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INDEPENDENT COMMISSION AGAINST CORRUPTION

PATRICIA McDONALD SC
COMMISSIONER

PUBLIC HEARING

OPERATION DASHA

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 16 OCTOBER, 2018

AT 12.00PM

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

THE COMMISSIONER: Any administrative matters?

MR BUCHANAN: No, Commissioner.

THE COMMISSIONER: Right. Mr Stavis.

THE COMMISSIONER: Right. Mr Pararajasingham.

MR PARARAJASINGHAM: Thank you, Commissioner. Mr Stavis, I have four topics to explore with you. Do you recall in the course of your evidence you gave some evidence about Mr Montague's views about the need for development in the Canterbury area?---Yes.

10

Just to assist you, the reference is transcript page 3975 where at line 18 you were asked, "Did Mr Montague ever say anything in these meetings about wanting more development or wanting more development of this kind, referring to the particular kind under discussion at that particular meeting, just in general you were talking about." "Yes, he certainly expressed in some of those meetings the need for development at Canterbury because it had been long overdue. His words, not mine, so yeah." Do you recall giving that evidence?---Yes.

20

So as at March 2015, what had been your connection to the Canterbury LGA?---I lived in the local government area I think since 1978 and in terms of dealings with council I was, in my capacity as a consultant town planner, dealt with council as well.

And as at March 2015, what were your personal views about development in the Canterbury LGA?---I think it very tired. The local government area was in dire need of development and an injection of I guess some growth. You only have to drive around to see how dilapidated buildings are with not much sort of capital investment.

30

Did you make any observations as to the pattern of the types of development that had occurred in the Canterbury LGA as at March 2015?---Very little I think. There were some mixed-use-type developments. The Canterbury town centre was being developed I guess but it was very sparse.

And would you say that your views were consistent with Mr Montague's views on the matter?---Yes, sir.

40

Now, sir, I want to explore just one aspect of your decision-making process whilst you were the DCP at Canterbury City Council. Can I take you to transcript page 3644.

THE COMMISSIONER: Do you want a hard copy?---Yeah, if you don't mind, just in case. Yes, sir.

MR PARARAJASINGHAM: Now, just a little moment. Just to assist you, the context of this extract, you were asked questions about a meeting regarding property at 998 Punchbowl Road and this was the meeting with

Mr Demian, Mr Montague and two councillors, where a particular FSR figure was raised. Do you recall?---Yes.

10 Can I just take you to line 31 to 40 on page 3644, and you were asked this question, “And you saw that as, given Mr Demian’s approach and given the particular figure that had been provide to you, as meaning that you had to procure an amendment of the planning proposal that supported an FSR of 2.8:1 or have very good reasons why you couldn’t?” Answer, “It’s not as simple as that. Provided that I was satisfied that we could potentially achieve that FSR within the planning parameters that Peter Annand had identified in the past, did I feel pressure? Yes, I did, I did.” Mr Stavis, you’re saying a few things there, it appears. Can you just unpack that answer for us, please?---There are two aspects to it. The first is that I had to be satisfied that I could support the proposal on its merits and, and, and in, and then I talked about the pressure that I was under to find, I guess, a solution.

This matter of being satisfied, I’ll call it personal satisfaction.---Yes, sir.

20 Is that something that, are you saying that in your mind, you needed to be personally satisfied of the merits of DA?---Yes, yes.

And you used this expression satisfaction throughout the evidence and I won't take you to all the references. You also used the expression comfort. ---Yes.

30 “I needed to be comfortable.” Can you explain how you used that word? Comfortable, in what context are you using that?---That on merit, I proposal, I felt comfortable in supporting a proposal.

And comfortable by reference to what?---Well, in terms of applications, that the proposal, whatever for it was, it felt and dealt with, it was appropriate in its urban context.

THE COMMISSIONER: Sorry, it was appropriate in its - - -?---In its urban context.

40 MR PARARAJASINGHAM: And coming back to your original answer, you said there were two aspects to it. You’ve given us some content to the first. The second was the pressure aspect. Can you articulate for us how those two phenomenons interacted?---Obviously there was pressure in getting applications out as, in a timely manner and the, and the process I guess that I followed was to ensure that things progressed, but in doing so, not at the expense of the merits of a proposal.

But you accepted that there was also pressure, was there not, to approve applications?---Yes, yes.

So my question is really, how did that aspect of the pressure to approve applications, how did that sit with this idea that you've raised about personal satisfaction, personal comfort?---Oh, it was two different things. I mean I still had to feel that I can support a proposal on its merit.

Can I take you to an example with another property. This is transcript page 3942.---Yes.

10 Just give me one moment, sir. So this is in the context, you were asked questions about communications between yourself and Mr Hawatt and Azzi regarding the frustrations that you were having with Charlie Demian's development application at 538-546 Canterbury Road. Do you understand that that's the context?---Yes, sir.

This is the car wash site.---Yes.

Can I just direct you to lines 7 to 28. I'll just read this to you. You were asked, "We've been through this already. You knew, didn't you, that if these issues weren't addressed then you wouldn't be able to justify an
20 approval being granted for the applications. That's fair, isn't it?" "I accept that, yes." "So what you're doing is, you're telling them, look, if you want these guys' applications to be approved they're going to have to play ball." Answer, "I was trying to find solutions, exactly." We'll skip over the next paragraph, and then it reads, "If there was to be apparent justification for approval then you could see that there were problems, that there were holes in the applications that needed to be covered over." Answer, "I wouldn't use the words covered over. They needed to address the issues for me to be comfortable with putting a recommendation up." Now, my question to you is this. In that answer you rejected the expression "covered over". Why did
30 you do that?---Because the, I guess what I interpreted covered over means that there are holes in an application and somehow I covered over those holes.

When you say covered over them, what does the expression covered over, what imputations does that expression have to you?---That I really didn't consider applications on merit.

Did it also convey that you were, it's more to do with appearances than reality?---Correct.
40

And you then go on in your answer to say, "I wouldn't use the word covered over." You then say, "They needed to address the issues for me to be comfortable with putting a recommendation up." Do you see that?---Yes, sir.

Can you explain, how does that second part of your answer qualify the first? What's the relationship between you rejecting covered over and then saying what you say there?---Sorry, can you just read that last bit again?

Sure. So you say there, after, “I wouldn’t use the word covered over,” you say, “They needed to address the issues for me to be comfortable with putting a recommendation up.”---Yes.

10 I’m just asking for you to just explain to us the connection between the first part of your answer and what I’ve just read out to you.---Okay. Well, in, in, in the last bit that you just read out it, what I was saying there was that I had to look at the merits of a proposal in its own right and it wasn’t merely just a way in which I sought to cover over any sort of planning issues I guess.

Are you saying that that part of the decision making process was a genuine - - -?---Absolutely.

- - - process you undertook?---Absolutely.

20 And there are other examples in the evidence which I won’t take you to but is this a fair articulation of your position, Mr Stavis? That a filter in your decision-making process was whether you were personally satisfied a recommendation could be supported on a merits basis?---Yes.

Let’s move on to the second topic that I want to ask you about, Mr Stavis. Give me one moment. Can I take you, Mr Stavis, to your contract of employment, and in particular the KPIs. So the contract of employment starts at page 144 of volume 5. You recognise that as your contract of employment, Mr Stavis?---Yes, sir. Yes, sir.

30 Can I take you firstly to page 150 and do you see clause 6.1.1, “The employee will, to the best of their ability, meet the performance criteria set out in the performance agreement, showing schedule D, as varied from time to time.” Do you see that?---Yes.

Then can I just take you then to just the commencement of schedule D, page 167. Do you see that as the title Schedule D, Performance Agreement? ---Yes.

And do you see that part A refers to outcomes and key performance indicators?---Yes.

40 Now, can I just take you to page 168. I just want to ask you about a particular KPI. Do you have it there, sir?---Yes, yes.

Do you see in the column Strategy at the bottom, sorry, we’ll start with, Themes and Long-Term Goals, that column.---Yes.

The second one reads “strong community”. Do you see that?---Yes.

And if you go over to the strategy, the last entry reads, “Delivery of high-level customer satisfaction”.---Yes.

Who are the customers, to your understanding?---The public and also applicants generally.

And if we just go to the third column, headed Key Performance Indicators, I just want to ask you about the last paragraph. I'll just read it out for you.
10 “By 30 July, 2015, implement a new method for front office processing of development applications so that customers have access to professional advice and any DA submitted meets the required standard before the application is formally lodged for assessment.” Do you see that?---Yes, sir.

To your understanding, was that KPI directed towards any particular deficiency within council?---Yes.

And what was that deficiency to your understanding?---The, basically, advice or specialised advice that was lacking at the front counter from a town planning perspective.
20

And to your understanding, what was the consequence of that deficiency?
---Poor customer service.

THE COMMISSIONER: I'm sorry, when you say the front counter, this is at council? If I wanted to make an enquiry about a DA, I would approach the front counter?---Yes.

And it's that advice being given at that initial meeting or dealings between the applicant and the member of staff at the front counter?---Correct.
30

MR PARARAJASINGHAM: And you're talking about planners when you say member of staff?---Yes, yes.

Right.---Yes.

Now, you've identified a deficiency that the KPI was directed towards. What's your understanding of how this KPI addressed that particular deficiency?---By providing upfront specialised advice, it, it leads a person – and it could be just a mum and dad – leads them with a better understanding as to what would be the likely issues with their proposal, so it identifies
40 issues, it's meant to identify issues up front and - - -

I'll just stop you there. When you say up front, this is all prior to the formal lodgement of a DA. Correct?---Correct, yes.

Sorry, I interrupted you.---Yeah. And it was designed to provide more informed I guess explanations on policy, controls, information that was likely to be required so that, and it was, so that a person could go away from

the front counter being a bit more informed than if it was just an admin person advising them.

10 And can I just direct your attention to a particular phrase. See in the second-last line it says, "And any DA submitted meets the required standard before the application is formally lodged for assessment." That expression, required standard, what did that mean in the context of this KPI?---Two aspects to it, one is not just the formal requirements that would make up an application, so that's one standard, but it's also almost like a preliminary forensic analysis of information that may have been provided over the counter and any, been able to identify any deficiencies in that information.

Is it, to your understanding is that reference to something more than mere ticking boxes?---Correct.

Is it to your understanding directed towards a quality assurance consideration?---That's correct.

20 Just before I move on from this particular KPI, is it your understanding that this KPI encouraged hand-holding by council prior to the formal lodgement of a DA?---Yes.

Can I just now take you to page 170 of the same volume, we're still in schedule D. If you just see, I'm interested in the third column.---Yes.

30 And the fourth-last paragraph which reads, and this is one of your KPIs, "By 30 July, 2015, implement a process allowing councillors to review major development applications so that councillor concerns can be raised." Do you see that?---Sorry, where are you reading that?

So you're on page 170?---Yeah.

I'm in the third row.---Yes.

And it's the fourth paragraph from the bottom.---Yes, sir.

Right. Starting, "By."---Yep.

40 Do you see that?---Yes.

My question is, to your understanding what deficiency was that KPI directed towards?---Providing upfront information or early in the process to councillors and it was meant to act as a way of informing them early in the process rather towards the end.

Okay. So you've identified it's directed towards informing councillors, but there is, is there not, another aspect to that KPI where it reads, "Implement

process allowing councillors to review major development applications so that councillor concerns can be raised.”---Yes.

What was the point in a process that required you to notify councillors?
---The point was that, well, councillors, it gave councillors the opportunity to raise any issues of concerns that they had early in the assessment process.

10 Sure. Because just taking a step back here, because councillors are the ones who ultimately would put a vote on a particular DA. Correct?---Correct, correct.

Right. And that’s at the councillor level. Correct?---Correct.

Is your understanding of this KPI that it was directed towards councillor involvement prior to that stage that I just referred to?---Yes, sir.

20 And did you in fact implement any such process?---Yes, sir. We started monthly meetings where relevant. Not in all cases there were a month that a major development application or planning proposal was lodged, but when there were we had these monthly, what we called briefing meetings with councillors.

THE COMMISSIONER: And who attended those?---The invitations went out to every councillor.

30 And sorry, from the staff?---Yeah, it was normally myself and sometimes, not always, but sometimes, because a lot of these were held after hours, it would be the relevant manager of that section, so either George Gouvatsos or Gillian Dawson when she was there.

MR PARARAJASINGHAM: But to just, I’m not sure you answered the Commissioner’s question, but which councillors would attend these meetings?---Well, the invitation was expressed, was extended to all the councillors.

40 Yes.---The majority of the, well, I’d say the main participants were Mr Hawatt, Mr Azzi, Councillor Kebbe I believe, to a lesser extent, but Councillor Saleh, on occasion the Mayor, I believe Linda Eisler attended, and there were a couple of others that I forgot, sorry.

THE COMMISSIONER: And were minutes kept of this at these meetings?
---I’m just trying to think if there were. It wasn’t - - -

Was it more informal?---It was more informal, yeah, yeah.

MR PARARAJASINGHAM: And can I just take you now to the second-last entry in that column on page 170. The KPI says, “Nil substantiated and

validated complaints from the Mayor or councillors regarding the director's professional conduct." Do you see that?---Yes, sir.

Did you understand that KPI to be effectively you had to keep the councillors happy?---Yes, sir.

That you had to service them?---Yes, sir.

10 Just before I move from this second topic, Mr Stavis, can I just take you to transcript page 3973.---Yes.

Sorry, sir, just give me a second. So from 3973 over to 3974 you were asked some questions, you were asked some questions by Counsel Assisting about firstly a formal pre-DA process, and then if you go over to page 3974 you're asked questions about an informal pre-DA process. Do you see that? ---Yes, yes, sir.

20 And this was in the context of questions about 212-218 and 220-222 Canterbury Road. Do you follow that?---Yes, sir.

I just want to ask you about the formal pre-DA process, do you understand, you were asked about the informal, I don't want to ask you anything about that. This formal pre-DA process, is this something that you inherited on your arrival at Canterbury?---Yes.

30 What to your understanding is the purpose of this formal pre-DA process? ---It provides a form for applicants to get feedback on their respective applications. And when I say feedback, I mean detailed advice and in, in almost all cases that was in the form of a written response at the end of that process.

And when you say formal advice, with council staff?---It would be council staff and that could be staff from various disciplines depending on the nature of the proposal. For example, there might be a traffic engineers, a town planner, a landscape architect, a heritage architect and there would ordinarily be representatives for the applicant and - - -

40 Such as?---Experts, so in their respective fields. So town planners, architects and the like.

Would you, as the DCP, attend something like this?---Generally if the staff thought that it was a major development of some sort or potentially a controversial one, yes.

And it's perhaps obvious, but this was all pre formal lodgement of a DA? ---Correct.

Is this process common at other councils, based on your experience?---Very common.

And perhaps you've given this answer, but at these pre-DA meetings is it fair to say that it is a free exchange of views and opinions?---Absolutely.

During the course of which council staff indicate a view as to the merits of a particular proposed application, for example?---Yes.

10 And in your experience at councils and Canterbury, how detailed is the nature of the opinions and views expressed by the council staff?---Quite detailed and to the point where it's like a mini assessment of their proposal.

And is it the case that things said in this forum are non-binding?---Non-binding, yes, and there's a disclaimer that's circulated at the bottom of the letter, the pre-DA advice letter, that basically says that.

20 So this letter that you've just referred to, this is something prepared after the meeting?---After the meeting it normally gets circulated, well, when I was there, about a week or two after the meeting took place.

And typically once that has been served or sent, what typically happens after that? What's the next step?---Ordinarily what would happen would be that the applicant and his or her experts would take the contents of that letter, and if there were issues that were identified in that letter they sought ways of addressing those issues in their formal submission, when it ultimately got lodged.

30 So is it the case that often there were differences between what the applicant presented in the formal pre-DA process and what was ultimately lodged?
---Yes.

I'm just going to move on now to a third topic I'd like to ask you about. Can I just take you to volume 20. And I take you to page 3 of that volume. Do you see, do you recognise this is the memorandum of advice prepared by Mr McEwen, Senior Counsel?---Yes.

40 If you go over to page 4, this advice was in respect to 548-568 Canterbury Road?---Yes.

This was a development that sought two additional floors, do you recall that?---Yes, yes.

And the second paragraph sets out the advice sought, which is whether it was open to council to be satisfied with respect to the relevant requirement of clause 4.6. Do you see that?---Yes.

So if you just go to page 13, do you see the advice was dated 14 July, 2012?---Yes, sir.

Now, what I want to ask you about is, if you can just go over to the next page, that is an email from Peter Jackson of Pikes Verekers lawyers to you. ---Yes.

10 And the body of the email says, “Please find attached the guidelines checklist for consideration of clause 4.6 exceptions to development standards.” See that?---Yes.

And then it goes on to say, “I have also attached, as part of the guidelines, three relevant decisions as follows,” and we’ve got the 425 v Ashfield Council 2015 decision there. Do you see that?---Yes, sir.

And then what follows on pages 15, 16 and 17 is the checklist.---Yes.

20 Now, why did Mr Jackson send you this email with those attachments? ---I asked for it.

Why did you ask for it?---Because I was concerned that, with the recent changes to case law in regards to consideration of clause 4.6, which had the net effect of creating another, sort of, layer in the consideration in the assessment for clause 4.6 submission, I wanted to get advice on that.

30 You said a number of things there. Let me just kind of work through them. So, can I ask you this, what was the purpose in sourcing this checklist? ---The purpose was to ensure that we were adequately dealing with clause 4.6 really.

And is it your evidence that this was prompted by the recent case law? ---Yes, sir.

And is it your position that your understanding of the 425 v Ashfield Council decision – and we won't go into it – was that, as you understood it, that case introduced a new element regarding the requirement that a development must result in a better planning outcome?---Essentially, yes.

40 And in your mind the effect of the recent decision was to tighten the test? ---Yes.

The clause 4.6 test.---Yes.

Is that what was in your mind?---Yes.

Now, did anyone ask you to source this document from your lawyers?---No.

Did Mr Montague say anything about it?---No.

Councillors Hawatt, Azzi, was it raised with them?---No.

So the idea to source this document came from you?---Correct.

Did you tell anyone that, you know, that this is what you were doing?---Yes.

Who did you tell?---George Gouvatsos.

10 And so Mr Jackson sends you this email with the attachment, and then if I can take you to page 94, do you see later that day, at 3.50, you send an email – sorry is that, have you got that there?---Yes.

You send an email to the development assessment team, correct?---Yes.

20 Where you say, “Hi all. To assist in your assessment for clause 4.6 submissions, I've devised a set of guidelines for you to consider as part of your assessment. All assessment reports should deal with clause 4.6 submissions in this way and I have also attached, as part of the guidelines, three relevant decisions.” So you see that?---Yes, sir.

How did you envisage the staff to use this document, this checklist document?---To include as part of their assessment reports. So they would use that document as a guide to assist them in understanding what matters needed to be addressed.

So are you saying that as they were undertaking that process that this checklist would be in front of them or just to the side of them?---Yep.

30 And they would use it as they went through the process of assessing a clause 4.6 submission?---Correct.

THE COMMISSIONER: So they're topics or issues that had to be addressed?---Yes.

MR PARARAJASINGHAM: And it's almost like a flowchart kind of set-up, isn't it? There are questions that they need to turn their minds to as they work through the document?---Yes.

40 And perhaps it's an obvious question, but why do that? Why give your staff this checklist?---To make sure that we, that they addressed the, the clause 4.6 appropriately and to give them I guess, make sure that they understood what, what they needed to consider.

Okay. So you provide this to your staff on 17 July. Did you get any feedback from the staff?---Yeah, I got, yes.

Okay. And what was the nature of that feedback?---Reluctance.

Why do you say that?---Some pushed back, because - - -

THE COMMISSIONER: Sorry, reluctance to - - -?---Well - - -

- - - use the checklist or disagreement with its approach?---I think to use the checklist because it effectively meant I guess an increased workload.

10 MR PARARAJASINGHAM: Sorry, I missed that last bit.---Increased, it meant increasing the workload and sort of another layer I guess and way in which one would need to consider when preparing a plan report for assessment.

Okay. So are you saying that the impression that you formed as a result of feedback from staff was that this document basically created more work for them?---Yes.

THE COMMISSIONER: Which staff?---(No Audible Reply)

20 Can you recall who raised it with you?---I'm just trying to think. I believe George Gouvatsos expressed to me that he had received some feedback. He's the one that comes to mind, to be perfectly honest with you.

MR PARARAJASINGHAM: So to be clear, George Gouvatsos said to you that he had received feedback about this - - -?---Yes.

- - - this checklist.

30 MR MOSES: Commissioner, I just make just this observation. I don't think this was put by my learned friend to that individual when he was before the Commission. My friend I'm assuming had instructions at the time to put that. I can't recall that being put to that individual, so I mean maybe my friend says he did. I don't have a recollection of that actually being put to that witness.

THE COMMISSIONER: Right.

MR MOSES: I'm not sure where this has come from.

40 MR PARARAJASINGHAM: Firstly, Commissioner, that evidence was given in answer to a question from you, Commissioner, about which staff members.

THE COMMISSIONER: Yes.

MR PARARAJASINGHAM: Secondly - - -

THE COMMISSIONER: Do you intend to take it further?

MR PARARAJASINGHAM: No, no, I was - - -

THE COMMISSIONER: As you said, it was my question. It's been answered.

MR PARARAJASINGHAM: Yes. I didn't ask it.

THE COMMISSIONER: All right. Proceed.

10

MR PARARAJASINGHAM: Thank you.

Now, just moving on from this discrete issue, do you recall, Mr Stavis, that you were asked a number of questions to the effect that you excluded your staff at various stages throughout the lifeline of a DA and a planning proposal. You recall those questions?---Yes, sir.

20 Can I ask you this. Before you commenced employment at the offices of Canterbury City Council in March of 2015, what was your understanding as to the productivity of the urban planning and development assessment team?
---Average and in some cases poor.

And when you say average and/or poor, what do you mean by that?---(No Audible Reply)

In relation to your answer to my question about their productivity.
---Applications taking a long time to be determined. Lack of communication in a timely manner.

30 With whom?---With the respective assessing officer, whoever it was.

Sorry, when you say lack of communication, between whom?---Between an applicant and a council officer.

And this understanding that you formed, what was the source of it?---Many sources. My personal experience in dealing as a consultant planner. Conversations that I had with Mr Montague during, prior to my employment. Certainly Councillor Hawatt and Councillor Azzi as well.

40 And this was all relayed to you prior to you hitting the ground in March 2015?---Yes, sir.

Can I ask, before you started in March of 2015, what was your understanding as to the general approach – call it philosophical, ideological, whatever – towards development by the urban planning and development assessment team?---Conservative, if I had to put a word to it.

And when you say conservative, what does that mean in a planning context?---Rigid.

Rigid how?---Insisting on almost like a checklist approach to planning. Insisting on compliance.

Compliance with what?---Development control plans.

So are you referring to strict compliance with controls?---Yes, sir.

10

And what is the effect of strict compliance with controls?---It, it, it does not allow flexibility to consider sites on merit.

Sure. The question I'm asking you is how does strict compliance with controls play out in a practical sense?---It inevitably leads to, in my opinion, poor customer service and a lengthening of the process.

THE COMMISSIONER: Sorry, and a - - -?---Lengthening of the process.

20

MR PARARAJASINGHAM: Is another way to put it that it results in the knocking back of non-complying DAs?---Yes. That's a given, yes.

And what's wrong with that?---Well, I think a responsible planner would be looking at, if they're customer service-orientated, looking – it's just poor customer service to just keep knocking things back.

In your view is it consistent with doing your job properly as a town planner?---No, it's not.

30

MR MOSES: Commissioner, can I just make an objection? None of this was put to the witnesses when they were called. I mean, I don't really, with all due respect, see what the relevance of this man's observations are in general terms about the planning and assessment team of the council. So he's just made a general observation in effect about the whole team, without any examples or specifics, and hurling it in this way, and for what purpose? It's got no probative value at all. If this is the explanation for his conduct, well, we'll see about that in the final submissions. But this should not be led in this way. If there are specifics, he can point to them. If not, this is of no worth.

40

MR PARARAJASINGHAM: Commissioner, this all goes to Mr Stavis's state of mind while he was director of city planning, and I'm developing and I'm actually moving on from that discrete point. It has been suggested with some regularity that the reason that this man was cutting people out was out of perhaps a consciousness of guilt, things that he was doing. I am exploring another reason for that. So these questions are directed towards his state of mind. This particular aspect I'm moving on from now.

THE COMMISSIONER: I'm not being helped as you've developed this at such a general level. If you're moving on and there are specific instances or if you're moving on to a new point, then well and good.

MR PARARAJASINGHAM: I am going to come to two examples shortly.

THE COMMISSIONER: Thanks, Mr Pararajasingham.

10 MR PARARAJASINGHAM: Mr Stavis, once you commenced at Canterbury City Council in March of 2015, how did you perceive that you were received by the staff of council?---Not all, not all staff but I felt a bit of resentment, yes.

Because it's the case that – as was helpfully put to you last week – you failed to obtain the team leader position in 2013, didn't you?---Correct.

And yet here you were two years later the director of city planning.---(No Audible Reply)

20 You're nodding?---Correct.

And it is the case that your appointment was not without its complications. ---Yes.

On commencing at council in March 2015, it must have occurred to you that those were matters that might have been operating on the minds of council staff.---Yes, sir.

30 And what effect did that have on you?---I guess I became stand-offish in certain circumstances, yes.

Did you become a little guarded?---I did, very much so.

And I asked you a moment ago about the number of people that you were managing. How many people were under your command, if I can put it that way?---I don't know the exact figure but it was in the vicinity of about 140-odd.

40 And prior to that how many people had you managed?---Best-case scenario it would have been six or eight.

Six or eight?---Yeah, yeah.

So it's fair to say you had little experience managing a large team?---I think that's fair.

Now, can I take you to a specific example. Transcript page 3503. Sorry, just bear with me. So, Mr Stavis, this is in the context, you were asked a

number of questions about the Homer Street property, and this is in the context of suggestions that you excluded Lisa Ho and Warren Farleigh from the process.---Yes.

I'll just read out to you the relevant parts. And at page 3503, this is in the context of a meeting that you had with Mr Alex Jelcic, right?---Yes.

10 And at 31 it reads, "Was there a reason why neither of them," referring to Warren Farleigh and Lisa Ho, "attended the meeting?" You say, "The only reason I can think of was because in my view, as I said yesterday, those, they were entrenched within their own, I guess, views on the application itself and I wanted to get a fresh perspective on, on looking at the proposal and exhausting all possibilities." You see that?---Yes, sir.

20 And then if you can just go to 3519. It's a similar context in that these were suggestions that, it was in the context of you were asked questions about the JBA report, and at 20 it reads, and this is in reference to Ms Ho, "You would have been aware that, A, she was the file officer and, B, she had made comments on Mr Olsson's report. Why in that circumstance would you not have sought her input or commentary on the JBA draft report?" Answer, "I can't answer that. I don't know why other than to say what I said before, and that is at that point in time they were, staff, Lisa was entrenched in her views and it's no coincidence that Russell Olsson's report in my opinion was, had exactly the same findings as what the council planner's report's recommendation was." Do you see that?---Yes.

30 Now, you've used this word "entrenched" and you use it elsewhere in your evidence. You would accept that that word might refer to the intensity with which someone might hold a view?---Yes.

And how steeped someone might be in a particular view, do you understand that?---Yes.

My question is, what was the view that you refer to in those two passages, when you say that these people were entrenched in their views? What was the nature of the view?---Rigid.

40 How so?---In the sense that, had a particular view they would not obviously deviate from or look at exploring other possibilities.

But that view, can you give us a bit of assistance in understanding how you, what you mean when you say, "That view"?---In relation to this property?

Yes.---It was, the approach, I guess the, the height issue was one aspect of it. Yeah, so, they would just, I guess, I'm not sure I'm answering the question.

Well, let me ask you this. Is another way to put it that, in your view they were inflexible?---Yeah, I thought that's what I meant by rigid. Yeah.

Conservative?---Yes, sir. Very much so.

Concerned with strict compliance with controls?---Yes.

Not prepared to look at things creatively?---Correct.

10 And I think you said this, not looking at the merits of the application, I think you gave that evidence. Can I just take you to one other example. So, page 3612 of the transcript.

So this, Mr Stavis, is in the context of suggestions that you excluded staff from discussions with Peter Annand, right?---Yes, sir.

20 This is looking at, sorry, the Punchbowl Road property and we're at page 3612. I'll just take you to line 24, "But why were you having these dealings with Mr Annand excluding your staff?" "Primarily because, you know, I was under the, I guess, advice to expedite these as much as we could, all the planning proposals, so, as I've said before, I took more of a proactive approach to things." And then, "You were getting pressure, weren't you, from Mr Demian and Mr Montague at the very least, if not also Mr Hawatt and Mr Azzi, to achieve the result that Mr Demian wanted to achieve on this site?" Answer, "I think that's a fair comment." "And you were getting pushback from your staff to the extent that you were obtaining reports from Mr Annand which satisfied that wish on Mr Demian's part." "That's probably a fair comment, yes." And this is the paragraph I ask to direct your attention to, "And so you didn't want to be exposed to that pushback
30 anymore and so you cut your staff out of the communications with Mr Annand." "No, it was, I made a conscious decision to take a more active role in these proceedings because a lot of these applications got to a point where they were going nowhere." It's that last part of your answer I just want to ask you about. What do you mean by that, that it got to a point that these applications were going nowhere?---The staff were rigid in their views, inflexible, and were not prepared to look at other way [sic] or explore other options, and so they sat on applications.

40 And when you say sat on applications - - -?---Well - - -

- - - what do you literally mean?---They didn't progress the application.

So it would just sit on their desk?---It would just sit on the desk, yes.

MR MOSES: Your Honour, Commissioner, I object again to this line of questioning because these were not matters, which if my friend had been so instructed on these when witnesses were being called who were employed by the council, that these were not put to those witnesses, so again I'm not

sure how this assists the Commission in terms of these general propositions being put that somehow individuals just kept things on their desk. Like which individuals, which files, when?

MR PARARAJASINGHAM: Commissioner, this, it's not being led for the truth of what is asserted, it's being led to give some understanding of this man's state of mind when he did the things that he did. It goes to an alternate explanation for what has been suggested as excluding staff, cutting staff out. So that, that, that's what it goes to. If this witness - - -

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THE COMMISSIONER: What was his impression.

MR PARARAJASINGHAM: His impression, certainly, his impression. That's the purpose of this questioning because for the first time, may I suggest, it is only in the course of examination of this witness did it become clear that, and I appreciate Counsel Assisting does have a case theory, that the suggestion that Mr Stavis was going out of his way to cut people out was made. That wasn't to my mind clear, and I'm not being critical, but that's how it came to my attention. So I'm addressing that aspect of the evidence that came out and that's what these questions are directed towards, but I have now finished that topic. I have one topic left and I notice lunch.

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MR MOSES: Commissioner, can I just make just a response to that, just so we're clear?

THE COMMISSIONER: Mmm.

MR MOSES: I mean there has to be a foundation for a belief so you can't just have a belief based on a fiction. There has to be a basis for it. Now, there is no basis in evidence that's been led in respect of his state of mind, so if there's a suggestion he had an honest belief held on reasonable grounds, there needs to be some grounds to say it. He can't just assert, well, that was my impression, who cares? There has to be some basis for it, otherwise there's no way that you could evaluate at the end of this case, at the end of this inquiry, whether there was a proper basis for it. And these types of assertions should not be hurled for the first time about public officials and why this man thought he could do what he did, with respect. So I maintain the objection.

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40 THE COMMISSIONER: All right then. We'll adjourn and resume at 2 o'clock.

LUNCHEON ADJOURNMENT

[1.01pm]