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HEARING

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INDEPENDENT COMMISSION AGAINST CORRUPTION

PATRICIA McDONALD SC  
COMMISSIONER

PUBLIC HEARING

OPERATION DASHA

Reference: Operation E15/0078

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON MONDAY 16 APRIL, 2018

AT 10.00AM

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

THE COMMISSIONER: I will deal first with the general scope and purpose of this public inquiry. The matters being investigated are, first, whether between 2013 and 2016 public officials – including councillors of the former Canterbury City Council Michael Hawatt and Pierre Azzi; the former general manager Jim Montague; and the former director of planning, Spiro Stavis – dishonestly and or partially exercised their official functions in relation to planning proposals and or applications under the Environmental Planning and Assessment Act 1979 concerning properties in the Canterbury City Council Local Area.

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Second, the circumstances surrounding the appointment of Spiro Stavis to the role of director (city planning), including whether between November 2014 and January 2015 Jim Montague exercised his official functions dishonestly or partially in relation to the appointment of Spiro Stavis to the role of director (city planning), and whether between November 2014 and January 2015, Michael Hawatt and Pierre Azzi engaged in conduct that adversely affected or could have adversely affected either directly or indirectly the honest or impartial exercise of official functions by Jim Montague, the general manager of Canterbury City Council, by expressly or impliedly threatening to cause the termination of Jim Montague's employment unless he appointed Spiro Stavis as director (city planning).

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The general scope and purpose of this public inquiry is to gather evidence relevant to those matters being investigated for the purpose of determining the matters referred to in section 13 subsection 2 of the ICAC Act. Now the public inquiry will be heard in two sittings, the first sitting commences today and will conclude on the 27<sup>th</sup> of April. The second sitting will commence on Tuesday, the 12<sup>th</sup> of June and continue until the 29<sup>th</sup> of June. The Commission will not sit on the public holidays of 25 April or 11 June 2018. Sitting days will usually commence at 10.00am and finish at 4.00pm with breaks for morning tea and for lunch. Now, the way we're going to proceed this morning is first I will hear appearance of Counsel Assisting and their opening address. We will then have a brief adjournment and I will then hear any other applications for leave to appear and other appearances. Mr Buchanan.

30

MR BUCHANAN: May it please the Commission. I appear with my learned friend Ms Mitchelmore as Counsel Assisting.

40 THE COMMISSIONER: Thank you.

MR BUCHANAN: The public inquiry that commences today is part of an investigation by the New South Wales Independent Commission Against Corruption into two main matters. The first, the recruitment and the appointment in the period late 2014 to early 2015 of Spiro Stavis as director (city planning) at Canterbury City Council and, second, a series of events in the period 2014 to 2016 involving land use planning and development

applications at then Canterbury City Council, together with a number of individuals associated with that council.

10 In relation to the land use, planning and development application matters, the issues are decision making around applications and planning proposals considered at Canterbury City Council in respect of a number of particular properties. Before moving to the detail of the subject matter of the hearing, I want to make some remarks about this opening and the nature of the investigation of the public hearing. The opening of the hearing is not  
10 evidence, nor, it should be stressed, is it a statement of the view of the Commission or of you, Commissioner. I want to make it clear that I am speaking on behalf of Counsel Assisting this inquiry and I am not speaking for you, Commissioner. You will make your findings based upon all the evidence and only after considering the submissions of all parties including those of Counsel Assisting.

20 This public inquiry is only one part, albeit an important part, of an investigation by the Commission. It is also important to understand that an investigation is not a trial. This public inquiry is not a trial nor like a trial. The procedures are different to those used in a trial. Some allegations of corruption have been raised and they were sufficiently serious to require investigation. This public inquiry is part of a process through which those allegations are being investigated. It should be understood that those allegations might change or be added to as the hearing progresses. The whole story of the matters under investigation is a complex story. To present it in a coherent fashion we've proposed to present it by organising it into parts. There is no simple or single timeline that can be drawn through the course of events, so my outline today cannot be strictly chronological and there will be a degree of backtracking and some repetition.

30 Before delving into the matters under investigation, it's necessary to outline some of the legal background. The broad legal framework for decision making in respect of the matters being investigated comprised, in the main, acts of the New South Wales Parliament and instruments made under those acts. Two acts of parliament were the Environmental Planning and Assessment Act 1979 and the Local Government Act 1993. It should be noted that some provisions of the Environmental Planning and Assessment Act have changed since the period of the events being investigated in this hearing. My references to sections of that Act are references to the  
40 provisions as they were in the period under investigation.

Two instruments under the Act concerned were the Canterbury Local Environment Plan, made in 2012 but which commenced at the beginning of 2013 and a code of conduct adopted under the Local Government Act by Canterbury Council in 2013. The Canterbury Local Environment Plan, or LEP as I will term it, was an instrument drafted by the council based on a New South Wales government template and was made by the Minister for Planning. The LEP provided the legal framework for decision making

about development on land in the Canterbury local government area. It made different provisions for different parcels of land, depending on how they were zoned under the LEP and how development on those parcels of land was otherwise regulated.

10 The Canterbury Development Plan, or DCP, was an instrument made by the council which provided detailed planning and design guidelines to support the planning controls in the LEP. Both the LEP and the DCP remain enforced under the amalgamated council. Decisions about development on particular land could only be lawfully made if they were in accordance with the requirements of the Environmental Planning Assessment Act and the LEP. However, in common with other LEPs, the Canterbury LEP had a clause, clause 4.6, which allowed for decisions about development to be made which contravened a development standard laid down in the LEP provided three conditions were met.

20 The first condition was that the applicant provide a written request that sought to justify the contravention of the development standard by demonstrating that compliance with the development standard was unreasonable or unnecessary in the circumstances of the case and that there were sufficient environmental planning grounds to justify contravening the development standard. The second condition was basically that the consent authority, usually council, was satisfied that the applicant's written request has adequately addressed the matters just mentioned and the proposed development would be in the public interest. And the third condition was that the Secretary of the Department of Planning and Environment give concurrence to, with council's decision. A relevant matter in this hearing is that in May 2008, where small exceptions that are not relevant here, the department notified all councils that they could assume the Secretary's  
30 concurrence.

There were two other bodies that were sometimes relevant to decisions on development applications in the City of Canterbury in the period 2014 to 2016. The first was the Independent Hearing and Assessment Panel, known as IHAP. While IHAP's could be established under the Environmental Planning and Assessment Act, they could also be created under the Local Government Act. Canterbury Council established its IHAP using its powers of delegation under the Local Government Act. Canterbury Council established an IHAP in 2006. Council delegated to IHAP its powers of  
40 assessment of development applications which were sent to IHAP. DAs were sent to the IHAP if they met predetermined referral criteria. Those criteria included whether the development would be significant, such as being four storeys or more, or being multiple residential unit developments.

Canterbury Council laid down rules for the operation of its IHAP and its interaction with council. The IHAP only assessed the development applications it received, it didn't determine them. That power remained with council. Development applications considered by the Canterbury City

Council IHAP which are relevant to this hearing were for the following properties, 538-546 Canterbury Road, Campsie and 548-568 Canterbury Road and 570-580 Canterbury Road, Campsie. There were also the joint, there was also the Joint Regional Planning Panel, or JRPP. This was also established under the Environmental Planning and Assessment Act. It actually made the decision on development applications that were referred to it rather than the council concerned. Relevantly, the DAs had to be determined by the JRPP where the value of a development being applied for was \$20 million or more.

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From time to time, planning – I'm sorry. From time to time, proposals might be made to change the zoning or treatment of particular land under the LEP. Those proposals were called planning proposals. Often, they were, for what might be termed, spot rezoning or other changes to development controls. If the council adopted a planning proposal the next step was for the proposal to be considered by the Department of Planning and Environment which would issue what was called under the Environmental Planning and Assessment Act, a Gateway Determination on behalf of the Minister for Planning. If the planning proposal found favour with the department it was not unusual for the department to make a Gateway Determination and from 14 October, 2012, to delegate to council the power to make the amendment to the LEP, subject to conditions. One of those conditions would be to put the planning proposal on exhibition to obtain feedback from the community and from other authorities with an interest in the land, those other authorities often being called concurrence authorities. That feedback would have to be taken into account before the amendment to the LEP could be made by council.

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Planning proposals had this advantage for developers. If they lodged a development application which didn't comply with controls under the LEP, then pursuant to clause 4.6 of the LEP they had to go through a major hoop. This was stringent criteria for developing, for demonstrating why an exception should be made for their DA. In addition, the Secretary of the department had to concur in an exception being made for the application, although, as previously mentioned, the department had back in 2008 indicated that concurrence could be assumed.

30

If the developer was able to get council to adopt a planning proposal to change the development controls to fit with the envelope of their proposed development and provided council obtained the department's concurrence to changing the LEP, the developer did not have to go through the clause 4.6 process, knew that their development met the LEP's planning controls and could maximise their lot yield in advance of making their development application.

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Commissioner, there are four people who will feature prominently in this hearing. James Montague, known as Jim Montague, general manager of Canterbury City Council; council's director (city planning) in the period

commencing 19 January, 2015, Spiro Stavis; and two men who were then councillors on the council, Michael Hawatt and Pierre Azzi.

10 Jim Montague was employed by Canterbury City Council from October 1982 until July 2016. From 1982 until 1993 when the Local Government Act 1993 commenced, his position was called town clerk. From 1993 until 2016 his position was general manager. These two positions were the same, just with difference names. Mr Montague was employed as general manager under a contract of employment dated 28 August, 2014 for the period 26 April, 2015 to 25 April, 2017. The contract was signed on 11 February, 2015.

20 Mr Montague's employment as general manager ceased on the proclamation by the New South Wales Government on 12 May, 2016, of the amalgamation of Canterbury Council with Bankstown Council and simultaneously the positions of general manager at the two councils being made vacant. He became deputy general manager but was made redundant and placed on special leave from 23 May to 3 June, 2016, at the end of which his contract was paid out. As general manager Mr Montague had the power to fill the position of director (city planning), and I'll come back to that.

In 2014 Spiro Stavis was a senior planner at Botany Bay City Council. In October 2015 he applied for the position of director (city planning) at Canterbury Council. He went through a recruitment process and was appointed to that position commencing 19 January, 2015 and he commenced work on about 3 March, 2015.

30 Michael Hawatt and Pierre Azzi were both councillors on Canterbury Council. Councillor Hawatt had been a councillor since 1995 and was re-elected in 2012. He was elected on a Liberal Party ticket. Councillor Azzi was first elected in 2012. He was elected on a Labor Party ticket. Councillors Hawatt and Azzi took a particular interest in planning issues, and as will be seen, took a particular interest in the appointment of Mr Stavis to the position of director (city planning). Their positions as councillors ceased on amalgamation on 12 May, 2016.

40 In the period 2014 to May 2016, a majority of the elected councillors had been elected as Labor Party councillors. They were councillors Robson, Azzi, Saleh, Adler, Paschalidis, Kebbe. Councillors Hawatt, Vasiliades and Nam were elected as Liberal Party councillors. The remaining councillor, Councillor Eisler, was elected on a Greens deal. To complete the picture, although it is not under investigation, in 2012, Councillor Brian Robson was separately elected as mayor and he was mayor during the events under investigation.

In 2014 to 2016, the structure of Canterbury Council had the council at the top. The council comprised the mayor and councillors. The general

manager was responsible to council for the management and operations of the organisation. The general manager had directors, division of council who reported to him. The director (city planning) was one such report. The director (city planning) had a number of managers reporting to him. One such manager was the manager (land use and environmental planning). The manager (land use and environmental planning) looked after, amongst others, the Urban Planning Team.

10 Another manager reporting to the director (city planning) was the manager of the Development Application Team. As the name suggests, the Development Application Team looked after the assessment of development applications and also strategic planning of land use. The two teams I have mentioned were staffed in the main by urban planners. Under chapter 11 of the Local Government Act, the director (city planning) was a member of what the Act called senior staff. Under chapter 11, senior staff were appointed and dismissed by the general manager, quote, “only after consultation with the council”, end quote. The general manager, on the other hand, was appointed and dismissed by council.

20 Generally speaking, the consent authority for development applications and rezoning proposals in the Canterbury City local government area was Canterbury City Council. The decisions could be made by council itself or they could be made under delegation, either by a committee of council called the City Development Committee or by a member of staff. The City Development Committee was a committee comprising the mayor and all the councillors. It made most of the decisions which will be referred to in this hearing. The members of staff with delegations to make such decisions were the director (city planning) and, for less important matters, managers and occasionally staff members.

30 The first part of this hearing is being conducted over this and the next week. In this first tranche, the matters being investigated principally concern three matters. The recruitment and appointment of Spiro Stavis as director (city planning) at Canterbury City Council; a planning proposal for a property at 15-23 Homer Street, Earlwood; and development applications for properties at 51 Penshurst Road, Roselands, and 23 Willaroo Street, Lakemba. This opening address will canvass the allegations being investigated and the evidence we expect to lead in respect of those three matters. In addition,  
40 evidence will be given in this first tranche from two former planners about a fourth and a fifth matter. A planning proposal for a property at 998 Punchbowl Road, Punchbowl, development applications and a modification application for properties at 548-568 and 570-580 Canterbury Road, Campsie. The second tranche of the hearing will explore the fourth and fifth matters in considerably more detail, as well as development applications and planning proposals for other properties, including 538-546 Canterbury Road, Campsie.

So that the evidence from a number of witnesses about those fourth and fifth matters can be understood in context, this opening address will also canvass those two latter matters. And with your permission, Commissioner, I will present a supplementary opening at the commencement of the second tranche of the hearing which will canvas the evidence to be expected to be lead in that tranche, upon which there has not, by that stage, been an opening address. The first general matter under investigation in this hearing is the recruitment and appointment of the period late 2014, early 2015 of Spiro Stavis as director (city planning). I propose to provide first a summary of the issues to be investigated.

This inquiry will investigate whether Spiro Stavis was given any sort of corruptly preferential treatment in the process of recruiting Mr Stavis for appointment, in the offer made in December 2014 for him to fill a position of director (city planning) and finally, his appointment to that position in January 2015. Specifically in relation to this matter this inquiry will investigate three particular allegations. The first allegation under investigation is whether between December 2014 and January 2015 Jim Montague partially exercised his public official functions as general manager of the former Canterbury City Council by appointing Spiro Stavis as director (city planning).

Turning to how this allegation could amount to corrupt conduct under section 8(1) of the ICAC Act, it would be partial behaviour to give someone an advantage for an improper purpose with knowledge that what was being done was for a reason which was unacceptable. Section 349 of the Local Government Act required that the appointment of senior staff at council be on merit. If partiality in the exercise of the functions of general manager under sections 335 paragraph H and 337 of the Local Government Act were to be demonstrated, then that could be corrupt conduct under section 8(1) of the Independent Commission Against Corruption Act. For the purpose of section 9(1) paragraph A of the ICAC Act, where it is sufficiently serious and merits criminal punishment in all the circumstances, such conduct could be the common law offence of misconduct in public office. Under section 9(1) paragraph C it could also constitute reasonable grounds for terminating a general manager if it is established that the conduct involves serious and wilful misconduct, dishonesty or neglect in the discharge of duty to appoint staff on merit. In addition it could also involve a disciplinary offence under section 9(6) of the ICAC Act if it is established that the conduct involved a substantial breach of the Canterbury City Council Code of Conduct, specifically clauses 3.5, 3.6, 5.9 and/or 5.10. The code relevantly required that councillors and council staff must always act in the public interest and must not act for an ulterior purpose or for irrelevant grounds, must not use their position to influence other council officials in the performance of their public or professional duties to obtain a private benefit for themselves or for somebody else, and must not take advantage of their status or position at council in order to obtain a private benefit for themselves or for any other person or body.



10 The second allegation concerning the recruitment and appointment of Mr Stavis as director (city planning) and being investigated is whether between November 2014 and January 2015, Michael Hawatt engaged in conduct that adversely affected or could have adversely affected, either directly or indirectly, the honest or impartial exercise of official functions by Mr Montague by expressly or impliedly threatening to cause the termination of Mr Montague's employment with the intention of influencing the exercise of Mr Montague's public duty in relation to the appointment of Spiro Stavis as director (city planning).

20 The third allegation under investigation in this regard is whether between November 2014 and January 2015, Pierre Azzi engaged in conduct that adversely affected or could have adversely affected either directly or indirectly the honest or impartial exercise of official functions by Mr Montague by expressly or impliedly threatening to cause the termination of Mr Montague's employment with the intention of influencing the exercise of Mr Montague's public duty in relation to the appointment of Spiro Stavis as director (city planning).

Commissioner, I will identify the specific conduct under investigation in relation to this allegation against Mr Hawatt and Mr Azzi after I have provided an opening in relation to the events of which there will be evidence in this hearing.

30 Both the second and the third allegations could be corrupt conduct under section 8(1) paragraph A of the ICAC Act if they adversely affected the honest or impartial exercise of the general manager's official functions in relation to the employment of senior staff at council. They could also be corrupt conduct under section 8(2) paragraph C if either or both matters adversely affected the exercise of Mr Montague's official functions and involve the corrupt offence, I'm sorry, involved the criminal offence of blackmail under section 249K(1) of the Crimes Act 1900. Blackmail I interpolate is an unwarranted demand with menaces with the intention of influencing the exercise of the public duty. Menaces is defined in the Crimes Act as including an express or implied threat or any action detrimental or unpleasant to another person.

40 For the purposes of section 9 of the ICAC Act, as already indicated the conducted alleged could have constituted or involved the criminal offence of blackmail. In addition, where the conduct is sufficiently serious and merits criminal punishment in all the circumstances, such conduct could constitute the common law offence of misconduct in public office. In addition the conduct alleged could have involved a disciplinary offence comprising a substantial breach of the applicable requirements of clauses 5.9 and/or 5.10 of council's then code of conduct.

In opening the hearing on the first three allegations under investigation I should sketch a brief background.

10 From 2010 to September 2014 the director of planning at Canterbury Council was Marcelo Occhiuzzi. The evidence will be that Mr Occhiuzzi had encounters with Councillors Hawatt and Azzi which could be politely described as robust and that those councillors were pushy and sometimes aggressive. His interactions with the two councillors led to strained relations between him and them. It here needs to be said that the council code of conduct provided that councillors were not to direct staff or to try to influence them in the exercise of their functions, however the code of conduct also provided that all requests for information and approaches to staff outside the forum of a council or committee meeting shall be directed to the general manager, to a director or to a manager.

20 In early 2014 Mr Montague raised with Mr Occhiuzzi concerns he said had been expressed to him by Councillors Hawatt and Azzi about the time taken to process development applications, as well as other assessment and compliance issues. The general thrust of what Mr Montague said on this occasion was that planning was not bold enough at Canterbury and that individual applicants were given a quote, "hard time" by assessment officers. Mr Montague made it clear that Councillors Hawatt and Azzi were controlling council. At a subsequent meeting Mr Montague warned Mr Occhiuzzi that the renewal of his contract would be seriously considered and that there was dissatisfaction with his performance, including from Councillors Hawatt and Azzi. Mr Montague told him he had one more chance, quote, "to turn the ship around." Mr Montague also told him of increasing tensions on the part of councillors and general antagonism towards planning matters.

30 In late 2014 Mr Occhiuzzi decided to leave Canterbury Council because he thought his position had become untenable. Mr Montague retained a firm of recruitment consultants, Judith Carpenter & Associates, to organise filling the vacant position. That firm's principal, Judith Carpenter, had considerable experience in filling senior positions in local government and Mr Montague had retained her previously to fill senior positions at council. It should be noted that two key performance criteria for this position of director (city planning) were experience and/or talent in team management and leadership and change management.

40 At this point I need to digress slightly and mention a person with lengthy and close connections with Canterbury Council and on the Liberal side of politics in the Canterbury-Bankstown region, a real estate agent called George Vasiliades, commonly known as George Vasil. George Vasil was the father of Con Vasiliades, one of the councillors on Canterbury Council.

It is expected the evidence will be that George Vasil knew and had known a number of councillors on Canterbury Council and that some had consulted him and he them on planning issues before council.

10 The evidence is expected to be that Councillor Hawatt and George Vasil had dealings with each other for as long as Councillor Hawatt had been on council, some 20 years, particularly in relation to planning matters. George Vasil also knew Councillor Azzi and had known Mr Montague for a long time. It is expected that the evidence will be that at the time the director (city planning)'s position was being advertised, Mr Stavis spoke with George Vasil more than once about planning instruments and issues in the Canterbury local government area, and that George Vasil introduced him to Councillor Hawatt. I should say that at that stage, Mr Stavis was employed at Botany Council.

20 In addition, it is expected that there will be evidence that Mr Stavis met with Mr Vasil and another man, Bechara Khouri, and underwent what might have been regarded as a mini job interview for the position. Mr Khouri was on the Labor side of politics and, amongst other things, was a consultant to developers, including to a developer Charbel or Charlie Demian. Mr Khouri had also known Mr Montague for a long time. Returning to the planning director recruitment process, in October to November 2014, Ms Carpenter conducted a process of advertising and initial interview of candidates to fill the position of director (city planning) at Canterbury Council. Before the closing date for applications, Mr Montague rang Ms Carpenter and said that he needed two people to be, quote, "Tapped on the shoulder", and named Simon Manoski, a well-respected planning manager who was then working in government and Spiro Stavis. As it happened, both had, by then, submitted applications for the position.

30 Ms Carpenter prepared a report for Mr Montague with a shortlist of candidates. Around 31 October 2014, Ms Carpenter rang Mr Montague and said that she had prepared a shortlist. She said that she knew Mr Montague was interested in Mr Stavis being included but he couldn't be included because, on paper, he did not meet the criteria for the job. Mr Montague wanted that he wanted Mr Stavis to be included on the shortlist. Ms Carpenter then conducted initial interviews with the shortlisted candidates including Mr Stavis. Ms Carpenter rang Mr Montague to give him feedback on this process and advise that again, Mr Stavis had not made selection because he did not meet the criteria for the position. Viewed objectively, it is clear Mr Stavis had no experience at director level and no background in change management, both essential criteria for the position. Mr Montague, however, said that he wanted Stavis to be included in the shortlist. Mr Montague subsequently told a departmental investigator that, quote, "There was a view", unquote, of councillors Hawatt and Azzi that Mr Stavis should be shortlisted for the interview.

In mid-November 2014, Mr Montague formed an interview panel comprising himself, Mayor Robson and councillors Hawatt and Azzi. This composition of the panel was unusual. It was unusual to include councillors. In addition, the planning did not include a member with planning qualifications. When Ms Carpenter asked Mr Montague why councillors were being included on the panel he said, quote, "I thought I would try something different this time." Ms Carpenter prepared candidate assessment documentation for the interview panel members. This included summaries about each candidate and a sheet of questions for candidates to be asked during final interviews and for the panel members to score the candidates. Interview panel members were advised that referees for candidates for the position had not been checked and that her company would check referees if it was wished to proceed further with a candidate's application. Investigations have revealed photographs on Mr Stavis' mobile phone of the sheet of questions for the candidates, and the photograph files are dated 16 November 2014. It is expected that Mr Stavis will say that councillors Hawatt or Azzi may have provided him with access to those questions. To have supplied copies of the questions in advance to one candidate would, of course, have been to subvert the interview panel process.

The interviews took place in Council Chambers in Campsie on 17 November, 2014. Ms Carpenter sat in as an observer. There were five candidates interviewed in addition to Mr Stavis, there were two of note, Simon Manoski and a Karen Jones. Both Mr Manoski and Ms Jones had particularly good qualifications and experience for the position. It appears that the interview by the panel were themselves, unusual and for some candidates, unpleasant. Councillors Hawatt and Azzi were rude and aggressive to candidates, particularly to Ms Jones. From their questioning, a particular subject in which Councillors Hawatt and Azzi appeared interested was whether, if appointed, candidates would do what the general manager told them to do. Immediately after the interviews Ms Carpenter advised Mr Montague that Ms Jones was the best candidate and next was Mr Manoski. Mr Montague was of the same opinion. Ms Carpenter advised that Mr Stavis did not meet the criteria for the position, however, because, it can be inferred, of the views of Councillors Hawatt and Azzi, Mr Stavis remained under consideration along with Ms Jones and Mr Manoski.

By 21 November, 2014 Ms Carpenter had not contacted Mr Stavis's referees. This was something that Mr Stavis told Councillor Hawatt by SMS to Councillor Hawatt's mobile phone. To this, Councillor Hawatt responded, "If she does the wrong thing, she will not succeed." On 24 November, there were further SMS's between Mr Stavis and Councillor Hawatt on the subject. Mr Stavis told Councillor Hawatt he was "anxious" about it.

On 24 November, Mr Montague emailed Ms Carpenter asking her what, "her gut feeling was on the director." At 12.10pm that day Ms Carpenter

replied that she thought Ms Jones was leading the pack with Mr Manoski coming in second and they were both were really good. She said that Mr Stavis had not managed at director level before and that she thought that Mr Manoski would get “internal resistance” to appointing Mr Stavis. However, something happened that day as, by 9.41pm Councillor Hawatt sent two text messages to Mr Stavis which implied that Mr Stavis would be appointed.

10 On 26 November Ms Carpenter sent Mr Montague two referee reports for Mr Stavis both of which were favourable. However, that morning she also sent a lengthy email in which she weighed the respective merits of Ms Jones and Mr Stavis. Ms Carpenter commended Ms Jones and explained how she met the performance criteria for the position. Ms Carpenter also explained why, in her opinion, Mr Stavis did not meet the performance criteria. Ms Carpenter wrapped up her analysis by saying, among other things, “Jim, it would seem to me there is no real comparison. Given Spiro’s lack of management and organisational experience it would be a very surprising move to appoint him, it would fly in the face of a merit selection process as set out in the 1993 Act.” This was a reference to Section 349 of the Local Government Act, which amongst other things, said subsection (i) when the  
20 decision is being made to appoint a person to a position, b from among the applicant eligible for appointment, the applicant who has the greatest merit is to be selection; (ii) the merit of the person’s eligible for appointment to a position is to be determined according to (a) the nature of the duties of the position and (b) the abilities, qualifications, experience and standard of work performance of those persons relevant to those duties.

Later that day the Mayor, Councillor Robson, gave Mr Montague his thoughts about the three candidates commending Ms Jones in particular and saying two things on Mr Stavis. “Lacks experience as a director,” and this,  
30 “lives locally too close to action.” During this period Mr Montague met separately with Ms Jones and Mr Stavis. He met with Mr Stavis on 26 November, 2014.

It’s expected that there will be evidence that a point during the interview and application process possibly at this meeting on 26 November, Mr Montague emphasised to Mr Stavis that if appointed, Mr Stavis would need to work to his direction.

40 On 5 December, 2014 Mr Stavis sent an SMS to Councillor Hawatt saying, that Mr Montague had offered him the job and, spelling out the abbreviation, “Thanks for everything.” Councillor Hawatt replied, “Finally we achieve results.” Sorry, I’ll read that again. “Finally we achieved results.” On 8 December, 2014, Mr Montague gave Mr Stavis a written offer of employment on a 12-month contract commencing on 19 January, 2015. The following day in writing Mr Stavis accepted the offer. Two weeks later, in a memorandum to all councillors dated 23 December, Mr Montague informed councillors that his and the Mayor’s preference had been for Ms Jones, and I quote, “based upon her extensive senior

management experience in similar roles within local government and the New South Wales Department of Planning”. Mr Montague continued in that memorandum, quote, “Following extensive discussions amongst panel members, it was resolved that Mr Spiro Stavis be offered appointment for a period of 12 months.” Mr Montague went on to say, quote, “Mr Stavis was not the most experienced person interviewed.” He has not held a director’s position in the past and has limited experience in senior management roles and organisational change.

- 10 One of the matters to be investigated is how and why in these circumstances Mr Montague came to appoint Mr Stavis to the position of director (city planning) at Canterbury Council. Matters to be explored are what role in particular Councillor Hawatt had to play in Mr Montague’s decision to make the appointment.

On 8 December, 2014, in writing, as I said Mr Stavis accepted the offer and the same day tendered his resignation from Botany Bay Council. However, on 11 and 12 December, Ms Carpenter informed Mr Montague – verbally and in writing – of serious concerns she held about appointing Mr Stavis.

- 20 On 16 December, Ms Carpenter provided Mr Montague with further references for Mr Stavis relating to more recent employment than the earlier references that she had obtained and provided. These new references can only be described as quite adverse.

- Ms Carpenter reiterated her opinion that an appointment of Mr Stavis would not be on merit. This seems to have had an impact on Mr Montague because the same day he consulted council’s solicitors as to his opinions, I’m sorry, as to his options, and he decided to withdraw the offer of employment. He told council solicitors, quote, “Against my advice it was  
30 decided to appoint Mr Spiro Stavis, who was not, in my opinion, the best candidate.”

Now, although that statement, Commissioner, was expressed by Mr Montague in the passive voice, under the Local Government Act, whilst it was required to be done in consultation with council, the power to appoint Mr Stavis rested entirely with Mr Montague – albeit, as I say, in consultation with council.

- 40 On the 15<sup>th</sup> of December, 2014, Mr Montague told a local government colleague that he didn't want to employ Spiro Stavis but that Stavis was being forced onto him by councillors Hawatt and Azzi. Mr Montague told the colleague that he didn't have regard for Mr Stavis’s ability as a planner or director of planning. There will be evidence that on 17 December, 2014 Mr Montague said that he believed council’s reputation would be at risk if the wrong person was appointed, and that he had allowed himself to be compromised.

On 18 December, 2014, council solicitors wrote to Mr Stavis, informing him that the offer of employment was withdrawn. Councillor Hawatt then commenced lobbying other councillors, saying that Mr Montague's decision to withdraw the offer made to Mr Stavis must be changed. Councillor Hawatt contended that otherwise council would be exposed to a significant legal liability to pay out Mr Stavis's contract with Canterbury Council. He called on Mr Montague to call an extraordinary meeting of council to discuss the situation. Around 20 December, 2014, Councillor Hawatt consulted people about the steps to take to terminate the appointment of a general manager. He argued to other councillors that Mr Montague should be sacked and Mr Stavis should be appointed director (city planning).

As previously noted by a memorandum dated 23 December, Mr Montague gave to councillors his account of what he called the "failed appointment" of Mr Stavis. Also on 23 December Mr Stavis texted Councillor Hawatt, and again spelling out the texting abbreviations, "I know you're on my side but, please, I need this job." It appears that Mr Stavis was also seeking assistance through Mr George Vasil. In particular, Mr Stavis sent Mr Vasil copies of correspondence to and from his solicitors – that is, Mr Stavis's solicitors – relating to the offer of employment and to the withdrawal of the offer.

On 12 January, 2015, information adverse to Mr Montague was published in The Sydney Morning Herald. One aspect of this information which will be referred to in the evidence is regular lunches which Mr Montague had at a restaurant in Enfield called Il Buco. It was reported that the lunches were paid for by council and attended by various people, most frequently the mayor, Councillor Robson. The relevance of this in this hearing is that the potential inferences that once these matters were published the issue of Mr Montague's council-funded meals, and similar issues, was used by councillors Hawatt and Azzi in lobbying of councillors and to construct motions in council meetings to provide reason for councillors to support the moves on council to terminate Mr Montague's appointment as general manager, additional to his reason – to his withdrawal, that is, of his offer to Mr Stavis of appointment as director (city planning).

Whilst there is no evidence that Councillor Hawatt was the catalyst for the story published on 12 January, 2015, there will be evidence that from around 23 December, 2015, Councillor Hawatt began providing information to a Sydney Morning Herald journalist on subjects unrelated to recruitment of the director (city planning) and which were adverse to Mr Montague and Mayor Robson. Beginning on 18 December, Councillor Hawatt texted the councillors at Canterbury Council, lobbying against Mr Montague's decision to withdraw the offer of employment to Mr Stavis, complaining that the decision exposed council to liability to pay out Mr Stavis, and seeking that an extraordinary meeting of council be held to address these matters.

The texts did not always go to all councillors and the mayor. Other texts on these subjects – texts which might be characterised, perhaps, as somewhat more tactical – were sent to a small group comprising Pierre Azzi, Ken Nam, Mark Adler, Con Vasil, Fadwa Kebbe, and Karl Saleh. Leaving aside Karl Saleh, Councillor Saleh, this was a group of councillors which, in February of 2015, Councillor Hawatt described as “the A Team”. Counting Councillor Hawatt as a member of the A Team, it comprised a majority of six out of 10 councillors.

- 10 On 24 December, Councillor Hawatt texted this group of councillors about removing Mr Hawatt – I’m sorry, I’ll read that again. On 24 December, Councillor Hawatt texted this group of councillors about removing Mr Montague as general manager. Also on 24 December, councillors Hawatt and Azzi went to Councillor Robson’s house and gave him a notice calling for an extraordinary meeting of council. The notice gave notice of motions to be moved by them. The motions were for resolutions including the following. A, to terminate immediately the employment of Mr Montague. B, to appoint an acting – I’m sorry, to appoint an acting general manager. And, C, to discuss the appointment of Mr Stavis as director of planning and  
20 the withdrawal of the appointment by Mr Montague, quote, “and take necessary actions”.

- Although the evidence for when this occurred is not presently precise, at some stage between the 17 December withdrawal of offer to Mr Stavis and the new year, Councillor Azzi said to Mr Montague words to the effect, “Fix this up. Appoint Mr Stavis or you can go.” Councillor Azzi also told Mr Montague that if Mr Stavis was not appointed director, then another role should be found for him in the Planning Division. When Mr Montague asked what job Councillor Azzi had in mind, Councillor Azzi replied that  
30 Mr Montague should sack Gillian Dawson, the manager of strategic planning, and appoint Mr Stavis to that position.

Between Christmas and New Year there were a number of conversations around the crisis. Amongst others, at 1.30am on Christmas morning Mr Montague texted Ms Carpenter to the effect, "All hell is breaking loose. Please ring me in the morning." Subsequently, Ms Carpenter spoke with Mr Montague, who said words to the effect, "My reputation is at stake."

- 40 On 26 December, Councillor Hawatt and Mr Montague agreed to meet for a discussion. The meeting took place at the Bulldog's League Club, Belmore on the afternoon of 17 December, 2014. Also present was Councillor Azzi. At the meeting, Mr Montague was made an offer by Councillors Hawatt and Azzi for him to receive a benefit beyond his entitlements were he to retire during 2015. The principal feature of the offer was that the three of them make an agreement that, in exchange for Councillors Azzi and Hawatt withdrawing the call for an extraordinary meeting of council, Mr Montague would agree, one, to resign by no later than the end of August, 2015, at which point he would, A, be paid his entitlements but also, B, would receive



a gratuity equal to a number of weeks' salary in recognition of his long period of service to council. And, two, that the offer of employment to Mr Stavis would be honoured.

10 It might be noted at this point that under his contract of employment, Mr Montague was entitled to 38 weeks of salary if he was terminated without notice. On Monday, 29 December, Mr Montague reported the making of the offer to Councillor Robson. They agreed this was corrupt behaviour and that the matter should be reported to the ICAC. There will be evidence that  
10 among the conversations being had around this time was one in which Councillor Azzi told the former premier Morris Iemma that "Stavis was the preferred candidate. Montague withdrew the offer to Stavis without reason. We have to remove Montague."

20 On 13 January, 2015, the offer made by Councillors Azzi and Hawatt to Mr Montague at their meeting on 27 December, 2014 was reiterated, first verbally in a meeting between Councillor Hawatt and Mr Montague in the presence of a witness and then by email by Councillor Hawatt to Mr Montague. Although it had other terms and conditions, the offer was that,  
20 in exchange for the extraordinary meeting of council being withdrawn, the call for the extraordinary meeting being withdrawn, Mr Montague would cease employment at council at the end of the August, 2015, he would receive a gratuity payout of 20 weeks for 31 years of service, there would be a full audit of the Il Buco and other executive expenses and Mr Montague would honour the employment contract of Mr Stavis.

30 Mr Montague reported the offer to Councillor Robson and on 14 January, 2015, Mr Montague sent an email rejecting the offer. In that email, Mr Montague spoke of the need for, "The appointment of a highly experienced and suitably qualified director to lead the planning division. It might be inferred from the words Mr Montague used in that 14 January email, that he remained of the view that Mr Stavis should not be appointed director of planning at council.

40 On 16 January, 2015, Mr Montague came to the offices of this Commission and saw an assessment officer. He handed over a written disclosure under section 11 of the ICAC Act about the threat and offers which had been made to him by Councillors Azzi and Hawatt. On the 22<sup>nd</sup> of January, Councillor Robson likewise made what he called a submission to this Commission detailing the events. Also on 22 January, Mr Montague sent a memorandum to councillors, setting out his account of events concerning the recruitment, offer of employment and withdrawal of offer to Stavis. Amongst other things in the memorandum, Mr Montague said, "Councillors Hawatt and Azzi made it clear that they wanted to proceed with Mr Stavis' appointment despite the information we had received from external sources regarding his suitability for the director's role."

The memorandum also referred to both the verbal threat to him, "Fix this or you can go," and to the offer with Councillors Hawatt and Azzi made to him of withdrawing a demand for his dismissal, payment of a gratuity of twenty weeks salary in exchange for him agreeing to retire, conditional of proceeding with Mr Stavis' appointment to the position of director of city planning. In the memorandum, Mr Montague said that he had disclosed the matter to the ICAC. Mr Montague went on in the memorandum to say, "Any action arising from consideration of matters in the notice of motion whilst under review by the ICAC would not only be premature but also an act of reprisal in these circumstances."

It might be noted at this point that amongst other things, this Commission referred these matters to the Office of Local Government and on 17 March, 2015, an investigator interviewed Mr Montague and made a detailed file note of their conversation which will be in evidence in the hearing. However, it doesn't contain details of the offer to Mr Montague by Councillor's Hawatt and Azzi.

On 27 January, 2015, the extraordinary meeting of council called by Councillors Hawatt and Azzi on 24 December, took place. It comprised two parts. In the first part, Councillor Robson said that consideration of the motion to dismiss Mr Montague would be taking reprisal for his disclosure to ICAC and he thereupon closed the meeting and, with Mr Montague and council staff, walked out. In the second part of the meeting, the remaining councillors, although not Councillor Eisler, purported to continue the extraordinary meeting and passed resolutions to sack Mr Montague and appointed a retired general manager from another municipality as acting general manager.

Now, Commissioner, we provide this account only to provide context for evidence events before and after. It needs to be said that the Commission is not investigating the legality of any council meeting or of the procedure of council meetings. It is also not conducting an investigation into whether either the motion or resolution to sack Mr Montague was reprisal, unlawful or otherwise, for his section 11 disclosure to the Commission. The events of 27 January, however, led the Office of Local Government to write to Councillor Robson, seeking to have him remedy the affair quickly, or else intervention by the Minister would be considered and the Minister wrote to Councillor Robson in similar terms.

On 1 February, Mr Montague received legal advice that Mr Stavis had an enforceable contract of employment and would have to be paid out according to the standard terms of employment if he was terminated. In a memorandum dated 2 February, 2015, Mr Montague advised Mayor Robson that he would appoint Mr Stavis because the majority of councillors supported it because of the liability otherwise to pay him out and in the best interest of the council and the community. Mr Montague agreed to offer the

offer of employment and pay Mr Stavis as if he had commenced work on 19 January.

On 11 February, a new contract was signed, incidentally, between Mayor Robson for council on the one part and Mr Montague for his employment, commencing 26 April, 2015, for two years.

10 On 13 February, 2015 an abortive extraordinary meeting of council was held, at which motions for resolutions sacking the general manager and for an investigation into Mayor Robson for not calling the previous extraordinary meeting in the time required were ruled out of order.

On 18 February, 2015, Mr Montague and Councillor Hawatt arranged to have a meeting off council premises, themselves and Councillor Azzi. The same day, Mr Montague told Councillor Robson he had received a call from Councillor Hawatt and it appeared there would be no further attempts by Councillor Hawatt to remove him.

20 On 26 February, 2015, Mr Montague recommended to council to confirm the appointment of Mr Stavis as director of city planning. At a meeting of council held the same day, the appointment of Mr Stavis, as director of city planning was confirmed by resolution, moved Hawatt, seconded Azzi. The evidence will be that after Mr Stavis was appointed, Ms Carpenter spoke with Mr Montague, who told her, to use his words, "A deal," had been done. Mr Montague said words to the effect, "I have been able to resolve the situation by giving the councillors what they wanted, which was the appointment of Spiro Stavis in the role of the director of planning."

30 Commissioner, I said that I would identify the specific conduct under investigation in relation to the allegations against Mr Hawatt and Mr Azzi after I opened on the expected evidence in relation to this topic. In relation to the second allegation of matters under investigation in relation to the recruitment and appointment of Mr Stavis, that is the one against Mr Hawatt, the conduct being investigated presently comprises, A, the provision for Mr Stavis of access to the interview panel questions before interview, B, calling for an extraordinary meeting of council to discuss the appointment of the general manager, C, getting notice of motion to dismiss the general manger, D, moving or attempting to move a motion to dismiss the general manager, E, suggesting that Mr Montague consider retiring  
40 voluntarily in exchange for a financial settlement.

In relation to the third allegation on this topic, the one against Mr Azzi, the conduct being investigated presently comprises, A, the provision of Mr Stavis of access to the interview panel questions before the interview, B, threatening Mr Montague that if he didn't hire Mr Stavis for the role of director of city planning Mr Montague would lose his job, C, calling for an extraordinary meeting of council to discuss the employment of the general manager, D, giving notice of a motion to dismiss the general manager, E,

moving or attempting to move a motion to dismiss the general manager, F, suggesting that Mr Montague consider retiring voluntarily in exchange for a financial settlement.

The balance of the matter under investigation involve the processes at Canterbury Council and events concerning development applications and planning proposals for specific parcels of land.

10 Before turning to them however I should indicate that the Commission has obtained and collected a quantity of evidence about the relationship after the attempt to remove Mr Montague from his position, between Messrs Montague, Stavis, Hawatt and Azzi, and the relationship between each of those four people and also with in particular three other people, Bechara Khouri, the developer Charlie Demian and the developer, Jimmy Maroun. I should say that decision-making in respect of properties where Messrs Demian and Maroun were the proponent will largely be considered in the second tranche of this hearing.

20 Evidence as to the relationships between these people will assist in determining motivation for events which occurred before Mr Stavis was appointed, will shed light on the nature of those relationships and the motivation of these people in relation to the council dealings with development applications and planning proposals in relation to specific properties the subject of this hearing. I propose therefore to now provide an outline of the nature of the evidence which will be led on some of those relationships.

30 There will be evidence of an exchange of emails between Councillor Hawatt and Mr Montague on 18 February, 2015 about meeting with Councillor Hawatt at a venue called The Lantern Club. Councillor Hawatt said, and I quote, "We all feel the same and need to move forward for the sake and benefit of the council. Let's have an open dialogue to help resolve the issue and get back to normality." Mr Montague replied, quote, "Bulldogs better, we might be seen at The Lantern Club." On 25 February, 2015, Mr Montague sent Councillor Hawatt an email seeking his views on replacing the mayor's car. The fact that this email was sent to Councillor Hawatt and not to other councillors may indicate the degree of influence that by that time Councillor Hawatt had over decisions by council. A copy of this email was located by Commission investigators when executing a search warrant on Mr Hawatt's residence. The copy includes handwritten notes, although  
40 crossed out, saying, quote, "Don't we wish to heal our relationship with you, not Brian." Councillor Robson was of course the mayor.

It is expected that Mr Stavis will give evidence about the extent to which his role at council was to service councillors, which part of his key performance indicators. He had to respond to councillor requests within a certain time frame. It is expected that Mr Stavis will indicate that he dealt more with Councillors Hawatt and Azzi and also Councillor Kebbe than other

councillors at Canterbury. The evidence is expected to be that on planning matters Mr Stavis observed that Councillors Hawatt and Azzi were the decision-makers of council. It is expected that Mr Montague will generally agree in that assessment. There is expected to be evidence that Councillor Azzi could be aggressive towards Mr Stavis. The evidence will be that Mr Stavis on occasion attended meetings which Mr Montague had with Councillors Hawatt and/or Azzi. In addition there will be evidence that at one of Mr Montague's meetings with his directors, when another director was not doing what Councillor Azzi wanted, Mr Montague told the directors present, quote, "Whatever these guys want, you give them." It is expected that Mr Stavis will indicate that Councillors Hawatt and Azzi had the power to make life for him very unpleasant. Mr Stavis will indicate that he was instructed by the general manager to the effect that, quote, "When dealing with applications, if an application was 50/50 as to whether it could be approved, then move towards the positive."

There will be evidence of regular social events at Councillor Azzi's house which were attended from time to time by Mr Montague, Mr Stavis, Councillor Hawatt, Charbel Demian and Mr Khouri. It is expected that there will be evidence that development applications were discussed at these meetings at Councillor Azzi's house. There will be evidence that Mr Stavis went to Councillor Hawatt to seek assistance with extensions to his, Councillor, I'm sorry, Mr Stavis's contract and pay rises for him, Mr Stavis. This is despite the fact that questions of his contract and remuneration were exclusively matters for the general manager to decide. The evidence will be that Mr Demian was a business acquaintance of Mr Montague. There will be evidence that Mr Demian attended a meeting between Mr Montague and Councillor Hawatt at Councillor Hawatt's office when efforts were being made to terminate Mr Montague's appointment and that he did so to try to help Mr Montague. It's expected that the evidence will be that Mr Khouri was a good friend of Councillor Azzi. There will also be evidence that around the time in March 2016 when council amalgamations were being considered, the general manager of another council met with amongst others, Councillors Hawatt and Azzi and Montague – I apologise, Councillors Hawatt and Azzi and Mr Montague. The evidence will be that at that meeting, Councillors Hawatt and Azzi appeared to assume that the other general manager would be appointed as the new general manager of the amalgamated council. The evidence will be that at that meeting Councillors Hawatt and Azzi praised Mr Montague as being, quote, "The greatest general manager," and that they expected Mr Montague would be treated with the respect he deserved. Councillors Hawatt and Azzi agreed that Mr Montague would retire and that Mr Montague should be brought back at a consultant on the same pay and conditions as he was then on. Councillors Hawatt and Azzi advised that they had agreed that a new aquatic centre should be built at Wiley Park and that it was to be named the Jim Montague Aquatic Centre. Mr Montague asked this other general manager to ensure that his staff were looked after once the amalgamation happened. Mr Montague said that the amalgamated council would need to

get rid of all the senior staff, except for Mr Stavis. Councillor Hawatt said that Mr Montague – I'm sorry. Councillor Hawatt said that Mr Stavis, quote, "Has to be there because he is forward thinking," and, quote, "gets results." Councillors Hawatt and Azzi, to use the other general manager's words, quote, "Tried to sell him," on Mr Stavis as an experienced director of planning.

10 In combination it is expected that the evidence will lead to the conclusion that Mr Hawatt and Mr Azzi wanted to ensure that Mr Stavis remained in a planning role on the council after amalgamations and despite them then having no role to play as councillors.

A matter to be explored in this hearing is the contact which Mr Hawatt had with Mr Stavis after amalgamation occurred on 12 May, 2016. Firstly to make representations about developments in the area, secondly, in relation to him, Mr Stavis, retaining his position as director of planning, and thirdly, as to how Mr Stavis should deal with the new acting general manager, Matthew Stewart. All this despite Mr Hawatt no longer having an official representative position on council.

20

The evidence will be that while his applications were under consideration at council from at least August 2014 through to May 2016, Mr Maroun had an acquaintanceship with Councillors Hawatt and Azzi which involved giving each other nicknames and visits by those councillors to Mr Maroun's house and the gym associated with it. I'll provide details about that relationship when opening on the evidence to be led in respect of the proposed development at 538-546 Canterbury Road, Campsie.

30 As I noted earlier, the Commission is investigating a series of events in the period 2014 to 2016 involving land use planning and development applications at then Canterbury City Council, together with a number of individuals associated with that council. I will outline the specific allegations in evidence, but in broad terms the focus of the Commission's investigation in this context is the exercise by Councillors Hawatt and Azzi, the general manager, Mr Montague, and the director (city planning) Mr Stavis of their official functions in relation to the particular development applications. A number of provisions of section 8 of the ICAC Act are of note in this respect.

40 The conduct with respect to the particular development applications under consideration could be corrupt conduct under section 8(1) paragraph A of the ICAC Act if it adversely affected or could have adversely affected either directly or indirectly the honest or impartial exercise of official functions by a public official. The official functions which may have been adversely affected by the conduct of Councillors Hawatt and Azzi include that of the general manager, include those of the general manager, Mr Montague, of directing staff and those of the director (city planning). In relation to Mr Stavis, his functions in relation to the provision of services in the regulation

and management of change to the built, natural and human environment which included the assessment of development proposals and also strategic planning.

The conduct concerned could be corrupt conduct under section 8(a) paragraph B of the ICAC Act if it constituted or involved the dishonest exercise of official functions by the former councillor and/or the former director (city planning).

- 10 In relation to some developments, the investigation will focus upon whether there was a failure to disclose relevant information on the part of the former councillors, the former general manager or the former director (city planning), such as relationships with development proponents. It will be submitted that a failure to disclose information of that nature such as relationships with development proponents, in circumstances where there is a duty of disclosure and with full knowledge of the relevant facts, would be a dishonest exercise of official functions.

- 20 Council staff, including the general manager, were subject to the obligations to disclose pecuniary and non-pecuniary conflicts of interest fully and in writing under the Canterbury City Council Code of Conduct. I'll address the meaning of the expressions pecuniary interests and non-pecuniary interests when I come to the section 9 limitations. In addition, if it is established that council staff gave advantages to applicants in the exercise of their official functions for the purpose of ensuring that they remained in the favour of then Councillors Hawatt and Azzi and therefore protected their own position at council, then this would be partial conduct under section 8(1) paragraph B of the ICAC Act. The conduct could also be corrupt  
30 conduct under section 8(1) paragraph C of the ICAC Act if it involved a breach of public trust. Such a breach of public trust may occur if councillors use their public office to obtain benefits for themselves or for their associates and not to service the public interest. In this regard it might be noted that the public official functions of councillors included the casting of votes in respect of motions before the council.

- 40 So far as concerns the limitations upon the nature of corrupt conduct imposed by section 9 of the ICAC Act, the conduct being investigated under these allegations could constitute or involve the offence of misconduct in public office. In addition the conduct could involve a substantial breach of an applicable requirement of the Canterbury City Council Code of Conduct. By virtue of the sections 449 and 451 of the Local Government Act and clauses 3, 10, 3.11, 4.7B, 4.12 and 4.13 of the Code of Conduct, councillors and staff were required to always ensure that development decisions are properly made and that parties involved in the development processes are dealt with fairly. They were required to avoid any occasion for suspicion or improper conduct in the development process. They were required in determining development applications to ensure that no action, statement or communication between themselves and applicants or objectors conveyed

any suggestion of willingness to provide improper concessions or preferential treatment. They were required to make a disclosure of significant pecuniary and non-pecuniary interests in items considered at council meetings and they were required to lodge initial and annual written disclosures of interest that could potentially be in conflict with their public or professional duties.

10 Having regard, Commissioner, to section 442 of the Local Government Act and clauses 4.5 and 4.10 of the Code of Conduct, a pecuniary interest was, quote, “An interest that a person had in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person.” A non-pecuniary interest is a private or personal interest the council official had that did not amount to a pecuniary interest.

20 By clause 4.12 of the Code of Conduct a non-pecuniary interest could be significant or non-significant, but where it conflicted with a councillor’s public duty it was required to be disclosed, whether or not it was significant. Clause 4.15 of the code provided as follows, quote, “A non-pecuniary interest will be significant where a matter does not raise a pecuniary interest but involves, A, a relationship between a council official and another person that is particularly close, for example familial relationships, B, other relationships that are particularly close, such as friendships and business relationships. Closeness is defined by the nature of the friendship or business relationship, the frequency of contact and the duration of the friendship or relationship.” We will be submitting that friendships with proponents of development before council would constitute a non-pecuniary interest required to be disclosed.

30 It is expected that the evidence in relation to a number of development applications will show a failure of councillors to declare friendships and business relationships with a development proponent which should have been managed as significant non-pecuniary interested under council’s Code of Conduct and thus could constitute substantial breaches of the code.

Would this be a convenient time, Commissioner?

THE COMMISSIONER: Yes, it would, thank you, Mr Buchanan. We’ll have an adjournment of 15 minutes.

40

**SHORT ADJOURNMENT**

**[11.26am]**

MR BUCHANAN: Commissioner, the first of the properties, the development of which is the subject of investigations forming part of this hearing, is a property at 15-23 Homer Street, Earlwood. The persons whose respective conduct is of interest to the Commission in respect of this property are Mr Stavis and Councillor Hawatt. In relation to Mr Stavis, the



Commission is investigating an allegation as to whether between December 2015 and May 2016 Spiro Stavis dishonestly exercised his official functions as a result of improper influence by Michael Hawatt by providing improper assistance to Assad Faker in relation to the planning proposal for 15-23 Homer Street, Earlwood.

10 15-23 Homer Street, Earlwood was a partially vacant block of land which sloped down from the street to the Cooks River at the Undercliffe Bridge. On 13 May, 2014, the development proponent, Assad Faker, submitted a rezoning application for 15-23 Homer Street seeking, in addition to an amendment to the permissible uses, an increase in the height limit that applied to the site from 10 metres to 18 metres. The justification given for an increased height limit was in order to facilitate a similar-scale development to that of the adjoining development at 25-33 Homer Street.

20 In his report to the meeting of the City Development Committee held on 13 November, 2014, Mr Occhiuzzi – then director (city planning) – said that an 18-metre height would be excessive for the location and would set an undesirable precedent. He recommended an increase to 14 metres, stepping down in height towards the river. At its meeting on the motion of councillors Hawatt and Vasiliades, the committee resolved instead – the City Planning Committee – resolved instead to increase the height limit to 17 metres.

30 A planning proposal consistent with council’s resolution was prepared by council staff – that is, for a height limit of 17 metres across the site. On 12 January, 2015, the planning proposal was referred by Mr Montague to the department for a Gateway Determination under sections 55 and 56 of the Environmental Planning and Assessment Act.

40 Around this time or shortly afterwards, it appears Councillor Hawatt drafted a motion to make it clear that the intent of council’s 13 November, 2014 resolution was not a height of 17 metres across the site but for the development envelope to be stepped down like the building next door. An attempt was made to introduce this motion at a meeting of council in February 2015. Council was informed that the planning proposal had already gone to the department. It appears the amending motion was not passed, nor did council attempt to withdraw and modify the planning proposal.

On 19 March, 2015, the department issued Gateway approval and gave delegated authority to council to make the amendment to the LEP subject to a number of conditions, including the following, quote, “Prior to public exhibit, the planning proposal is to be amended to include further justification to support a maximum building height of 17 metres on the site. An additional study that accurately represents and addresses the impact of future development on the character of the local area is to be made available with the planning proposal during the exhibition period.”

The department advised council that it was up to council to determine who would undertake the additional urban design study, but that should the department consider that the relevant study has not adequately justified the proposed heights or floor space ratio, then the department had the option of making a submission to the exhibition of the proposed amendment to the LEP, which would then constitute an unresolved agency objection. If there was an unresolved agency objection, council would no longer have the delegated authority to make the LEP amendment.

10

On 29 May, 2015, council appointed Russell Olsson of Olsson & Associates Architects to carry out an additional height study for 15-23 Homer Street in response to the department's Gateway condition. Mr Olsson advised the developers' proposed height limit, starting at 18 metres and stepping down to 15 metres, was excessive. He recommended an alternative height limit above street level for the tallest component of its recommended building envelope of 13.2 metres to 14.5 metres. When informed of this in July 2015 and asked what council should do, the department told council that where the study did not meet the Gateway condition, council would need to make a decision as to whether it supported the height or reverted back to the original recommendations.

20

There will be evidence that Councillor Hawatt was involved in trying to progress the planning proposal. For example, there will be evidence of an SMS sent by Mr Stavis to Councillor Hawatt on 30 September, 2015, quote, "Mike, if you can't make the 3.30pm meeting with Assad Faker tomorrow re: Homer Street, I'd rather reschedule, as I'd like you there, please." On 18 December, 2015, it appears Mr Stavis and Councillor Hawatt met and the topics for discussion included Homer Street.

30

On 18 March 2016, JBA Urban Planning Consultants – the planning consultants for Mr Faker's company Croycon, C-r-o-y-c-o-n, Investments – submitted to council a document entitled A Planning Justification Report for the property. On 19 April, 2016, one of Mr Stavis's staff, Lisa Ho, wrote a file note identifying issues with the JBA report, including that the justification report proposed a scheme which was even greater in terms of height, bulk and scale than that originally submitted. The JBA proposal included an additional level. The proposed building did not step down towards the river as originally submitted and the report did not address compatibility with the neighbouring building or the river foreshore. It appears that on 20 April, 2016 Mr Stavis provided Mr Olsson with a copy of the JBA Report and asked him to prepare a follow up report.

40

It is expected that Mr Olsson will give evidence to the following effect. He met Mr Stavis at the council on 20 April, 2016 and there were no other people present. Stavis asked him to review the JBA Report and said of it, "I think it is better than the previous proposal." By this and by telling Olsson that councillors were pro development, Olsson believed Stavis wanted him

to change his report. This was the first time Olsson had ever been asked to change a report. Mr Stavis said, "There is a lot of pressure from councillors to have development on this site." And he should "assess the JBA Report and change the report." Stavis said, "You can charge whatever you like for the changed report." Stavis mentioned the "register for urban designers" and said, "We are looking out for urban designers like yourself and you should register." Olsson thought the "open chequebook" approach and the mention of the register for urban designers was an attempt to entice him and to have him change his report for the benefit of the developer.

10

It is expected that Mr Stavis's evidence will be to the effect that he asked Mr Olsson to consider the possibility of increasing the bulk on the corner of the site. He may have told Mr Olsson there was some pressure from councillors. He asked Olsson to redo his report but he cannot recall talking about fees for an amended report or talking to Olsson about possibly being included on a register for urban planners although one was being considered at the time.

20

Commissioner, if you accept Mr Olsson's evidence in this respect, there will be question whether you are satisfied that Mr Stavis attempted to offer an inducement to Mr Olsson for a favourable report. If he did, it will be our submission that that would have involved a dishonest exercise of his functions as director of planning contrary to section 81B of the ICAC Act and/or a breach of public trust contrary to 81C.

30

Mr Occhiuzzi will give evidence that if the objective of retaining a consultant is to provide an independent review of the proposal, then it is inappropriate to sit down with that person and suggest changes to be consistent with the applicant's planning proposal.

40

On 9 May, 2106 Mr Olsson submitted to Mr Stavis an amended report which did not support the applicant's position. Mr Stavis wrote to council's newly appointed manager (land use and environmental planning) Mitchell Noble saying that he didn't particularly like Olsson's recommendation and that it was "not quite what he had discussed". Stavis wrote, "Let's chat tomorrow, please, about his wording.

On 10 May, 2016 Mr Stavis emailed Mr Noble saying, "As discussed today, please proceed to submit a response to the department's Gateway approval utilising the JBA Report and provide me with a time line on when this will be submitted. This is a priority. Let me know if you need additional resources to assist." Mr Noble will say that he felt obliged to impress Stavis in his first few days, in his, Mr Noble's first few days and this was a significant influence on his suggestion as to how to progress.

Mr Noble's evidence will be that he raised concern about using the applicant's planning report when an independent study was available and that Mr Stavis directed him to exhibit the JBA Report and not the Olsson

report. The same day Mr Stavis emailed Mr Olsson saying, “I have reviewed the revised report and I must admit it is a bit on the negative side with additional recommendations that I don’t believe we discussed.” Mr Olsson replied that the JBA Report “is bigger than the original planning proposal”. My recommendation brings it back to something like the original planning proposal.

10 It appears that Mr Olsson’s report was not put on public exhibition. Instead commencing on 2 June, 2016 the JBA Report, that is the applicant’s report, was exhibited. The evidence will be that this was on the instruction of Mr Stavis. Mr Occhiuzzi will say that as a matter of good practice unless it was significantly flawed the report which had been commissioned by council should have been exhibited. It is expected Mr Stavis will say that he probably should have put both reports on public exhibition.

20 It is expected that Mr Stavis’s evidence will indicate that at least in hindsight he was trying to get a report which would justify the applicant’s case. It is expected that Mr Stavis’s evidence will indicate that he saw it as part of his job to obtain reports which would support the outcome supported by the particular developers but that that did not mean he was acting dishonestly although it did mean he wasn’t doing it properly. The evidence will be that Mr Stavis thought he was under pressure to make things happen.

30 On 12 May, 2016 the Homer Street proposal was one of a set of properties which, despite Mr Hawatt no longer being a councillor and no longer having constituent responsibilities, he and Mr Stavis continued to discuss. Thus on 26 May, 2016 Mr Hawatt asked Mr Stavis for a progress update on Homer Street amongst other proposals and planning issues such as the Campsie master plan. Within hours Mr Stavis provided Mr Hawatt with the requested update. Mr Stavis had already been pressuring his planner, his staff planner tasked with this project, Mr Noble, to ensure that letters for three proposals including for Homer Street were seen to the department by the end of the week.

40 After getting Mr Hawatt’s inquiry, Mr Stavis emailed Mr Noble, and spelling out abbreviated text as usual, “Please, Mitchell, needs to happen.” It is expected Mr Stavis will say that this sort of inquiry from Mr Hawatt prompted him to act urgently in relation to the applications concerned because that was what was being done for applications Mr Hawatt was involved in, that he had been directed by Mr Montague to look after and appease Michael Hawatt.

Mr Stavis’s employment contract required him to act honestly and exercise a reasonable degree of care and diligence in carrying out his duties and functions. It is expected the evidence will be that Mr Stavis thinks he probably was not acting properly. Noting Councillor Hawatt’s involvement and his interaction with Mr Faker and Mr Stavis his conduct is also of interest to the Commission, in particular whether it adversely affected or

could have adversely affected the honest or impartial exercise of Mr Stavis's official functions in a manner that could constitute the offence of misconduct in public office or a significant breach of the code of conduct.

I turn now, Commissioner, to an allegation being investigated in this hearing in respect of two properties, one in Roselands and the other in Lakemba. It is alleged that from December, 2015 Councillor Michael Hawatt dishonestly exercised his official functions by favouring development applications for properties located at 23 Willeroo Street, Lakemba and 51 Penshurst Road, Roselands in order to favour the interests of Talal El Badar. Both the  
10 properties at 51 Penshurst Road and 23 Willeroo Street were at the relevant times owned by Talal El Badar. Mr El Badar was, and as far as the Commission knows still is, married to Laila Hawatt, Councillor Hawatt's daughter.

In relation to 23 Willeroo Street, Lakemba in March, 2015 Mr El Badar sought development approval for the construction of five two-bedroom townhouses on that site. Mr El Badar signed the development application as the owner. On 18 August, 2015 Mr El Badar appealed to the Land and  
20 Environment Court against the deemed refusal of the development application. The matter went to conciliation which was terminated on the instructions of council staff after the plans submitted by Mr El Badar were regarded as not sufficient to address matters raised by council staff in the conciliation conference.

After he was contacted by Mr El Badar about this issue, Mr Stavis requested that council staff hold off on proceedings while he reviewed the plans. Mr Stavis added, quote, "I wanted to avoid a prolonged costly hearing, if possible." The evidence will show that Councillor Hawatt contacted Mr  
30 Stavis about 23 Willeroo Street a number of times. Before Mr El Badar brought his appeal, Councillor Hawatt told Mr Stavis that he wanted to be told what the issues were with the DA. He said the property was, quote, "An isolated site with units on both sides", and that the DA, quote, "should be assessed on its merits" rather than on, quote, "the current DCP with the setbacks which make it unworkable." DCP, in this context, meaning Development Control Plan.

In January 2016, council staff under Mr Stavis decided to terminate the conciliation process. Mr Stavis was on leave at the time and Mr El Badar  
40 emailed Mr Stavis to tell him saying, quote, "This is very upsetting." The same day, Mr Stavis emailed his acting director saying, quote, "Fix the issue". Despite being on leave, Mr Stavis then corresponded personally with Mr El Badar to try to fix the issue. Mr Stavis intervened and asked that council's lawyers be instructed to continue with the conciliation. He copied Councillor Hawatt into his emails and Hawatt replied, quote, "Thanks, can you resolve this?" The conciliation was eventually successful and the development application was approved by the Land and Environment Court on conditions. At the time of these dealings in respect of 23 Willeroo

Street, there was a connection between Talal El Badar and Mr Hawatt beyond their familial relationship. There will be evidence that at the relevant time, Councillor Hawatt also had a financial or business relationship with Mr El Badar, in relation to a property owned by Councillor Hawatt at 31 Santley Crescent, Kingswood.

10 The evidence collected to date will disclose the following matters. There was a company called Bella Ikea Strathfield Pty Ltd. The directors of the company were Hussain Matta, Mohammed El Badar, Talal's brother, and  
10 Abdullah Osman. It is expected that the evidence will be that one or more of the directors at Bella Ikea and Talal El Badar were interested in purchasing and developing 31 Santley Crescent and, in that context, that Talal El Badar introduce the company to Councillor Hawatt. Through his solicitors, Sterling Legal, in November and December of 2015, Councillor  
20 Hawatt received two payments, totalling \$300,000 from Abdullah Osman and his brother, Alae Osman, also an associate of Mr El Badar. The payment purported to be an option fee or deposit for the purchase of the property at 31 Santley Crescent. It is understood that Abdullah Osman denies that this was a reward for assistance provided by Councillor Hawatt  
20 in relation to Willaroo Street, and that there was no connection between the two properties. Eventually, Mr El Badar and the Osmans' withdrew from the development.

30 The evidence collected suggests that Mr El Badar and his associates had a genuine interest in developing Santley Crescent. However, the amount of the option fee seems unusually large given that the fee for a subsequent option entered into for the purchaser of the property once El Badar and the Osmans withdrew from the development, was \$30,000. \$300,000 was the amount which Councillor Hawatt needed to purchase a unit at Hope Island,  
30 Queensland. 31 Santley Crescent was subject to a caveat by Martha Robson, no relation to Councillor Robson. Ms Robson had agreed to remove the caveat if Councillor Hawatt purchased a unit in Queensland in which she would obtain a share. It is suspected that Councillor Hawatt needed the caveat to be removed to proceed with further dealings in respect of the property. The money paid by Abdullah and Alae Osman was used to purchase the unit at Hope Island in Queensland in the names of Hawatt and Robson and Ms Robson removed her caveat from the Santley Crescent  
property.

40 After Mr El Badar and Abdullah and Alae Osman withdrew from the development, Councillor Hawatt entered into an option arrangement with Nifitsa, N-i-f-i-t-s-a, Pty Ltd, dated 27 April 2016 for a fee of \$30,000, with the purchase price being \$1.5 million. Abdullah Osman had an interest in the development at Willeroo Street. Along with Talal El Badar, he was a director of Willeroo Street Pty Ltd. It is expected that the evidence will be that Abdullah Osman was Mr El Badar's partner in the property, and that Willeroo Street Pty Ltd handled the financial dealings for the property. Because of this evidence, dealings in relation to 31 Santley Crescent will

feature during the hearing, so far as they relate in particular to 23 Willeroo Street, to Mr Hawatt and to Mr Talal El Badar.

10 In relation to the property at 51 Peshurst Road, Roselands, in February 2015, Mr El Badar sought development approval for the construction of 12 townhouses on the site. There will be evidence that on 29 April 2015, Councillor Hawatt received a text message from his daughter, Layla. With  
texting abbreviations spelt out, the text read, "Don't forget us, 51 Peshurst Road, Roselands." On 11 May 2015, Councillor Hawatt emailed Mr Stavis asking him to find out why there were delays. Twelve weeks with the DA  
and over a month with a council's engineer's report about stormwater. Subsequently on 11 June 2015, the development was approved for a  
deferred commencement consent subject to a condition proposed by Mr El Badar's architects, the acquisition of a water drainage easement from  
downstream properties to deal with storm water. However, Mr El Badar was not able to obtain the downstream owner's consent for such an  
easement.

20 There will be evidence that on 3 August 2015 at 11.17am, Councillor Hawatt received a text message from Layla, quote, "51 Peshurst Road, Roselands." At 11.20am, Councillor Hawatt sent a text to Mr Stavis saying, quote, "Hi Spiro, 51 Peshurst Road, Roselands. RE stormwater pump out connection. Can you see how to help?" Mr Stavis replied that the plans were referred to the development engineer retained by council and he had asked him to prioritise this assessment, however the development engineer subsequently advised that the deferred commencement conditions had not been satisfied. Mr El Badar then submitted an application to modify development consent under section 96 of the Environmental Planning and Assessment Act, to amend the stormwater drainage design to substitute a  
30 stormwater pump out system for the requirement to obtain a drainage easement from neighbouring landholders.

Around 31 August 2015, Councillor Hawatt wrote to Mr Stavis recounting the problems which the person he described as the applicant had encountered and concluding, quote, "How can we help him re: his proposal? Thanks, Michael Hawatt." On 7 December 2015, Mr Stavis told Mr El Badar's solicitors that he had instructed his staff to finalise the report on the section 96 amendment application. Then, on 11 December 2015, Mr Stavis wrote to his staff asking whether the development application had been  
40 finalised as it was, in his words, quote, "super urgent". There will be evidence of text messages between councillor Hawatt and Mr Stavis in which Councillor Hawatt chased up the Section 96 approval.

On 21 December 2015, the section 96 application was recommended for approval by a council planner, Felicity Everhart, and approved on delegated authority by another officer, Andrew Hargreaves. Ms Everhart's evidence will be that neither Councillor Hawatt's inquiry, nor Mr Stavis' involvement in the assessment process, affected the way she assessed the application in

terms of the priority or outcome of the assessment. The property was sold with development approval on 23 April 2016 by Mr El Badar for \$3.25 million, having been purchased on 15 September 2012 for \$1.25 million.

10 Whilst the interventions by Councillor Hawatt and the interventions by Mr Stavlis do not appear to have had an impact on the final outcome for 51 Penshurst Road, the offense of misconduct in public office may still be made out even if the outcome would be unlikely to have been any different. This is because, and I quote from a 2015 decision of the Supreme Court in the trial of Mr Edward Obeid for the same offence, “In cases involving  
15 allegations of the exercise of corrupt influence, the inquiry is focused on the likely effect of the integrity of the decision-making processes, rather than a consideration of whether before the misconduct the same result would have ensued.” Whilst the Commission does not presently have an allegation of dishonest exercise of official functions by Mr Stavlis in relation to either 23 Willeroo Street or 51 Penshurst Road, I should indicate that there are features of his conduct in the case of each property which give rise to concerns that Mr El Badar received consideration from Mr Stavlis that he would not have received if Councillor Hawatt had not been involved.

20 Commissioner, I turn now to an allegation under investigation which relates to a different property, at 998 Punchbowl Road. The allegation being investigated in respect of this property is that, in March 2016, Michael Hawatt, Pierre Azzi, James Montague and Spiro Stavlis dishonestly exercised their official functions by resolving to increase the FSR and building height in relation to a planning proposal for 998 Punchbowl Road, Punchbowl in order to favour Charbel Demian.

30 There is some necessary background to the evidence as to corrupt conduct in relation to 998 Punchbowl Road, which incidentally was located on the corner of Canterbury Road. Remembering that the LEP commenced in January, 2013, at a meeting held on 31 October, 2013, council amended a residential development strategy it had been preparing in the preceding months in numerous respects. One respect was that the floor space ratio, or FSR, for 998 Punchbowl Road be increased from 0.5:1 to 1.8:1, and that the height limit be increased from 1.5 metres to 15 metres. The motion for the amendment was moved Councillor Hawatt, seconded Councillor Annand. The amendment was not supported by any analysis or recommendation by council staff.

40 The Residential Development Strategy was not a planning instrument but rather a policy document to inform the creation of a planning instrument. Accordingly, for it to be implemented its contents needed to be made the subject of a planning proposal for amendment of the LEP. This was so resolved at that same meeting, on 31 October, 2013, and a planning proposal to amend the LEP consistent with council’s resolutions was put on public exhibition and returned to council at its meeting on 2 October, 2014. Council staff recommended to that meeting reduced loosening of



development controls. They recommended that considering that this site was adjacent to a lower density zone, the FSR could be increased to 1.5:1 and that the maximum height could be increased to 15 metres.

The applicant in this case was Charbel, or Charlie, Demian. He and his wife owned the land through a corporate vehicle. It appears Mr Demian had requested an increase in FSR to 2.2:1 to maximise the building form on the site. Council staff did not support this request, saying that it would be, quote, “inconsistent with other FSRs in the LEP” and would, quote, “exacerbate amenity issues on adjoining land”. Although recommendations from staff are not binding upon council, they do provide independent advice and analysis as to the planning implications of different options.

At a meeting held on 2 October, 2014, council resolved to increase the FSR to 2.2:1. The motion was moved by Councillor Hawatt and seconded by Councillor Azzi. On 12 December, 2014, the department advised that increases to the FSR for 998 Punchbowl Road, quote, “constitute intensification that has not been strategically justified”.

On 23 December, 2014, Mr Montague advised the department that due to the council’s resolution to increase the FSR, 998 Punchbowl Road would be the subject of a separate planning proposal for amendment of the LEP. In February 2015, council duly submitted a planning proposal to the department for 998 Punchbowl Road, seeking an FSR of 2.2:1 and a height limit of 15 metres. On 16 February, 2015, the department advised that the planning proposal did not contain, quote, “adequate information to proceed with assessment” and asked council to, quote, “submit additional information, demonstrate an adequate justification for the 2.2:1 FSR sought, to clearly demonstrate that it has strategic merit”.

To meet this request, council engaged Peter Annand, an urban designer, to provide an independent urban design assessment of the planning proposal. The evidence will show that around this time Mr Annand was also interested in obtaining other work with council. It appears that the first draft of Mr Annand’s report was sent to council on 18 June, 2015. What appears to have been a subsequent draft includes an additional item regarding compliance with the Apartment Design Guide not included in the draft of 18 June, 2015. The additional information contended that the setbacks required by the Apartment Design Guide, quote, “need not apply because the adjacent properties are likely to be up-zoned at some stage, and the building can be designed so that the balconies do not directly look down into adjacent properties”. The amendment appears to have been in response to correspondence about setbacks affecting 998 Punchbowl Road.

On 26 June, 2015, there was a series of emails commencing with Mr Annand advising Mr Stavis and council planner Warren Farleigh that the setbacks would have the effect of dropping the FSR from 1.8:1 to 1.3:1. Mr Stavis replied, “Please come and see me on Monday. We’ve already let the

cat out of the bag to the applicant when we received your draft report. We need to get as close as possible to that FSR.” Mr Annand explained that the new Apartment Design Guide added to setback requirements, but that the developer in this case, quote, “might make a case for leniency so that the FSR of 1.8:1 could be retained”. Mr Stavis said, quote, “Agreed. But your report and drawing needs to argue that. It needs to argue that it is okay in this instance.” Mr Annand advised Mr Stavis, “I think I know how to fix it.”

10 Mr Annand produced a fresh version of his report in respect of amendments due to release of Apartment Design Guide. The new version included an argument that the setback requirement in the guide need not apply because adjacent properties were likely to be, quote, “up-zoned at some stage” and the balconies could be redesigned. The evidence will indicate that on 12 August, 2015, Mr Stavis met with Mr Montague and Mr Demian and discussed 998 Punchbowl Road. Mr Stavis advised his manager (land use and environmental planning) Gillian Dawson that council was being asked to consider, quote, “picking up some of the lost FSR by increasing the height on the corner of Punchbowl and Canterbury roads from 21 metres to  
20 25 metres”. Mr Annand’s earlier report had suggested there was a possibility of including a corner element of some 21 metres in height on the site. On 18 August, 2015, council planner Mr Farleigh asked Mr Annand to model the implications of a 25-metre building at 998 Punchbowl Road. On 26 August, 2015, Mr Stavis advised Mr Annand, quote, “I’ve just improved your engagement. Please proceed. Main aim is to get 25 metres on the corner and as close to 2.2:1 FSR.” Mr Annand replied, “No way you can get anything like 2.2:1 and provide decent and useful communal open space.” Stavis replied, “Do your best.”

30 On 4 September, 2015, Mr Annand’s report was sent to Mr Stavis and Mr Farleigh. It considered a number of options and concluded, quote, “The maximum FSR that can be supported in this context with a generous and usable communal open space at ground level is 2:1.” Mr Stavis emailed back some minor handwritten amendments to the report and otherwise advised that he was happy for Mr Annand to finalise. Ms Dawson replied to Mr Stavis advising that she had quote, “serious concerns” about the preferred option, as it assumed that the adjoining land would be rezoned and that, quote, “This idea was canvassed by the department as part of the structure planning process, Punchbowl Station, then dropped because they  
40 did not think it appropriate.” Mr Stavis drew to Mr Annand’s attention that the report could not assume that the adjoining land would be rezoned.

On 9 September, 2015, another draft of Mr Annand’s report was sent to Stavis, Farleigh and Dawson. It stated that, quote, “The maximum FSR that can be supported in this context with a generous and useable communal open space at ground level is 1.8:1 to 2:1.” Mr Stavis replied to Mr Annand, quote, “I noticed Lili sent a draft to Warren and Gill as well,” I think I should pronounce that “Jill,” “Warren and Gill as well contrary to

what we agreed. I wanted to review first. Can you ask her to send an email saying it was sent in error and to disregard?" On 14 September, 2015, Mr Stavis advised Mr Annand that he had proofread the report and it sounds good. He asked that Mr Annand send it again, quote, "As a separate email to Gill and me and not as part of this email trail." This email and the emails of 9 September, 2015 suggest that Mr Stavis wished to conceal from Ms Dawson his dealings with Mr Annand in relation to this draft.

10 On 20 August, 2015, planners for the developer and owner of 998 Punchbowl Road wrote to council requesting that the planning proposal be amended to allow a building height of 25 metres and an FSR of 2.7:1. It appears from the evidence that at some point an FSR of 3.2:1 was discussed and rejected by Mr Stavis. On 26 October, 2015, the planners for 998 Punchbowl Road wrote again to council seeking an FSR of 2.8:1. Mr Stavis forwarded this proposal to Mr Annand for his review. On 9 November, 2015 Mr Annand sent Mr Stavis a draft under a covering email stating, spelling out the abbreviations, "Final answer 2.1 at 18 metres with 25-metre tower." On 23 November, 2015, Mr Annand sent Mr Stavis an email  
20 advising, quote, "I can readily support 2.1:1 at six to eight storeys, but I feel eight storeys at 2.8:1 will give rise to precedent problems, but that is council's call." On 4 January, 2016, Mr Stavis wrote to Mr Annand requesting an update as, quote, "Last time we met you were going to prepare an updated report supporting 2.8:1 and six to eight storeys as per the sketch I had given you."

30 Commissioner, by this stage, if not earlier as can be seen, that on the evidence collected so far by the Commission, whilst the report was supposedly being prepared for the purpose of submission to the department by someone independent from council, and indeed Mr Annand so represented it, it was not being prepared by someone truly independent from council. In addition Mr Stavis was not only aware of that, but was involved in controlling the contents of the report.

40 On 7 January, 2016, Mr Annand submitted a report advising that the FSR of 2.8:1 sought by the proponent, quote, "Is possible within the required setbacks and building height and particularly if a reasonable and useable communal open space is provided as a roof garden on top of the building." It is expected that Mr Annand will say that all his report said was that the FSR was achievable, but this did not mean that he recommended it.

On 8 January, 2016, Mr Stavis forwarded a copy of the final report to his staff. On 30 January, 2016, he requested that the amended planning proposal, quote, "Go to March council meeting. Very important we meet this deadline."

A council planner, Tom Foster, then drafted a report to council following on receipt of the final Annand report. Mr Annand, I'm sorry, Mr Stavis made changes to it, removing references critical of the proponent's revised

planning proposal and also removing options for council which were less favourable to the development proponent. Mr Stavis finalised the report to council which he submitted under his name. The report stated that, quote, “Annand Associates were engaged by council to provide an independent urban design assessment in line with DPE’s request.”

The evidence of Mr Foster will be that Mr Stavis told him to, quote, “Get rid of the draft reports with Mr Stavis’s amendments.”

10 998 Punchbowl Road was a matter in relation to which Mr Stavis received pressure from Mr Montague and from Councillor Hawatt and Mr Demian. There will be evidence that probably late in 2015 Mr Stavis was called to a meeting in Mr Montague’s office at council where Councillors Hawatt and Azzi and Mr Demian were already present. The evidence will be that he was handed a piece of paper with scribbled notes on it, including a particular floor space ratio. The evidence will be that at that meeting Mr Stavis tried to defend himself from accusations by Mr Demian that he couldn’t achieve a particular FSR. Mr Demian accused Mr Stavis of not  
20 knowing what he was talking about. Mr Montague told Mr Stavis that he had to come up with a solution. After that meeting Mr Stavis discussed with Mr Annand whether or not the required FSR could be achieved. As a result of those talks Mr Annand ultimately submitted what was probably his 8 January, 2016 report, an outcome Mr Stavis will say he considered to be a compromise.

The evidence will be that in trying to achieve Mr Demian’s desired FSR, Mr Stavis was affected by the pressure he was under and worried that if he failed to achieve that he would suffer the same fate as the previous director. The previous director was Mr Occhiuzzi.

30 At its meeting held on 17 March, 2016, on the motion of Councillors Hawatt and Azzi, council resolved to adopt Mr Demian’s planning proposal for the site with a maximum FSR of 2.8:1, and that council’s planning proposal for the site be amended in line with that proposal.

Before passing from this topic I should indicate that it is expected that there will be evidence that Mr Stavis met Mr Demian at a meeting at Councillor Azzi’s house which he was asked to attend at a time when two of Mr Demian’s applications were being considered by council, one of them being  
40 998 Punchbowl Road, the other being 548 Canterbury Road. There will be evidence that he had one or more conversations with Mr Demian at Councillor Azzi’s house before, during and after the conversations he had with Mr Annand, and there will be evidence that the proposal for 998 Punchbowl Road was one of the matters which Councillors Hawatt and Azzi asked Mr Stavis about when he went to meetings at Councillor Azzi’s house.

Excuse me a moment. If you would just excuse me a moment, there's a mistake I made that I'd like to correct before parting from 998 Punchbowl Road. I spoke of the meeting of council on 31 October, 2015 in which the Residential Development Strategy was amended. One respect was that the floor space ration for 998 Punchbowl Road was to be increased from 0.5:1 and that the height limit be increased from 8.5 to 15 metres. I think I said 0.5 to 15 metres. It should have been 8.5 to 15 meters.

10 The next allegation to be investigated in this hearing or the next being opened upon in this address, Commissioner, is that from October 2014 Michael Hawatt, Pierre Azzi, James Montague and Spiro Stavis dishonestly exercised their official functions in connection with resolutions or approvals in connection with a development proposal at 548 to 568 and 570-580 Canterbury Road, Campsie, in order to benefit the interests of Michael Hawatt, Charbel Demian and others. The land at 548-568 and 570-580 Canterbury Road, comprised two adjacent parcels of land. The land at 548-568 Canterbury Road, was often referred to as Harrison's. The site had been occupied by a hardware store named Harrison's Timber. The proponent for development of this site was Charbel Demian via a company called  
20 Statewide Planning Pty Ltd. The development proposal also involved Bechara Khouri acting as a consultant.

The site also involved a planning proposal for rezoning, running concurrently with a number of development applications. The planning proposal arose from a submission to council by Statewide, made in June 2013 for the height limit applying to 548-580 Canterbury Road to be increased from 18 to 24.5 metres to permit an eight-storey development. On 31 October, 2013, council endorsed it residential development strategy, which included an amendment moved by Councillor Hawatt, seconded  
30 Councillor Annand, that the maximum building height for 548 Canterbury Road be increased from 18 metres to 25 metres, "As proposed by the applicant." The resolution included a directive that a planning proposal be prepared for the department's gateway process to implement that among other amendments.

Now as I indicated earlier the two properties were adjacent to each other, the Harrison's property was adjacent to 570-580 Canterbury Road and it was also, 570-580 was also the subject of a development applications by Statewide. Commissioner, because there are a number of applications and it  
40 might be convenient just to have up on the screen a table which we've prepared which tries to set out in summary form the applications for development of these two properties made, by or on behalf of Statewide, of which there will be evidence. On the 26 November, 2013, DA 509/2013, a DA by Statewide for construction of an eight-storey mixed-use development on 548-568 Canterbury Road. It was accompanied by a request to vary the height under clause 4.6 of the Canterbury LEP and the owner's consent was signed by Harrison's Timber Pty Ltd.

26 November, 2014, DA 509/2013, A. This was a section 961A application by Statewide to modify the consent for development on 548-568 Canterbury Road. It sought an additional car parking to accommodate the extra units, the subject of DA 592/2014. Subsequently, on 16 December, 2014, DA 591/2014 was lodged by Statewide to demolish and construct a six storey mixed use development on 570-580 Canterbury Road, accompanied by a submission to exempt the DA under clause 4.6 of LEP from height controls.

- 10 On 16 December, 2014, DA 592/2014 was a DA by Statewide to add two storeys to the six-storey approved development on 548-568 Canterbury Road. The owner's concept was signed by Charles Demian.

On 28 October, 2015, DA 510/2015 was a DA by Statewide to add two storeys to its approved six storey development at 570/580 Canterbury Road. In January, 2014, Roads and Maritime Services indicated it had no objection to DA 509/2013 in May 2014. Council was granted delegated authority to make the amending LEP, the subject of the planning proposal, resolved upon on 31 October, 2013. The proposal was, amongst other things, to  
20 increase the maximum building height for 548-568 Canterbury Road to 25 metres.

In June 2014, however, Statewide lodged amended plans for DA509 of, I'll start again, lodges amended plans for DA 509/2013, proposing a six storey development instead of an eight storey. The revised plans were for a development which still exceeded the 18 metre height limit but less so than before the amendments. In August, 2014, the Roads and Maritime Services raised concerns with council about the planning proposal because of its impact on roads and other transport infrastructure.

30

Two events occurred on 2 October, 2014. The first was that the Joint Regional Planning Panel approved DA 509/2013 for the amended six-storey development on 548-568 Canterbury Road. The development exceeded the 18-metre height limit in parts. Secondly, after exhibition, the 2013 planning proposal was endorsed by council. On 26 November, 2014, Statewide made a section 96 application to modify the consent it had received to DA 509/2013 for development on 548-568 Canterbury Road. It sought approval for the construction of additional car parking to accommodate extra residential units. The application for construction of these additional units  
40 came shortly afterwards on 16 December, 2014, when Statewide lodged DA 592/2014 to add two storeys to the six-storey approved development on 548-568 Canterbury Road. On both applications, Mr Demian signed the owner's consent.

Also on 16 December, 2014, Statewide lodged DA 591/2014 to demolish and construct a six storey mixed use development on the adjusted property,

570-580 Canterbury Road. That application was accompanied by a submission to exempt the DA under clause 4.6 of the LEP from height controls imposed by the LEP. I'll detail a short chronology in relation to that development application in a moment.

10 It appears that later in December, 2014, the increase in height for a development on the 54/-568 site was dropped from council's planning proposal in response to RMS concerns. Turning to DA 591/2014, excuse me, please. On 16 December, 2014, Statewide lodged with council a development application to demolish and construct a six storey mixed use development on 570-580 Canterbury Road. The DA was accompanied by a submission to exempt the DA under clause 4.6 of the LEP from height controls.

20 Because of the scale and nature of the proposed development, the DA was referred to the IHAP, the Independent Hearing Assessment Panel, for assessment. Mr Stavis recommended to IHAP deferred commencement approval for the DA. The IHAP considered this DA in 3 August, 2015. The panel reported that it thought the proposed development was generally compliant but deferred consideration of the DA to allow the applicant to provide additional information and for council staff to assist any such additional information and provide a report to the panel.

30 The next day, Mr Demian rang Mr Stavis. He left a message. Mr Stavis sent him an email saying that he got the message and was, "Still working through the issues and trying to find solutions. Mr Stavis indicated that the main problem was satisfying the requirements of clause 4.6 of the LEP to exempt the development from planning controls under the LEP. In this case, in respect of the height of the development. He concluded the email by saying, "Please understand, I am doing my best, Charlie, to assist and to hopefully find a solution." Masterton Stavis then forwarded a copy of that email to Councillor's Hawatt and Azzi.

On 6 August, 2015 Mr Stavis asked the staff to have supporting materials ready for him before a meeting he had with Mr Demian that day. There will be evidence that on 7 August, 2015 Councillor Hawatt organised a meeting with Mr Demian at Councillor Aziz's house and that that meeting probably took place on 8 August, 2015.

40 There's no evidence that Mr Stavis attended that meeting on 8 August, but as I've already mentioned, there will be evidence that Mr Stavis met Mr Demian at a meeting at Councillor Aziz's house which he was asked to attend at a time when two of Mr Demian's applications are being considered by council. One of them being 548 Canterbury Road.

Between 3 August and 13 August, 2015 Mr Stavis prepared the business papers for the meeting of the City Development Committee due to be held on 13 August. On 10 August, 2015 Mr Stavis discussed with a staff

member the possibility of a report of 570 to 580 Canterbury Road as a late report to the committee. Later that day, the staff member emailed Mr Stavis pointing out that Council's IHAP Policy contains rules which require that when it was received additional information sought by IHAP meant that the DA was to be returned to the panel for final consideration. "Prior to determination by the City Development Committee or council." Mr Stavis replied to that staff member, copying in Mr Montague, "This is a governance issue which may need to be taken up directly with the GM."

- 10 In his report on DA 591/2014 to the City Development Committee for its 13 August meeting, Mr Stavis set out, IHAP's decision but later in his report also said the DA, "had been assessed pursuant to Section 79 (c)." Section 79 (c) Commissioner, was the provision of The Environmental Planning and Assessment Act which dealt with the assessment of development applications. Mr Stavis said in his report that he thought it appropriate to support the applicant's submission to vary height standards under Clause 4.6 of the LEP and recommended deferred commencement approval.

- 20 Notwithstanding the obstacle to approval of the DA posed by the IHAP's position on it on 10 August, 2015 Mr Stavis informed Mr Montague that Councillor Hawatt had asked him, Mr Stavis, to provide him with draft conditions for a standard approval. Mr Montague then provided those conditions to Councillor Hawatt who asked that they be circulated to the Councillors.

- 30 On 13 August, 2015 on the motion that Councillor Aziz, seconded Councillor Hawatt, the City Development Committee voted to approve the DA subject to the conditions provided by Mr Stavis and Mr Montague to Councillor Hawatt. The effect of these events was to accelerate the process of developing 570 to 580 Canterbury Road.

In October, 2015 Statewide lodged DA 510/2015 to add two stories to its approved six storey development at 570 to 580 Canterbury Road. In November, 2015 a planning proposal to increase the height limit which applied to 570 to 580 Canterbury Road was sent by Council to the Department for gateway approval. DA 510/2015 was still being assessed by staff when Canterbury City Council was amalgamated with Bankstown Council on 12 May, 2016.

- 40 On 23 November, 2015 the IHAP recommended that consideration of both DA 592/2014 and DA 509/2013A concerning 548 to 568 Canterbury Road be deferred to allow the RMS to be fully consulted about the total development of the site. The panel also said it was of the opinion that Council couldn't legally determine DA 592 or the Section 96 Modification Application until they had been referred to the RSM. In addition, the IHAP reported that it was not satisfied with the justification for the height of the development under Clause 4.6 particularly not 4.6 (iii).



On 30 November, 2015 Messrs Stavis and Montague were advised by the IHAP's lawyer and by council staff that IHAP considered could not determine those applications without the RMS's views having been obtained. However, the same day referring to an upcoming meeting of the City Development Committee Mr Stavis advised staff, "GM wants this DA to go to the 3/12 meeting notwithstanding IHAPs deferral request."

10 Mr Stavis proposed to Mr Montague a motion that could be moved in the City Development Committee. "Council is generally in support of the proposed development and delegates the determination of the GM once concurrence is obtained from the RMS." It appears that advice was not sought from councils solicitors as to the legality of council delegating it's function to the general manager in this manner.

20 On 1 December, Mr Montague circulated reports for 548 to 568 Canterbury Road as late items for their committee meeting. At its 3 December, meeting the City Development Committee considered both DAs. In his report Mr Stavis told the Committee that the IHAP had recommended be these DAs be deferred to allow the RMS to be fully consulted but in his report on DA 592 of 2014, Mr Stavis said, "The application had been referred to the RMS which had advised it raised no objection to the proposed development subject to conditions being imposed on the consent that the proponents submission satisfied the requirements of Clause 4.6 of the LEP specifically Clause 4.6 (iii) and that the submission was supported and given previous general advice from the department the concurrence of the department to the Clause 4.6 exemption was assumed." Mr Stavis recommended both applications for approval. At the end of his report after his recommendation for approval subject to conditions Mr Stavis set out the IHAP's report including that it considered council could not determine either application before the matter had been referred to the RMS and that it was not satisfied with the proponents justification for variation of the height under Clause 4.6 of the LEP particularly not with Clause 4.6 (iii).

A combination of Messer's Stavis and Montague appear to have drafted recommendations to the committee that the DAs, "Be approved in principle and once suitable concurrence has been received from RMS the GM is authorised to issue the consents subject to conditions in the DCPs report and any conditions arising from the RMS's concurrence."

40 On 3 December, 2015 the City Development Committee resolved unanimously that the general manager be authorised to issue the consent for both applications once concurrence had been received from the RMS subject to the conditions recommended by Director of City Planning and any other conditions that arose as a result of the RMS concurrence.

The committee resolved that it decided not to accept the IHAP recommendation given that the applications had now been referred to the RMS.

Commissioner, we will submit on authority that the device of approval in principle and authorising the general manager to issue a consent subject to conditions was not lawful. It was not lawful because although council could delegate it's functions, the relevant function was to deter a development application not to determine it in a particular way.

10 Commissioner, I was going to go on to consider the question of how a corrupt conduct arising on the evidence in relation to these applications but I note the time. If it's suitable to do so, we'll continue that after tea.

THE COMMISSIONER: Yes, thank you Mr Buchanan. We will now adjourn until 2 o'clock.

**LUNCHEON ADJOURNMENT**

**[1.00pm]**