirm, when Mr Andronos has been using this term "council policy" that means the council resolution?
---Resolution, yeah, yeah.

MR ANDRONOS: Now, if we can go back to volume 12 at page 279, and I think we've established that you got Mr Annand's report on the 18th?---Yes.

This is a communication you received on the 22nd, which is the following Monday.---What page was that, sorry, sir?

Page 279.---Thank you. Yes, I have it.

30 Look, we can probably skip that one, Mr Stavis. Can you turn instead to page 285.---Yes.

40 Now, you see this is an exchange of emails on Wednesday the 24th, commencing about halfway down the page with an email from Mr Annand, appears to have gone to Mr Foster, we don't know who else it went to, if anyone. So there he says, well, obviously it will go to Ms Ho as well, "Lisa, if there are any changes on Canterbury Road needed I need to know today so I can get the amended drawing tomorrow. Peter." Then we go up the page to the reply which comes from Mr Foster, and it's possible that the distribution list of this email reflects the original recipients from Mr Annand, but at the very least you see that you received - - -?---Yes.

- - - you received the email.---Yes, sir.

And Mr Foster says, in relation to, there are two projects on foot obviously, Punchbowl Road and Croydon Street. Croydon Street is irrelevant to this inquiry. The first bullet point he responds on Punchbowl Road. "The site setbacks for four-storey component need to increase to nine metres on the

northern and eastern boundaries to enable compliance with new Apartment Design Code setbacks, six metres for four storeys and three metre for transition to lower density zone. This will apply to any DA lodged on the site and we should ensure any planning proposal is compliant.” Now, this was a new development, wasn’t it?---It was a planning proposal, yes, so it was a new, yes.

Sorry, I used development in a different sense.---That’s okay.

10 This was a new issue that arose?---Oh, sorry.

That’s all right.---As far as I could tell, yes.

Yes. And it meant that whatever had been the acceptable FSR previously would have to be lowered, wouldn’t it, because of the setbacks would be greater?---I’d have to check to see when the actual Apartment Design Code amendments were made, whether they were made at the time that Mr Annand had prepared his report, his additional report, I’d have to check that, but there were changes that were made which effectively resulted in
20 increase in setbacks in the transition zones. But in answer to your question, if you’ve got a smaller site, potentially you would be able to only, you achieve theoretically a lesser development, yes.

Well, just look in the bullet point, the first bullet point on page 285. In the first line Mr Foster says, “The site setbacks need to increase on the northern and eastern boundaries.” Surely that means, that can only mean whatever the setbacks presently are, they have to get larger. From whatever the starting point is, they now have to get larger.---Without the benefit of the information in front of me, it’s difficult for me to comment, but I don’t draw
30 the inference that it’s, it, well, what he’s saying here is that it actually, whatever they are at the moment they need to be increased to what, what the SEPP requirements he states, yes.

Now, can you turn now to the emails, the email chain that commences on page 286.---Yes.

Now, 286, 287 and it does go over to 288, but the new component is all on 286 and 287. So if you see at the bottom of 287 there is another copy of the email that you just looked at.---Yes, sir.

40 And if you go up the page you see a response from Mr Annand. “Tom. Okay, Punchbowl Road, six metres, four storeys, then three metres for the next storey??” Two question marks. Then he goes on to ask more questions about the transition.---Yes.

Then if you keep going up the page there is another communication from Mr Foster at 2.06pm on 24 June. “For Punchbowl, nine-metre minimum from both side boundaries plus three metre (12 metre total) for upper levels.

Minimum is required by new SEPP apartment design code. Doesn't give us the flexibility to account for future, so for purposes of assessment we have to assume adjoin properties stay R3 with 8.5-metre height limit. Therefore additional setback limits apply.”

MR BUCHANAN: “Therefore additional setbacks apply.” “Setback limits apply”.

10 MR ANDRONOS: What did I say?

MR BUCHANAN: Sorry, I thought you said “must” but I must have misheard.

MR ANDRONOS: Well - - -

MR BUCHANAN: I apologise.

20 MR ANDRONOS: No, that’s all right. Now, then at the bottom of 286 this appears to be your first contribution to the conversation. You say, “Tom, I agree with all that,” and then you go on to make a comment about Croydon Street, which we don’t need to bother with. And then the rest of the email chain appears to be related to Croydon Street but perhaps you could just have a look at that to satisfy yourself that what I’m saying is correct there. ---Yes, it appears so.

30 So it must be the case by 24 June you were aware that Mr Annand had effectively given you a starting point of 1.8:1 on the 18th. Mr Foster in this line of communication indicated that there were further setbacks which would apply, and those further setbacks were likely to adversely impact on the FSR that was achievable on the site. Is that correct?---Possibly, yes. That’s probably right.

It must be right, mustn’t it?---Yeah.

Yes. And you turned your mind to the question and you agreed with Mr Foster at the bottom of 286.---Yeah. I’m not sure if I was agreeing to just the email below. That I can’t be certain of. But - - -

40 You were agreeing with everything in relation to Punchbowl Road.

THE COMMISSIONER: You say, “I agree with all that.” And then you - - -?---Oh, yeah, sure.

- - - raise something about Croydon Street.---Sorry, I was reading the wrong one. I was reading the wrong email. Yes, okay.

MR ANDRONOS: Now, that’s how things stood at the end of the day on 24 June. The next day you participated in a meeting with Mr Hawatt, Mr

Azzi, Mr Montague and Mr Demian to discuss the Demian projects generally. Does that sound right to you?---I'm not sure if it was the next day, but I do recall that there was a meeting where all those people were involved, yes.

But you recall, do you, that there was a meeting with Mr Demian after this information came to light?---I believe so, yes.

Now, was that a difficult meeting with Mr Demian?---No.

10

You had had some meetings with Mr Demian before, hadn't you?---Yes.

And you already knew, by 25 June, that he could be a difficult man.---Yes.

And in fact, you'd had a very negative experience with him a few weeks earlier?---I, I recall the meeting, if that's the meeting you're referring to, where it was actually, heated words were exchanged.

Heated words.---And I - - -

20

An almighty row.---Yep, pretty much.

Yes.---Yes.

So much so that Mr Demian sent you an email apology later that day?
---Correct.

30

And you saw fit later on in the month to ensure that a record was kept of that apology on the council file?---I think it was just part of the email chain, but, yes, like, it was.

But later on in the month, in fact after this second meeting in June, and I suggest to you the reason you wanted to keep a record of the apology is that you were concerned about Mr Demian's behaviour and you wanted to make sure that your position had been protected in relation to him.---I think that's a fair comment, yes.

40

And 25 June was the second meeting that you had with him in the space of a few weeks where, to use the vernacular, he'd been on the rampage again.
---Yes.

Now, you recall a meeting at which Mr Demian insisted on having regular meetings with you?---With, yes.

With you and perhaps with your staff?---Yes.

And he wanted meetings with you every week?---Yes.

And - - -?---And I believe also with the general manager in some cases, yeah.

But at this point my suggestion is he only wanted to meet with you and people who were answerable to you.---Initially, I believe that's true, yes.

Yes.---Yes.

10 And at that point, Mr Montague intervened and said that he wasn't having it, and do you remember these words, "That would be the tail wagging the dog"?---I actually do recall him using that expression, yes.

And it was in connection with Mr Demian wanting, in effect, to control council and to make you answerable to him personally?---I, I don't recall that bit, to be honest with you, but I do remember the general manager being, expressing concern about the way in which Mr Demian was treating staff, yes.

20 Well, he was - - -

THE COMMISSIONER: Can I just ask, and this is around June, when - - - ?---Yeah, it was around, it was, it was around that time, yes.

And when Mr Demian had suggested some weekly meeting with you and the staff?---Yeah.

30 MR ANDRONOS: In effect, Mr Montague was telling Mr Demian to back off and he did?---Not, not as much as I would have liked, to be perfectly honest with you, because he did continue to, yeah, be the person that he was, yeah.

Perhaps I should break that down in to two components, that question. Mr Montague told Mr Demian to back off, in effect, didn't he?---In that, in that instance, yes, yes, yes.

And that was only partially successful in your view?---I believe so, yes.

40 THE COMMISSIONER: And sorry, the backing off was him not having weekly meetings with the staff?---Yes.

MR ANDRONOS: So in the space of a few weeks, you'd had a couple of tense, heated meetings with Mr Demian, there was an apology at the end of the first one and some find of victory for council over Mr Demian in terms of procedure in the second?---Yeah, yes.

Commissioner, I note the time.

THE COMMISSIONER: We'll take the morning tea adjournment and we'll resume at 11.40.

SHORT ADJOURNMENT

[11.15am]

THE COMMISSIONER: Right.

10 MR ANDRONOS: Thank you. Mr Stavis, just before the morning tea adjournment I was asking you questions about the June 2015 meetings that you participated in with Mr Demian. Now, turning to the second of those two meetings, the 25 June meeting, which you've agreed was a meeting at which Mr Demian got agitated, do you recall what the issue was that got him so agitated?---There was concern about the floor space ratio.

On 998?---On 998. Sorry, are we talking about, which meeting are we talking about?

20 This is the 25 June meeting, so it's the second of the two. It's the one at which Mr Montague and Messrs Azzi and Hawatt were present, as well as you and Mr Demian.---Yes. Okay.

Now, my understanding, correct me if I'm wrong, is that that dealt with a number of Demian projects, so it could be anything that he was mad about, but I'm just trying to explore with you now - - -?---Sure.

- - - whether you recall what the issue was or what the issues were, if there was more than one - - -?---Yes.

30 - - - that was exercising his mind at that meeting.---Oh, I'm not sure about that exact meeting date, to be honest with you, okay, but the meetings that I had with the general manager with those councillors present as well as Mr Demian, it was always to discuss a number of his proposals, and there was at least two meetings that were very similar in flavour where he became agitated with how long things were taking to process and, you know, basically pushing back on initial thoughts that we as a department had in relation to his projects.

40 Yes.---And it all had to do with achieving a development yield that he thought he could achieve.

Yes. You volunteered that it might have been FSR that he was concerned about at, to be fair, I think meetings at around this time. Do you recall what the FSR was that was under discussion in relation to 998 Punchbowl Road? ---Yeah, well, if it's the meeting that I recall that you're referring to, it was a meeting that I attended after Mr Montague, Charlie Demian and definitely Mr Hawatt and Pierre Azzi were there, and I was called in after those

gentleman were all present in the GM's office, and if it's the same meeting you're referring to where there was a plan that was presented which basically - - -

I'm not talking about - - -?---Just, okay.

That's a meeting and we'll come to that in due course.---Sure.

10 The meeting with the piece of paper with scribble on it. Is that the meeting you're referring to now?---Yes, yes.

Yes. Well, I'm not talking about that meeting.---Okay.

Because I think on any view of the evidence, that occurred later in the year. ---Okay.

20 I'm talking about a meeting that you had with Mr Demian shortly after you received the draft report from Mr Annand. That's the draft report which said - - -?---Yes.

- - - 1.8 metres.---Yes, okay, yeah.

30 Now, sorry, 1.8:1, not 1.8 metres. Do you recall whether or not the discussion about FSR, if there was one at that meeting, was 1.8, was it 2.2, was it some other figure?---There were, early on, and I'm not sure if it's this meeting, but very early on when we met with Mr Demian and the councillors as after we had received the Annand report, he was, he'd been, Mr Demian was a talking about an FSR of 2.2:1 I believe at that meeting, yeah.

Now, with Mr Demian talking about an FSR of 2.2:1, did you tell him that you had a report from Peter Annand saying that 1.8:1 was the maximum that he had said was achievable?---That I can't recall to be honest with you.

If you did, that would be a reason for him to get angry, wouldn't it?---Yes.

40 Do you think, putting those two facts together, that that might have been said?---Most of the meetings that I had with the general manager with Mr Demian were, I'd say the majority of them were heated, yes. On, on - - -

All right, well - - -?---On the part of Mr Demian.

Well, at this stage?---I don't recall to be perfectly honest with you.

But just on that point, whenever Mr Demian had a go at you in the presence of Mr Montague, Mr Montague took your side, didn't he?---He was certainly, to be fair, if I had to describe it, it wasn't, it was, it was neutral if I really had to put a category on it.

Well, I'm suggesting to you that he was more than neutral. He was in your corner.---Yeah, look, to the extent that, you know, he obviously saw that I was getting upset as well in, in some if, in the meetings and from that perspective, yes, he did defend me in front of him.

You never had an occasion where Mr Montague and Mr Demian ganged up on you in a meeting?---No.

- 10 So back to this meeting in particular, the June meeting. Do you recall whether you disclosed to Mr Demian at that meeting that you had received that set of email communications, including the one from Mr Foster which we went to earlier today, about the increase of the boundaries and setbacks?
---No, I can't say that I do recall that.

Do you think you would have?---I, I would have tried to, to persuade, to articulate the issues that had been raised, yes, but I don't know whether I would have shown him that particular email.

- 20 Isn't it more likely, if Mr Demian was already insisting on 2.2 and you didn't have anything before you to support 2.2, that you wouldn't have disclosed the additional problems, hoping that you could work out a solution to those problems before you had to confront Mr Demian with it?---I don't recall that being the case.

I'm just asking likelihood at this stage.---Likelihood, possibly.

Can you please turn to page 291 of volume 12.---Yes.

- 30 And here's a chain of email correspondence between you and Peter Annand. If you start down the bottom of the page, the first email from Mr Annand to you on 26 June at 7.48am, to you and Mr Farleigh. "Spiro and Warren, heads up. The new Design Guide setbacks as interpreted increase both side setbacks on Punchbowl Road job from six to nine metres. This is the effect of dropping potential FSR from 1.8:1 to 1.3:1. Please discuss urgently before I alter all of drawings (many) and texts. Peter." So, is this the first occasion that it had been articulated to you that, in Mr Annand's view at least, 1.3:1 was the then achievable FSR on 998 Punchbowl Road?---It's, it's likely but I just don't recall exactly, but it, I don't dispute that, no.

- 40 Do you recall what your reaction was to seeing this?---I think my initial thought was let's, let me have a look and see what, how he's come up with this analysis, yeah.

Well, wouldn't your first thought have been along the lines of, oh, my God, this is going to make things even worse with that Demian character?---No, I guess I was more, it was more a case of me wanting to examine what Peter Annand was, how he'd arrived at that. Yeah.

But I'm suggesting to you it just defies any understanding of human nature, given the run-ins you'd had with Mr Demian, for you to see this. Firstly you would have understood that this meant that if Peter Annand were correct, Charlie Demian would get a lower yield even than he would have got on 1.8.---Yes.

And you'd had run-ins with him as recently as the previous day, where he was asking for more and you were insisting that he couldn't have it.

10

THE COMMISSIONER: On this particular property?

MR ANDRONOS: On this particular property. Well, perhaps I could just make a general point. You knew that Mr Demian would ask for whatever he thought he might get away with, didn't you?---I think that's a fair comment.

And you saw part of your function as resisting.---Yes.

20

Because you would have been content for him to have whatever yield was appropriate.---Yes.

And appropriate in your mind was what could be defended according to planning principles.---Yes, sir.

But that didn't mean you didn't have a problem with him every time you insisted on applying those planning principles.---Correct.

30

It just made it worse.---Correct.

And so on this occasion this is what you're faced with. Council had said 2.2:1 is what we're going to go to the government with. Annand had come back and said 1.8:1 is the best you can do on this property. And then at about the time of this meeting you're presented with further information which says it's not even 1.8, it's 1.3. Now, you must have known that this would have been an explosive disclosure to make to Charlie Demian. ---Look, given the, given the, the history, yes, but my main focus was, yeah
- - -

40

That's okay. I'm not asking your focus.---Yeah, yeah.

I'm just asking you, okay, so - - -?---I'd agree with that.

And that must have been obvious to you when you opened your email at 7.48 or thereabouts on the morning of Friday, 26 June.---That's correct.

And so then about 44 minutes later you sent the next email in the chain back to Mr Annand, in the middle of the page, "Peter, please come and see me on

Monday. We've already let the cat out of the bag to the applicant when he received your draft report. We need to get as close as possible to that FSR." Do you recall sending that?---Yes, sir.

And is this a fair characterisation of what you're saying to Mr Annand? It's going to create an almighty problem because we have already set certain expectations with the applicant, and so what we need to try and do is meet the expectations we've already set as best we can. Is that really what you're saying?---I'm, to a large extent, yes.

10

Yes. Well, there's no other way to read that, is there?---Yes.

When you say yes, you're agreeing with the negative proposition I put?
---Yes, yes, sorry, yes.

Now, "Letting the cat out of the bag," you're referring there to a disclosure at some meeting, aren't you, and it could either be the 4 June meeting or, curiously enough, the tail wagging the dog meeting on the 25th. That's right, isn't it?---Yes, it's one of them, yeah.

20

And if it was the earlier meeting, that meant that you didn't say anything at the 25 June meeting to disabuse Mr Demian of any impression he might have had that 1.8 was still what Mr Annand had recommended.---Yes.

So your response is to go back to Mr Annand and say, let's try and work this out, let's make sure, before I do anything further, that you're right.---Yes.

30

And you did that, not just because you didn't want to buy into another fight with Mr Demian, but you did that because that was how you saw yourself, as the person who would be able to try and find a solution.---Yes.

And the problem that you were dealing with was not just the combustible personality of Mr Demian, but you had a council resolution that you were trying to get close to. Correct?---Correct, sir.

And also you knew you had the particular interests of at least Mr Azzi in this project. Is that correct?---That's fair comment.

40

And you put these things together and that gives you an imperative to try and go back to Mr Annand and find some way of looking at it again to see whether or not 1.3 really is the correct figure.---Yes, sir.

Now, my suggestion to you is that Mr Montague had nothing to do with any of that, did he?---Not in so far as the way you've just described it.

Yes.---Yes.

When Mr Montague attended those meetings it was largely as a facilitator or simply as a presence as the general manager. That's correct, isn't it?---Yes, yes.

When meetings turned to town planning issues, he was out of his depth, wasn't he?---Yes.

He was a layman who, did he ever use the term, "The dark art of town planning," with you?---Yes.

10

Yes, yes. It was a mystery to him, and so he wasn't going to – are you familiar with him ever using the term, "You don't buy a dog and bark yourself?"---Yes.

Yes. And by that you understood him saying he looked to you to provide all the expertise, you and your team, in relation to town planning issues?
---I think that's fair comment.

20

Moving on, Mr Stavis. A little over a month later on 5 August, and perhaps the Commission staff can take us to volume 13 at page 15. Do you have volume 13 there, Mr Stavis?---No.

15, not 50, sorry, it's my fault. Do you have that, Mr Stavis?---Yes, sir, sorry.

30

Now, at the bottom of the page is an email that you received from the applicant's architect who identifies him or herself with the initial J. Do you recall who that was?---Mr Demian had changed architects I believe, and that could be John from Geofom Design.

Now, you forwarded that message to Ms Dawson later on night, later that night and you say (not transcribable) "Email received from the applicant's architect. Can you please prepare a response from me and include a timeline of when we'll be sending through to the department. Need this next week." So, you need the response the following week, is that correct?
---Yes, sir.

40

Now, that's an example of you just being responsive to a request coming from an applicant?---Correct.

Now, you were aware through your whole tenure that Mr Montague wanted things done quickly?---Yes, sir.

And that was across the board?---Yes, sir.

And you knew that he responded to complaints and enquiries from members of the community and the applicant community?---Yes, sir.

And it was his invariable practice, wasn't it, if anybody contacted him to enquire as to timelines or to complain, so far as you were aware, he was on the phone to you saying, "Spiro, when can we do this?"---Yes, sir.

And he always said, "Can we do this quicker?"---Yes, sir.

If you said it could be done tomorrow, he'd want it done today. If you said you could do it next week, he'd want it done this week?---That, that's correct.

10

And overall, in terms of getting things done quickly, that is a practical outcome that you supported?---Yes, sir.

Even though it made life difficult for you and your staff?---Yes, sir.

Now, if you go over the page, to page 16. You have Ms Dawson's response.---Yes.

20

Where she sets out what obviously she expects the timing to be for 998 Punchbowl Road, "10 September, report to the CDC. 30 September, planning proposal with the department. Department of Planning issues a Gateway Determination. Mid-November earliest for exhibition if determination received by end of October", and then she goes into some detail about over the Christmas break.---Yes.

Now, you just note that Ms Dawson says it could go on exhibition in November effectively if the stars all align.---Yes.

30

Now, you were seeking this information in response to an enquiry from the applicant's architect. It's very likely, isn't it, that you passed this on?---Yes, I believe so.

Yes. And I haven't seen an email where you do so. So it may be that either the email hasn't been reproduced or you passed it on in a meeting.---Yes, sir.

Now, you must have known when you passed it on to the applicant that you would be setting expectations in the applicant's mind about what timing was achievable?---Yes.

40

Provided everything went according to plan, that would be achievable.---Yes.

And that was the information that Ms Dawson had provided to you, indicating what she thought was achievable?---Yes, sir.

So, if you subsequently were to insist on complying with that timetable, it would only be insisting on complying with a timetable which you thought was a reasonably achievable one?---Yes, if the stars aligned.

If the stars aligned.---Yep.

Now, just by way of background to get us from this stage to the next stage, you received another report from Mr Annand in about the middle of September?---Yep. I believe so.

10

And there might have been drafts and negotiations, but we don't need to go into that. So the status at the end of September is that you've had some meetings, there have been a number of versions of the Annand report, and then late September, on the 29th, you receive an email from Matt Daniel. And what was his role in Mr Demian's organisation?---You know, it's a bit confusing because he, I believe he worked for Mr Demian and he was always on-and-off acting as a, a, I guess as a, as his representative on, on various applications, and this was one of them.

20

Yes. Now, you hadn't heard from Mr Daniel on this issue for some time, had you?---I don't believe so, yes.

Perhaps if you could turn to volume 15. Sorry, volume 13, page 115. Do you have that chain of emails?---I can barely read it. Can I have the volume, the hard copy? Sorry.

It's in volume 13, page 115. I'm sorry.---Oh, 13. I'm sorry, I thought you said 15.

30

I'm sorry. I misled you.---Yeah. What page was that on?

115.---5. Yes.

So commencing in the bottom third of the page, the email of 29 September, at 10.16am from Mr Daniel to you. He says, "I trust all is well with you." That's what people often say when they send you an email out of the blue. Do you agree with that?---Yes.

40

Yes. "I'd like if possible to set a meeting with you to discuss our emerging designs for our project at Punchbowl. Kindly provide a time that works out for you. Look forward to meeting with you. In attendance will be John and me." That must be the J of the previous email we looked at?---Yes.

"We can provide you with preliminary plans prior to the meeting to assist with discussion. Kind regards, Matt." And then you respond that night happy to meet but you're fully booked until the end of next week.---Yes.

And so Mr Daniel, at the top of the page, accepts how busy you are and indicates he'll try and make a time with Eva. So you recall that you did have a meeting with Mr Daniel and with John.---Yes.

Sometime early to mid-October it must have been.---Yes.

That's right. And the purpose of the meeting, as you understood from this email, was to bring to your attention something new they had in mind for 998 Punchbowl Road.---That's correct.

10

And you must have felt a sense of dread when you read that.---If it's the version that I'm thinking of, yes.

THE COMMISSIONER: I'm sorry?---If it's the version that I'm thinking of, that meeting, yes, that's fair.

MR ANDRONOS: Well, just the email telling you that something more is coming.---Oh, sorry, the email. All right. Well, no, I wouldn't say direct, no.

20

All right.---No.

That did come later.---Yes.

Now, at that meeting do you recall whether any documents, any plans, any drawings were provided to you?---Yes.

At that meeting?---I believe so, yes.

30

Now, that must have been the first occasion on which you became aware that the Demian interest sought to increase the FSR even beyond the 2.2 that had been so problematic up to that point.---I believe it was actually an exorbitant FSR that was being proposed at that meeting, yes.

Well, it was probably, well, I suppose just go back to what Peter Annand had said in his report, and we can go back to it if you need to be comforted that this is accurate, but the Annand report which is dated 14 September said he was prepared to accept an FSR of 1.8 to 2:1 with a building height of 18 metres for six storeys and a tower of 25 metres, which was eight storeys.

40

And that's at volume 13, page 94 if anybody wants to be comforted by that. 13, page 94. That's the covering email.---Yes.

The report follows.---Yes.

And the conclusion, the conclusion is at page 112 of volume 13.---Yeah. Yes, I see that.

So that's the state of play prior to Mr Daniel coming to you out of the blue on 29 September and saying that he wants to talk to you.---That's, I see no reason to dispute that.

Now, you have a meeting and I'm suggesting to you, Mr Stavis, that this was a technical meeting involving you, Mr Daniel and John.---Perhaps staff being present as well, but yes.

10 Maybe some staff present as well.---Maybe, I can't recall exactly but - - -

It wasn't a high-level meeting involving Mr Demian or Mr Montague or any councillors?---Not at, not at that meeting, no.

No. And there were two immediate consequences of that meeting, one was that you wanted to send sketches that Peter Annand had prepared to Mr Daniel. Do you recall that?---I do - - -

20 If you go to volume 13, page, well, firstly 117 is a note to yourself to do so and then page 123 is Rita Nakhle coming back to you in relation to that. ---Yes.

And so the purpose of that must have been that Mr Daniel had said at the meeting, we've got these new plans, it would help us to finalise them if we could get access to what Peter Annand had done.---Yes.

Yes.---Yes.

30 And you didn't see anything wrong with providing those plans - - -?---No. - - - as calculations. And so sometime around the middle of the month they go to Mr Daniel.---Yes.

Now, on 20 October, you get a letter from a Mr McGaffin, and this letter is at page, under cover of an email at page 126 of volume 13.---Yes.

Now, you see in the, you see the covering email is from Craig McGaffin to you?---Yes.

40 Copy to no one else at council it seems, and attaching for your attention their letter in relation to 998 Punchbowl Road?---Yes.

So then if you go to the letter itself which commences at page 127, the letter is dated 16 October but it doesn't seem that you could have possibly seen it before the 20th. I think that fair?---Yep.

Now, in the second paragraph of this letter it refers to recent meetings with Canterbury City Council staff and further design and development. Now, that reference to recent meetings, whether there was one or more than one,

it's not the point I'm going to ask you, but it must be a reference to the meeting you participated in at least?---Yes.

And it goes on to say, "We wish to request a number of amendments to the planning proposal. It's scheduled to be considered by council at its December meeting." So, if we go into the substance of the letter itself, if you go to page 129, and in the second paragraph which commences with the words, "As a result".---Yes.

10 "As a result of further numerous meetings", again, we'll just leave to one side whether there were numerous meetings or a single meeting, it's not relevant to the point I'll take you to, "and significant design development, project architects Geoform prepared a building volume study, which is attachment 1. It demonstrates how it can accommodate increased height limit and maximum floor space ratio." And then they say, "On this basis, we request that the planning proposal be amended to allow a maximum building height of 25 metres and an FSR of 2.7:1".---Yes.

20 So, you must have seen this on or about the 20th.---That's fair, yes.

Now, if you go, the attachment includes page 137 but, please, if it will assist you, leaf through all of the pages which constitute the attachment from about 132 onwards".---Yes.

But we get to 137 and you'll see there's a total site area of 2,056 square metres. This is on the right-hand side of the page.---Yes.

Maximum building area of 6,628 square metres.---Yes.

30 Total FSR of 3.2 and a net FSR of 2.7.---Yes.

What's the difference between total FSR and net FSR? Is net FSR simply an 85 per cent ratio?---No. Net, net FSR is taking into account the actual saleable FSR. So it's excluding corridors, loading docks, car parking spaces and what have you.

40 THE COMMISSIONER: So like common property?---Yeah. So, there's, it's a, it's a term that developers use and ultimately governs the amount of developable area that they could sell, effectively.

MR ANDRONOS: And is that a fixed ratio or does it operate according to some sort of scale or is that a calculation that has to be done?---It's, it's a calculation that's done.

THE COMMISSIONER: So, on another development it could be 75 percent or 90 per cent or - - -?---That's exactly right. Yep.

MR ANDRONOS: Now, you called Mr Daniel the same day, didn't you?
---I, I can't be sure on that, sir, sorry.

Well, please turn to page 141 of volume 13. You'll see, I'm sorry, it might have been Mr McGaffin you called, oh sorry, no, I was right the first time, Mr Daniel.

10 And you'll see this is in the email chain that commences with the provision to you of the letter, Mr Daniel says, "Hi Spiro, thank you for your call. I will call back to discuss in more detail." Now, that suggests that you tried to call him, he couldn't take the call, he will call you back.---Yes.

And he must have called you back.---In all likelihood, yes.

But leaving that aside, the fact that you called him obviously indicates you had something to talk to him about?---Yes.

20 And the thing you would have had to talk to him about would have been this letter that you just received.---Yes.

Do you recall what you had in mind when you received this letter?
---Concern.

Concern?---Yeah.

Because you thought that - - -?---Yeah. Well - - -

30 - - - they had been offered an inch and this was a mile that they were seeking to take?---Something like that, yes.

Yes. Now, did you have any contact with Mr Demian about this after you spoke to Mr Daniel?

MR PARARAJASINGHAM: Commissioner, can I just raise (not transcribable)

THE COMMISSIONER: I'm sorry?

40 MR PARARAJASINGHAM: If I may, until very recently it has been tolerably clear to me at least the purpose of my friend's cross-examine. I'm less clear at this point, and I perhaps invite – through you, Commissioner – my friend to articulate the purpose of this particular line of questions. It's just not clear to me as I stand here now.

THE COMMISSIONER: Is that because of the non-involvement of Mr Montague?

MR PARARAJASINGHAM: Yes.

THE COMMISSIONER: Mr Andronos?

MR ANDRONOS: The time at which Mr Stavis became aware of certain features of the proposal does affect Mr Montague directly because he's given an account of how he became aware of it, which this evidence addresses.

10 THE COMMISSIONER: Sorry, Mr Montague in other circumstances has given an account.

MR ANDRONOS: Yes. Mr Stavis has given an account of how he became aware of certain features of this proposal in a way which directly impacts upon Mr Montague, and this is establishing through the evidence why that account needs to be challenged. I don't know if my friend, Counsel Assisting, is aware of where I'm going with this but it does have a direct forensic purpose relevant to Mr Montague's interest.

20 MR BUCHANAN: I'm not sure I have something in my mind, but I'm not sure whether it's the same thing as what Mr Andronos has in mind.

THE COMMISSIONER: All right. Mr Pararajasingham, do you press the -
--

MR PARARAJASINGHAM: I press the objection. My friend has obliquely perhaps tried to answer my inquiry through you, Commissioner. As I stand here now, I press the objection. It's not immediately apparent to me what this goes to, and we are getting into the detail of things that have been covered - - -

30 THE COMMISSIONER: Covered, yes.

MR PARARAJASINGHAM: - - - at length. So that's why I take objection.

MR BUCHANAN: Maybe the witness could just be asked to stretch his legs for a couple of minutes.

THE COMMISSIONER: Would you be happy with that, Mr Andronos?

40 MR ANDRONOS: I'd be happy except this is broadcast outside.

THE COMMISSIONER: Oh, that's - - -

MR BUCHANAN: Sorry, yes. So it is. That could be, that could be - - -

THE COMMISSIONER: Thank you, Mr - - -

MR BUCHANAN: That can be fixed.

THE COMMISSIONER: Oh, can it? All right. If you just hold on for a sec, can you - - -

MR ANDRONOS: Could we do it this way? It might be quicker. Perhaps if my friend Mr Pararajasingham and my friend Mr Buchanan and I have a quick conference at the side of the court. I might be able to demonstrate to them, without having to upset everybody, where this is going and why I'm asking these questions.

10

THE COMMISSIONER: Has anybody got an issue with - - -

MR BUCHANAN: Sorry. I've gone for a walk. I'm stretching my legs.

THE COMMISSIONER: And if anybody else wants to join in. Look, I'm sorry, I'm getting a little bit concerned about this. I thought this could be dealt with relatively quickly. If it's going to be an issue I think we might have to ask Mr Stavis to go outside to stop the broadcast outside so I can be party to it.

20

MR ANDRONOS: I think we've probably taken the conversation as far as we can.

MR BUCHANAN: And it will be necessary to ask Mr Stavis to retire.

THE COMMISSIONER: All right. Can we just stop for a minute. May I inquire, are we able to stop the broadcast or have we got to involve IT? Okay. Mr Stavis, could you go outside, just stretch your legs out in the foyer, thank you.---Thank you.

30

I'm sorry, is that Ms Stavis? Yes. Thank you. Right.

MR ANDRONOS: Commissioner, the forensic purpose of this line of questioning is this, and I acknowledge that this covers some ground that has been covered before in the sequence of events, but in my submission I need to put it in context because the witness has given evidence that he became, he first became aware of a particular demand in relation to FSR at a meeting where a piece of paper with some scribble on it was provided to him and he was told by Mr Montague to go away and come up with a solution. Now, my instructions do not accord with the witness's evidence and I need to put my version to him. Now, in order to be of assistance to the Commission, the Commission needs to know obviously which of those accounts will be more likely and can be preferred. Now, in order to establish that my version of events is to be preferred, I need to establish the occasions on which the witness had the opportunity to review the same material beforehand and I propose to put to him that he did in fact review the material beforehand, so that his account of the meeting cannot be correct. Now, I can't just blunder in and say you're wrong about the meeting on 9 November. That would be

40

of no forensic utility at all. The only utility that the Commission can get from the submission which I propose to make, if the circumstances are explored so that you, Commissioner, will have enough to decide on the balance of probabilities which version is correct. That's where this goes.

THE COMMISSIONER: Just before I call on other counsel, the factual dispute that you're exploring is whether at the 9 November meeting - - -

MR ANDRONOS: Well - - -

10

THE COMMISSIONER: Hold on. Sorry, that was attended by Mr Montague, whether, A, Mr Stavis said something like, "This is the first time I've come aware of an FSR problem?"

MR ANDRONOS: Well, no, no, that's not the, that's not the proposition.

THE COMMISSIONER: Or is it more that Mr Montague said, "Come up with a solution"?

20

MR ANDRONOS: Mr Stavis has given evidence that he was surprised by what he saw at that meeting, and also at that meeting, well, it might not even be that meeting, that's another point which remains unresolved and which this evidence is directed to resolving, what was provided and looked at - - -

THE COMMISSIONER: At the meeting.

30

MR ANDRONOS: At the meeting, when the meeting took place, which affects who was there and what Mr Montague said. Now, unless it can all be placed in sequence, you, Commissioner, will just have bare assertion on one side and bare assertion on the other. Now, the sequence of events involved two letters and some emails where those letters are discussed and that will go to establishing, in my submission, that Mr Stavis was aware of the material before the meeting. As a result of that, the account, on my instructions, is to be preferred. There's a direct forensic purpose, Commissioner.

THE COMMISSIONER: And is your main issue whether Mr Montague said something along the lines of, "Come up with a solution"?

40

MR ANDRONOS: Yes, that's the main issue but it can only make sense in the context of what was disclosed at the meeting and what had gone before.

THE COMMISSIONER: Mr Pararajasingham, do you maintain your objection?

MR PARARAJASINGHAM: I do, Commissioner. As I understand it, well, the objection is simply that this line of questioning, in my submission, cannot rationally effect what my friend wants to do ultimately, which is

suggest that Mr Montague didn't say those words. As I understand the evidence, this FSR figure was an evolving thing. And whether Mr Stavis was aware of how the figure evolved, his evidence is at the meeting he expressed surprise, and in response to things that other people did at this meeting Mr Montague issued some instructions. So, in my mind at least, I am finding it a little bit difficult to understand how taking Mr Stavis through this material rationally effects the likelihood that Mr Montague said what he said at that meeting. So, that's the first limb, and the second limb of the objection is this line of questioning necessarily involves repetition, and I note that the standard direction, section 19, requires demonstration that the cross-examination differs to a significant degree. If there is some difference, in my submission, it couldn't be said that it's to a significant degree and so that is the secondary basis of my objection.

THE COMMISSIONER: Mr Buchanan, are you going to assist me?

MR BUCHANAN: Commissioner, I support Mr Pararajasingham as to the first limb of his objection. I share his inability to see that it necessarily follows, or indeed follows at all from whether or not the witness was surprised when he saw the particular FSR, which was written on the document that he was shown at that meeting, and I can give you a page reference. I was going to say a character reference. I can get you a page reference for that particular evidence. It's 3627, line 9 and following.

THE COMMISSIONER: Yes.

MR BUCHANAN: So, in my respectful submission, the witness could be right when he says that Mr Montague told him to go and fix it, whether or not it was the first time he had seen that the FSR had been revised upwards to 2.8. That is to say he might already know that that was being sought on Mr Demian's behalf, but the fact that Mr Demian was insisting upon it one way or another at that meeting and that Mr Montague told Mr Stavis to go away and fix it could still easily happen in my respectful submission. However, I do not share, with the greatest respect, Mr Pararajasingham's submission that this isn't a matter that it is legitimate to explore having regard to the standard directions, and the fact that this area has been the subject of evidence, for two related reasons. One is that it's not inviting him to say the same thing but in trying to get him to contradict himself, but secondly it's in my submission a sufficiently significant aspect of the narrative to warrant clearing it up if there's going to be a dispute about it. And it might also be that in some way in submissions Mr Andronos is going to be able to persuade you, Commissioner, and me that there is a necessary correlation or sufficient correlation between whether this was news to Mr Stavis or not, and whether or not Mr Montague told him to go away and fix it. But in any event, the narrative is an important one, it is an important aspect of the evidence in respect of both this witness, but particularly Mr Montague, and so I, with respect, submit that Mr Andronos should be permitted to continue his examination of the witness on this subject.

THE COMMISSIONER: Mr Andronos, we're up to the 20th, the email of 20 October and the meeting's, when is it, 9 November?

MR ANDRONOS: There's one, there's one more letter and I think some emails about phone calls. There's not a lot in the narrative before the rubber hits the road, Commissioner.

10 THE COMMISSIONER: Well, if we can to the rubber hitting the road as quickly as possible I'd be very grateful.

MR ANDRONOS: I'll do my best, Commissioner.

THE COMMISSIONER: I'll flag with you, I do have some sympathy for Mr Pararajasingham's first point about whether the two are linked, but look, I'll allow you to pursue it, but if we can do it as expeditiously as possible.

20 MR ANDRONOS: Of course. And thank you, Commissioner. I'm indebted to my friends.

THE COMMISSIONER: Can we bring Mr Stavis back in, please.

Thanks, Mr Stavis.

MR ANDRONOS: Thank you, Mr Stavis.

Now, Mr Stavis, can you please turn to page 149 of volume 13.---Yes, sir.

30 Now, this is an email from you to Mr Demian of 23 October - - -?---Yes.

- - - in which you set out some history and then express a view. So I'll just take you through the email.---Yeah.

40 "I tried to call you just now." So obviously you and he had been playing telephone tag through that week. "I just wanted to make sure we're on the same page. As you know, council resolved to increase the FSR and height on the site to 2.2:1 and 15 metres respectively." Okay, that's a matter of history, uncontroversial. "If you recall from our first meeting, we said we could not achieve the FSR within the 15-metre height limit control and that we'd consider additional height on the corner of Canterbury Road and Punchbowl Road to let you get as close as possible to the 2.2:1." Now, is that first meeting a reference to some time back in June or are you talking a more recent sequence of events?---No, would have been early on in the piece and, yeah, early in the piece. I can't recall exactly what date, but, yeah.

So then you go on to note, "The revised proposal submitted last week had an FSR in excess of 2.2:1, i.e. 3.2:1." So obviously as at 23 October you were

aware of the Demian interests seeking more and you were resisting.---Yes, sir.

10 You go on to say, “I don’t believe an FSR of 3.2:1, more akin to business zones, is justified on planning grounds given the site’s context,” and then you go on to give some reasons. And then you say to Mr Demian, “Please make sure the FSR does not exceed 2.2:1 in accordance with council’s resolution, and I’ve also spoken to Matt about my concerns.” So you were well aware by this point that Mr Demian’s then current proposal was 3.2:1, correct?---Yes, sir.

And you were insisting that 2.2:1 was the limit.---Based on the evidence that I had before me at that point in time, yes.

Yes. Now, on 26 October, if you turn to page 154 and 155, you receive another communication from Mr Daniel. You can see on page 154 on the afternoon of the 26th, which is the following Monday, Mr Daniel sends you another document.---Yes.

20 And then you forward that to Mr Annand the following morning. Now, I’m just looking – before we look at the letter, let’s see what you say to Mr Annand. “See latest proposal for your review. I note the FSR has increased from 2.8:1. A preliminary review” - - -

MR BUCHANAN: “To”.

THE COMMISSIONER: “To”. Not “from 2.8”, “to 2.8”.

30 MR ANDRONOS: Oh, of course. I’m sorry. “Has increased to 2.8:1. A preliminary review seems to show that it does not comply with the setbacks and open space provisions under the DCP and ADG.” So you had obviously reviewed the letter in the time between receiving it from Mr Daniel and sending that email to Mr Annand.---Probably, yes.

Well, you must have because you had a view on its contents.---Yes.

And you were aware that the FSR that was being proposed was 2.8:1.---At that point, yes.

40 At that point, yes. Now, when you received that email, you had not participated in any meetings with Mr Montague and Mr Demian relevant to 998 Punchbowl Road since June. That’s correct, isn’t it?---No, I, I used to keep Mr Montague quite regularly updated on anything to do with Mr Demian, whether it involved me going up and seeing him direct or on the phone. Whenever there were – and I learnt that pretty fast just by virtue of the nature of Charlie Demian’s, the way he was.

Two things. Firstly, I think you had some meetings with Mr Demian and Mr Montague in August. So the extent to which I said June, I think I might have misstated the position. So there'd be some in August. But what you just described as being you keeping Mr Montague informed is something quite different to participating in a meeting of you, Mr Demian and Mr Montague, isn't it?---It is, yes.

There weren't any meetings.---Not that I can recall.

10 Yes, that's right.---Sorry.

That's right. And certainly not any meetings before you sent this email to Mr Annand on 27 October, where you note the FSR has increased to 2.8:1. That's correct, isn't it?---I, I can't recall, to be honest with you, if I had any meetings prior to that.

Well, you're not aware of any meeting requests or meeting room reservations in the period say from 29 September to 27 October, are you?
---Not that I can recall.

20

Now, if you go to page 155 of volume 13 you'll see in the second paragraph of that letter another reference to meetings with Canterbury City Council staff and further design development. Do you see that?---Yes, sir.

That is another reference to meetings that only you and staff participated in with the Demian interests, isn't it?---I think it's likely, yes.

30 Now, if you go to, just so that you can satisfy yourself that when you sent the email Mr Annand you were referring to the right document. If you go to page 157 you'll see there in the bullet points in the top third of the page the request for the amendment to allow a maximum building height of 25 metres and maximum permissible floor space ratio of 2.8:1.---Yes, sir.

So you would have I suggest informed yourself in the email that you sent to Mr Annand by a review of this page of this document. Is that correct?
---Sorry, can you repeat the question, sorry.

40 Your reference in your email to Peter Annand of Tuesday the 27th picks up the FSR reference at page 157, doesn't it?---Yes, sir.

Now, if you go to the attachments to that letter, one of which is volume 13, page 165. Now, I'll just ask you to note the figures on the right-hand side of the page.---Yes.

Total site area square metres 2,056. Maximum building area in square metres 6,040.---Yes.

Total FSR 2.94.---Yes.

So you had all of this and you looked at all of this no later than the morning of 27 October. That's correct, isn't it?---That's, its likely, yes.

Now, can I take you to the question of a meeting that you attended at which you say Mr Demian, Mr Hawatt, Mr Azzi and Mr Montague were present.
---Yes, sir.

10 Now, do you still recall that all four of those men were present at this meeting?---That's the best recollection I have, yes.

When you say the best recollection you have, do you accept that your recollection in this regard may be faulty?---No. I think I've been pretty good in relation to that meeting.

Now, can you look at page 199.---Sure.

20 Now, am I correct in understanding that this is the document that you say was given to you at that meeting?---Yes.

Now, leaving aside the handwritten amendments, you'll see, won't you, the figures on the right-hand side, 2,056, 6,040 and 2.94?---Yes.

That indicates this is the same document, or forms part of the same document that you had been provided with on 26 October, doesn't it?---Yes.

So if you were handed this at the meeting, apart from the handwriting on it, you had seen it before, correct?---Not with the handwriting on it though.

30 Yes, apart from the handwriting.---Yes, yes.

Apart from the handwriting.---Yes.

Now, leaving aside the handwriting in the left-hand corner, which I think you've indicated already is your own handwriting.---Yes, sir.

40 The rest of that handwriting is simply seeking to expose argument as to particular boundaries, isn't it? Is that how you understand it?---No, I, well yes. In terms of the, the writing itself, yes.

But in terms of the content of the proposal, it doesn't alter the content of the proposal at all, does it?---Other than reducing the floor space slightly.

Well, is that FSR of 2.8, so that is in fact an improvement from your point of view, isn't it?---Well, from what they were proposing, yes.

So, that's -- I was going to ask you this, that's- -?---Well, it's, I'm not, yeah, I'm not, well, yes, yes, sorry.

That's a gross rather than net FSR figure as you understand it?---Yes, sir.

But certainly on that basis of what you see there, this is a better outcome in terms of minimising FSR, if that's the objective, than the version provided to you on 26 October?---Yes.

10 Now, I want to turn to your account of how this was provided to you. Now, my suggestion to you, Mr Stavis, is that this document, being the document with the handwriting on it, wasn't discussed at any meeting that you were present at until 9 November. Do you have a view on that?---I can't be sure of the exact date, to be honest with you.

But you wouldn't – all right, I won't take it any further. Now, I want to explore the accounts you've given of that meeting.---Sure.

Can Mr Stavis please be provided with transcript at page 3628. Perhaps starting at 3627, maybe 3626.---Yes, sir.

20 Now, to be fair, I think we ought to start at 3626, where at about line 24, my friend Mr Buchanan asked you questions about the date of a meeting, and he refers to some earlier evidence about it being 29 October. Please read that to yourself, but I don't think anything's going to turn up for purpose of my question about whether or not there was a meeting on the 29th and whether there was another meeting. Now, then at the bottom of the page and over on to 3627, Mr Buchanan asks you about a sketch plan with handwriting on it, and that's the page I've just taken you to, volume 13, page 199.---Yes, sir.

30 And he asks you about it and you say that it appears to be the document that you were shown at that meeting.---Yes, sir.

Okay. Now, I think to be fair at this stage you're saying it's the meeting of 29 October, but can I just interrupt that and say whether it's the meeting of 29 October or 9 November, you had already received the letter that's dated 26 October and that you had sent to Mr Annand with comments on 27 October.---Yes, sir. That's likely, yes.

Well, I mean you had, you had.---Yeah, yeah.

40 Now, you were then asked two questions. "As you can see, it has on it 2.8--" "Yes." "-- as the FSR. Was that the first time that anyone indicated to you that the figure being sought for the FSR was to be revised upward to 2.8?" You say, "Yes, I believe so." "Were you surprised when you saw it?" "I was, yes." "You have a memory of being surprised when you saw it?" "I was, yes." Now, having seen the letters and the sequence of the correspondence, do you accept that the figure of 2.8 as being the outer limit, which I think is the gravamen of my friend's question, the outer limit of what was being requested could not have come as a surprise to you at any

meeting because you had seen it in a letter and you had commented on that in your email to Mr Annand on the 27th.---At the time that was my best recollection, yes.

Well, at the time you gave the evidence that was your recollection?

---Yes, sir.

Yes. But if you go back to volume 13, 154 - - -?---Yes.

10 - - - you'll see that you even refer to the figure of 2.8:1 at least two and perhaps, at least two days and perhaps two weeks prior to the meeting.
---These are the emails you're referring to?

Yes, your email to Mr Annand we refer to.---Yes, sir.

So do you accept that your recollection as it appears at page 3627 of the transcript cannot be correct?---Well, the bit about being surprised, yes, but in terms of my account of that document being handed over in the surroundings that I described there, that's - - -

20

Well, I haven't asked you about that.---Sorry, sorry.

In terms of being surprised - - -?---I, I - - -

- - - you admit that you were wrong?---Yeah, that was the best recollection that I had at the time when I gave the evidence, yes.

30

And in terms of seeing not just your sensation of surprise, but in terms of seeing it for the first time, you accept that you cannot have been correct about that either?

THE COMMISSIONER: Well, hold on, hold on. Seeing what?

MR ANDRONOS: Seeing the figure of 2.8.

THE COMMISSIONER: Okay.

40

MR ANDRONOS: You cannot have been correct about that either?---Well, what was, what was sent in the previous emails was I think an FSR higher than that anyway, it wasn't - - -

Well, in your email to Mr Annand - - -?---Yeah.

- - - you identify 2.8:1 - - -?---Sure, sorry, yes.

- - - as the figure.---I understand the question, yeah.

So there's no surprise about 2.8:1.---Yeah.

Yeah.---That was my best recollection at the time.

Okay. Now, it was your best recollection at the time, but it demonstrates, doesn't it, that the picture you have in your mind of that meeting as being one where you walk in, a document is shown to you and you're surprised by what you see, at the outset is not an accurate recollection? Just answer that question insofar as I've taken you, please.

10 THE COMMISSIONER: I object. I think that's unfair. His evidence wasn't that he was surprised at the document, it was more the FSR being 2.8.

MR ANDRONOS: All right. Well - - -

THE COMMISSIONER: There might have been, yeah.

MR ANDRONOS: Okay. Yes. All right. Well, well, yes, I said document, but I'm certainly talking about in terms of the 2.8. You say in the transcript
20 on 9 August, "Were you surprised when you saw it?" And that was the figure being revised upwards to 2.8. And you said, "I was, yes." Now, my question to you, Mr Stavis, is the picture you have in your mind of how that meeting transpired cannot be correct because the first thing in that meeting is not borne out by the objective evidence. Do you agree with that?---I don't, sorry. I, I do recall the meeting the way it was. But I, on reflection, in terms of at the time when I gave the evidence, the comment about being surprised, I probably, obviously accept that that's not the case. But I remember distinctly being given that document at that meeting with all those people present. With the handwritten notes, sorry.

30 You remember being given a document with the handwritten notes on it.
---Yes

But you still recall being surprised, do you?---No, I'm not saying that now.

No, I'm not asking you to tell me what I want to hear.---No, no.

I'm asking that notwithstanding the objective evidence, which probably indicates to you that you can't be correct, do you still have a picture in your
40 mind of being surprised?---Um, um - - -

THE COMMISSIONER: It's a bit difficult after the objective evidence.

MR ANDRONOS: Well, yes, I know, but - - -?---It's, it's hard for me to, look, all I can say, sir, is at the time when I gave the evidence I believed it to be a true account.

Look, look, Mr Stavis, I'm not having a go at you in that respect. What I'm testing is your recollection and whether, up until I took you to this five minutes ago, you would have sworn on a stack of Bibles – and in fact did swear – that that was your recollection.---Yeah.

And what I want to suggest to you is that no matter what you subjectively believe – and honestly or otherwise, we won't get into that – but no matter what you subjectively believe, the reality was you were not surprised. When you look at the surrounding circumstances you cannot have been.
10 ---When you look at, I'll answer, I'll answer truthfully. At the time I thought that was the best, that was my recollection, of being surprised. I agree.

THE COMMISSIONER: Mr Stavis - - -?---Sorry.

- - - I don't think Mr Andronos is attacking you on your evidence that you gave back on 9 August.---Sure.

I think he's now exploring, as you sit here today and think back, what occurred at that meeting.---Yes.
20

Is it your recollection that you weren't surprised at the 2.8 FSR?---Um - - -

Or what is your recollection as you sit there now?---I can remember feeling a sense of surprise, and maybe the surprise was not, I don't know, I just felt that at the time.

All right.---I don't know how else to - - -

MR ANDRONOS: Okay. Now, still on that account of the meeting, the
30 account that you gave to the Commission on 9 August this year. The account goes on for some pages, but if we go to 3628, first you have an exchange with Mr, your account is that you have an exchange with Mr Demian. He wasn't being aggressive because he was in the presence of others as well. If you just want to remind yourself, that's on 3628 at about line 17.

THE COMMISSIONER: Sorry, have you got the page?---I don't have line, I don't have a line 17.

40 MR ANDRONOS: It's between 10 and 20. Every tenth line is numbered, okay?---Oh. So - - -

So you have to - - -?---3628.

3628. You have to count the lines, including the blank lines, yourself.
---Yeah.

Now, where I particularly want to address your attention, Mr Stavis, is what follows from that. So there you say that Mr Demian wasn't aggressive. We go further down the page to the paragraph at line about 35, the paragraph which commences with the words "How did you respond".---Yes, sir.

10 And the question is, "How did you respond?" Your answer is, "Look, as I normally respond. I said yeah, we'll look at it on its merits. I was noncommittal at that meeting in any way, shape or form." Now, my suggestion to you, Mr Stavis, is that was a truthful answer and it was an accurate answer. Now, that's correct, isn't it?---Yes, sir.

Now, then we go over to the next page 3629, perhaps starting at the top. "Was there any indication on your part of whether 2.8 was achievable?" And you say, "No, no." Then you're asked the question, "Did Mr Montague say anything?" You say, "Not that I recall other than in just very general terms about looking at it. I remember him saying, 'Spiro, look, go away, have a look at it and see what you think.' Words to that effect anyway." Do you see that?---Yes, sir.

20 And then the next question, "Was there anything that was said about you having to come up with a solution?" And your answer is, "Not that I can recall specifically, no. Sorry." Now, my suggestion to you, Mr Stavis, is that this was honest and accurate evidence.---I believe so.

30 But wait, if you go to the passage that my friend, Counsel Assisting, took you to from page 3630 of your private examination on 1 December. It starts there. Now, here you were confronted in the witness box on 9 August this year with some evidence you had given on a different occasion in a different forum and it was different evidence. Now, you're talking about a meeting and I suggest it's the same meeting and you'll see starting at about line 30 on 3630, "So there was also an issue about increasing the FSR on the site?" "Yeah. The floor space ratio, yeah, yeah, look, yes." "What was the issue?" "The issue was in relation to try and get a certain FSR on the site, whether or not that could be achieved. Yeah." "And could it be achieved?" And I won't read the whole answer but you say that there's difficulty. "Who wanted that particular FSR that was difficult to achieve?" "Well, obviously the proposal that," oh, yes, that's probably what you did mean. "What was in the proposal?" "Yeah, yeah." "Did anybody else speak to you about trying to achieve the high FSR?" "Mr Montague." "Mr
40 Montague did? When did that conversation take place?" "We had a meeting at council in his office." "Was anybody else present?" "Yeah." "Who else was there?" "Charlie Demian." "Mr Demian was there?" "Yes." "Pierre Azzi and Councillor Hawatt?" "Yeah." "And what did Mr Montague say during that meeting?" "Well, I walked in on the meeting, right. They were there before I arrived. I walked in on the meeting and there was a bit of paper like that with some scribbled notes on it and there was, I distinctly remember there was an FSR figure on it, yeah. So it was all, it was, yeah, so when I walked in it was the case of again me defending

the fact that we couldn't achieve a particular yield." "Who were you defending that against?" "The developer." Look, I won't take you through all it because you've already been through it twice, but if you go over to 3632, just after the number 30 on the left-hand side, the paragraph that commences, "So what did Mr Montague say?" "Well, you know, we've got to come up with a solution." "And did you give any undertaking and," oh, you said, "The only thing I said was put, you know, put the issues up, put your (not transcribable) to us and we'll have a look at it, yeah." And that's where that account of that meeting ends on that occasion. So, straight away, 10 Mr Stavis, you can see the problem for the Commission, because you've given two quite inconsistent account of the same meeting, correct?

THE COMMISSIONER: Sorry, on that - - -?---On that point?

MR BUCHANAN: Commissioner, can I respectfully submit that the first question should be, if the proposition is that they're quite inconsistent, then putting that proposition and seeing whether the witness in fact agrees with that.

20 MR ANDRONOS: Of course. Of course, I'm sorry. I'm racing ahead.---It was a bit difficult to follow you - - -

THE COMMISSIONER: Hold on Mr Stavis. Hold on.

MR ANDRONOS: Do you accept that in those two accounts of the meeting you have Mr Montague saying quite different things? Do you agree?---Can I be taken to - - -

30 Yes, I'll take you to - - -?---For comparison?

I'll take you back specifically to the passage.---Yep, you know.

Go to 3629 at line 4.---Yes, sir.

40 "Did Mr Montague say anything?" "Not that I can recall, other than in just very general terms about looking at it. I remember him saying, 'Spiro, look, go away, have a look at and see what you think,' words to that effect anyway." "Was there anything that was said about you having to come up with a solution?" "Not that I can recall specifically, no. Sorry." Now - - - ?---Sure.

Now, can you then go to 3632 at line 32. "So, what did Mr Montague say?" "Well, you know, we've got to come up with a solution." Now, I suggest to you, they are not consistent.

THE COMMISSIONER: Do you agree with that?

MR ANDRONOS: Do you agree with that proposition?---They're not, they're not, if you take them, if you compare the two, they're not.

They're not.---I accept that.

Now, you were sitting in the witness box and were confronted, having given your account in August of this year of what you remember, you were confronted with having said something different. Now, what I suggest happened on that occasion in August, Mr Stavis, is that you were concerned
10 about having given inconsistent evidence and so you simply fell back into line and said the first version must be correct. Is that what you did?

MR PARARAJASINGHAM: (not transcribable) first version - - -

THE COMMISSIONER: Sorry - - -

MR ANDRONOS: Sorry, sorry, the - - -

THE COMMISSIONER: I'm confused with versions.
20

MR ANDRONOS: I'm sorry. I'm sorry. The December 2016 version must be correct. Is that what you did?

THE COMMISSIONER: Sorry, say that again?

MR ANDRONOS: Sorry, I'll withdraw that question.

THE COMMISSIONER: Sorry, could you ask that question again?

30 MR ANDRONOS: Sorry, Commissioner. The question was a mess. I won't press that. Can you not, please, before I ask that question, can you not, please, go to 3634. Well, actually start at the bottom of 3633, the last three lines of 3633. And I just want to go back then to your memory of what Mr Montague said in terms of the particular contribution to the conversation.---Sure.

Can you, as you sit there now, sir, this is on 9 August, recall him saying that a solution had to be found? Now, before you go any further that is different
40 to the original evidence you gave on that day a few pages earlier, do you accept that?

THE COMMISSIONER: I think you've established that.

MR ANDRONOS: Yes, okay. "If so, I want to ask you to tell us what is your recollection about what Mr Montague said on that subject, if you wouldn't mind." "I distinctly remember after, towards the end of the meeting, Mr Montague, I mean, there were a series of exchanges with everyone and then Mr Montague saying to me distinctly, 'Look, we have to

find a solution to this.” So, and I'll read the next question and answer as well, “And what did you understand Mr Montague was saying to you? What did you have to do according to what was your understanding of what Mr Montague was saying to you?” “Essentially, to look at the proposal itself and see whether or not, look, the tone and the spirit of what he was saying was pretty much, look at finding a solution, in the sense of looking at finding a way in which we can get to the 2.8:1, yeah.” Now, isn't what you're saying in that last passage I read to you that what Mr Montague actually said to you was, “Go away and have a look at it,” but you
10 interpreted that by way of its tone and spirit to mean go and achieve 2.8:1? Is that what that last answer means?---Because of the way, yes, I'll answer it that way.

Yes. Because at first in August of this year when asked to give your actual recollection you said that all he said was, “Go away and have a look at it.” Then when confronted with evidence that you had said something different on a, on a different occasion, you said, “Oh, yes, I remember that he told me to go, go fix it, go find a solution.” But then when you were asked to give your recollection again, what I suggest you did is try to synthesise the two
20 so that your actual recollection that you gave the court in August would conform with what you were told you said in December 2016. That's what happened, isn't it?---No, I don't remember that happening, to be honest with you, in my mind. I tried to give a best account in each, each time I was asked a question or very similar, as best as I recalled at that time when I gave evidence.

Of course, because it's a long time ago, it was a long time ago even in 2016 when you were talking about specific words in a specific meeting, wasn't it?
---Yes.

30 And human memory is a fallible thing. Correct?---Correct.

And you are left with an impression when the actual words used might not conform with the impression you have. You agree with that?---On occasion it could occur, yes.

And it's possible, isn't it, that you came away from that meeting with an impression that what Mr Montague said was, “Go and find a solution,” when the actual words he used were the words that you recalled, which is,
40 “Go away and have a look at it.” That's possible, isn't it?---If I'm hand on heart, it's possible.

Well, it's likely, isn't it?---I, I, I don't know whether I could go that far, sir, to be perfectly honest with you.

All right. Well, let's look at what happened, let's look at what happened after the meeting.

MR PARARAJASINGHAM: Could I just raise one matter?

THE COMMISSIONER: Yes.

MR PARARAJASINGHAM: My friend is moving on. Just in fairness to this witness, and I stand to be corrected, but I don't think it's been put that what was said in December of 2016 at the compulsory examination was incorrect. I don't think that's been put. My friend has asked about things said on 9 August, this witness has been taken to what he said in December of 2016, but I mean I stand to be corrected but I don't think that was, it has been put that that was wrong, which underpins my friend's line of questioning.

MR ANDRONOS: I, I - - -

THE COMMISSIONER: He definitely established it was inconsistent. Sorry, Mr Andronos.

MR ANDRONOS: Yes. Look, I'm indebted to my friend. I really should as a matter of completeness say that. Now, Mr Stavis, as my friend, Mr Pararajasingham points out, I'm putting a series of propositions to you and those propositions are essentially that when you were first invited to give your account in August of this year of what was said at that meeting, you gave the correct version, and it follows from that proposition that what you said in December 2016 is incorrect. Now, I will put that to you squarely. I am suggesting to you that what you said in December 2016, that Mr Montague said in words, words to the effect of, "Go away and find a solution," was not correct.---At the time that was my recollection. I, I, I, I get, I, I, it's possible, it is possible.

THE COMMISSIONER: Mr Stavis, sitting there today and thinking about that meeting, what's your recollection? Forgetting everything, the version, what you said in - - -?---It's a bit difficult, yeah.

- - - December, what you said in August?---My recollection is that I walked into a meeting and the gentlemen, the two councillors, Mr Hawatt and Mr Azzi, Mr Montague and Charlie Demian were all sitting around. There was, there were pleasantries exchanged. I sat down. Mr Demian went and started talking about things, just as spruiking his proposal, had the plan, and I recall in relation to Mr, Mr Montague him saying, "Go away, have a look at it," words to that effect. But I interpret that as actually, really, look, and that's - - -

Sorry, so that's your recollection as you sit there today?---That's, yeah. Yes, sir. Pardon, ma'am, sorry.

MR ANDRONOS: Can we look at the events which immediately followed that meeting? Because I'm going to put you some more propositions which

bear upon your recollection of the meeting. On 8 December, 2015, you sent your secretary an inquiry in relation to a meeting she had scheduled with Peter Annand. This is at volume 14, page 1.---Yes, sir.

10 Now in the inquiry you sent to Ms Rahme – sorry, you say, “Do you know what this is about? Fadwa wants me to meet her for site visits over lunchtime. Can you call her to arrange?” She responds, “This is the meeting you asked me to schedule with Peter Annand.” And then your response, the final email in the chain, is “Okay, I think we should reschedule for next week as I'm still waiting for instructions.” And the heading is “Re: 998 Punchbowl Road”. So you are obviously telling Ms Rahme, and tell me if I'm wrong about this, that you're waiting for instructions about something prior to meeting with Mr Annand. Is that a fair reading?---I believe so. That's what it says.

20 Now, you said in evidence, 3659, line 41, I don't think you necessarily need to see it, that you thought you were waiting on instructions from Mr Montague. Do you recall giving that answer?---No, I don't recall giving that answer but I, I can look at it.

Just before I take you to it, if you were waiting on instructions from Mr Montague, what would that be instructions about that you would need to hear from him before having a meeting with Mr Annand?---I'm not sure, to be honest with you. I really can't recall what it would be.

30 Is this correct? The reason you're not sure is that there's nothing you could have been waiting on instructions from Mr Montague on at that point in relation to that project.---I wouldn't have put it in those terms if I wasn't, to be perfectly honest with you. I'm just, I haven't seen what I actually, the context of it.

Okay, well, let's go to the transcript. 3659. Line 41. Starts at line 16. Line 16. So about two-thirds of the way up the page.---Sorry, what page?

3659 of the transcript.---Thank you.

Now, you were asked some questions in relation to this very email, which is why I'm coming back to it.---Yes.

40 And the question is, “From whom were you waiting for instructions?” And your answer is, “I really don't remember. It's likely that it was from the general manager.” Then you went on to deny it being from Mr Demian and then at 41, so the last paragraph on the page, “But what instructions from Mr Montague would you have been waiting on at this stage?” “Look, I'd be speculating. I'm only assuming. The only people I took instructions from, sorry, that reference is likely to be, sorry it's likely that it was from the general manager but I can't be a hundred per cent sure.” Now, my question to you, Mr Stavis, is essentially, and so I'm not simply replicating the

question that's been asked, I'll put it to you as a positive proposition. There was nothing you could have been waiting on Mr Montague to give you instructions on at the time you sent that email at page 1 of volume 14.---I, I did, I did quantify, or qualify that by saying that I didn't remember, from memory and just reading that.

10 Well, that's right, you were speculating and I'm not saying you put it at a high level of confidence, but I'm saying, on reflection, looking at it again now, your speculation must have been wrong, mustn't it?---It is possible, yes.

Well, it must have been.---I, I can't be a hundred per cent to be perfectly honest with you but it, it is certainly possible.

THE COMMISSIONER: This an appropriate time?

MR ANDRONOS: I see the time, yes, thank you, Commissioner,

20 THE COMMISSIONER: All right. We'll adjourn for lunch and return at 2.30.

LUNCHEON ADJOURNMENT

[1.32pm]