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17/04/2018

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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE PATRICIA McDONALD SC
COMMISSIONER

PUBLIC HEARING

OPERATION DASHA

Reference: Operation E15/0078

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 17 APRIL, 2018

AT 10.00AM

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THE COMMISSIONER: Mr Buchanan.

MR BUCHANAN: Commissioner, before asking Mr Occhiuzzi to return to the witness box, can I raise, Commissioner, a matter that has arisen since the Commission rose yesterday, which is communications we have had with Mr Occhiuzzi's representative, Canterbury Bankstown's Council's representatives about some further documents that they have provided us with that it's been suggested might be of assistance in examining Mr Occhiuzzi. We've been provided with a letter yesterday, it's dated 16 April 2018 from Hall and Wilcox Lawyers. Mr Occhiuzzi's lawyers, I don't know if Your Honour has a copy of that?

THE COMMISSIONER: I do have a copy, thank you.

MR BUCHANAN: Since receiving that this morning about 9 o'clock, we received a folder, a small folder with 100, 150 sheets of paper in it which are copies of various documents. We've had a look at many of them, mainly just by flipping through, I have to say, courtesy of Ms Ellis taking time off other work that she had to do, to do that. We've identified one document that we think the Commission will be assisted by, but otherwise, unless there is a particular document that it is thought would assist the Commission on the issues before it, we think that it should be possible for me to examine Mr Occhiuzzi about the general nature of the communications and who they were from and the effect they had on him without a need to trouble the Commission with another folder.

THE COMMISSIONER: All right.

MR BUCHANAN: So, so far as concerns the letter from Hall and Wilcox, Commissioner, there are seven types of documents itemised there, document five is the document that we've selected out and that I would wish to take Mr Occhiuzzi to. At the moment, we don't think the Commission will be assisted by going to documents one to four. I will be taking Mr Occhiuzzi to the document at item 6, I should indicate that we were given a copy of that last night. And as for 7, that's the bulk of the documents and it's going through those that will take a little bit of time, unless we have correctly understood the general nature of them, in which case it hopefully won't be necessary to go through them all in detail.

THE COMMISSIONER: All right. Mr Moses, can I raise with you the folder of documents?

MR MOSES: Yes, Commissioner.

THE COMMISSIONER: Now, yesterday before hearing applications for leave and notices of appearances, I did remind practitioners about the guidelines and the practice direction.

MR MOSES: Yes.

THE COMMISSIONER: I would be very grateful if – and this is for every party – if there is any documents or other evidence that you think will be relevant to the Commission’s inquiries. The procedure is it must be raised with Counsel Assisting, and if a decision is made that it will assist the Commission, it will be tendered by Counsel Assisting. It is a very big brief.

MR MOSES: It is.

10

THE COMMISSIONER: We would be assisted if it could be provided to us with more time for my team to review it.

MR MOSES: Of course.

THE COMMISSIONER: As Mr Buchanan indicated, Ms Ellis has tried to get through the folder after it was delivered around 9 o’clock this morning. What I propose in respect of the folder is Counsel Assisting has identified two documents.

20

MR MOSES: Yes.

THE COMMISSIONER: After the completion of Counsel Assisting's examination of Mr Occhiuzzi, if there are other documents that you think should be placed before the Commission, what we will have to do is not excuse Mr Occhiuzzi but stand him down, and then I would ask you to put in writing the particular documents that you would, in a sense, press and also identify the issues that they go to and how they will be relevant to this inquiry.

30

MR MOSES: May it please the Commission.

THE COMMISSIONER: But I will be grateful if, in future, if there are any other documents that we do receive them in plenty of time.

MR MOSES: Yes. I think with this issue, Commissioner, we can say that Mr Occhiuzzi's representation, those instructing me, were only retained last week, late last week for that purpose, so they've been scrambling to get across the materials as quickly as they can. But we will certainly adhere to what you've said.

40

THE COMMISSIONER: All right. Thank you.

MR MOSES: May it please the Commission.

THE COMMISSIONER: The final piece of administration I wanted to raise with everybody is that there have been amendments to the witness list, to

witnesses for Wednesday and Thursday, and I understand that's up on the website. Now, is that everything for the moment, Mr Buchanan?

MR BUCHANAN: In terms of administration, yes, Commissioner. If it's convenient, Mr Occhiuzzi can be recalled.

THE COMMISSIONER: Yes. And, Associate, we may get Mr Occhiuzzi reaffirmed.

MR BUCHANAN: Mr Occhiuzzi, we were talking yesterday, I think, about the relations you had with two councillors in particular, Councillors Azzi and Hawatt. Can I ask you this, in the time that you were working for Canterbury City Council, did you have contact with Councillors Hawatt and Azzi to any greater or lesser degree that you did with other councillors on that council?---Look, the, the, the level of contact certainly increased over
10 time. Azzi, I note, was elected in 2012. The level of contact with some councillors is more that with other councillors. Councillor Hawatt, I would say, excuse me, was one of those councillors I had more contact than less. Councillor Azzi as well. In the last twelve months or so I would say that Azzi and Hawatt were, for want of a better expression, my biggest customers.

And what was the nature of that contact or communication? What form did it take?---Hawatt tended to write emails, sometimes text messages and
20 sometimes phone calls, but by far the bulk of, of his communication came via email. Excuse me, Councillor Azzi, tended to make phone calls more than, more than email as well as before or after council meeting or councillor briefings and workshops and that sort of thing. Councillor Azzi favoured face-to-face contact, Hawatt favoured email contact although when the opportunities arose, when we were in the same forum, before or afterwards, he took that opportunity to raise issues with me.

And was the face-to-face contact with Councillor Azzi cordial?---Often it was but sometimes it was, as I've said in my statement, tended towards
30 aggression towards me when matters weren't, in his opinion, being satisfactorily addressed. He had a, a very robust manner about him, as did Hawatt.

When you received emails from Councillor Hawatt, what was the general subject matter, are you able to describe it?---Well, there were – look, I'm
estimating, but there would have been hundreds of emails over the, the, the span of the four years that I was at Canterbury Council.

From this one councillor?---From Hawatt.

40 Yes.---Probably thousands of emails from all councillors. The, the general nature of those emails tended to be about compliance-type matters, fines, unauthorised building works and development applications.

Right. In respect of fines, what was the thrust of his representations to you? ---He, he would often make statement along the lines of council officers, rangers or food inspectors or compliance officers being too heavy-handed, being too, too, let's just say too heavy-handed with their application of the rules, the law, council policies and sometimes unfairly fining his

constituents. He would often make statements like, you know, "People are simply trying to make a living, your people are making it very difficult." He would, on a couple of occasions suggested that the fines be removed, but that was the general thrust of his representations.

And was the level of interaction with councillors of the same order as you had encountered in your previous positions?---No, no, this was, this was much higher.

10 And it changed in 2012 and increased. Is that right?---Certainly from Councillor Hawatt and Councillor Azzi there was, there was more contact. That's my recollection, yes.

And so that's after Councillor Azzi had been elected?---That's right.

After the elections of 2012.---That's right.

20 Can I ask you about your relations with the general manager. Do you still have a copy of your statement there?---No, I don't, I don't.

We can provide you with access to a copy. And if I could ask you just to turn to page 5, but feel free to consult any part of it at any stage if it assists you in answering a question. So you've told us in your statement that you thought that Mr Montague was a stabilising influence in Canterbury City Council for a number of years prior to 2012. What was it that you observed that gave rise to that opinion?---I had contact with the previous director of city planning, Mr Robert Davidson, before I arrived at Canterbury City Council, just to – he actually reached out to me and made contact and I had several conversations before and after started at Canterbury Council. He described to me that the organisation was not the most progressive organisation, council organisation in Sydney, it was very stable, politically very stable, politically very predictable, and that's what I continued to observe for several years. As I say, it wasn't the most dynamic or progressive or innovative organisation but it was certainly stable and politically under the mayoralship of Robert Furolo things were stable.

30 THE COMMISSIONER: I'm sorry, what do you mean by politically stable?---What I mean is that when reports were going up it was, it was predictable, the outcome was predictable, the executive had meetings prior to – so this is a week before the council meeting, preparing the agenda and there was a pretty good understanding from the general manager about the likelihood of things being approved or not. So in that sense there were no surprises on the floor at council.

40 MR BUCHANAN: Was there any change in the extent to which council officers' recommendations to council in their reports were adopted by council after 2012, the 2012 elections?---There certainly were. The most notable one of those was the matter that we discussed yesterday, the 31

October, 2013. For me that was a real landmark in the way that the council operated.

If you could just explain to us in what way was it a landmark?---Well, it was, it was - - -

10 Comparing of what happened, your experience of what happened in this council and in other councils before?---That's right. So, as I was saying, the decision of the council were fairly predictable prior to 2012. There was a reasonable level of confidence that what was being put up in a professional sense was more or less what was going to be adopted. After 2012 and more specifically that decision of 2013, gave rise to a whole lot of surprises, a whole lot of matters that challenged the professional view of the council staff, which I'd not seen prior to that.

20 So, it could be said in terms of governance about a local government authority that its officers are meant to perform their functions and frame recommendations in a way which is impartial, and which applies their professionalism. Would you accept that?---Yes.

And that the councillors would ordinarily be expected to have a very good reason if they would not accept the recommendation of such staff?
---Correct. Yes. I agree with that.

But your experience was that essentially that changed in 2012?---That's right.

At Canterbury City Council?---That's right.

30 In your statement you say at paragraph 18, that after 2012, Mr Montague became more involved in development matters?---Yes.

40 In what way?---Look, from the, from my commencement at Canterbury City Council, Jim Montague had shown an interest in the progress status of development applications on a frequent basis, that was the norm. After 2012, that intensified. I would often be asked for updates on where matters were up to, DA matters, where they were up to. This came by email or phone call or through his PA. And towards the end, I think through late 2013, 2014, he became quite involved in several large DAs, and I can be quite specific if you like but his involvement sort of moved from simply asking the status and progress, to asking that things be expedited, for example.

And I'm going to ask you a question of did you form a view as to why his involvement became more intense? My second question will be, what was the basis of that opinion?---Jim made it very clear that the political climate had changed at council after 2012. He made it very clear that it was a very pro-development council, he made it very clear that Hawatt and Azzi were

in charge. I think his interests were in ensuring that the development, that particularly larger development, wasn't being unduly held back or restricted. That's my speculation.

And from what you could see, was his – Mr Montague's statement that Mr Azzi and Mr Hawatt were in charge. Correct?---That was my observation on the floor of council, yes.

10 Now, I asked you some questions yesterday about the LEP, the 2012 LEP and the process of its making, and we dealt with the residential development strategy. Can I ask you, though, about the LEP, if I can – have you got next to your first statement a copy of the LEP?---Yes, yes I do.

Very good. Could you turn to clauses 4.4 and following?---Yes.

And I'm going to ask you to have a look at – if the witness could be provided with access to volume, the documents volume 1, please, page 57. ---Thank you.

20 If you see the document that's been put in front of you, it's a two-page, I think it's a two-page, no, no, it's a longer, seven-page document headed LEP Practice Note, published by the Department of Planning.---Yes, I see that.

Reference number PN08-001 and dated, or rather issued 30 January, 2008. ---Yes, I see that.

And the topic is height and floor space ratio.---Yep.

30 Were you, in the time that you were at Canterbury Council, familiar with this document?---I would have been, but I haven't read it for a while.

That's okay. What I wanted to ask you about was the material under the heading Standard Instrument Provisions on the left-hand column on the first page of the practice note which refers to standard LEP clauses, the process of making the 2012 LEP was an attempt to standardise LEPs across the state.---Yeah, that's right.

40 And to ask you this. It refers to clause 4.4, floor space ration, and says in the first dot point, "This clause allows councils to specify maximum FSRs on a floor space ratio map."---Yes, I see it.

You see that?---Yeah.

Is this something that was done in the Canterbury LEP of 2012 in respect of every lot?---No, not in respect to every lot. It's, it was applied in most residential areas, I'm going on memory, but not for example the Canterbury Road corridor, nor in the town centres for larger development.

And so the Harrisons site for example on Canterbury Road, 548 Canterbury Road, is it the case that as you understood it the LEP had a control for the height of buildings on that site but not for the floor space ratio?---That's my recollection, yeah.

But also for other lots on Canterbury Road, as you recall it?---That's right.

10 And thinking of the property 15-23 Homer Street, Earlwood, on the corner
- - -?---Yeah.

- - - going down to the river, was that also a lot which had a height limit prescribed for it but not a floor space ratio?---I can't actually recall that but I'm happy to be shown whether that's the case or not.

Right. If no FSR was prescribed in the planning instrument, that then meant that the floor space ratio of any development needed to be determined for the purposes of the development. You'd agree with that?---Correct, yeah.

20 And of course that, subject to clause 4.6, exemption from development controls, that meant that all matters that pertained to a development application and its bulk and size were up for grabs essentially?---Yeah. I wouldn't describe it as up for grabs.

Right.---There were - - -

30 How would you describe it?---There were other controls that applied, and this was the subject of a lot of discussion not only in this council, in Canterbury City Council, but in other councils where floor space ratios aren't applied, and there's very strong opinions on either side of that fence, but there, there are, there are other controls like setback controls and qualitative controls in SEPP 65, which is the apartment design guide, about ventilation, about solar access, about building separation, which, which are quite relevant and I think the philosophy behind not setting floor space ratios was that it was very difficult for these larger sites to determine kind of a one size fits all, it would have had to have been done because of the configuration of the allotments and the size of the allotments varied so significantly across the corridor, it would almost had to have been done site-by-site.

40 But an outcome of this was that the floor space ratio for such sites was, or could be, a matter for contention between the development proponent and council officers on the one hand, and between the development proponent and councillors?---Well, it simply didn't apply. There was no floor space ratio application. There was no number to work from. There was the height and then a whole bunch of qualitative controls and, and quantitative controls like setbacks as well which would determine the overall size of the building.

But you could, you would accept that it, nevertheless, had the potential to be a matter for contention between the development proponent, on the one hand, and council on the other, the, the consent authority?---I'm, I'm not sure what you mean by a matter for contention. The FSR, you mean?

The proponent would propose one FSR and the consent authority might say, "No, we think that's too big, too dense. We think it should be lower."
---That's right, that's right. It, it wouldn't be put in, in terms of an FSR because there was no FSR. It would be put in more qualitative terms about
10 separation with other buildings, solar access, privacy, those sorts of things.

If a submission was made for a development proposal to be, a planning proposal to be signed off on by council and submitted to the department that, in respect of such lots, would have an FSR in it or ascertainable from the way it's been put together?---Correct. Correct, that's right.

And in that context, the FSR could easily be a matter for contention?
---Correct.

20 And council officers might have one view but others might have another view?---Yep.

So I just want to check, if I could just give you an opportunity to have a look at the next page of the practice note. On the left hand column, about halfway down, the paragraph commencing, "Similarly, council should consider applying height and FSR controls where there is development pressure for taller buildings in sensitive locations such as those centres along the coast where there is the potential for significant environmental impacts."---Yes.
30

So the recommendation essentially, was for FSR controls to be inserted in the instrument, where there was pressure for development for taller buildings?---That's right. That's what that says.

And that's what turned out to be the case on Canterbury Road?---Tall buildings?

Yes.---Correct.

40 Well, and pressure for taller buildings.---Yes, that's right.

When you started in 2010 at Canterbury, did the, thinking of that time and thinking of the time you left, did the pressure for taller buildings on Canterbury Road change at all?---Yes, it did.

How did it change?---Well, the, I think I read in an email that I had sent to Councillor Hawatt, I, I listed the number of either development interests or, or applications, particularly along Canterbury Road, as well as in the town

centres in Campsie and Lakemba and others. There, there was more interests in, in, in taller buildings up to six storeys or so and that that was posed about 2011. The, the council had made it, before I arrived, a deliberate decision to increase the development potential in the town centres, to rejuvenate them.

10 Was there a town centre on Canterbury Road?---There is the Canterbury Town Centre which is adjacent the, the railway station but the, the Canterbury Road corridor, which is a, a very long corridor of course, was the subject, as I understand it, of a, of a study before I arrived. Again, to rejuvenate and enliven the Canterbury Road corridor. The controls, very broadly, were a response to that, to that study.

And apart from that email to Councillor Hawatt referring to where there was pressure for taller development in other precincts or other suburbs, your experience was that there was pressure on Canterbury Council for approval of taller buildings on Canterbury Road?---Absolutely.

20 During your tenure?---Absolutely. Yes. Undoubtedly.

So just turning then, finally, to give you an opportunity to look at it on the right hand column under the heading Other Issues and Considerations in the practice note- - - ?---Yes.

- - - in general, if councils wish to develop a building height development standard then a FSR development standard should also be applied and vice versa. Would your response to that be the explanation you gave us earlier as to why that wasn't the case in the Canterbury LEP?---That's right.

30 Can I take you back, please, to the circumstances in which you left? You felt you had to leave, am I using the wrong words there, because of the pressure you were under?---As I've said in my statement, I didn't think that my position as a planner, as a director of planning, I felt it was untenable. My position, I felt, was my recommendations and my team's recommendations and directions and proposals were constantly being questioned. I felt that I was being undermined and I didn't feel that I was being as effective as I was employed to be.

40 Could you have a look, please, at these documents that the Commission has been provided with in this plastic bag? It's a sheet, some sheets of typed written notes and a notebook. Do you recognise them?---Yes, I do.

What is the notebook?---So, this was a little notebook that I kept some fairly haphazard notes from time to time. In hindsight I wish I had kept more comprehensive notes more frequently, but they're notes that I kept of various events, they're a little bit random.

Is it all in your handwriting?---Yes, yes.

Are the sheets of A4 paper in front of you, what are they?---So, this is a, my translation of my writing, it's not always the easiest to follow, so I've, with the assistance of the legal team, typed these notes up to make them more legible.

You typed it up yourself?---I helped type it up because someone had a go at their impressions and I fixed things up.

- 10 Very good. Could you have a look please at this document? Now if you just flip through it and compare it to the sheets of A4 paper, is that a copy of the transcript, if we can call it that, of the notes you wrote in your notebook but with redactions on it?---Yes.

Thank you. Now if you just put to one side the notebook and the unredacted transcript, thank you.

- 20 And if you could – I'll ask you some questions about the transcript of the notebook. First of all, before I embark upon particular entries, can I ask you this. To what extent were the notes that you wrote in your notebook contemporaneous with the events that they described?---They were somewhat contemporaneous. They were a little, as I said, a little haphazard and a little bit chaotic which is a reflection of the work environment that I found myself in. So the, the notes were often put into this book a day or two after the, the, the event but there is one not that, that, that was included in the notebook a couple of months after the, the, the event took place.

- 30 Rightio. And that's identified as such I think. We'll come to that. Why did you keep the notebook?---Oh, look, I was becoming increasingly uncomfortable, I suppose it started with the council meeting of 31 October, and things through 2014 were becoming I suppose increasingly out of control.

So that's 2013 you started keeping the notes?---Yeah, it was late 2013.

- 40 Thank you. And why did you feel the need to record the events that you recorded?---A little bit it was therapy and I think more importantly it was, you know, I've done the ICAC training several times and it's, it's good practice to, to keep track of these things. As I've said, I regret not having done it more comprehensively and not more frequently, but it, things started to feel uncomfortable therefore I felt a need to, to document some of these things.

Would you just excuse me a moment. Commissioner, can I just check that you have a copy of the redacted version of the transcript of Mr Occhiuzzi's notes?

THE COMMISSIONER: Yes. It consists of eight pages.

MR BUCHANAN: It looks like that.

THE COMMISSIONER: Yes.

MR BUCHANAN: Yes. Your Honour, I – I do apologise – Commissioner, I propose to tender the redacted transcript but I do propose also to take the witness briefly through the entries as well, just so that he has an opportunity of speaking to them.

10

THE COMMISSIONER: Ah hmm.

MR BUCHANAN: Would it be convenient for copies to be distributed to the parties represented?

THE COMMISSIONER: Yes, that would be good. I'll mark it first. And can I just check, Mr Occhiuzzi, this is an extract of certain entries in your notebook, it's not a complete transcription?---No, this is, this is, that's it.

20

MR BUCHANAN: It's not an extract though, Commissioner, it's a transcript. That is to say he, the witness, has typed up his words as written in the notebook. But as I understand it, all of the notes.

THE COMMISSIONER: So this is all of the notes typed up?---That's right.

All right. Thank you.

30

This will be Exhibit 54, a document consisting of eight pages of the typed-up version of Mr Occhiuzzi's notebook with redactions.

**#EXH-054 – REDACTED TRANSCRIPT OF NOTES FROM
MARCELO OCCHIUZZI'S DIARY DATED 24 OCTOBER 2013 TO
19 SEPTEMBER 2014**

40

MR BUCHANAN: If I can foreshadow this, Commissioner, I'm very happy to entertain an alternative, but I didn't propose tendering the notebook or the unredacted version, I propose returning them to Mr Occhiuzzi's representatives.

THE COMMISSIONER: That's fine. As you've identified that the various stages whereby it was typed from the notebook and then some redactions had been made, I don't think we need to tender the notebook.

MR BUCHANAN: Thank you, Commissioner.

Now, if I can just ask you to briefly speak to the entries. The first one that is not redacted is dated 24 October, 2013. Briefly what was that about?
---So this is one of the meetings leading up to 31 October council meeting where the RDS was determined. There was, in fact I think this was the night of the meeting, the previous meeting, so there was a deferral, I think it was on the 24th, I think there's, the GM suggested this report be deferred given the late hour, so that was planned, the council had planned to, to consider the RDS on the 24th and subsequently deferred it. There was discussion around a particular site that's identified there, 443-457
10 Canterbury Road, and there was a desire to include a 25-metre height limit on that site. I expressed concern that this would have been too tall a development, given the surrounding height limits, and I said, "If you want to pursue 25 metres, let me have a look to see whether I can contain that, that height to a more manageable limit."

Now I'm not going to ask you this question in respect of every entry, but could I just ask you in respect of this entry, why did you make the entry in your notebook after that event?---Look, it was an unusual exchange and I just wanted to - - -

20

Which exchange?---The discussion with the councillors and Azzi in particular was driving this to increase the height limit to 25 metres, and I felt that I had to have some involvement. I'd taken the line that if the councillors wanted to change the planning controls it was up to them, up to the elected body, that is, but this one I felt that it needed, that height limit needed to be managed and I offered to put up an alternative to mitigate the impacts of a higher height limit than was otherwise proposed.

30

THE COMMISSIONER: Mr Occhiuzzi, you said it was an unusual exchange with the councillors. Why was it unusual?---Well, you know, I was sort of put on the spot. There was a report that was prepared for the councillors consideration and there was an alternative that I felt I was being asked to comment on at very short notice, which, as I said, prior to 2012 that would never have occurred. I felt I was put on the spot and I suppose I was asking for some time to see if I could come up with something more sensible.

40

MR BUCHANAN: The entry dated the 28th of October, 2013, is about a phone call which was initiated by Councillor Azzi?---Yes.

He expressed unhappiness with some of your staff, especially strategic planning and is that regulatory services?---No, no. The strategic planning team were the team that came up with the – sorry, were responsible for the LEP, the DCP and those sorts of controls.

I'm sorry, I'm asking you about the – if you look at the second line of the entry, he went on to say that he remained unhappy about some of my staff.

You said, especially strategic planning and regulatory services?---Sorry, regulatory services, that's right. That's shorthand, yeah.

What was he saying about strategic planning?---This was a constant concern expressed by both Azzi and Hawatt.

This is land use planning?---No, this is about the team responsible for the LEP and the DCP.

10 Yes?---The RDS.

Yes?---As I say, this was a consistent concern expressed by both Azzi and Hawatt about the team's operation.

What was the nature of the concern expressed to you?---That they were getting in the way of reasonable development occurring, that they were overly bureaucratic, that the controls didn't work, that sort of thing.

20 And in the second paragraph of that entry you say that he told you that your name had come up in various discussions, but that you were – and then you've got in inverted commas, 'under his protection'?---Yes.

That's what he said?---Yes.

What did you understand him to be conveying to you, what was the message you took from that?---Well I understood from that, that others, I assumed, other councillors were keen to get rid of me, but I was under his protection.

30 And that that protection could be withdrawn?---That was absolutely inferred.

He said, and I'm quoting, 'He said that he was prepared to give me one more chance or two but that I need to be careful. The very strong inference was that I was running out of chances'?---Yes.

40 Turning then, to the next entry dated 30 October, 2013, that is the meeting that you've already spoken about but can I ask you about the reference there, for lines from the top on the second page, "Councillor Azzi, lost his temper, stating that Canterbury is getting left behind and that our controls were not facilitating development." What do you mean by, "Lost his temper"?---So the meeting occurred in the, in the mayor's office. We sat to one corner of that office, Hawatt, Azzi, Robson, Montague and myself and we were discussing the, the, the, the, the residential development strategy - - -

I apologise, I said earlier that this was a meeting that you already talked about, but in fact this is a pre-council meeting?---That's right. That's right.

Right. And you hadn't previously spoken about that, I think. But anyway, continue, I just didn't want to mislead anyone.---Okay. So there was sort of general discussion around, around the RDS. I don't remember exactly the circumstances but the, the, the net result was that Azzi, fairly theatrically, got out of his chair and walked towards the window waving his arms around, saying you know, "We're getting left behind. Have a look at this," and looked out the window and said, "Where is all that happened development? Canterbury isn't developing." Words to that effect.

- 10 In your experience, over a number of councils, was it usual for a couple of the councillors, but by no means all of them, to be in a pre-council meeting with the mayor and the general manager like this?---Look, in terms of political caucus meetings, I'm not sure what goes on. I found myself, I thought it was unusual for me to be there. I didn't enjoy being at those meetings but I, I thought it unusual, yes.

When you say, "Those meetings," this was not the first meeting or not the only meeting, which took place in the general manager's office, involving Councillors Hawatt and Azzi and both other councillors?---Sorry, it was the
20 mayor's office.

Oh, in the mayor's office. Sorry, I apologise.---The, the previous meeting on 24/10 was in the general manager's office. Sorry, what was the question again?

- I'm just trying to ascertain how many meetings did you attend of what might be called the executive, if you call the general manager and the mayor the executive, but two out of all of the other councillors only?---Yeah. There, there were several, there may have been three. So two were described in
30 these notes. There may have been three, possibly four.

And did you question the fact that Councillor Azzi and Councillor Hawatt were there at these meetings?---I, I accepted them, I didn't question that.

THE COMMISSIONER: Can I just ask you, you talk about these various meetings. Were they always held in a council building?---Yes.

For example the mayor's office or the general manager's office?---Yes.

- 40 You never attended in, for example, at one of the councillors' homes?---No.

MR BUCHANAN: And then you've recorded there, your recollection when you made the notes, of what Councillor Azzi said and what the general manger said in response, that Councillor Azzi said that he didn't care about consultants reports or officers reports, "I was elected to make decisions and that's what to do." He said that if people didn't like it, they should kick him out in three years' time. And the general manager said this was fine as long

as councillors approached their decisions with, to use his words, "Clean hands"?---Yes.

What did you understand the general manager was referring to when he delivered that qualification that, "So long as councillors approached their decisions with clean hands"?---Well, that was, to me that was a clear inference that decisions shouldn't be made corruptly. That, that was fairly clear in my mind.

- 10 Can I take you down then, there's an entry for 31 October and you've told us about that meeting, we've got your notebook entry there. Excuse me. Over the page is 21 November 2013, a DA lodged for 548-586 Canterbury Road by Charlie Demian, and you've told us about in the notes the circumstances of the actual documents being left for you?---Mmm hmm.

- 20 Why did you make that particular entry?---I thought that it was unusual for a large development application to come in without owner's consent. It's one of the cardinal rules of accepting a development application, is that it must have owner's consent. On the odd occasion, you know, there might be some set of specific plans missing or something and you might agree to accept the DA on the basis of the plans being lodged the next day or something, but owner's consent is absolutely fundamental to the lodgement of a DA.

And I take you to the entry on 18 December 2013. There are three DAs listed against the dot points. Is that right?---Yes.

- 30 You then say, 'GM has kept a close interest in the DA for 45 South Parade, Campsie', and you go on to say there were two pre-DA meetings with Ziad, Z-i-a-d, and Marwan, M-a-r-w-i-n, Chanine, C-h-a-n-i-n-e. You then write, 'I question why these meetings involve the GM at all.' Who were Ziad and Marwan Chanine?---So, they were fairly regular applicants and it was a, Ziad was an architect and Marwan, I think, the developer side of the relationship. They lodged applications with council on a relatively frequent basis.

- 40 And why did you write the words, 'I questioned why these meetings involved the GM at all'?---Look, it was unusual that the GM appear in a pre-DA type meeting, he did, he did appear in meetings from time to time, not quite sure why I wrote that but it's unusual for the GM to appear before the – at a pre-DA meeting.

Was there a difference in the – and I think you've already told us – there was a difference in the degree of interest that Mr Montague showed in the progress of development applications and planning proposals between before the 2012 elections and after the 2012 elections. Is that right?---Yes.

And it was your experience that after the 2012 elections, Mr Montague was attending meetings in relation to the progress of DAs and planning proposals more often than he had before the election, that's more often than before Mr Azzi arrived on council?---That's my recollection, yes.

And more often, that's not just Mr Azzi but Councillor Hawatt was taking a more active role in dealing with the land use issues?---Yes.

10 Now in the next paragraph, you say after the DA was lodged, which DA are you referring to there?---Presumably 45 South Parade.

Rightio, thank you. Why do you say, 'presumably'?---Because there's no specific reference to it. The last paragraph, the previous paragraph referred to 45 South Parade.

Thank you. Now - - - ?---Yes, it is definitely 45 South Parade, yes.

And that's the one that involved the Chanines?---Yes.

20 Starting at the bottom of that page and going over the page, recall the GM approaching you on 11 February. It would've been 2014?---Yes.

And said that Zena was being a bit fussy with the DA. Who was Zena, Z-e-n-a?---She was one of the development assessment planners. She was dealing with the application.

In council?---That's right.

30 And you go on to say he showed you, that Mr Montague showed you a message on his phone from, quote, 'Bechara', B-e-c-h-a-r-a, 'which asked the GM to get me involved.' Is that right?---Yes.

And how do you know it was from Bechara?---Well, he, he showed me, the entry says he showed me a message on his phone and he showed me so I read that on his phone.

40 Then if I can just take you down to the paragraph commencing, "On 7 March." "I was invited to a meeting with the Chanine brothers and the GM." Do you remember by whom you were invited?---Look, I don't specifically remember but it would have been the GM's PA I imagine.

Was this unusual, being invited by the general manager with some what might be called development proponents?---It was not overly unusual let's say. It happened from time to time.

Did it happen more often after the 2012 election?---That's my recollection, yes.

Then you go on to talk about the council meeting. Is that a meeting that occurred shortly after the 7 March, 2014 meeting with the general manager and the Chanine brothers?---Yes.

And you describe there Councillor Azzi being critical of your handling of the DA and you've set out what occurred, and you go on to say that, "Councillor Azzi said to me that I hadn't done my job properly and he glared at me and shot me dirty looks." Is that right?---Yes.

10 That's what occurred?---That's what occurred.

Is this the sort of thing that was contributing to the pressure that you felt you were increasingly under in respect of the work you were doing and the response you were getting from the councillors, particularly Councillor Azzi and Councillor Hawatt?---Yes.

Then you say that prior to the meeting the GM rang you at about 5.30pm, "And asked me some questions about the DA and said that the Chanines were meeting with him and Councillor Azzi and Hawatt to discuss the proposal." You asked the GM whether you should attend and he said no. ---Yeah, that's right.

20

And you didn't attend?---I didn't attend.

And again that's the sort of meeting that increasingly occurred after the 2012 elections, apparently as you understood it on the information you had, between the GM and certain development proponents and Councillors Azzi and Hawatt?---Look, I'm not sure about those third party meetings, I can only comment on the meetings that I was at. I, I am aware that this meeting occurred because Jim Montague shared that with me. I can only speculate that this sort of thing was also happening without my knowledge.

30

Can I take you then, the next entry is for 21 July, 2014. It's in respect of a DA for 2-26 Haldon Street, but can I ask, we can read what you have set out there, can I just take you to the last three lines of that entry. You're describing before that a conversation that you were having at a meeting with the owner, the architect, Mr Montague, Stephen Pratt, one of your planning staff - - -?---Yeah.

40 - - - and yourself, to discuss the DA. Is that right?---That's right, yeah.

In the GM's office?---In the boardroom, yes.

And you describe what occurred over the page, and just so that we know who "he" is on the next page, going back to the previous page, the second-last paragraph, "The GM said that we had reached an impasse and that's where we would leave things. Upon the applicant team leaving, he said, 'What are we doing?'" He is Mr Montague?---That's right.

“He sounded exasperated. He then said, ‘What is he,’ referring to Mr Pratt, ‘doing, saying that he couldn’t support the variation and that he doesn’t speak for council?’ And there was some more opinion that you’ve recorded that Mr Montague expressed and you’ve recorded – if I could just ask you about the last few lines there. You said you agreed, but the extent of the variation was simply, quote, “A bridge too far.”---Yes.

Your words?---Yes.

10

He, Mr Montague, said, ‘If that’s the case, I expect you to say exactly what’s acceptable and what’s not.’ That’s what Mr Montague said?---That’s right.

20

You said, ‘Our job was to assess proposals, not design them’?---Yes, that’s right. That was a pattern that I felt was emerging where proponents would come in and present their plans, often it was the first time and certainly it was the case in this particular instance, first time I’d seen the plans. In this case I think it was three levels above the height limit, we said so, we said that Steven Pratt and myself said that this was, as I said, they’re a bit too far. What Jim Montague expected me to do, to say, exactly what level of variation, if any, should be applicable to the site there and then. I prefer to take plans away, have a discussion, get our heads around things a little more and be a little more, take a little more consideration. Jim often demanded that I express my opinion there and then to be more helpful and I found it difficult to do that.

30

To be more helpful to whom, as you understood it?---To be more helpful to the applicant to provide them with the direction they needed to get their application off the ground.

So just taking a step aside from the Haldon Street development, from time to time, a development proponent in general, in abstract, might encounter a development control which would affect the desired yield in terms of profit from the number of units, residential units that might be included in the development. You accept that in abstract?---That’s right. That’s right.

40

What is your response to the proposition that it was your job, as director of city planning, to provide solutions where a developer did come up against a development control which restricted what the developer could do?---Look, the job of the development assessment area was simply to assess the application against the plans and determine the application. Increasingly, the council was moving towards a solutions mode as you put it, to try and get applications across the line where possible. I remember through – I can’t recall the dates exactly but at some stage we put together, with the team, a strategy to try and reduce processing times because that was an issue that was identified, and I agreed, it was an issue. As I’ve said in a later entry, I did acknowledge the very large number of very significant

development applications, but one of the key recommendations out of that internal piece of work that we conducted with the development assessment team was to ensure that applications, after they've had that initial review and assessment, it would result in a letter, more often than not, requiring additional information or amendments or modifications to the application. We were trying to reduce that interaction to one set of requests, sorry, one request, rather than going backwards and forwards and backwards and forwards which prolonged the process in time for applications. In my experience, when applicants, particularly at the bigger end of the spectrum, receive that initial letter, some would take it up further and I would receive representations from the general manager asking what's this one about, or what's that one about, which prolonged the processing time. So, I actually sent a letter to all regular applicants letting them know that from now on, I can't remember the timeframe or the timeline on that, we would be sending out one letter and be determining application after that.

Did you see it – I withdraw that. As you sit there now, Mr Occhiuzzi in the witness box, and being a very senior planner, do you see it as the role of the council officers in the development assessment area to provide developers with solutions to their problems when they think the development controls are too tight?---Look, perhaps it's a fine line. It's not a matter of providing solutions, you know, we provide advice on the application of the controls, what sort of level of tolerance there is for some variation, and that's it. I think as I've included in my note there, it wasn't up to the council officers to design the building, it's up to the council officers to assess the development.

THE COMMISSIONER: On that can I just take you back to your first entry on 24 October.---Yes.

You finish with, you discuss an issue was raised about the height limit and then you say, "The following day I drafted a map which limited the extent of 25 metres to the southwest corner of the site."---Yes.

Is that an example of trying to find a solution for the application?---I, I, I suppose I draw a difference between an application with established controls for the site, and this is the council trying to change the controls to a 25-metre height limit. I expressed the view at that meeting that rolling out a 25-metre height limit on that site would have adverse effects on, on neighbouring properties, and this was my attempt to, to bring the height of the building back towards Canterbury Road to minimise that impact.

Ah hmm.---So I, I, I differentiate between, and that's, the assessment of an application with existing controls and the design of new controls.

And with the design of new controls are you willing, it was your view that as a council officer you could be in a sense assisting the development, the applicant for the development to reach a solution?---Sorry, Commissioner, this was in the context of the Residential Development Strategy, so this was

a whole bunch of sites that were being discussed and in terms of their controls. For some reason or another we honed in on this site. It was one that Councillor Azzi expressed a view on.

So that's a different process from individual applications - - -?---That's right.

- - - being made to the council.---That's right, mmm.

10 MR BUCHANAN: The pressure though, and I invite you to respond to this proposition, was essentially the same, it was just in a different area. It was the, the pressure was to loosen controls in the planning proposals and in development applications the pressure was to overcome or again loosen the development controls?---Look, I suppose it was, but the, the question, the question that the Commissioner just put to me there regarding that 25-metre height limit, this is the council's controls, so it was up to council, and I was part of that council I suppose, to come up with a, with a sensible and reasonable control for that site, versus a developer coming to the council with a proposal against already established and gazetted controls.

20

Can I take you to the entry for then, it's just headed Late May 2014, Belated Entry. This is the one that you referred to earlier that you made a little while after the event?---Yes.

How long after, as you recall it?---Well, it would have been a couple of months after. I recall that in mid-June to mid-July I was on an overseas trip which, which obviously took me away from work and I didn't think about work too much. On return I had discussed this particular meeting with the people that I was overseas with at some length, it was seared in my memory, and upon returning I made a note of it.

30

And if you could have a look at page 13 of your statement, is it summarised there commencing at paragraph 39?---Yes.

And so can I just ask you, I'm not going to ask you about the details but just take you to one reference that's about, plucking a figure out of the air, 12 lines down. "He cited 23 Oatley as an example."---Yes.

40 That's Mr Montague citing 23 Oatley?---That's right. There was only Jim and myself in that meeting.

And 23 Oatley was the property that you told us about yesterday, wasn't it? ---That's right.

Where the requirement for landscaping has been avoided and concrete had been placed there instead.---That's right.

And there had been a falling out with, or there had been the exchange with Councillors Azzi and Hawatt?---Yes.

On site. And so, here it would appear that Mr Montague was using that incident as a cudgel, he was criticising you for the fact that it had occurred?--Yes.

10 You refer later on, down, to acknowledging that, "Our process times were too slow." And then you go on to explain as to what would contribute to that at Canterbury and then you say that, in the climate, I'm sorry, he said that, in the current climate, he had, no choice but to consider not renewing my contract. It pained him to say that but there was dissatisfaction amongst councillors that he had to respond to?---Yes.

Did he say which councillors?---Look, I can't recall. These, these notes are, are more contemporaneous than my recollection now but he'd certainly mentioned Azzi and Hawatt during that discussion but that specific reference, I, I, I can't say with certainty.

20 And then you go on to describe the conversation and what occurred the next day. In these notes you go on them just excuse me a moment. 11 August, 2014 - - -

THE COMMISSIONER: Can I just, before we leave the 8 May. The reference to the junta, what was your understanding, well, first, did Mr Montague explain who was - - -?---Yes. The, the junta was, was a term that, that I, I think Jim came up with. He referenced it many times over the, the last twelve months or so that I was at the, the council. It was a reference to Azzi and Hawatt.

30 MR BUCHANAN: And you say in your statement that he told you that the junta was Azzi and Hawatt and that they were controlling council?
---Yes

There's a reference in these notes on 11 August, 2014 to an meeting in the GM's office with the GM about a particular property because it's talking about setbacks and the GM said he had spoken with George Vasil and that he disagreed with your opinion.---Yes.

40 By the conveyors?---That's right.

The GM said that, I had to, you had to think very carefully about how this is managed because if it was challenged in court and we lost, "It would not be good for me." He glared at me seriously as he said this, he said, "Do you understand what I am saying"?---Yes.

Had you encountered George Vasil before?---Yes.

When did you first encounter Mr Vasil?---Look, I, I'm not exactly sure when I first met Mr Vasil but he, he, I had met with him I think a couple of times. He often turned up to council meetings. He was very knowledgeable about planning matters and, and, and court cases, the council's planning controls. He'd obviously been very involved, at least from a distance from what I could see, involved in the sense of understanding and keeping abreast of what was going on in the council and its planning controls. But I, I didn't have a huge amount to do with, with Mr Vasil.

10 Did you have any dealings with him in respect of any particular property, or was it only general contributions that he made?---I think I, I think I attended a meeting, I don't know the date, Mr Vasil owned a site on Canterbury Road. I don't know the address and I think I met with him once or twice. He had a development application that was current and he was talking about a different development application to vary the original development application, but that's about, I think, the extent of my involvement. I may have met him occasionally, I certainly would say hello to him after council meetings if he was in attendance. He was, he was well known to many of the council staff.

20

Can I just take you to what you have transcribed here, you've put in quotes the words you attribute to Mr Montague, 'It would not be good for me'. Is that 'me' a reference to you or Mr Montague?---No, to me.

To you, Mr Occhiuzzi?---Yes. That development, I won't mention it because he redacted the site but that was the subject of a lot of discussion and it boiled down to the council staffs' interpretation that I shared of what constituted a side or a rear setback. It was a corner block, a big development on New Canterbury Road, and we took the very firm line that the development, the relevant setback was a rear setback which required a greater level of setback and separation. The applicant insisted that it was a side back with less separation, less setback and this went to the question of yield. Our interpretation, the council staffs' interpretation, reduced the yield for the applicant and so this exchange revolved around that. As a result of this discussion, I sought a legal opinion from Adam Seton whose view confirmed our view. There was still a lot of dissatisfaction even after that legal opinion.

30

40 Is Adam Seton a lawyer?---Adam Seton is a fairly well known, I think, fairly well known environmental planning lawyer. The council at a subsequent council meeting resolved to get another opinion, which we got, which was a little less absolute about its interpretation. The long of the short of it was this matter ended up in court after I left council, which sustained the interpretation that we took.

Can I just pick up something that you referred to there? You talk about the opinion that you held and your staff held. 'We held', was that a typical example of the way that, certainly by the time it came to determining

applications and drafting reports to go to council, decisions were made as to what opinion should be expressed, as to what the situation was, as to what should be allowed, what was a bridge too far, that you worked with your staff and they worked with you to come to a consensus view?---Yes. Yes. It was quite a regular occurrence that George Gouvatsos who was the manager of development assessment would come into my office, sometimes with his staff, and we would have a discussion around a particular application, particular provisions of the LEP or the DCP and we would come to a consensus about how things should be interpreted, and we would run with that. That was fairly regular.

Did you often find yourself overruling your staff?---No. I don't recall. It may have occurred but it certainly wasn't the way that we operated in a general sense.

Excuse me a moment. And I take you then to the next page, 16 September 2014. Again, I interpolate, Commissioner, that this is concerning properties that are not the subject of investigation in this hearing, but I just wanted to take you up on the expression of – your characterisation of Mr Montague's temper at the end of paragraph numbered 1. 'The GM was very angry.'? ---Yes.

I don't need you to explain the ins and outs of that particular issue, but did that happen with any degree of frequency in your experience?---Not really. It, it, it, I, I, I recall a couple of instances where the GM became quite angry, but it wasn't, wasn't his, his, his, his normal way of behaviour, I'd say.

Right. Thank you. Now, I won't ask you about 19 September, 2014 on the next page, except to simply ask you what's the reference to "mayor ex"? M-a-y-o-r e-x.---Oh, so, sorry, so mayor ex is a, was a regular meeting conducted between the mayor of the day, the general manager and the three directors.

Thank you. 19 September, 2014. The GM requested that he be given a copy of the IHAP report for the DA for 570-574 New Canterbury Road prior to being listed on the IHAP paper. You said that the internal deadline had been missed for its preparation, is that right?---Yes, that's right.

And you note at the bottom, "I note I can't recall the GM wanting to review a report prior to going to IHAP. He said to me that I should, 'Learn to stop hitting my head against a brick wall.'"---Yes.

And what was the message you were getting when he said that?---I think it's fairly self-explanatory, isn't it? I think there was a, a desire by him for me to be a little more flexible in my approach.

Did it contribute to the pressure that you described yesterday that you felt you were under that led to your resignation?---Yes. Yes.

Would you have a look, please, at this document. Commissioner, I propose to tender this document. It's one of the ones that were supplied by Mr Occhiuzzi's legal team today and it's fairly self-explanatory. There's just one question I wish to ask about it, if it's convenient.

THE COMMISSIONER: All right. The letter from Mr Occhiuzzi to Jim Montague, dated 10 October, 2014, with the title Resignation, will be Exhibit 55.

10

#EXH-055 – LETTER FROM MARCELO OCCHIUZZI TO JIM MONTAGUE RE: RESIGNATION DATED 10 OCTOBER 2014

MR BUCHANAN: This is the letter through which you tendered your resignation?---Yes, that's right.

20 In the second-last paragraph you say it's been a difficult decision for you to resign. It might seem obvious, but why was it a difficult decision?---Well, I look, I thought I'd, I'd worked hard to, to get to the position of being successful in my application for the job in the first place. I thought I had been building a good team, had been doing some good work at the council, and I didn't want to give that up. But as I said, it was with mixed feelings that, that I've made the decision because – as I've said just earlier – my position and my opinion was becoming quite untenable.

30 In your statement you're talking – on page 14, paragraph 45 – of having participated in a performance review conducted in 2014, run by external consultants, and the final assessment found that you'd either met or exceeded organisational expectations during the 2013/14 financial year. That performance assessment, together with the plan against which you've measured your performance, is at the back of your first statement.---Yes. Yes.

And it's signed off by Mr Montague?---That's right.

And it's signed by you?---Yes. Yes.

40 The date is 23 September 2014?---Yes.

And so that's four days after you'd been told you needed to learn to stop hitting your head against the brick wall?---Is that right? Yes, I suppose yes. Yep.

Excuse me a moment, Commissioner. I asked you about your acquaintanceship to the extent that you had one with George Vasil. Did you know Bechara Khouri, K-h-o-u-r-i?---His name had come up a couple of

times, I met him at a social function at Councillor Kebbe's house at one stage. I may have met him at one meeting, I can't even be certain what that meeting was about but it's not someone that I had very much to do with at all.

Who did you understand he was?---I thought he was a friend of Jim Montague's, but I could be wrong.

Thank you, Mr Occhiuzzi.

10

THE COMMISSIONER: I note the time, would that be a convenient point? All right. We'll take a morning tea break for 15 minutes. The hearing stands adjourned.

SHORT ADJOURNMENT

[11.37am]

MR BUCHANAN: Mr Occhiuzzi, can I show you a document, please?
20 Whilst the witness is reading it, Commissioner, I would propose to tender this. If it's suitable to admit it then it would mean that parties could have a copy of it while it's being the subject of examination.

THE COMMISSIONER: It's a City of Canterbury Statement of Understanding of Code of Conduct, completed by the witness on the, Mr Occhiuzzi, is that he - - -

MR BUCHANAN: That'll be the subject of a question, actually.

30 THE COMMISSIONER: Sorry, I'm assuming it's prepared by the witness. Is that 15 October, 2013?---That's right.

MR BUCHANAN: Thank you.

THE COMMISSIONER: That will be Exhibit 57. Oh, hold on, excuse me for a minute. Yes. It will be Exhibit 56. Thank you, Cat.

40 **#EXH-056 – CCC STATEMENT OF UNDERSTANDING OF THE
CODE OF CONDUCT SIGNED BY MARCELO OCCHIUZZI
DATED 15 JUNE 2013**

MR BUCHANAN: Sir, you recognise the document?---Yes, I do.

And it's your Statement of Understanding of the Code of Conduct after attending a code of conduct training. Is that right?---That's right. Yes.

And how long did that training take?---I think it was a day or half a day.

And who conducted it?---I think it was Ms Kath Roach. Ms Kath Roach, I think.

A council staff member?---No, no. Council appointed consultant.

10 Could the witness be shown volume 2 of the documents, please, and I'm not going to ask you to read the whole thing, but just simply to identify, if I could ask you to turn to page 39 of volume 2, is that the City of Canterbury Code of Conduct, and if you can flick through it, that as you recall it applied whilst you were there from 2013 to '14?---Yes, that's right.

And in which you were trained as you acknowledged in that statement of understanding?---Yes.

Thank you. That's my examination of the witness.

20 THE COMMISSIONER: I'll leave you, Mr Moses, for the time being. Let me just see. Mr Neil, do you have any questions?

MR NEIL: No, thank you, Commissioner.

THE COMMISSIONER: Mr Andronos?

30 MR ANDRONOS: Commissioner, the documents which were tendered this morning, particularly the transcript of the notebook which I think is Exhibit 54, that does potentially raise some issues which affect Mr Montague as he is mentioned on a number of occasions in that document. In light of that and the course which you, Commissioner, identified this morning that the witness would be not excused but stood down with the possibility of coming back at some later date, in light of that which fell from you this morning, Commissioner, what I would seek is the opportunity to take instructions in relation to this latest document and perhaps I could let Counsel Assisting know whether in light of that document I propose to ask Mr Occhiuzzi any questions, and then he could be recalled at a time that's convenient to the Commission and to Mr Occhiuzzi, if indeed that's the case.

40 THE COMMISSIONER: All right. I first should clarify when I raised the prospect of Mr Occhiuzzi not being excused it was on the basis that Mr Moses did want to press more of the documents that were set out in the folder. That wasn't going to be my definite course, but you have raised I think a legitimate point that this document came into our possession yesterday afternoon, the witness has given some evidence about your client, Mr Montague - - -

MR ANDRONOS: Yes.

THE COMMISSIONER: - - - and you should have an opportunity to get instructions from Mr Montague. How long do you think that would take you?

MR ANDRONOS: I could, I could let Counsel Assisting know overnight.

THE COMMISSIONER: All right.

10 MR ANDRONOS: And so it would be possible, if it's convenient to Mr Occhiuzzi of course, to deal with any examination on my part in the current sittings. Of course nothing may come of it and, and we may not need to recall him, but I could let Counsel Assisting know overnight.

THE COMMISSIONER: Right. Can I just ask you before asking Counsel Assisting his view, putting to one side Exhibit 54, did you have any other questions of Mr Occhiuzzi?

20 MR ANDRONOS: No, Commissioner, although Exhibit 54 may cause me to revisit that decision in relation to one or two paragraphs of the witness's first statement.

THE COMMISSIONER: Right. I'll just ask Counsel Assisting his view.

30 MR BUCHANAN: In principle, Commissioner, I don't oppose the application. The only issue will be timing and that is not just a matter of if it be necessary to do so fitting Mr Occhiuzzi back into the witness list, but also at a time when Mr Moses would be available to be present. So this is something that will have to be worked out, but otherwise there's no objection to the application on my part.

THE COMMISSIONER: All right. Mr Moses, is it just a matter of fitting in with when you were intending to be present at the inquiry?

MR MOSES: Yes. We'll fit in with whatever's convenient to the Commission.

THE COMMISSIONER: Right.

40 MR MOSES: I won't be here tomorrow, Commissioner, but we'll certainly take whatever steps necessary to ensure that we assist the Commission, so if it's Thursday or Friday or whenever we'll certainly make arrangements.

THE COMMISSIONER: Mr Occhiuzzi, subject to other questions from other legal representatives, in principle I agree with the application. I think it's a matter of fairness for Mr Montague's legal representatives to review your notes. It may be the case that you've got to come back to answer some more questions, you may not. But when we finish going through with the legal representatives, I won't excuse you and it will be then a matter of the

solicitor from the Commission to ask about your availability, and we'll try and accommodate a convenient time for you. All right. Now, is Mr Doyon here? He's not here today. Mr O'Gorman-Hughes, any questions?

MR O'GORMAN-HUGHES: I have no questions, Commissioner.

THE COMMISSIONER: Now, Mr Taylor's not here, and then are we left then with Mr Pararajasingham?

10 MR PARARAJASINGHAM: Commissioner, I do have a couple of questions.

THE COMMISSIONER: All right.

MR PARARAJASINGHAM: Sir, I appear for Mr Stavis. I just have a couple of questions of you. You gave some evidence earlier today about your relationship with Councillor Hawatt. Have you got your statement to hand?---Yes.

20 Can you just go to paragraph 13?---Yes.

And there you say, so, this is in the context of your relationship with Councillor Hawatt, 'I tried as much as possible to respond to Hawatt by email and subsequently filed the response in council's document management system.' What is that, the council's document management system?---So, that was a system called DataWorks. I tried, as I say in the statement, as much as possible to document all of my responses rather than keeping communication to telephone and text message. So, it was just a matter of filing those responses in the DataWorks system of council.

30 But when you say DataWorks system, is that a kind of log system?---It's a document management system, so, as to – so, basically the old paper file system translated into a document management system, electronic management system.

So is it the case that whenever you received an inquiry from a councillor, you would document that in this electronic system?---As much as possible. I can't sit here and say that 100 per cent of all inquiries were documented there but I tried as much as possible, so I would say the vast majority were documented there.

40 And you would just make a recording in a shorthand way, presumably?
---What I did do, was basically email the councillor, Councillor Hawatt or Azzi or Kebbe or any of them, I would email them, sorry, CC the general manager, Jim Montague, and then file that response, or my PA would file that response in the DataWorks system.

Just staying on this issue of responding to councillors' inquiries, in your, I think it's the second attachment to your statement which is your 2013, 2014 performance plan?---Yes.

Do you have that there? If you just go to, it's the fifth page?---Yeah. Yeah.

10 And you see there that in the first column it says strategy and then respond to mayoral and council inquiries in an appropriate and timely manner, and then key performance indicators, all mayoral and council inquiries are appropriate responded to within five working days, and then outcomes, all mayoral and council inquiries were appropriately responded to within five working days. My question is, is this. In your experience, is that a common KPI for people in your position?---Look, it's not uncommon and I remember having this discussion at a previous council where that response might be, if it's a more complex inquiry. That response may simply be, I need to research this further and it may take two weeks or one week or whatever, to have a more comprehensive response. So, it's just about being timely and responsive to councillors, so I wouldn't say it's necessary unusual.

20

And you'd agree that no distinction is made as to the nature of the inquiry, it is all mayoral and councillor inquiries. Correct?---That's what that says, yes.

Do you know what if anything prompted that particular KPI?---No, I don't.

So as far as you know, from the time you commenced, was that one of your KPIs?---Look, I'm not sure, I'm not sure about that.

30 Just moving on to a separate issue, you gave some evidence yesterday, just bear with me, where you were asked some questions by Counsel Assisting concerning your interactions with the independent consultants. Do you recall being asked those questions?---Yes.

40 Just in fairness I'm just going to ask you about a particular response you made. This is at page 69 of the transcript. You were asked this question, "What if a planning proposal has been prepared at the request of council by staff and at the request of the department an independent consultant is retained to provide additional justification for the change or changes proposed in the planning proposal, what would you say in those circumstances to the director of city planning" I think that should be, "Sit down with the author of the consultant's report with a view to modifying the substantive content?" And your response was, "If the report is commissioned on the basis of a specific condition of a Gateway Determination it would be prudent to allow that report to be prepared absolutely independently and receive the outcome of that." Do you recall giving that evidence?---Yes, yes.

My question is this. Clearly however there is nothing in your tenure, there was nothing preventing you as a director from communicating with an independent consultant. Correct?---That's right.

10 Plainly there was nothing preventing you from expressing to the independent consultant the nature of the view of council?---Look, I think that would all need to be wrapped up in the brief, the purpose of the work being commissioned, the context of that work, the relevant planning controls and so on. I think I said that we would, council would need to take care in how it communicated with, with that consultant. That's not to say that all communication should be precluded of course.

So there was nothing preventing you as a director from communicating with an independent consultant for the purpose of perhaps contextualising the background to a report for example?---Contextualising I think would be fine.

20 Just finally I just want to ask you about clause 4.6 of the Canterbury LEP. It's the case that that clause provides a mechanism by which exceptions to development standards can be applied. Correct?---Yes.

It is effectively a discretion to vary a development standard for a particular DA?---That's correct.

30 In your experience it is a clause heavily utilised by all councils?
---I wouldn't necessarily say heavily utilised but it's, it's there for a reason and its predecessor was State Environmental Planning Policy Number 1 which provided flexibility to the, the planning system. It's, it's necessary in my opinion to apply some level of flexibility in the right circumstances.

And it's a clause that you utilised in your tenure at Canterbury?---I no doubt would have from time to time utilised that as well.

Is it fair to say this, would you regard that clause as a mechanism by which one could be solutions-driven?---(No Audible Reply)

THE COMMISSIONER: Sorry, who could be?

40 MR PARARAJASINGHAM: Sorry, the, the director could be solutions-driven towards a particular DA, that clause 4.6 allowed you to wear that hat, if I could use that expression?---Clause 4.6 enabled a level of flexibility to be applied, as I say, in the right circumstances, yeah, but that's, that's where I would leave it.

Now what, if anything, did you rely on to guide your exercise of that discretion in clause 4.6?---Well, the objectives of the zone, the objectives of the particular standard, so if it was height or floor space ratio, those objectives that were guiding that discretion.

Okay. So following up on that, what did you rely on by way of, say, material to inform yourself as to the scope and content of those objectives? ---Well, the LEP and DCP, and anything else that might be relevant in a planning sense. They're the two most relevant things in a theoretical sense, I suppose.

When you say anything else, can you give some examples?---Clause 4.6, perhaps I'll turn to it.

10

Yes, let's go there.---Just to make it easier.

Perhaps I'll ask it this way. If you turn up clause 4.6?---Yeah.

Do you have it in front of you?---Yes.

If you go to subpart 4 which reads as follows, "Development consent must not be granted for development that contravenes a development standard unless, A, the consent authority is satisfied that subpart 1, the applicant's written request has adequately addressed the matters required to be demonstrated by subclause 3 and subpart 2. The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the developments are proposed to be carried out and, B, the concurrence of the director general has been obtained." My question is directed towards subpart 4A(2) and it is this, can you just identify the material that you relied on to inform yourself as to the scope and content of the objectives referred to in that subpart?---So, subclause 4 talks about – sorry, first of all, you go back to the objectives of the zone, the objectives of the particular standard which I think is – sorry, you're quite right. Subclause 4A(2), sorry about that, so that the objectives of the particular standard and the objectives of the development in which the proposal is to be carried out.

20

30

So my question is outside, to give some meaning to those words, what did you rely on?---Well, I suppose the objectives of the standard and the objective of the zone. I think that's it.

And that's contained in the LEP itself?---That's right.

40

Outside the LEP, any other documents that you may have used to inform yourself of how to exercise the discretion?---I suppose if there's a draft change to the controls where those draft changes of controls, a planning proposal or a draft LEP amendment, and there's some certainty and imminence around their, their gazettal, then they could be introduced.

What about things like council resolutions, for example?---Generally not. As I say, council resolutions would need to find their way through to, changes to the planning controls which would take the form of LEP

amendments, which would need to go through a process of exhibition and sign-off and ultimately gazetted by the State Government, depending on what stage of that continuum the matter is at. There is, there is a certainty and imminence test that one must apply in, in determining whether the new control – that as yet un-gazetted control – should be considered and what way that should be considered.

10 And during your tenure at Canterbury Council, are you aware of any legal advice being sought to assist the proper application of clause 4.6? Is that something that was sourced while you were there?---It may have been. I don't recall that but it may have, that may have occurred.

And just finally, you gave some evidence today about your interactions with your staff members. It's the case that reports that went to council went under your name?---Under my role, that's right.

20 Under your role. And it's the case that it, it wouldn't be unusual, from time to time for you to have disagreements with members of your staff about particular aspects of a particular development application, for example? ---Sure. I mean there, there was, from time to time, debate around the outcome of particular applications as, as I think I've outlined previously. That was generally the, the, the point of discussion between myself, whilst I was there, and the manager of development assessment and the relevant assessment planner, and we would, we would come to a resolution, and more often than not it would be an agreed position that, that the group took.

Thank you. I have no further questions.

30 THE COMMISSIONER: Thank you. Mr Moses?

40 MR MOSES: All right. Thank you, Commissioner. Commissioner, there is one additional document to that which my learned friend, Counsel Assisting, tendered which is the statutory declarations of the director of city planning which was signed on 2 April, 2014. I seek to show it to the witness and tender it for three reasons. Firstly, it was the delegation that applied, certainly from 2 April, 2014 moving forward, and contained within the declaration it sets out a clause 12, the restrictions which the director had in respect of determining an application for development consent. The other point that it's relevant to is, that it makes it clear that the general manager, it says in clause 3, may supervise, control and direct without limiting the generality of the means, the exercise of any sub-delegated power to the director. So it puts into perspective both the, as it were, the power or authority of the general manager as well as the position of Mr Occhiuzzi in relation to the structure within the council and their statutory declarations.

THE COMMISSIONER: All right. I haven't seen the document.

MR MOSES: No. If I could hand that to you, it was behind - - -

THE COMMISSIONER: Mr Buchanan, you have seen it?

MR BUCHANAN: I have been shown it. Thank you.

MR MOSES: Thank you. So, Commissioner, it's clause 3, which is the general manager issue and you'll see at page three, clause 12, the determinations, power, that is what he, that is the director, may determine. And finally, you'll see that at 13, "Certain notice must be provided in
10 relations to certain categories of applications." And also at page five is his signature which makes it clear that the delegations were to be exercised, subject to the code of conduct and any relevant legislation and council policy. What I wanted to ask the witness was, was there a delegation that existed prior to this one? If so, did it alter in any way from the previous delegation. And thirdly, did he carry out his role in accordance with these delegations as directed by the general manager from time to time? That's really the area.

20 THE COMMISSIONER: Right. Mr Buchanan?

MR BUCHANAN: Commissioner, my submission is that this falls within the mechanism that was proposed for dealing with material that was to be drawn to the attention of Counsel Assisting, that we be given an opportunity to consider it. Now, I indicated to Mr Moses that I wasn't convinced on what I had shown, that it had sufficient salience to warrant me tendering it. In our submission, in that circumstance, it would be desirable for us to be presented with something in writing as to the salience of the contents of the document so that we can take that on board and act upon it if we're
30 persuaded, and present, provide you with assistance, Commissioner, as to our views as to its salience whether persuaded or not.

THE COMMISSIONER: All right. Mr Moses, given Mr Occhiuzzi, I think the odds are, will be coming back - - -

MR MOSES: Of course. We're happy to accommodate - - -

THE COMMISSIONER: Yes. I think that's appropriate, and also for example Mr Andronos may want to review this and get instructions from Mr Montague.
40

MR MOSES: It may be relevant from Mr Montague's position because that does impact upon him and his role.

THE COMMISSIONER: Yes. So we'll get you a copy so you can get instructions on that as well.

MR MOSES: Thank you, Commissioner. Yes, thank you Commissioner. Well, I may then proceed to ask Mr Occhiuzzi just some other questions

then in relation to documents that are in evidence as well as questions that were raised earlier. Mr Occhiuzzi, earlier in your evidence you were asked some questions in relation to Exhibit 54, which you may have with you which is the typed notes in relation to your diary. Do you have that with you?---Yes.

And you were asked some questions in relation to page 3 which is the entry, I think it is, for 21 November 2013 relating to 548-546 Canterbury Road? ---Yes.

10

And that property, of course, I think was zoned originally as an industrial zone property. Correct? That is that Canterbury Road property. Is that right?---Look, I can't recall the zoning of it.

Okay. And if I can go, then, just to this particular property, was this a property that was being sought to be, in effect, dealt with as an exception to the local environmental plan that existed in relation to this area?---Yes. So, there was a submission on this site which was considered by the council at its 31 October meeting, 2013.

20

And just picking up something that the Commissioner asked you, was this in relation to submissions that were received as part of the residential development strategy, or something different?---No, that's right. It was actually a submission received to the local environmental plan when it was exhibited in 2012, and all of those submissions that sought increases in height and density were then corralled, I suppose, to the framework of a residential development strategy for assessment.

30

And if you go to Exhibit 53, that's paragraphs 22 to 24 where you explain the issues - - - ?---Sorry, which exhibit?

That's okay. It's your statement of 29 November 2017, it's your first statement, the larger one?---Yes.

And it's paragraphs 22-24 where you explain the rationale for the residential development strategy?---Yes.

40

Okay. And just to understand a bit of the history of this, spot rezoning if we can call it that, in terms of the label, that is the application of zoning to a specific parcel or parcels of land within a larger zoned area, when the rezoning is usually at odds with the LEP. Correct?---That's right.

And it basically means you're dealing with a particular area different from what the LEP provides for, correct?---That's right.

And the zoning system that is contained within the LEP is to assist the governing body to discharge its duty of care including statutory duties in relation to controls. Correct?---Yeah, that's right.

But because of amendments to legislation that have been enacted, local governments now have the power to in effect alter particular zones within the LEP based on submissions being advanced?---That's right, in the form of a planning proposal.

And does that have to go then to the Department of Planning by way of seeking a Gateway Determination when you are dealing with what is called or used to be called spot rezoning?---That's right.

10

And is that then to, as it were, have another pair of eyes on this from a legislative scheme to have the Department of Planning look at it and to ascertain whether or not firstly it is justified and secondly whether any further controls or evidence need to be put in place to allow that to occur? ---That's right.

And of course spot rezoning was in effect permitted by changes to legislation. Correct?---Look, the capacity to lodge a spot rezoning application or more recently a planning proposal has, has been around for a long, long time.

20

With different controls in them?---Different sort of legislative base, that's right.

And the one involving Gateway Determinations, when did that come into effect?---Um, about six or seven years ago.

And that was in order for the Department of Planning then have eyes on these types of applications occurring?---That's right.

30

Okay. Thank you. Can I then ask you just in relation to the code of conduct, and Commissioner, I'm taking the witness to the brief of evidence, volume 2, at page 39 I think it is, Commissioner, when the code of conduct commences. Do you still have volume 2 with you, Mr Occhiuzzi?---Yes.

My learned friend, Counsel Assisting, has provided you with Exhibit 56 which is your statement of understanding of the code of conduct, and you'll see that this code of conduct training occurred on 15 October, 2013. Correct?---That's right, yep.

40

And prior to that training on 15 October, 2013 - - -?---Ah hmm.

- - - was there training that you undertook in your role as director of planning in relation to code of conduct within the council?---Look, I, I can't recollect whether I did or I didn't.

Okay. Can you recall prior to the training in relation to the code of conduct which commences at page 39 of the brief of evidence, volume 2, whether

there was a previous version of this code of conduct which you had been provided with when you commenced employment with the council in 2010?---I would have been. I remember receiving a large folder with all relevant documents and, and it would have included the code of conduct of the day.

That was the director of planning information package potentially?---That's right, that's right.

10 Can I just take you through some of the provisions of the code of conduct. If you go to page 42 under the heading Personal Responsibility, that provides that councillors, members of staff of council and delegates of the council must comply with the applicable provisions of this code of conduct?---Yes.

You understood that of course to include you?---That's right.

20 And if you then go to page 87 of the brief of evidence under the heading Responsibilities, point 6, council officials are responsible for reporting cases of suspected fraud or corrupt conduct.---Sorry, page?

Page 87, volume 2. It's page 49 on top of it, which is another number. ---Yes.

And you understood of course as part of your training that council officials were responsible for reporting cases of suspected fraud or corrupt conduct? ---Yes.

30 And if you then go to page 88, which is Reporting, 7.3, the general manager encourages the reporting of any suspected fraud and corruption issues. ---Yes.

And to assist council officials and members of the public, council has mechanisms in place to provide guidance for reporting fraud and corruption. Do you see that?---Yes.

40 Okay. Can I then ask you to go to what appears then to be the various mechanisms that are contained to deal with reporting. Did you understand that if there was a concern about the conduct of a councillor in relation to the way in which they were exercising their public functions, that that was a matter that you could make a report on?---Yes.

And that report would go to, would it, the general manager if it didn't involve the general manager?---Yes.

And if it involved the general manager it would need to go to the mayor? ---That's right.

So if you go to page 97 of the brief of evidence which is how may a code of conduct complaint about a council official, other than the general manager be made, that sets out at 4.5 to 4.9?---Yep, yes.

And if it's about the general manager that has to be made to the mayor?
---That's right.

And if you then go finally to page 123, that sets out the flowchart there in relation to the matters as to how to deal with complaints?---Yes.

10

Okay. Is it fair to say that during your period as director of planning in terms of the evidence that you've given to the Commission, in terms of your two statements and evidence to the Commission today and yesterday, is that you found aspects of the requests by Councillor Hawatt and Azzi to be not in accordance with your advice in relation to certain development applications. Is that the starting point?---Sorry, could you repeat that?

20

In relation to Councillor Hawatt and Councillor Azzi, your view or observation was that they weren't always willing to accept your advice in relation to development applications?---That's right.

And that, this is in a broad sense, there were, at times, requests or demands that were being made in relation to certain development applications that you found to be not acceptable because it wasn't in accordance with your advice as how the legislation operated, being the Environmental Planning and Assessment Act?---Yeah. Look, the majority of those advances were actually coming from the general manager for, you know, expediting matters.

30

Relaying matters of concern that he'd received from Councillor Hawatt and Councillor Azzi?---Correct.

And was your concern in respect of the expedition of some matters that the general manager Mr Montague was putting to you, was that that was then leading to priority being given to certain properties over other properties?
---That appeared to be the case, yes.

40

And that meant that other applications that were before the council had to be delayed to be dealt with while the priority matters were dealt with?---Yes.

And that in itself creates potentially unfairness in respect of other applicants?---Yes.

And in relation to those matters you were – is it your understanding that Mr Montague was asking you or directing you to give priority to certain matters?---Yes.

And that's what you did?---Yes.

As a result of his requests?---Yes.

Okay. Thank you. And that's because he had the power to direct you to do that?---Yes.

Yes, thank you, I have no further questions of the witness. Thank you, Commissioner.

10 THE COMMISSIONER: Mr Buchanan?

MR BUCHANAN: Briefly. Thank you, Commissioner. Mr Occhiuzzi, when you were being asked questions about clause 4.6 of the LEP, you said that the clause was necessary to provide flexibility in the right circumstances. Do you recall giving an answer - - - ?---Yes.

- - - to that effect?---Yes.

20 Now, I appreciate that you might have answered this question in a different context earlier, but what did you mean by 'in the right circumstances'?--- The whole premise of clause 4.6 and state environmental planning policy number 1 previous to that, was to provide a degree of flexibility to the planning system. I think there's an acceptance that there's a set set of zones and a limited number of development controls that apply across the board, but there's virtually limitless circumstances and situations, lot configurations, lot sizes, you know, tree cover, rock crops, slope, so there is, from time to time, a necessity to apply a degree of flexibility to ensure that the controls are achieved in what they're setting out to control, to achieve.

30 And so by definition there would be situations where it would not be the right circumstances to exercise the discretion conferred by clause 4.6? ---That's, well, in the majority of cases it would be prudent to stick to the controls.

Now, the clause required the consent of the Secretary to be given in its terms, but as a matter of fact, were you aware of a directive that had been circulated by the department some time earlier to the effect that the consent of the Secretary could be assumed for the exercise of discretion under 4.6? ---Yes, that's right.

40 So, did that mean that there was no oversight by the department when clause 4.6 was used, was applied?---That's my understanding, yes.

So it wasn't a case of submitting a report to the department saying this is what we propose to do, knowing that the department would send something back saying yes, we give it a tick? It was the case that you didn't even tell the department that you were exercising the discretion?---That's right.

Because of the directive that had been circulated many years before?
---That's right.

Thank you, Commissioner.

10 THE COMMISSIONER: All right. Mr Occhiuzzi, I can't excuse you, I'm
sorry for that. It may be that you are coming back. Ms Ellis will be in
contact with you to try and determine a convenient time for you, but I would
like to get you back either this week or next week so that we can deal with
your evidence to completion in this sitting of the public inquiry?---Okay.

Thank you very much.

THE WITNESS STOOD DOWN

[12.47pm]

20 THE COMMISSIONER: Mr Moses, the written submissions on the - - -

MR MOSES: Delegation?

THE COMMISSIONER: The delegation.

MR MOSES: Yes, Commissioner.

THE COMMISSIONER: When can they be provided to Counsel Assisting?

30 MR MOSES: We can provide them by, if it's not inconvenient,
Commissioner, by 10.00am tomorrow morning, if that's convenient for you,
Commissioner.

THE COMMISSIONER: That would be good.

MR MOSES: Okay. Thank you.

THE COMMISSIONER: Is that all right, Mr Buchanan?

40 MR BUCHANAN: Yes.

THE COMMISSIONER: That fits in?

MR BUCHANAN: Obviously, Your Honour, but if it's – it probably is
better sooner than later, because - - -

MR MOSES: We're happy, Commissioner, it really won't deviate from
what I said on transcript, it may be more eloquently expressed in the letter,
but we'll ensure that it gets to the Commission by 10.00am tomorrow.

MR BUCHANAN: We'd just like to let Mr Occhiuzzi go when - - -

THE COMMISSIONER: Yes.

MR BUCHANAN: When we can.

10 THE COMMISSIONER: And Mr Andronos, do you think you can confirm your instructions by tomorrow morning?

MR ANDRONOS: Yes, Your Honour. Certainly by 10.00am tomorrow.

THE COMMISSIONER: Thank you.

MR MOSES: Commissioner, would it be convenient just to mark that delegation as an MFI just so that there's a trail of what it is in the transcript? Only if that's convenient to you, Commissioner.

20 THE COMMISSIONER: Yes. We'll mark the delegations director (city planning) which was signed by Mr Occhiuzzi on 2 April 2014 as MFI 1.

#MFI-001 – DELEGATIONS FOR THE DIRECTOR OF CITY PLANNING

MR MOSES: Thank you, Commissioner.

30 THE COMMISSIONER: And I should just check Mr Occhiuzzi took his notebook back, the original notebook, or - - -

MR BUCHANAN: I was meant to retrieve that, and someone has anticipated the necessity to ensure that it goes through the document processes at the Commission. I've been asked to read onto the record a property identification tag number for the notebook with Mr Occhiuzzi's handwritten notes and the unredacted copy of the transcript that he made of those notes. That number is E15-0078-09-043/PR004. Thank you.

40 THE COMMISSIONER: Thank you.

MR BUCHANAN: Commissioner, it's ten to 1.00, but we could start perhaps, with the next witness.

THE COMMISSIONER: Yes. It think it's - - -

MR BUCHANAN: If Ms Carpenter could be called, please?

THE COMMISSIONER: Ms Carpenter, do you take an oath or an affirmation?

THE WITNESS: I'll take an oath, thank you.

MR BUCHANAN: Thank you. Your name is Judith Carpenter, is that right?---It is, yes.

I apologise, the section 38 declaration. I - - -

THE COMMISSIONER: That did pass my mind.

10

MR BUCHANAN: It's my fault for not having raised it. I apologise.

20

THE COMMISSIONER: Excuse me for a minute, Ms Carpenter. You have been summoned to give evidence. You have to answer questions asked of you truthfully and also if you're asked to produce any document or thing you must produce that document probably thing. You have a right, at common law, if you give an answer that may incriminate you in respect of a criminal offence or a disciplinary offence or a civil penalty, to refuse to give that answer. Now, that privilege doesn't apply here but what I can do is, if the indication I'd that you would have taken that objection if you had the ability to, I can give a direction under 112, which provides a protection that in, really except for one limited circumstance, any answer you give can't be used against you in any criminal, civil or disciplinary proceeding. The exception is, if you give evidence here that is not truthful, there is the possibility that you may be prosecuted for an offence under the ICAC Act, which is really an offence of, similar to perjury. The protection would not apply in those circumstances. But for abundant caution, do you wish me to make a direction under section 112?---Yes. Thank you.

30

I'm sorry. I think, thank you, sorry, section 38. All right. Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by this witness and all documents and things produced by this witness during the course of the witnesses evidence at this public inquiry are to be regarded as having been given or produced on objection and there is no need for the witness to make objection in respect of any particular answer given or document or thing produced.

40

PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY THIS WITNESS AND ALL DOCUMENTS AND THINGS PRODUCED BY THIS WITNESS DURING THE COURSE OF THE WITNESSES EVIDENCE AT THIS PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION AND THERE IS NO NEED FOR THE WITNESS TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED.

THE WITNESS: Thank you.

MR BUCHANAN: Thank you, Ms Carpenter. Your name is Judith Carpenter?---It is.

And you are a recruitment consultant?---I am.

10 A somewhat specialised recruitment consultant?---I probably operate in three areas. Local government, not-for-profit and professional services.

And for how long have you been doing that work?---In my own business for 21 years, and prior to that with KPMG and Pricewaterhouse.

And your own business is Judith Carpenter and Associates?---That's correct.

And that was established in 1996?---That's correct.

20 Now, Ms Carpenter, you've made a couple of statements for this inquiry to the Independent Commission Against Corruption?---I have.

And if I could show you, please, this volume, if you could just check this has copies of those two statements in it, including behind your first statement copies of documents that you referred to as exhibits to your statement. Do you see that?---Yes, I do.

Now, I'm going to be asking you questions largely going through your statements and I invite you to refer to your statement if at any time it will
30 assist you in answering a question.---Thank you.

You knew Mr Montague, Mr Jim or James Montague, the general manager of Canterbury City Council, as at 2013/14?---I did, yeah.

For how long had you known him?---I had, so Mr Jim Montague and Canterbury Council had been clients of mine for some time, probably for the previous 10 years, but you know, I'm guessing there.

40 And when you say they'd been clients, what work had you done?---So we had done recruitment, including previous directors, we had done work in reviewing some of the operations and I think that there had been a performance review discussion.

And in your statement at paragraph 6 on the second page you say that through a conversation with Mr Montague you became aware that the position of director of planning was to be advertised and recruited for. Just going back to paragraph 5, this was leading up to October 2014, and that Mr

Occhiuzzi had held that position, had come to the conclusion of his employment contract and had fallen foul of councillors.---That's correct.

Who told you he had come to the conclusion of his employment contract?
---That would have come from Mr Montague.

And when you say, "had fallen foul of councillors," is that your description of your memory of what he said - - -?---That's correct.

10 - - - or the effect of what he said?---Ah, that would certainly be the effect of what he said, yeah.

You in paragraph 7 talk about Mr Occhiuzzi and the role he played. Where did you get that knowledge from?---So Mr Occhiuzzi had been a previous candidate of ours. He had a really strong reputation in the industry and I was aware, and I don't know where I was aware from, that he had been working effectively in council, and I think that that had probably come through via comments from other senior staff.

20 Other senior staff of that council or other councils?---Of that council, yeah.

Mr Occhiuzzi has told us that he started work at Canterbury Council in 2010.---Ah hmm.

So on that basis, unless it was like 1 January, 2010, you would have been involved in his recruitment to that position in 2010?---That's correct.

And that's when you would have had the opportunity to speak with him yourself. Is that right?---One of my, one of my consultants - - -

30 Yes?--- - - - was involved in that recruitment and she spoke with him, interviewed him and also conducted the reference checking.

And so how do you know about the character of the man and the work that he did at that time?---So I would have seen the reference checks and I would have seen her report.

And is that because it was your job to sign off on those or at least review them before they went out?---Review them before they went out.

40 You say in paragraph 7 Montague told you Marcelo had clashed with councillors, but you're not aware of the exact details.---No, and I don't think any details were provided.

All right. And then Mr Montague asked you to put a proposal together. If the witness could be shown volume 3 of the volumes of documents, please. If you could identify the proposal. Can I suggest it's volume 3, pages 1 through to 13.---Yes, that is the proposal.

And on page 2 is a letter that – was that meant to accompany the proposal or is it part of the proposal?---It was part of the proposal.

10 Can I ask you, in this document there's quite a bit of information set out about what was required of candidates to fill a position, for example, looking at page 3. You'll see that there's three paragraphs there before the words, 'Below we set out', and the first paragraph indicates that the council is seeking to appoint a director who will work collaboratively to provide strong technical advice and effective people management in all planning and environment matters, and then there's another paragraph and then there's a third paragraph. My question to you is where did that information come from, or where would it have come from?---So that information about what they were looking for?

Yes?---It would have come from the general manager and it probably came also, from my understanding, of the council generally.

20 And was there anything in those requirements for the position which struck you as unusual at the time?---No.

Excuse me a moment. The recruitment process on page 4, I take it that there's nothing terribly unusual about that either?---This is a standard process that we would use.

Thank you. So most of that would have come from you and would have been agreed to?---Yeah. Yeah.

30 By Mr Montague?---Yes, that's correct.

Now, if I can ask you to go to page – sorry, I do apologise. I note the time, Commissioner. And this actually would be a convenient time.

THE COMMISSIONER: Okay then. All right. We'll adjourn for the lunch break and come back at 2 o'clock.

LUNCHEON ADJOURNMENT

[1.02pm]