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INDEPENDENT COMMISSION AGAINST CORRUPTION

PATRICIA McDONALD SC  
COMMISSIONER

PUBLIC HEARING

OPERATION DASHA

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY 18 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: Good morning, Mr Buchanan.

MR BUCHANAN: Before the first witness is called, Commissioner, a couple of matters of administration.

THE COMMISSIONER: Oh, thank you. Yes.

10 MR BUCHANAN: Yesterday, counsel for Canterbury Bankstown Council proposed that a couple of documents be tendered and arrangements were made for them to be supplied and for a written identification of the grounds for the tender and its relevance to be provided to the solicitor instructing us.

THE COMMISSIONER: Now, can I just confirm that was the document we marked MFI 1?

20 MR BUCHANAN: One of them was the document marked MFI 1 and the other was a document entitled Application Evaluation Form. We've had the opportunity of considering those two documents. In respect of the Applicant Evaluation Form for Spiro Stavis, dated 15 August, 2013, I tender it.

THE COMMISSIONER: Thank you. So the City of Canterbury Applicant Evaluation Form for Spiro Stavis, dated 15 August, 2013 will be Exhibit 57.

**#EXH-057 – CCC APPLICANT EVALUATION FORM FOR SPIRO STAVIS COMPLETED BY SELECTION PANEL DATED 15 AUGUST 2013**

30 MR BUCHANAN: The other document, Commissioner, was marked for identification 1, and it's an instrument of delegation in respect of the director (city planning). It's a five-page document. Commissioner, it was submitted to us that the document was about the powers, functions and duties of the director of city planning. However, we're not persuaded that it actually meets that description. It's in fact an instrument of delegation and it's about the powers and functions delegated to the director of city planning. Now, we could be corrected but we certainly can't recall at this stage that there were any of the things of which there's evidence that Mr Occhiuzzi did  
40 which informed the issues in this case, which were pursuant to an exercise of delegated power.

THE COMMISSIONER: Yes.

MR BUCHANAN: And a review, just a short review of the document itself would support that conclusion. Particularly in respect of determinations of development consents. Accordingly, we decline to tender that document.

THE COMMISSIONER: All right. Ms Alderson, may I ask, we received a letter from your instructing solicitors, as Mr Moses outlined, the ground on which you pressed the tender of the document. You've heard Mr Buchanan's submissions. Is there anything you wish to add?

MS ALDERSON: Nothing further, Commissioner.

10 THE COMMISSIONER: All right. I have reviewed the document, I reviewed your submissions. I had an issue as to its relevance. Given that really Mr Occhiuzzi was primarily here for a lot of background evidence, I'll decline to receive the MFI 1 into evidence.

MS ALDERSON: If it pleases the Commissioner, thank you.

THE COMMISSIONER: Thank you.

Now, any other matters you have, Mr Buchanan, at the moment?

20 MR BUCHANAN: Only the next witness. Mr Occhiuzzi is not required to be recalled.

THE COMMISSIONER: I was going to ask about that. And I believe we might have another appearance?

MR STANTON: Yes, that's so, Commissioner. Stanton, I seek leave to appear for Bechara Khouri, please, Commissioner. My initials are SJ just to distinguish me from the younger members of the profession with the same surname.

30 THE COMMISSIONER: Thank you, Mr Stanton, that leave is granted.

MR STANTON: May it please the Commission, thank you.

MR BUCHANAN: Commissioner, I overlooked asking for Mr Occhiuzzi to be excused further attendance on his summons.

THE COMMISSIONER: Oh, yes. Thank you. We'll excuse Mr Occhiuzzi.

40 MR BUCHANAN: Thank you.

**THE WITNESS EXCUSED**

**[10.16am]**

THE COMMISSIONER: All right. Mr Connell.

MR BUCHANAN: And Ms Mitchelmore will be taking this and the next couple of witnesses.

THE COMMISSIONER: Right. Thank you.

MR BUCHANAN: This and the next witness.

THE COMMISSIONER: Mr Connell, do you take an oath or an affirmation?

10

MR CONNELL: Affirmation, please.

THE COMMISSIONER: Now, Mr Connell, one matter I wanted to raise with you, you have received a summons to attend and give evidence, so you're compelled to give evidence, and that means you must answer questions asked of you and also if you're asked to produce any document or thing you must produce that. It is open to you to give your evidence on objection. You have that entitlement. What that means is that any evidence  
10 you give, with one exception, can't be used against you if there were any other criminal, civil or disciplinary proceedings. Now, the exception which is an important one is that you've just given an affirmation, you must tell the truth.---Ah hmm.

If it was discovered that you gave untruthful evidence there is a possibility that you may be charged with an offence under the ICAC Act - - -?---Ah  
hmm.

- - - of giving false evidence, it's like a form of perjury. But with that  
20 exception, everything else that you say today can't be used against you.  
---Ah hmm.

Now, on that basis do you want to take that general objection to your evidence?---Ah, no.

Sorry?---No, no.

You're all right?---Yes.

30 Okay then.

MS MITCHELMORE: Thank you, Commissioner. Your name is Vince Connell?---Correct, yes.

And you have made a statement to investigators of the Commission in relation to this matter on 10 April, 2017?---Yes, that's correct.

Can I provide you with a copy of your statement. And, Mr Connell, if you need to refer to your statement in the course of giving your evidence, please  
40 do so. Mr Connell, can I take you to paragraph 7 of that statement. At the time of making the statement you were the director of planning and regulation at Tweed Shire Council. Is it the case that you are still employed in that position?---Yes, that's correct.

And you have a background of employment in planning roles with local government as outlined in paragraph 6 to 7 of your statement. Is that right?  
---Yes, that's correct.

You've been employed with a number of local councils, including in senior positions?---Yes, that's correct.

And your qualifications and the courses that you've undertaken relevant to your employment are set out in paragraphs 3-5 of your statement. Is that right?---That's correct.

10 Mr Connell, can I take you back to October of 2014? It's the case that you became aware that the position of director (city planning) was available. Is that right?---That's correct. Yes.

And you contacted Ms Judith Carpenter for the purposes of obtaining an information package in relation to that position. Is that right?---That's correct.

And you had some email exchanges with Ms Carpenter about the position. Is that right?---That's, that's correct. Yes.

20 And they are exhibited to your statement. Is that right?---They're part of the statement. Yes.

Yes. Can I take you, Mr Connell, to the last of those emails that are exhibited to your statement, which is an email from Ms Carpenter to you on 12 November 2014, and the subject is, 'Meeting on Monday'. Do you see that?---Yes, I do. Yes.

30 That email confirmed your meeting at the council on 17 November at 11.30pm, sorry, AM. By this time had you been interviewed by Ms Carpenter?---I'd had a phone conversation with Ms Carpenter, yes, prior to that.

Looking at the email, Ms Carpenter informed you who would be present at the interview. Is that right?---That's correct.

40 Were any of the named persons known to you before the interview, that is, Jim Montague, Brian Robson, Councillor Azzi or Councillor Hawatt?---I was only aware of Mr Montague just through general, my experience in local government, Mr Montague was a long time, an employee of Canterbury Council, that was my only recognition. I did not know him personally.

So you hadn't met Mr Montague?---No.

But you knew of him- - -?---I knew of him.

- - - by reputation?---Yes.

Did you have any contact with any of the named persons in the email before your interview?---No, I did not.

Did you have any contact with anyone from the council before the interview?---No, I did not.

Did anyone provide you with any material in advance of your attending the interview?---No, they did not.

10 Were you given the interview questions in advance of the interview?---No, I did not. No, they were not given to me.

Can I take you to paragraph 12 of your statement? You say in the last sentence that you were aware that the position was a full-time position and you assumed it would be awarded to the applicant based on standard merit selection process. Can you tell the Commission what you understand by standard merit selection process?---To my experience in applying for jobs over a period of time, the standard process that a merit assessment be based on a council policy as well as the description, job description or position  
20 description that had been advertised as part of the recruitment process, so I believe that those matters would be the assessment, the basis of assessment on merit of a person to be selected in that job.

I see. You've just mentioned your experience. Given your background, is it the case that before attending this interview you had participated in a number of application processes for positions in local councils?---Yes, that's correct.

30 And does that include attending interviews for senior planning positions?  
---Yes, that's correct.

When you attended the interview at Canterbury City Council on 17 November 2014, were the members of the panel those whom Ms Carpenter had foreshadowed in her email?---Yes, they were. Yes.

So that was Mr Montague, Councillors Hawatt and Azzi and Mayor Robson. Is that right?---That's correct, yes.

40 Was the composition of the interview panel for this position consistent with interview panels that you had attended for other local government positions?---It, it wasn't in the sense that I, on one occasion I've had an interview with an elected official but generally speaking, those other interviews had just been senior management and not the involvement of elected councillors in that interview panel.

I see.

THE COMMISSIONER: And can I just ask, that panel where there was an elected officer, was it only one member of the panel was an elected officer?  
---That's correct, yes.

And there were other senior management of the council on the panel?  
---That's correct, yes.

MS MITCHELMORE: And Mr Connell, if I can just take you to paragraph 14 of your statement. I think you also indicate that there was HR personnel on panels from time to time. Is that correct?---That's correct, yes.

All right. Can I take you to paragraph 15, Mr Connell. You've stated there that overall you felt that the interview was very unusual and at times inappropriate. Are you able to explain to the Commission why you felt the interview was very unusual?---I suppose I can best describe it as, as two interview processes happening at that same time. There was an interview process, which I believe was in the more conventional approach, taken by Mr Montague and the, Judith Carpenter, the recruitment, from the recruitment firm. They did all the things expected in terms of greeting me, making me feel comfortable in, in, in setting up the interview, asking I think quite conventional questions that would be expected to be asked at this senior level. And that was part of it, but the other part was the, the other, the process that was being conducted by the, the three councillors that, that were present. And the, from my perspective, the, the questions were very narrow in terms of the, the broader criteria of the position where they tended to be very much focussed on planning and development issues. There was no questioning about my experience or in the broader ability to do the job. So from that perspective and they, they probably, oh it's fair to say those, those questions dominated most of the time of, of, of the interview and from that perspective, it, I hadn't experienced that type of, of a process before.

I see. And you also indicated, in paragraph 15, you describe the interview as "at times inappropriate". Can you explain what you meant by that?---I thought some of the questions that, that were asked by the councillors were, were, in a way, leading. I felt that they were putting me under some sort of pressure. I think some of the questions, really were questioning the integrity of myself and the ability to do, come to this council and I just think that they were not necessarily related to the, the merit selection of, for this position.

I see. I might come back to some of the questions. Just looking at paragraph 15, and I think this is your evidence, that General Manager Montague started with some conventional questions, which you would expect of an interview of this kind.---Yes.

And then the remaining majority of the questions were asked by the councillors without any particular structure. Is that right?---That's correct. Yes.

And when you refer there to the councillors, are you referring to all of the councillors at the interview or particular councillors?---I thought the, from the three councillors, there were some unusual questions that had been asked.

10 I see. If I take you to paragraph 16 of your statement, you've set out a number of questions that you recall that you were asked or, in words to the effect that you can recall. You say at the end of the paragraph that there were other questions, commentary about the adequacy of existing planning controls relating to properties along Canterbury Road. Can you explain what you meant by commentary?---I think there was, the, the questions weren't as, as direct as, as I expect and I think there was some context in the way, when I use the word commentary, there was some context that the, the councillors had provided about the difficulties they'd had at, at converting some of the approvals processes and the, the planning along, affecting development sites along Canterbury Road. I think there was a level of frustration expressed through that, that, through that commentary that some of the existing controls were not quite suited to development that, that was occurred and, and that the existing planning controls needed to be updated.

20

And were you asked what your view about those matters was or was it just commentary given by councillors?---There was questioning, I think, about how could I assist or, this, this, the particular planning controls and, and the updating the planning controls and I gave my experience in working for other inner city councils and that I had been a strategic planner in the past and that similar issues about, for example, about the, the long main roads such as Canterbury Road and the interface that has, with adjoining character, lower density residential areas and just to say that I had had that experience and I felt that I could assist in reviewing controls and getting appropriate controls to get good development in that, in those locations.

30

In terms of the questions and commentary about the properties along Canterbury Road, were there again any particular councillors asking those questions of you that you can recall?---From my memory it was mainly Mr Hawatt, Councillor Hawatt, Michael, Michael Hawatt. That's, yes, he seemed to have the most interest in, in asking about the planning controls, yes.

40 Can I take you to paragraph 17. You've indicated or you've said that it appeared from the questions and commentary and familiarity between the councillors that they were some form of pro-development alliance. Are you referring there to all three councillors who were present at your interview? ---Yes, I thought they did have some familiarity, yes.

And can you indicate what you mean by familiarity?---I think just the general sense of the questions was that, or my impression was that the councillors were concerned about the obstacles, some of the obstacles that the planning system placed for development, and from that there was a

general I think theme that I, I, I gauged from that, that line of questioning that the councillors were seeking to reduce the obstacles in, in, in the planning system to, to promote good development.

10 All right. You've said, if I can take you to paragraph 19, that you found it very unusual for such a well-remunerated executive position that there were no questions about organisational finance, HR, risk experience and capabilities. Are they the sorts of topics that you had been asked about in interviews for previous senior planning positions at other councils?---Yes, very much so. In fact they probably played more of a part than, than just the general planning technical knowledge that I had gained, yes.

Can I show you a document, which is volume 3, page 181. It should be up on your screen there, Mr Connell. Is that a document that you've seen before?---I can't recall seeing that. There may have been some document handed to me as part of the interview process but I can't, I can't recall the, the details of that, no.

20 You can't recall seeing that document. Mr Connell, can I just ask you to just come back from the microphone a little bit.---Yeah, sure.

Thank you.

THE COMMISSIONER: What about before you attended the council for the interview, had you seen anything like that?---Not before I'd arrived. I just, just recall in my memory there, there might have been as I was waiting, Ms Carpenter might have briefed me, but I can't recall seeing that, that document per se given to me, yeah.

30 MS MITCHELMORE: Just looking at the questions, Mr Connell, are you able to tell the Commissioner whether you recall if you were asked any of the questions on that list?---Possibly the first introductory type of question about what, what, what attracted me to the position, that type of thing. Some of these questions I don't recall being asked in that fashion, no, I, I don't recall seeing those, no.

40 Just looking at the questions, Mr Connell, are they questions of a nature that you might expect would be asked of you in an interview of this kind?---Yes, they, they look certainly relevant to the, to the position, yes, mmm.

And are they the type of questions that you expected would've been asked of you in this interview?---Yes, they are. They're quite relevant questions, yes.

Can I take you back to paragraph 18 of your statement, Mr Connell? You've said there that you recall receiving looks and gestures from the general manager and Ms Carpenter during the course of the interview which appeared to you to be sympathetic. Can you recall what the gestures were?

---I believe it was in body language, facial expression, I, I got the sense that they felt a bit embarrassed about the way that the interview was being conducted.

I see. You've indicated earlier in your evidence that Mr Montague asked you initially some conventional questions. Did he ask you any of the questions which you consider to be unusual or inappropriate?---No, I didn't. No.

10 Can I take you, Mr Connell, to your statement at paragraph 20? You've indicated there that immediately after the interview, you knew you were not the person that they were looking for due to the reactions of the councillors. Which councillors are you there referring to?---The three councillors, my sense of just from body language it didn't seem very accepting and very much interest, really, in what I was saying, so I would say that my take, I felt that from the questions I'd answered and the response that I'd given, that the three councillors, I was not the person they were looking for for this, this role.

20 Do you recall them having any particular reaction to any particular answers that you gave?---I think there was, one of the questions I suppose which is probably the most unusual was from, I believe, was from Mr Azzi. It was regarding a question about whether or not I would, I suppose a hypothetical, whether I would attend a meeting of a resident group or grouping of the residents who were opposed to the development, whether or not I would attend a meeting if I was requested to attend that meeting. And I said that – my basic response to that, in my experience in current roles I frequently meet with all types of groups and individuals regarding development issues, unless there was something inappropriate or otherwise I would generally  
30 attend meetings on request and that would be expected of me as a director of planning. And I think that that sort of, from Mr Azzi's perspective, he did question that a bit. I couldn't, can't recall the exact words but he felt, he seemed to be disgruntled by that response that I would agree to attend such a meeting if I was requested.

Mr Connell, could I again just ask you to, yeah, come back from the microphone. It's for recording purposes and you don't need to speak into it?---Okay.

40 Thank you. Are there any other reactions of councillors that you can recall or is that the main one that sticks out for you?---I think that the, it was pretty much a stern, I suppose, stern stonewall face of the three councillors to the answers I got of other, that I gave to other questions, so that's the feeling that I got, that it wasn't something that they had warmed to.

You also say in that paragraph that you decided at this time that it would be highly unlikely that you would consider taking the job even if it was offered. Why was that?---I felt that as a, the relationship of senior executive

councillors is critical, and in that position given that there seemed to be a very strong pressure to make development happen and to support development, and from that line of questioning I felt that it wouldn't, it would be an unreasonable amount of pressure placed on my position if I was to take that job, and given the context of the interview where I felt that there were, there was a, you know, it's a major role encompassing quite a significant range of tasks management, a lot of people, quite a large budget and also the fact that I was expected to be, as part of that role, as part of an executive team that was contributing to the running of the council, without  
10 any interest or understanding or questioning of those, my abilities to do those things, it seemed that the council, councillors had little interest in that part of the role but were very much focused on the development side of things, and I don't think that's, in terms of performing the job and performing the other range of roles expected, I thought that just would've been an overbalance and an unreasonable expectation in taking on that job.

I see. Now, Mr Connell, at paragraph 21 of your statement you refer to a subsequent conversation with Ms Carpenter in which you expressed concerns about the conduct and format of the interview. Were there  
20 particular concerns that you can recall raising with Ms Carpenter as to those matters, conduct and format?---Yes, it was a pretty short conversation. I just expressed my, pretty much along the lines what I've said in my statement and what I've said today. I felt that it was an unusual interview and that some of the question, I believed was inappropriate and that I, I, I gave my impression that I believed that they, I wasn't the person that they were looking to to appoint for this job.

I see. And you've indicated that Ms Carpenter expressed some sympathy and agreement with that view. Can you recall what she said?---I can't recall  
30 exactly what she said, but certainly from my perspective what I was hearing from her was that, that she believed that this was quite an unconventional interview process.

Thank you. Thank you, Commissioner. That's the examination.

THE COMMISSIONER: Thank you. Ms Alderson, any questions?

MS ALDERSON: No questions, Commissioner.

40 THE COMMISSIONER: Mr Neil?

MR NEIL: No, thank you, Commissioner.

MALE SPEAKER: No questions, Commissioner.

THE COMMISSIONER: Mr O'Gorman-Hughes?

MR O'GORMAN-HUGHES: No, questions, Commissioner.

MR STEWART: No questions, Commissioner.

MR ANDRONOS: No questions, Commissioner.

THE COMMISSIONER: Mr Connell, you can be excused.---Thank you very much.

10 **THE WITNESS EXCUSED**

**[10.41am]**

MS MITCHELMORE: Commissioner, the next witness is Ms Meryl Bishop.

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

MS BISHOP: Affirmation.

THE COMMISSIONER: Has section 38 been discussed with - - -

MS MITCHELMORE: It has, Commissioner.

THE COMMISSIONER: I understand a direction under section 38 has been discussed with you. Do you wish me to make such a direction? This is whether you want to give your evidence on objection.---Yes.

MS MITCHELMORE: I understand, Commissioner, that section 38 and its effect has been explained to Ms Bishop, and my understanding was that she wished to take the objection.

THE COMMISSIONER: Yes. And I'll just emphasise, as has probably been explained to you, it means the evidence you give or any document that you produce can't be used against you in criminal, civil or disciplinary proceedings, the exception being if you don't tell the truth here and you're prosecuted for an offence under the ICAC Act of giving false evidence. ---Yes, I understand.

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

30

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

40

MS MITCHELMORE: Your name is Meryl Bishop?---Yes, it is.

And you have made a statement to the Commission in relation to this investigation in May of last year, is that right?---That would be correct.

Can I provide you with a copy of that statement. Ms Bishop, your name doesn't appear at the top of the statement on page 1 but it appears at the top of the subsequent pages, and can you confirm that's your signature at the bottom of each page?---Yes, it is.

Ms Bishop, can I take you to paragraph 5 of your statement. You there say that you currently hold the position of director (environment and planning) at Georges River Council and that you've held that position since October 2016. Do you still hold that position?---Yes, I do.

10

Can I take you then back to October and November of 2014. Do you recall, Ms Bishop, applying for the position of director (city planning) with Canterbury City Council?---Yes, I do.

If I can take you to paragraph 7 of your statement, is it the case you became aware of it through seeing the job advertisement?---I saw the job advertisement, yes.

20

Can you recall, Ms Bishop, what position you were employed in at that time?---At that time I was the manager of strategic planning at Ryde Council.

Right. And it's the case, Ms Bishop, that the background of your employment is in planning roles with a number of councils. Is that right? ---That is correct.

You've referred to those councils in paragraph 4 of your statement. Is that right?---Yes.

30

And you have the qualifications in planning and management that are set out in paragraph 3 of your statement. Is that right?---Yes, that's correct.

40

All right. Can I take you to paragraph 8 of your statement. You indicate there that having reviewed the job advertisement you were aware that the position was a full-time position being offered and that it was to be awarded on merit-based selection. Can you explain to the Commission what you understand by the term merit-based selection?---My understand is that when you apply for the position you are to outline your experience and skills in relation to the set criteria and those experience and skills outlined in your application then forms the process of how that selection would occur and how you progress through the interview process.

I see. Following the submission of your application, you were contacted by a Ms Judith Carpenter who was a recruitment consultant for the council. Is that right?---That's correct.

In paragraph 10 of your statement you refer to being interviewed by Ms Carpenter. Was that by phone or in person?---Look, I can't recall whether I

went into her offices or we did it over the phone, sorry, I can't, I can't recall, but we did, we did have a conversation, yes.

I see. And you were then invited to attend an interview on 17 November, 2014.---Yes, that's correct.

Can you recall who was present at that interview?---Jim Montague, the mayor, Councillor Robson, Councillor Hawatt and Councillor Azzi.

10 All right. And Mr Montague was the general manager of the council at the time?---Yes, he was the general manager.

Is it the case that Ms Carpenter was also present?---Yes, apologise, she was there.

All right. Were any of those persons known to you before the interview?  
---No, they weren't.

20 Aside from Ms Carpenter with whom you've told us you spoke before attending the interview, did you speak to or meet with any of the members of the panel before the interview?---No, I didn't.

Were you provided with any material in advance of the interview?  
---No, I wasn't.

Does that include on the day before the interview?---Including on the day.

And were you given interview questions in advance of the interview?  
---No, I wasn't.

30 Given you background, Ms Bishop, is it the case that before attending this interview you'd attended a number of interviews with local councils for positions?---Yes, that's right.

And does that include senior planning positions?---That's right, and directors' positions, yes.

And is it the case that you've attended such interviews since that time?  
---The one to, to get my current role at Georges River Council, yes.

40 Yes. Are you able to tell the Commission what you recall of the interview on 17 November, 2014?---Could you just, in relation to its atmosphere or the questions asked, could you just elaborate on that a little bit for, for me?

Certainly. All right. If I can take you to your statement perhaps at paragraph 14, you've described the interview as unprofessional and that the panel – perhaps if I stop there. What do you mean by describing it as unprofessional?---Okay. So as, as I recall I arrived to the interview, and I'm

assuming this was to try and calm me down because, you know, we're all a bit nervous when we go into the interview, Jim Montague stated that he, that the, that the previous candidate had only answered six of the set questions, wonder if I could do any better. So that, and I thought, oh, well, all right, okay, but I thought that was an unusual way to start a position for, for a senior position within a council. So that was probably the first, the first thing. I guess in relation to how the interview process ran, it started off with some scripted questions, it appeared to be scripted questions, and then it, it wasn't so long into the interview process that it, it appeared that unscripted questions seemed to occur, and I'm saying that on the basis that the, that the process of asking questions by each of the panel members seemed to dissolve and a number of them were asking me questions and interrupting me. And so I guess the process was unusual from my experience in, in that it didn't seem to be particularly structured.

I see. You've also said that the panel asked you questions that were odd based on your experience. What do you mean by that?---Well, as I say, usually in, when you, when you're applying for a positions, your interview process for senior management, you're about your strategic direction, your vision for the directorate, how you deliver, how you would ensure, would ensure that services are delivered through KPIs, et cetera. So, that didn't really occur. As, as I say, the questions, from my memory, was in relation to how I would do decision making and how I would act on directions that I was given, directions that I may not agree with, what process would I put in place. And there was questions on particular development sites and development scenarios which I really couldn't answer.

I see. So you set out in paragraph 14, I think, the effect of some of the questions that you were asked, that they're the type of questions you recall being asked in the course of the interview?---Yes. That's right.

Can I take you to paragraph 15. You've indicated that the questions were generally asked by Montague but Councillors Hawatt and Azzi asked questions, and I think you've already indicated they didn't appear to be scripted and you say that you believed they lacked appropriateness. What do you mean by lacked appropriateness?---In, just, as I say, based on my experience, the question to be asked, for example, "What would you do if the general manager asked you to do something that you didn't agree with? What would you do?" That was one. The second one was, "If the council provided you with a direction and you didn't agree with it, how would you implement that direction or that requirement?"

All right. And your experience was that, in your experience, your belief was that those questions were not appropriate given the circumstances?---I, I, but I thought they were unusual. Unusual in the context of, of, as I say, the seniority of the position.

I see. Did Mr Montague ask you questions that you considered to lack appropriateness?---Not that I can recall. No.

All right. So who was asking you those questions? It was Councillors Hawatt and Azzi, did you say?---Namely, yes.

10 All right. You indicated that you were asked about particular development scenarios. Can you recall anything about what, which scenarios they were? To particular developments?---They referenced a development on New Canterbury Road and, and they would ask me whether I could, if I knew the development and whether I could comment on it. But because I didn't know the development, sort of, the, the question didn't lead anywhere. And the other question was about, I think again they referenced a particular site, I think maybe in Earlwood, about a, a medium-density development occurring within a low-scale residential area. And then asked me, again, I didn't know the site but I talked about the context of medium density within those lower scale residential areas. They asked me how would I, what was my opinion and how would I deal with it.

20 All right. Can I ask what your impression was, Ms Bishop, of the manner in which the questions were asked of you by Councillors Hawatt and Azzi?  
---Look, given my sort of experience with councillors over, over the years, they all have very different manners in the way they talk to staff. So, I think the manner in which they were talking to me, probably was a little in appropriate but what I found difficult and inappropriate was, they did not allow, they'd ask me a question, I'd start answering it, then either the same person would come in and ask me another question or another member of the panel would ask me another question and I, I wasn't allowed to finish my answer. So I, I, so I think it lacked appropriateness in relation to, sort of, the  
30 procedures of, of, of the interview.

Did the questions that you were asked by Councillor Hawatt give you any insight into his attitude to development in the local government area?---Not particularly, but clearly he had an interest in planning.

I see?---Given the, given the focus of his questions.

40 I see. And what about the questions asked by Councillor Azzi?---I can't, I don't have an opinion on where he was, what his focus was, no, I don't know.

I see. Do you recall any questions being asked by the mayor?---I can't recall. He did ask me questions, I can't recall what the focus was but I, no, I can't recall what that focus was.

Ms Bishop, can I show you a document, it's volume 3 page 181. Ms Bishop, is that a document that you've seen before?---No, I haven't. Except in yesterday's evidence but no, I haven't seen it myself.

Can I ask you to have a look at the questions and tell the Commission whether you recall whether you were asked any of the questions on the list in the course of the interview on 17 November?---I think I, I'm pretty sure I answered one and two because they're fairly standard questions you will get about what are the challenges a city faces and how, and how would you address them, so, I think one and two I was asked.

10 Do you recall being asked any of the others?---No. No. No.

Ms Bishop, can I ask you in your experience, having attended a number of these interviews, was the composition of the panel consistent with panels that you've attended for other senior positions?---Look, I have attended one other council for a director position and there was the mayor and one councillor on that panel. The composition, while rather odd because there were three councillors including the mayor, it didn't surprise me because often councillors tend to have a very keen interest on who the director of planning is, so it wasn't a surprise to me because I had attended an interview where councillors were on the panel.

20

I see. Thank you. Commissioner, that's the examination.

THE COMMISSIONER: Thank you. Ms Alderson? Mr Neil?

MR NEIL: No, thank you, Commissioner.

THE COMMISSIONER: Mr Andronos?

30 MR ANDRONOS: No, Commissioner.

THE COMMISSIONER: Mr O'Gorman-Hughes?

MR O'GORMAN-HUGHES: No questions, Commissioner.

THE COMMISSIONER: Any other questions?

MR STANTON: No questions, Commissioner.

40 MR PARARAJASINGHAM: No questions, Commissioner.

THE COMMISSIONER: Right. Thank you, Ms Bishop. You may be, you are excused.

**THE WITNESS EXCUSED**

**[10.58am]**

MR BUCHANAN: Could Mr Bechara Khouri be called, please?

THE COMMISSIONER: Mr Khouri, do you take an oath or an affirmation?

MR KHOURI: An affirmation.

<BECHARA KHOURI, affirmed

[10.58am]

MR BUCHANAN: Mr Stanton might like to come to the front of the room.

THE COMMISSIONER: Yes, sorry Mr Stanton, yes.

MR STANTON: If I may, thank you, ma'am.

10 THE COMMISSIONER: Mr Stanton, have you discussed a section 38 direction with Mr Khouri?

MR STANTON: I have indeed, Commissioner. The witness will avail himself of that direction.

THE COMMISSIONER: All right. And Mr Khouri, I'm sure Mr Stanton has emphasised to you that this protection that the direction gives you to does not apply if you are prosecuted for giving false evidence to ICAC during this public inquiry. Pursuant to section 38 of the Independent  
20 Commission Against Corruption Act I declare that all answers given by this witness and/or documents and things produced by this witness during the course of the witness's evidence at this public inquiry are to be regarded as having been given or produced on objection and there is no need for the witness to make objection in respect of any particular answer given or document or thing produced.

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

40 THE COMMISSIONER: Thank you, Mr Buchanan.

MR BUCHANAN: Thank you, Commissioner.

Mr Khouri, your name is Bechara Khouri?---Yes.

And, sir, do you have an office where you work or out of which you work?  
---Currently I work from home.

Mr Khouri, what is your occupation?---I'm a medical scientist by profession.

Is that how you occupy yourself?---Well, not currently. I used to be a medical scientist but then I went into business, I was in the food business for long time.

In the food business?---Yes.

10 Yes.---I had franchises, Ali Baba Lebanese Cuisine, then I sold them and I had a share in Canberra till three years ago.

You had a share in?---In a restaurant in Canberra.

Yes.---And then the last three or four years I was working in trade as a consultant, mainly consultancy in trade.

In Israel?---No, no, in Australia.

20 In Australia.---Yes. Sorry, maybe I should get closer.

And is that trade within Australia or trade outside Australia?---From Australia to overseas.

Have you earned an income at all as a result of being retained or helping people, whether retained or not, in the buying or selling of land?---Yes, I have, sir.

30 And when did you start doing that?---I started doing this about four years ago.

And - - -?---I - - -

- - - how did it start?---I invested in a property trust.

In a property?---Trust.

40 Trust, yes.---Certain percentage which was sold and then that was the first time I made some money out of it, yes.

And - - -?---And then - - -

Yes?---And then I reinvested the money in another site, again was purchased and sold.

I'm sorry, could you say that again?---I invested the profit from the first one into another property in a trust again, different trust, which was sold. Again there was more profit made, and that has continued till very recently.

Yes.---We, last year we, I invested in a property on, for a motel on Canterbury Road, Campsie, that was last year, and that has failed, it's gone to court, and now the group is reapplying again for another application for the motel.

Yes. Those sound as if they're investments on your part?---Yes.

10 My question about was whether you had helped people - - -?---Yeah.

- - - buy or sell land.---Ah, I have helped people buying land, yes, sir.

When did you start doing that?---Ah, oh, must be, must be years ago. 15 years ago.

How many people have you helped buying land?---Ah, one, a few people, sir, a few people. I can't, I can't give you a definite answer.

20 Can you give us an estimate?---Ah, maybe two or three people, yes.

Only two or three?---Yes, yes.

Okay. Have you helped people sell land?---Ah, I have attempted ah, to do so, but ah, but that didn't ah, didn't eventuate.

And have you earned an income from helping people to buy or attempting to sell land?---Ah, ah, helping to buy, no, I haven't, sir.

30 So you haven't ever received income - - -?---From - - -

- - - as a result of efforts to - - -?---Find land.

- - - help people buy land or efforts to help people sell land?---Yeah.

40 No money at all?---No, this, I have to clarify this. Now, that was part – finding opportunity was part of my consultancy and therefore I did this as part of the work I used to provide to certain people. So part of my work is to bring opportunity on the table. Some work, some don't, so because I was on a retainer by those people, I was doing, I was bringing subcontractors, project managers, I was coordinating and visiting sites, I was trying to get finance, I was looking for opportunity. Yes. All this together, that was part and parcel of what I used to do.

You used to do?---Well I'm not doing this at the moment.

I'm sorry?---I'm not doing this at the moment, no.

So you mentioned the word consultancy a moment ago?---Yes.

Did you have a consultancy?---I did.

When did you start that consultancy?---About four years ago.

Did it have a name?---My company was K & H Bech Pty Ltd, that was - - -

And is that K & H Bech, B-e-c-h?---Yes.

10 Pty Ltd?---Yes.

And how long have you had that company?---Since 1991.

And do you say that that is a consultancy which doesn't operate anymore?  
---No, it doesn't operate.

When did it finish operating?---About four years ago.

20 Why did it finish operating?---Because I, my projects finished, the one I was  
doing with that particular firm and that, and that's it, really, that, it's not a  
continuous thing. You've got to do something, you do it and you, you  
leave.

So it sounds as if the consultancy was for one client?---One client, yes.

Is that right?---Yes, sir.

30 No other client at all?---There were other clients but they were very short,  
short period client, very short client, one project thing.

And can I just establish again when did that consultancy for that particular  
client start?---Officially 2000, maybe, and 12, or 2000, sorry, 2013 to 2014,  
or it was 2013, one of the two.

Sorry, I just want to clarify that. You did mention 2012?---Between,  
between '11 and '13, sir.

40 Between 2011 and 2013. Is that the length of time over those three years  
that it operated?---No, it's only operated for one year, one year, but what I'm  
saying is it was between that particular time, I don't have the exact timing.  
It was, it was one year, that paid consultancy only for one year, sir.

And what was that period of one year, what were the dates, as best as you  
can recall?---I'll say 2012.

The calendar year 2012?---Yes, yes.

And after 2012- - - ?---Yes.

- - - you weren't involved in any consultancy to help people buy land or to help people sell land?---No. No.

Or to obtain contractors for them or subcontractors?---No. No.

Or to try and get them financed?---Yes.

10 When you say yes, do you mean - - - ?---I didn't.

- - - you did not do that after the end of 2012?---That's right.

Is that what you're saying?---That's what I said.

And so how have you earned an income since the end of 2012?---I, I still have the rest of them, and it's from my investment in the property trust. As I said to you, I invested in the trust and, and the trust was making money and that was worth, enough supported me.

20 What was the name of the trust?---Again, K & H Bech Pty Ltd, Khouri family trust. Sorry, the trust, the vehicle, there was a different, a different trust for each project. One was called Nabrish.

Can you spell that, please?---N-a-b-r-i-s-h. Nabrish. One was called Arguille, A-r-g-u-i-l-l-e.

Yes?---One was called Nara, N-a-r-a, and I can't remember the other one, sir.

30 And were you or your company, K & H Bech Pty Ltd, or do you pronounce it Besh?---Bech.

Bech Pty Ltd. Were you the trustee or were you the beneficiary of the trust?---The company is the trustee for the trust, yep.

And who was beneficiary?---The, the family, the Khouri family.

Including yourself?---Yes, sir.

40 Now, you said that there was a client you had in 2012 for the consultancy that you conducted during that year.---Yes.

Who was that client?---That was Demian Construction, Charlie Demian.

Demian Constructions?---Yes.

Charlie Demian was the principal of that firm, was he?---Yes, yes.

And how did that relationship, you had during the operation of that consultancy, start?---I knew Charlie for a long time.

Before 2012?---Oh, yeah.

10 Could you say when it was that you first knew him?---Oh, must be, must be something like 16, 17 years ago. I was involved in, with some investors in Macquarie Bank, looking at a golf course in Milperra. This is how the relationship started. I was, not me personally but the people working with me were offered, were offered an option for one week to buy the site. I told Charlie about it previously, so Charlie knew that I was involved in that Milperra golf course, called the Riverland. Now, unfortunately, there was interested group that had come forward and the option was terminated on Friday. It was for, I believe, these days for \$12 million, and it was a contract to exchange the thing. So the following day Charlie rings me up and he said, "Oh, I bought the golf course." I said, "What golf course? Which one?" I thought some other golf course. He said, "Riverland." That was on Saturday, the following day after the option finished, yeah. And I said to Charlie, "Why did you call me on Friday? (not transcribable) Saturday." So apparently some agent from Wollongong, but anyhow, he ended up paying 16 million for it instead of 12 million. I said, "I could have saved you a lot of money if I knew you were keen and interested." So from, from that day, I established that relationship and it wasn't, it wasn't for salary or repaying or anything. I thought Charlie is a, is a decent man and is a professional. So, we continue having this relationship.

30 What was the relationship?---Oh, you know, I help him with things, find him sites. There was another site I turned his attention to and that was in Lane Cove.

Just, if I need to know the sites, I will come back to particular properties in a moment, if I - - -?---My apology.

So you acted as a consultant to Mr Demian?---Yes.

And I'll come back to that in a moment. Who was Mr Demian?---Charlie Demian. He, he's an investor and a developer.

40 And when you first met him, was he an investor and developer?---He was just starting in those days, yes.

When did, as far as you know, he become an investor and developer?---17, 18 years ago. He was in the telecommunication business previously.

Now, you started this relationship with him whereby you were a consultant and you found him properties or tried to find him properties. Is that right? ---That's right.

For the purpose of?---Well, for the purpose of making some money.

And who would make the money?---Well, if I go and find a property, I expect my return for my efforts.

How would you get a return out of it?---You get a certain percentage out of it.

10 Who from?---From the buyer or, sorry, or sometimes from the buyer, sometimes the seller, depends on the arrangement.

On the nature of the consultancy with Mr Demian that you've described so far, he would've been the buyer?---He would be the buyer, yes.

20 But you might've obtained fees from either Mr Demian or the seller or both?---Or depends on, yeah, not both, no. All depends on the agreement. If I go to Charlie and say Charlie, look, I can get this land as it is and then you buy it for that price and you got to make sure I get looked after, that's how the arrangement, or, depends who owns the land and I can make this arrangement with the other person, but not the two together. No.

Can I just go back? You mentioned earlier that there had been two or three people - - - ?---Yes.

- - - you had assisted with buying and selling land?---Yes.

Was Mr Demian one of them?---One of them.

30 Right. Who were the others?---Dyldam, Dyldam, D-y-l-d-a-m. Dyldam.

Thank you?---That's a very big company.

Yes. Was there another one?---I can't remember the third one, it could be someone small, medium, I just can't recall the third one.

Did you earn any money from the consultancy work you did for Dyldam?  
---I did earn a retainer for a short period of time, I think it was for, between three and six months.

40 Did you earn any money from the consultancy work you did for Mr Demian?---Yes, for one year.

And did you receive that money during 2012?---Yes, it was a retainer on a monthly basis.

A retainer?---Yes.

I thought a moment ago you said you didn't have a retainer or a salary with Mr Demian?---No, I said I worked for one year as a consultant and I had a retainer for, monthly retainer for me, I had this in my statement as well.

Can you tell us about that retainer, please?---Yeah, it was, it started with \$15,000 per month, and as I said to you that included head hunting, project managers, following up on sites, tradies, filing site and opportunities, working on obtaining finance from private firms, it included all those sorts of things, visiting site on a daily basis.

10

And you said it started at \$15,000 a month?---Yes.

Did something happen? Did it become less or more as the year progressed?  
---It has come less, it ended up with 5000 per month.

In December 2012?---Yes. Yes.

And you received that money?---I have so, yes.

20 Did you receive any money from Mr Demian after 2012?---No.

Did Mr Demian owe you any money after 2012?---No.

Was there a period of time when Mr Demian owed you money?---No. No.

You're quite sure about that?---No, Mr Demian never owed me any money, no. I mean, I had an expectation that that retainer is maintained and continued.

30 In 2012 or after 2012?---After 2012.

Yes?---But unfortunately I think his cash flow, or financially he wasn't in the position to do so, and that was, he said it very clearly, you know, he can't afford to continue. That was the end of the matter.

And so there was never a period of time when in your view, Mr Demian owed you money?---No. No.

40 And there wasn't a month in 2012 when he failed to pay you your monthly retainer fee?---He didn't fail, he made it clear that he can't continue with it.

Well doesn't that mean he failed and that was the reason for it?---He failed in what?

In paying you your monthly retainer fee during 2012?---No, he paid me my 2012 monthly retainer fee, I said to you, he did. He did all the way and he said at the end that his cash flow is restricted and he no longer can, at this stage, continue with it.

You have referred to a document. You were previously interviewed by Commission investigators, is that right?---Yes. Yes.

In 2017, last year?---Yes.

And you were asked questions in which you gave answers about these subjects, amongst others?---About this, yes.

10 Excuse me a moment. Can I pass you this folder. If I ask you to just turn to – I withdraw that. Looking at the first page, do you agree it appears to be what's described as a Record of Interview between investigator Simon Berry, investigator Lisa Stockley and Bechara Khouri, and then it gives an address, on 15<sup>th</sup> February, 2017? Do you see that?---Yes, yes.

Have you seen this before?---Yes, I have, yes.

And when did you last see it or a copy of it?---It was an exhibit on, on (not transcribable).

20

When did you last see it?---Two days ago.

Two days ago?---Yes.

Thank you. Now, on pages 13-14, you'll see that you're recorded as talking about Charlie paying you retainers, and then at about line 11, "He had, his cash flow is all right and he stops when he got problems with cash flow, but I never stop helping him, you know." And then you go on to describe a particular project.---Ah hmm.

30

And down on page 14, do you see at line 25 you were asked, "You were on a retainer from Charlie?" Answer, "Not all the time." Question, "But what sort of money do you get?" Question, "Oh, sometime five per month, sometime 10 per month, sometime 15 per month. Depends on his cash flow." The investigator said, "Okay." And then you said, "But I can tell you something, I mean, Charlie owes me big. I mean, if he pay between now until I die, he still, he still behind because obviously, I mean," and then the investigator asked about whether your relationship with Mr Demian was friendly.---Yes.

40

Was what you said to the investigator last year that's recorded there, that at the time of speaking to the investigator Charlie owes you big, and that if he paid between the date of the interview until you died, he would still be behind, were those true statements?---Yeah, they are true statements, yes.

They're inconsistent with what you've said today, aren't they?---No, they are consistent, sir, because when you direct him to big sites like Riverland and Lane Cove and Homebush and you don't, you don't make any money

off it – well, you were hoping to get something out of it – that’s a massive, that’s a massive opportunity. I give you an example.

No, no, no. There’s no need for an example. What do you mean when you say “that’s a massive opportunity” to explain the evidence that you have given today, which is different from the statements you made to the investigators as to whether Mr Demian owed you any money after 2012?---I don’t believe they are different, sir, because I’m telling you that the value of the opportunity I brought to Charlie was much, much, much more than the  
10     retainer I have received, and that is very clear, I think, Madam  
Commissioner. I mean, the one example too, if might, I might tell you, in, in, in the city, in Ultimo, Charlie was stuck. He was building a building there. Through my relationship and contact with Macquarie Bank, I had Macquarie - - -

When was this?---I really don't know the exact time.

Was it in 2012 or before 2012 or after 2012?---No, no, before, no, no, before, sir. Before. Before. I had - - -  
20

Well, I was asking you questions about your consultancy with Mr Demian, which you said was during the calendar year 2012. I asked you whether you were on a monthly retainer. You said you were. You said the monthly retainer amounts changed from month to month during the year. I asked you whether at the end of that consultancy, at the end of 2012, Mr Demian owed you any money, and you quite clearly told us, no, he didn't. Now, either you were lying to the investigators or you're lying to this  
30     Commission.---I don’t think I'm lying to anyone, sir. I explained to you exactly the value of what I have given. And that’s, I repeat this, the value what I have provided to Charlie is much, much, much bigger than what I got out of it, and that is very clear. And I don’t understand what you're trying to say, why I am lying. I don’t think I am lying. I said this to the investigator. And this means, or supposed to mean, that the value of the work and the opportunity is worth much more than what I got paid for. I think that’s very clear.

That’s not what you said to the investigator and that’s not what you told the Commission today, is it?---Not (not transcribable) - - -

40     That’s what you're saying now.---Well, I'm explaining what did that supposed to mean.

Had you - - -?---Because it told the investigator - - -

Have you been to Mr Demian’s house, his residence?---I have. I have, sir.

How frequently have you been?---Oh, very occasionally. Three or four times the last (not transcribable)

Has he been to your house?---Once.

When was that?---Last year sometime.

Have you spoken to Mr Demian since the 15<sup>th</sup> of February, 2017, when you were asked questions by the Commission's investigators?---15<sup>th</sup> February, yes, I have. I believe I have, sir, yes.

10 And how often have you spoken with Mr Demian since that date?---Very occasionally. Very occasionally. Spoken over the phone or saw him?

At all spoken to him.--Oh, I, I, well, I haven't seen him now for at least three or four months. But before that I used to pop in when I went Parramatta and see him and have a coffee with him, yes.

And - - -?---(not transcribable) sorry.

20 Did you talk to him about the interview that was conducted with you by the Commission's investigators on the 15<sup>th</sup> of February, 2017?---No, I didn't.

Why not?---Why should I? I'm not allowed to talk to him.

Mr Khouri, you are telling us, are you, that you not only didn't speak to Mr Demian about the interview but you had no reason to. Is that what you're telling us?---Well, according to the law I am not supposed to tell anyone about the interview.

30 That might be the case, but I'm asking you wasn't it clear to you that the Commission's investigators were interested in your relationship with Mr Demian?---Yeah.

And you had a good relationship with Mr Demian last year?---Yes.

And this year?---Yes.

40 And you're quite sure, are you, that you never said anything to him about the interview conducted with you by Commission investigators in February, 2017?---The subject was never discussed.

And did you tell him that you had been interviewed by ICAC investigators? ---I can't honestly recall. That subject never come up with Charlie.

Has he asked you about whether you have been contacted by the Commission?---No. No.

I notice the time, Commissioner. Thank you.

THE COMMISSIONER: We'll take a morning tea break of about 15 minutes. So we'll stand adjourned for that period.

**SHORT ADJOURNMENT**

**[11.30am]**

THE COMMISSIONER: Please have seat, Mr Khouri. Mr Buchanan, just before you recommence your examination, I just wanted to remind  
10 everybody here, and particularly members of the public, there are to be no photographs or visual or audio recordings of the proceedings in ICAC and also no photographs taken outside the hearing room just around the premises of ICAC. There should be signs up to remind you of that, but I was asked to just emphasise those prohibitions again this morning.

Right. Thank you, Mr Buchanan.

MR BUCHANAN: Thank you, Commissioner.

20 Mr Khouri, the consultancy that was in 2012 you say didn't continue beyond 2012. Is that right?---Right.

But have you continued to have a business relationship with Mr Demian?  
---Yes.

And what's been the nature of that relationship?---Just before I left we were in a process of establishing a modular home concept.

30 A modular home concept?---Concept - - -

Yes?--- - - - using the Canadian experience.

Canadian experience?---Yes. And we had set a committee of designers and architect to start working on that project. So we had several meeting in that matter, that regard which is on hold at this stage.

40 Do you continue to keep an eye out for properties that Mr Demian might be, might find interesting for the purposes of development?---Not recently, not recently.

What do you mean by that?---At the moment I don't think he is in a position to acquire any property. He is already overloaded.

And where are Mr Demian's properties insofar as the Sydney metropolitan area is concerned?---All over Sydney. He just terminate or finished one in Mount Lewis Bankstown, he's working on one in French Avenue, Bankstown, getting built that is.

Yes.---He finishing one on Liverpool Road, Bankstown, he's got the Milperra Riverland Golf Course, he is doing a major subdivision in Penrith, he has one in, he has one in Hornsby, he has his office in Charles Street, that was approved for 15 or something storeys, he's going to start on this - - -

Is that in Parramatta?---Parramatta, yes.

Yes.---My apology, Parramatta, yes. He has a massive land in Camellia.

10 Sorry, in Camellia?---Camellia.

Yes.---Which is close to Parramatta. It's about 60,000 square metres, and he is negotiating with the state government in relation to rezoning that particular land at the moment.

You know the suburbs that are in the Canterbury Council local area?---Yes.

20 Has he had developments or properties that he's holding with a view to development in that area?---Yes.

Which have they been?---I think he had the Harrison, Harrison site.

On Canterbury Road?---On Canterbury Road which he sold. He has, he has one further down towards Belmore. It's just an old shoe factory.

30 In Canterbury Road?---On Canterbury Road, yes, in, in Belmore, the suburb called Belmore there. And further down toward Lakemba he has a small site on the left before you reach Chapel Street. So he's got one, two, three, he sold, he sold one and still has two property on Canterbury Road, yes.

And what about in Punchbowl?---He had a petrol station in Punchbowl for a long time. It's been there for years. Corner of Canterbury Road and Punchbowl Road.

Does he no longer have it?---No. I think, I believe he still has it, he still has it.

He still has it?---I think so. Unless - - -

40 And are these properties that you've described in the Canterbury area as you understand it?---Yes.

Properties that he held in the period 2014 to 2016?---I would assume that's the case, yes. I'm not sure on this.

When did you stop looking for properties that Mr Demian might be interested in?---Oh, about two years ago.

2016?---Yes.

Do you remember when in 2016?---No, I don't, sir.

And did you find any of the properties that Mr Demian has now, in the Canterbury local area, for him?---No. Absolutely not.

None of the ones on Canterbury Road, for example?---Absolutely, definitely not.

10

Lakemba, Belmore?---No. I just want to remind you, sir, if that - - -

Yes.---I'm not the only person who brings property to his desk. I'm just one of them. So he has agents running around, other people who bring opportunity to him and other people as well. So that's a normal practice that, if you are seen in that level of property market, you always gets those information coming you, to you from all different directions.

20

Are you familiar with a company, connected to Mr Demian, called Statewide Planning Pty Ltd?---Yes. Yes.

What, as you understand it, is the function of that company?---I think this company does all the planning and, and the architecture planning and all submissions for the company.

And how long has it been doing that for Mr Demian, as best as you can recall?---Six, seven, eight years.

30

Have you known or had any relationship with, friendship or acquaintanceship with councillors from Canterbury City Council?---Yes. I - - -

Who have they been?---I know the mayor, Brian Robson.

This is before amalgamation in 2016.---Yes. How, how, how far before you want me to go?

40

Well, at the moment, all of them, if you wouldn't mind, before amalgamation?---Well, I, I used to know John Gorrie. He was the mayor back, late John Gorrie, God bless his soul.

And how do you spell that surname?---Gorrie, G-o-r-e, G-o-r-i-e [sic]. John Gorrie. I knew all the consecutive mayor and some of the councillors who come after that.

And this is going back how far?---Twenty years.

And in terms of the period of the council between the 2012 election and the 2016 amalgamation, did you know councillors on Canterbury City Council, other than the mayor?---Yes. I did.

Who were they?---I knew Mark Adler. Mark's been in council for a long time. I knew Fay Kebbe. I knew Karl Saleh.

Sorry, can you just give us the first one after Mark Adler?---Fay.

10 Fay?---Kebbe. K-e-b-b - - -

And is Fay F-a-d-w-a?---Fay, F-a-y, I think.

Very good. But Kebbe is K-e-b-b-e?---E-b-b-e-h.

E-h?---E-h, I think. (not transcribable)

Thank you. Yes. What was the one after that?---I knew, I knew Michael  
20 Hawatt or I knew of him, I didn't know him much until very recently. I got to meet Pierre Azzi the last couple of years, his good wife always when she does a meal, because I've got no one, I live by myself, she was kind of her to invite me for a meal every now and then.

Who was this?---Councillor Azzi's wife.

Councillor Azzi's wife?---Yes. She realised I live by myself and I have no one so she, she always invite me to come and have a meal with the family, so we become family friends.

30 Right?---I knew, I knew Con, Con Vasil, I knew, I didn't know the others, this is the one which I know most, really.

And not everybody would be lucky enough to have known the councillors on a particular council or in a particular local government area for a period of 20 years or so. How come you do, or have?---I know a lot of councillors all over Sydney, sir, not Canterbury.

Why, I'm asking?---Well, in case you didn't notice I was a community  
40 worker between late 80s, early 90s or mid 90s and I worked with the Australian Arabic Welfare Council as a community worker, and that line of work, you get to know a lot of people in the community service section, Canterbury, Bankstown, Strathfield, Auburn, Cumberland, Hurstville. You do get, on a regular basis, go to functions and go to information sessions and go to presentation all over Sydney. Parramatta, Auburn, and I get to know a lot of people, and plus, because I've been a member of the Labor Party for such a long time, since the late 1970s. You get to meet those people at conferences and special events, so I did know a lot of people and I know a lot of people in Sydney without any doubt.

Have you cultivated relationships with councillors, particularly on Canterbury City Council before the amalgamation?---On the community service level, yes. Canterbury was, when I was a community worker, Canterbury was the leading council in providing community service and they had a very honourable record when it comes to having program for the new arrival and the new multicultural community which was evolving for the last 30, 40 years in the area. Yes, I have a lot of support from councillors and from the general manager of course, I was very understanding to the community needs because there is a big gap in trying to pass the services available to new - - -

If I can just ask, thank you, I understand that?---Yes.

Have you shared any other interests apart from community services with, just selecting them, the councillors on Canterbury City Council between 2012 and 2016?---No. Apart from social activities, no.

So you haven't shared an interest in land use planning with any councillor on Canterbury City Council between 2012 and 2016?---Never. I will challenge any councillor on, or to come now and say that Bechara Khouri asked me to do anything in that particular field.

And you haven't shared an interest with any councillor on Canterbury City Council between 2012 and 2016 in respect of land use, that is to say, developments?---No.

What the land can be used for or will be used for.---No. And to be quite honest to you, councillors have no idea about this sort of thing. These sort of things get carried away with professional (not transcribable) Commissioner. It is a fallacy to go to a councillor and ask such a question because they don't know.

By that do you mean that you think that you have a degree of knowledge or proficiency in planning law or planning practices or planning assessment above and beyond the average citizen?---I didn't say that.

No, no, no, I'm asking?---No, definitely not.

You don't?---Oh, above the average citizen you mean?

Yes, that's my question.---Oh, yes, of course, of course, I do. I do know the process, if you want to put it this way. There is a process and I know the process.

And how have you used that knowledge?---Well, I always give advice to people about following the process, and that includes employing an architect to start with and employing a planner, and I told them you have to comply,

you lodge, if you comply you get approved, you don't comply, you appeal, you lose the appeal, you go to the Land and Environment Court. The process is clear-cut so there is not ambiguity about that. And that has been my position coming from day one. I have educated a lot of, including councillors, about the issue of the process and the issue of the code of conduct where when I see things are a bit irregular I've always opened my mouth and gave my opinion about these sort of things. So my role, and maybe you can ask people, has been very, very constructive in relation to this matter where I advise people not to go and speak to councillors.

10

And in referring to the code of conduct do you mean council's code of conduct?---Ah - - -

What's the code of conduct you were referring to a moment ago?---Well, there is, there is a Council Code of Conduct and there is an ICAC Code of Conduct whereby you don't, you know, meet with developers or applicants. It's important that people understand.

20

Who doesn't meet with applicants or developers?---Councillors, councillors. Councillors?---Yeah, councillors.

Why have you needed to know that?---Well, a lot of people don't know that.

30

But why have you needed to know that?---Because I ah, I ah, advise people, normal citizen, that if you have an issue to do with planning, you don't go to councillors, you go and get an architect and a planner and they will represent you when it comes to this matter because you will get nowhere going to councillors. And that's my experience for the last years and years.

And so is the message that you're giving us – tell me if I've got this wrong – that so far as concerns Canterbury City Council, and we're talking in the period before the amalgamation concern in the last three or four years before the amalgamation was concerned, you have had no dealings with any councillor in relation to land use planning or how development applications are dealt with?---Yes, that's a fair statement.

40

And have you talked with councillors about those subjects? I thought you said a moment ago that you've had to educate them?---Yes.

Why, why have you bothered, why, why have you seen it as necessary or desirable that you educate councillors about planning and land use issues? ---Because I understand that the Labor Party did run courses for future applicant, for to be a councillor, and I know that the course contained the code of conduct which include ICAC Code of Conducts and other code of conducts and I see an obligation as a member of the party to clarify this in front of people. It's, I'll be, I'll be, I'll be very careless if I, if I have a friend or a councillor or associate I know is a councillor or member of the

branch who is a councillor, that to see him doing the wrong thing and not say something, it's really common sense.

You said that - - -?---And – sorry.

You said that irregular things have happened. Did you mean by that at Canterbury City Council?---Irregular things, I don't know - - -

10 Irregular things? Have you detected any irregular conduct occurring at Canterbury City Council between, say, 2012 and 2016 in relation to how DAs have been handled or land use planning?---Yes, I have, and that's what's in the media, that there is a perception of dysfunctionality of the Planning Department. There was an article about the delays which was building up and the massive backlog which was building up, and feedback from the community where people were complaining bitterly about, not only about DAs but small things about tree, drainage and illegal garage. So there were issues, yes, I have to say there were issues.

20 What have you done about those issues?---I have conveyed a lot of information to my good friend Mr Montague. He always asks me my opinion about the feedback from the community, what's happening, what people think, what's going on, and I've always assisting him in that regard by passing all this information to him and, of course, you can ask him. I've always, Jim had a lot of respect toward information I supplied him because I know, I'm on the ground, I've been on the ground for a long time, I know a lot of people and I get a lot of feedback, Assistant Commissioner.

Have you - - - ?---And I always pass it to Jim.

30 Have you detected any irregularities in relation to how DAs have been handled or land use planning at Canterbury City Council between 2012 and 2016 in relation to something that, as far as you're concerned, could've been a breach of the code of conduct?---It's not much the code of conduct, it's the inconsistency, if I may say, in dealing with DAs. It is the enormous pressure which has built on the local government area, LGA, as a result of the boom, the massive investment which come to Canterbury. That has created a big vacuum, Assistant Commissioner, the pressure was massive, and you can feel it from people complains and people going and coming.

40 What's the gist of the complaints?---Inconsistency.

Inconsistency in what sort of way?---Oh, you know, some want a laneway, some don't get a laneway, some apply for section 4.6 which is an exception whereby you can, you can say, look, I'm going to give you a laneway but I need in return a valuation for that land which I'm giving you to facilitate the rubbish collection and other access, and don't create, that's an example, traffic on Canterbury Road. That was a very contentious issue. I mean, on one side - - -

Thank you. I think we get the picture?---Sorry.

So you haven't detected any irregularity in the way DAs have been handled or land use planning at Canterbury City Council between 2012 and 2016 - - - ?---The only other - - -

- - - in terms of whether a particular developer was given a favour that he or she or they weren't entitled to, for example?---Mr Deputy Commissioner.

10

I'm not the Commissioner?---Sorry, Deputy Commissioner, is it?

No?---Assistant Commissioner.

If you could just answer my question, please?---Sorry, I'm trying to address you, sorry. Yes, the irregularity is that a lot of people, not only one or two, were putting pressure on council to get a result on the application. The banks are on their back, the delays were costing them money, there were a lot of unclarity or whatever you want to say in relation to how you deal with, I've heard, I've heard a lot of complaints which I always pass to - - -

20

Was Mr Demian one of those people who made those complaints?---Yes, Demian is the biggest complainer. Demian do a lot of, he's a, he's a very big planning guy, he knows his planning backward. He had a big team in his office to handle the planning, some of them used to work for the department, as a matter of fact, and some of them - - -

Tell us about Mr Demian's complaints?---Demian was complaining about the continuous request for changes, like, he'd go to a meeting and he'll be asked to provide one, two, three, four.

30

By council planners?---By council planners. He'd go and provide them, then he'd get hit with another list. He'd go and provide them, he was very, very unhappy about the way he was treated. And he told me that the planner walked out one day on him in a meeting. He just walked out because nearly had a bit of confrontation. So Charlie did handle his own, his own planning situation, hands on. That's always has been the case.

And is it your belief, in the period of 2012 to 2016 that the development controls, the legal development controls that applied in the Canterbury City local area, were overly restrictive for the development that was taking place to that the development that needed to take place or the development that people wanted to undertake?---Yes. That's an accurate statement.

40

And when you say (not transcribable) use development controls, what are the sort of – can you give us examples of development controls that you considered to be overly restrictive?---The previous planning laws always focus on merit and each development has its own merit and that is, its

location, its size, its position, all these sort of things. Canterbury Council, historically, and that's something I know, that they have dealt with the gaps and the, the, the old, the old - - -

I think you were going to use the work antiquated?---Antiquated. Sorry. Thank you.

Antiquated what?---Antiquated DCP and LEP, where the DCP contradicted itself - - -

10

DCP?---Yes. There were a lot of old, belongs to the 50s and 60s, which has not changed to deal with this era, or those years you're talking about. And when the pressure came in and they - - -

Pressure for development to - - -?---For development. Yeah.

20

To increase, to occur in the first place?---Yes. They really hit the wall in style because the, and I passed this information to Jim Montague many times, that, that the council laws are not up to scratch like other councils, I'm comparing to other councils which have changed the DCP and LEP to have a clear-cut view and outcome in black and white. Now, you're not asking what that's supposed to mean.

No, no. I'm going to ask you a different question.---Please.

30

I might be oversimplifying it, Mr Khouri, but by and large, if a development proponent – I'll withdraw that. If a proponent of, let's say, residential development is trying to get their development up and running and their plan's through, they have an interest in maximising their yield, don't they? Or their lot yield?---Absolutely, absolutely.

And there are two or three particular development controls which can inhibit or constrain lot yield. One would be building height. Is that right?---Yes.

One would be floor space ratio?---Yes.

And one would be setbacks?---Absolutely.

40

And you can probably think of others but they are three obvious one, aren't they?---Yes.

And are they development controls that, as far as you're concerned, are overly restrictive in the Canterbury City local government area in the period of 2012 to 2016?---Yes. I believe so.

And that from your understanding of the situation, that Mr Demian also considered it to be overly restrictive in the period?---No. No. Mr Demian was, from what I know, he was not pushing the envelope. He was even

having difficulties getting what he's entitled to under what you mentioned, the FSR.

Wasn't he trying to build residential developments that exceeded, by some significant margin, the building heights in Canterbury Road?---It wasn't significant. This issue was a 4.6 issue, whereby if you give a laneway, in this case that laneway was about 1,100 square metres, it's in the DCP by the way, council must compensate you for giving that land.

10 THE COMMISSIONER: Mr Khouri, you're really not answering the question.---Sorry.

The question was, was Mr Demian concerned about building heights for some of his developments on Canterbury Road, that he wanted to increase the building height. Now, did you know that was one of his concerns or not?---Yes, yes, I did.

All right.---But I'm trying to explain why - - -

20 MR BUCHANAN: And he had to - - -

THE COMMISSIONER: We just want to know that answer.---Sorry, sorry, yes, yes.

MR BUCHANAN: He had to so fashion his development applications as to be able to, as it were, push the envelope so that he could maximise his lot yield notwithstanding constraints posed by height limits that were written into the LEP for the parcels of land on Canterbury Road that he was trying to develop in the period 2014 to 2016. That's right, isn't it?---Yes, yes.

30 Were you involved in the exercises of trying to work out how best to push that envelope, notwithstanding the constraints of the development controls for Mr Demian?---I just said previously, Mr Buchanan, that I was never involved in the planning process with Charlie. He has people who are senior ex Department of Planning and are - - -

But you're aware that - - -?--- - - - top guns.

Yes. Okay.---Yeah.

40 You're aware that that was what Mr Demian was doing or trying to do? ---Well, I'm aware that every man and his dog in the area was doing this.

And that might be a fair statement. I'll just ask you to spell that out. When you say every man and his dog, what do you mean?---Every developer attempt to maximise in one planning reason using other planning reason attempt to maximise their building. It's a common knowledge in Sydney, not only in Canterbury, and - - -

Now, of course one of the ways of overcoming a development constraint posed by a development control in an LEP, you've already referred to getting an exemption under clause 4.6 of the Canterbury LEP.---There's more than that, Mr Buchanan.

10 Yes.---There's something called VPA, voluntary planning agreement, which still apply all over Sydney whereby, and it's a policy in places like Parramatta whereby if you want to apply for extras, I think in the CBD applies only, you pay per unit to the council in return for these extras. So this is becoming a common practice.

That might be so now, but can I ask you, in respect of Mr Demian's efforts in the Canterbury Local Government area in the period let's say 2014 to 2016, that wasn't the device he was using, was it?---No, no, no.

He was using the devices of a clause 4.6 exemption or variation - - -?  
---That's right.

20 - - - or a submission being made for a planning proposal to be adopted by council to be submitted to the department for a Gateway - - -?---That's right, determination.

- - - approval for exhibition with a view to making an amending LEP that would cover the land concerned?---That's right, exactly.

30 And, and that was how Mr Demian was doing it. Were other developers doing it the same way in Canterbury?---Absolutely. I've seen it all over the place.

Now, that of course meant getting either clause 4.6 submissions or planning, submissions for planning proposals through council.---Yes.

And Mr Montague didn't have a vote on council, did he?---No.

But the councillors each did have a vote?---Absolutely.

40 So it stands to reason, doesn't it, that the councillors are the people who need to be spoken to with a view to doing one's best to alleviate the constraints that are imposed by these types of development controls such as building height, FSR, setbacks?---Well - - -

You approach the councillors, don't you?---Not really, Mr Buchanan, and I'll tell you why. Because this is eventually a determination by Gateway, as you said, so council can say whatever they want, I mean it's, the final decision is made by Gateway and the Department of Planning.

But you don't have anything to put through Gateway until council has resolved that the planning proposal should go through. Isn't that right?  
---No, it doesn't have to go through.

I'm sorry?---Council might very well reject a planning proposal.

Yes?---But that does not stop it going further to Gateway. There's another law, another channel whereby you can continue.

10 Who can continue? Council or the developer?---The developer. The developer will use another way, I forgot what it's called, to reach Gateway to make a determination on this, so you can bypass council.

But if you have a majority of the councillors on, let's say, Canterbury City Council on side and they approve your submission for a planning proposal, then that will go through to be considered by the department in the Gateway approval process?---Absolutely, but that doesn't mean - - -

And if you have, if you have - - -

20

MR STANTON: Commissioner, he's trying to finish, with respect.

MR BUCHANAN: Well I'm just asking for a yes or no answer.

MR STANTON: I know it's been a vibrant exchange, but in fairness, I mean, he was trying to finish, Commissioner. Excuse me being so impertinent and not standing. Sorry, ma'am. Or seemingly so.

30 THE COMMISSIONER: That's all right. I think what we need, Mr Khouri, is you to listen to the question and answer it. Mr Buchanan is trying to get your either agreeing or not agreeing with propositions. If there is an explanation needed, Mr Buchanan will pursue that or ask you about an explanation or Mr Stanton eventually will as well, but I think we've got to be guided by Mr Buchanan's questions in the first place, all right?---Yes. Yes, Commissioner.

40 MR BUCHANAN: If the developer or the developer's representative can get a majority of the councillors on, let's say, Canterbury City Council to approve a submission under clause 4.6 and approve a development application notwithstanding the development, the constraints posed by development controls in respect of that particular development, then you're in, aren't you? The developer can develop what they're allowed to develop?---No.

Why not?---Because it has to go to something called Independent Hearing Panel, IHAP.

If it didn't go to the IHAP in the first place then it's a matter for council, isn't it?---It has to go to IHAP.

And secondly, secondly, IHAP was not a consent authority, it did not determine development applications, did it?---It gave - - -

It assessed them?---It gave recommendation.

10 It assessed them?---It gave recommendation.

And made recommendations, but the decision maker at the end of the day was council?---Absolutely.

And council could reject the IHAP recommendations?---Yes. Yes.

In your experience, that happened at Canterbury City Council between 2012 and 2016, didn't it?---I believe it did.

20 Did it happen in respect of any of Mr Demian's developments?---I am not sure.

What development can you think of in respect of which that happened?---I can't recall any development which was - - -

Where the IHAP recommendation was not followed?---Yes, yes, I wasn't privilege to this information.

30 You said that people made complaints and you would have discussions along the same lines with Mr Montague?---Yes.

Can I just ask about when that was? Was this in, can I ask you to think about the period 2014? Was it during 2014?---I can go way back, way back.

Right. Was it after 2014?---Before 2014.

Yes?---And after.

And after 2014 as well?---Before, before and after.

40 Do you remember a director of city planning at Canterbury City Council called Mr Occhiuzzi?---Yes. I met Mr Occhiuzzi a couple of times.

And what was your opinion of him?---Well he was a very reasonable planner.

A very reasonable planner?---Yeah, yeah, yeah.

You didn't have any problems with him?---I never dealt with him.

Did you hear of Mr Demian having any problems with him?---No.

And he left?---Yes, I'm aware of.

And do you remember why he left?---No idea.

And who was his successor?---Successor was Spiro, Spiro Stavis.

10 Stavis?---Stavis.

And did you have any dealings with Mr Stavis in relation to developments and development controls?---Very, no. Very occasionally, the planning - - -

Very, sorry, I didn't quite - - - ?---Very occasionally I would've called him and - - -

Right. So can you remember what those occasions were?---It was things to do with a tree or a drainage, nothing to do with DAs. Sorry, once, yes, once  
20 I went with a group of planners and urban designers to discuss with him a site in Brighton Avenue, Croydon Park. That was a site bought by a Dyldam subsidiary.

And Dyldam - - - ?---Yeah.

- - - is one of Mr - is that - - - ?---No, no, that's - - -

That's not a Demian company?---No, no, no.

30 Completely different developer?---Yeah, yeah, yeah.

Rightio?---Yeah.

MR STANTON: Sorry, Your Honour?---And we had, we had urban planners, urban designers, architect, there were about eight people there and Spiro was there with his urban designer and someone else.

MR BUCHANAN: But can you just tell us what the exchange was?  
---Sorry.

40

What were you trying to get Mr Stavis to consider?---Well, the panel of planning had a list of requirement which was passed to council to discuss with the applicant and this is why we were there, in relation to open space and providing bits and pieces before the final submission goes to the Department of Planning.

And what were you trying to get Mr Stavis to do?---Yes, I just organise the meeting and took the people, I did not talk in the meeting, they were very qualified people there.

10 It sounds as if, Mr Khouri, that you had certainly in the period 2014-2016, a considerable interest in how, in the decision making process on the constraints posed by development controls in the Canterbury City Local Area. The constraints imposed on developers. From what you've been talking to us about, it sounds as if you've been very knowledgeable about it and it's something of which you've held strong views, and you've been very well aware of what developers, including Mr Demian, have thought about them and you've been very well aware of the, if I can use the expression, devices that developers might use or the paths they may follow to try to get a decision in their favour to alleviate a constraint by council?---No, that's a misleading statement, Mr Buchanan.

20 What's misleading about it?---Because I don't, I have the knowledge but not necessarily an interest, so there's a two different things, and this is why I try to make it very clear that I have never got involved in a planning process. Yes, I've organised a meeting for Dyldam but there were people who took charge of the negotiation, I was there just as an organiser, that was the only - - -

30 THE COMMISSIONER: Can I just stop you, Mr Khouri? I think Mr Buchanan put to you that you had knowledge and strong views. Now, you agree that you had knowledge, did you have strong views?---Depends what you mean by strong views, sorry, I don't understand. What is strong view? I mean, I had knowledge which simplified the views, but strong, the word strong is - - -

MR BUCHANAN: Well it's obvious that you held an opinion?---Opinion, yes.

That aspects of the LEP in particular - - - ?---Yes.

40 - - - were deficient and holding back development which needed to take place. That's a pretty strong view, don't you think?---I'm not sure. It would be strong if I know more about planning, yes, but my knowledge doesn't me that distance.

Well you're been educating us about planning?---No, no, no, no, no, I mean I can assure you that is not in comparing with some of the people whose going to be sitting here soon.

And you're quite sure that you haven't had an interest in talking to councillors on Canterbury City Council with a view to obtaining decisions favourable to developers in respect of alleviating the constraints posted by development controls in the period 2014 to 2016?---Mr Buchanan, I made a

statement before and I'll repeat it, I will challenge any councillor to put their hand here on oath and say Bechara Khouri come and ask us to do anything for him. I said that, I'll say it again and I'm willing to take the full consequences.

Now, even though you told us that Mr Demian himself took the battle to councillors. Is that right?---Yes.

And to Mr Montague?---Yes.

10

We're talking about Canterbury City Council?---Yes.

To try to get development controls lifted or varied to favour his developments. But is that not something that you did as well, whether it be formally or informally?---No. I can say it with a lot of confidence. No.

20

But it would have helped you and your relationship with Mr Demian, and you know it would have helped Mr Demian, if the situation had been that there were people in the council – in terms of council officers and people on the council – who would look with favour upon attempts to loosen development controls, Certainly so far as Mr Demian's developments were concerned. You'd agree with that, wouldn't you?---No. No, I don't. because Mr Demian handled his planning matters solely and I had no idea what he went there, to discuss what, what side, what issues. Mr Demian was hands on and, and I said (not transcribable) he had a massive team of planners in his office which I had nothing to do with and I wasn't involved in the process.

30

But they weren't lobbyists, were they?---I'm not a lobbyist.

You are anticipating my next question.---Yes.

The planners in Statewide planning were not lobbyists, were they?---No, no.

40

Mr Demian approached council himself, councillors and the general manager in respect of his developments, and you, you say, did not at any stage. But my question to you was, would it not have been of assistance in remedying the problem that you've identified and would it not have been in Mr Demian's interests to have people who are council officers who would assist in loosening these controls, and councillors – particularly if a majority could be cobbled together – that would approve applications to loosed development controls for his developments?---Mr Buchanan - - -

MR STANTON: Commissioner, one must rise to one's feet. The rules of evidence don't apply, obviously. However, even on the very, very tangential basis upon which this could be relevant to this inquiry, bearing in mind the parameters with which you can receive material, this is so hypothetical. It's

utterly hypothetical, as to be of little, if any, utility to this inquiry from this witness.

MR BUCHANAN: In my submission, Commissioner, for cross-examination of this witness, of course, hasn't finished. There's a bit to go. But to have the witness agree that, yes, it would have been of assistance to have such people in and on council, would have served the interests that I've identified, is something that then is a useful basis on which to proceed further in respect of his own actual conduct.

10

THE COMMISSIONER: And when we get more detail - - -

MR BUCHANAN: Absolutely.

THE COMMISSIONER: No, I'm going to allow it, Mr Stanton.

MR BUCHANAN: So the question I'm asking you, to be perfectly clear, is the question in the abstract, but we are talking about Canterbury City Council, we are talking about the period 2014 to 2016. It would have served the developers interests, that you have identified, in alleviating the constraints posed by development controls? And it would serve Mr Demian's interests – and because of your relationship with him, your interests – to have inside council, council officers who would assist in loosening development controls for Mr Demian's, let's just talk about Mr Demian, Mr Demian's applications. And councillors, particularly, if a majority could be put together, who would approve those applications and submissions. That would have advanced the developers interests, Mr Demian's interests and your interests. Isn't that correct?---This, this question, Mr Buchanan, has got no legs to stand on. I'll tell you why. Because I can tell you, and that's the truth, that I did not agree on some of the proposals he put forwards. There was a lot of disagreement. Not only me, even between him and, and I've said that before, and planners and even the general manager, who has told me once that he is not very happy from the way he is dealing with his staff. So - - -

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30

40

But those complaints you've told us about were complaints about inconsistency and delays. The complaints I'm asking you about are concerns that there are constraints, unreasonable constraints placed on development by the LEP that reduced the profit that a developer can make, that were being enforced by council, and that was a problem for developers such as Mr Demian. Isn't that the case?---I am not aware of any development that Mr Demian had in the area whereby he got what he was trying to do or trying to achieve.

THE COMMISSIONER: Mr Khouri, you're not being asked that. ---Oh.

You're really not answering Mr Buchanan's question.---Probably don't understand it, I'm sorry. Can you, Mr Buchanan, can you just repeat this nice and slowly so I can comprehend what you're trying to say?

MR BUCHANAN: Developers like anyone need an income, don't they?  
---(No Audible Reply)

You agree?---Yes, yes.

10 And a developer in theory makes a profit from their development if things all work out right. Isn't that correct?---Correct.

And if there are height controls or FSRs or setback requirement that reduce that profit, then the person who could have potentially made more profit if those controls were dispensed with, wouldn't be very happy, they'd want to try and dispense with those controls. Isn't that right, in abstract?---Yes, yes.

Now, if you have council staff who will write a report for council when it's considering the developer's application to dispense with the controls which  
20 favours the developer, that is in the interests of the developer, isn't it?  
---Well, hypothetically, yes, but do you want me to extend on that?

THE COMMISSIONER: No, no, we're just - - -?---Yeah.

- - - dealing with a hypothetical level at the moment.---Yeah.

MR BUCHANAN: And if the developer can get a majority of the councillors to approve the developer's application or submission to dispense with or alleviate the development controls that inhibit his profit - - -?  
30 ---Mmm.

- - - then that's in the interests of the developer too, isn't it?---Of course.

And so it would be a good idea, wouldn't it, to cultivate council officers to try to get them on side to assist developers in the way I've just described, wouldn't it, that would be a good idea?---Still hypothetical, yes.

And it would be a good idea to cultivate councillors and to persuade them to the same view, that the controls should be alleviated or dispensed with in a  
40 particular case?---Hypothetically, yes.

Yes. Now, why wouldn't people do what's in their best interests, why wouldn't developers do what's in their best interests in this regard?  
---Because in reality you cannot dispense and play with control, unless you are in a hurry to end up here. I mean this is not a simple thing to do, Mr Buchanan, to play with control. It would be filtered out and caught in the system very quickly, it's not funny, it's not that simple. The best you can do, and I repeat, is to use other laws like 4.6 and VPAs whereby you give

council land or you give them the laneway or you give them an open space and in return, in return you get a compensation for it. In my opinion that's the best anyone can do in reality.

10 What is wrong with getting council officers on side and getting councillors on side to approve an application to alleviate or dispense with development controls, what's wrong with that?---There is something wrong, there's limitation to how much, limitation clear in the law to how much you can play with control. There are laws which control the flexibility of those controls. There are laws which regulate and police the application of those control. Now - - -

Now, Mr Khouri, you know that in the period 2014 to 2016 Canterbury Council did alleviate and loosen development controls in respect of particular developments, either by clause 4.6 approvals of a variation or by getting a planning proposal, approving a planning proposal that was submitted to the department with a view to changing the LEP. You know that did happen, don't you?---Yes, I do.

20 And you know that happened in Mr Demian's case, don't you?---And, and other case.

How did that happen?---Well, it was the Planning Department, I mean - - -

No, no, no, no, no. Before it got to the Planning Department how did it get through council?---Because council voted on it.

30 Why did they vote in favour of alleviating those controls?---Council can vote on any - - -

We know they can. Why did Canterbury City Council in the period 2014-2016, let's take Mr Demian's properties. Why did Canterbury City Council do that?

MR STANTON: Commissioner - - - ?---Because, because let me, let me answer.

40 MR BUCHANAN: Well he hasn't said he doesn't know the answer?---No, no, no, let me, let me - - -

THE COMMISSIONER: Do you have - - -

MR STANTON: I withdraw the objection at this stage?---I'm trying to, to, to, because Mr Buchanan, I must tell you that when a submission for 4.6 or rezoning is prepared - - -

MR BUCHANAN: Yes---? - - - I can assure you this submission is prepared by people who worked for the Department of Planning and some

very senior people using the law, using the law, to argue their case, and there is no way I have seen a serious submission getting rejected to be quite honest with you, if it is prepared by the right people legally, legally and from planning perspective, bulletproof.

To your knowledge, Mr Khouri, was there anyone on the staff of Canterbury City Council in the period 2014 to 2016 who was of assistance in alleviating constraints on development for developers such as Mr Demian?---Ah - - -

10 Who are you thinking of? You paused for a fair bit of time?---I paused because, because - - -

Who are you thinking of?---Because - - -

Just tell us who you're thinking of?---Spiro Stavis.

20 Thank you. Why Spiro Stavis?---I think because he's the director of planning and, more importantly, I must tell you that the policy of that council from back, back years to always try to resolve matters before they go to court, so the council always attempts to deal with issues before court and if you go and check the record of Land Environment Court about the number of cases from Canterbury in the last 20 or 30 years, you will find that Canterbury Council had the second lowest or the lowest cases ending up in the Environment Court. So, that was - - -

Despite the inconsistencies, despite the delays, despite the antiquated controls?---No, no, Mr Buchanan I'm referring to 20 or 30 years back.

30 Sorry, you're referring to - - - ?---I said from 30 years back to now from what I know, that was their policy.

What was the difference Mr Stavis made?---No difference.

Well why did you mention him, why were you thinking of him - - -?---  
Because it was - - -

40 - - - when I asked whether there was anyone inside council who was of assistance in this regard?---Because director of planning always is leading in handling this.

What was it that Mr Stavis did or facilitated that improved the outcomes for developer who needed to alleviate development controls in Canterbury Council?---I really can't answer that question because I don't know.

Well why did you mention him?---I mentioned him because he's the director of planning.

Was there any councillor on Canterbury City Council in the period 2014 to 2016 who was of assistance in alleviating development controls for a particular developer such as Mr Demian?---I'm not aware of that.

Well, you call a councillor who alleviated or who was instrumental in alleviating, I'm sorry, instrumentally procuring resolutions of the council to alleviate development controls pro-development, wouldn't you?---Yes.

10 Were there any pro-development councillors on Canterbury City Council in 2014-2016?---The majority of them were pro-development.

I'm sorry, I didn't hear that?---The majority of them were pro-development.

Was there anyone who rounded up the numbers to make sure that there was a majority when a decision was being made to alleviate department controls?---I am not privilege to this information.

20 You don't think that Councillor Hawatt or Councillor Azzi might've performed that function?---I can tell you they were very proactive when it comes to planning but to perform such a - - -

In what way were they proactive when thinking of actual development applications or planning proposals? In what way were they proactive? ---They were very interested from what I understand in upgrading and updating the planning instrument of the Canterbury local government area.

30 We're talking 2014-2016. The instrument was made in 2012, started in 2013. What happened, what was it that Councillors Azzi and Hawatt did between 2014 and 2016 that was of assistance in getting the numbers to have decisions made to alleviate development controls of particular developments?---You really have to ask them, Mr Buchanan.

No, no, no, no, no, they're not in the witness box. You are, Mr Khouri. Could you tell us, please, what you understand they did?---I said, and I repeat, they were pro-development, they have a vision for the area from what I hear or see.

40 But how did they persuade other councillors to vote with them?---Mr Buchanan, how would I know the answer to this question?

You don't know, is that what you're saying?---I have said to you I have never attended a council meeting before, I was not interested and I kept an arm length from the whole process, and if you ask me how they impacted and put, I don't know what you're trying to say, I do not have this information, Mr Buchanan.

Have you had any understanding of whether anyone controlled the numbers on Canterbury Council between 2014 and 2016?---I tell you what I know.

THE COMMISSIONER: No, no, answer the question.

MR BUCHANAN: What's your understanding as to whether anyone controlled the numbers on Canterbury Council between 2014-2016?

---There's not one person who controlled the numbers.

Was there two people?---Maybe three.

10 Who? No, no, no, no, no. Which three people?---There were the, the Labor caucus was divided into one, two, three pieces.

Sorry, one, two, three?---Section.

Sections, yes?---And you've got the Liberals there, three of them, and you've got a Green there and there's no Independent. This was the composition of the council floor.

20 Yes?---Now, you really need to go to the voting trend and see who and what was who - - -

The Commission has done that, Mr Khouri?---Yeah.

And the evidence before the Commission shows that the voting trend was that there was a majority, usually a large majority in favour of decisions to alleviate development controls, taking as an example, developments, particular developments on Canterbury Road where Mr Demian was the proponent. So take that as granted, we know that that was the case. The question is how did it occur? Who rounded up the numbers?

30 MR STANTON: Does he know is the question before the Commissioner.

MR BUCHANAN: No, no, no, no, no. Well you seem to know a little bit about the personalities and the party affiliations of councillors. You don't know how majorities were obtained for development decisions?---If you want me to lie I'll give you an answer but I'm not going to lie to you.

40 But didn't you have an interest in knowing how this was arranged?---I had no interest in knowing, why should I have an interest?

Because you have a close relationship, a potentially financial relationship, with a developer for large developments in the Canterbury City Council area and if his developments got up and he was able to maximise his profit, you might be able to get some of your money back?---I think you're pushing - - -

MR STANTON: Where's the evidence of that, Commissioner?  
Commissioner, I object to that, he's never, ever said after 2012 he obtained any further benefit financially from Mr Demian.

MR BUCHANAN: That's correct.

THE COMMISSIONER: Yes.

MR STANTON: Nor did he say, Commissioner, that he stood to, on a contingency or at best a very, very farfetched expectation that should it be in some way causative – and that's really even more remote – then he'd be getting some windfall from Mr Demian. We haven't even tested Mr  
10 Demian's generosity as yet.

THE COMMISSIONER: Mr Stanton, Mr Khouri was taken to his statement in the record of interview that Mr Demian still owed him big.

MR STANTON: Yes. And he qualified that, ma'am, with respect.

THE COMMISSIONER: But he still, his evidence was that he did so much for Mr Demian. The money came down. He said to the investigators last year that he was still owed big by Mr Demian. I assume that was the basis  
20 of Mr Buchanan's question.

MR BUCHANAN: It was, Your Honour.

THE COMMISSIONER: And I will allow it.

MR BUCHANAN: It was in your interests to know how decisions assisting developers, particularly Mr Demian, could be made, might be made, would be made on Canterbury City Council in 2014 to 2016, wasn't it?---No.  
30

And it was in Mr Demian's interests to have that knowledge too, wasn't it?  
---That's Mr Demian problem, not mine.

But you had a close enough relationship with him, and a long enough relationship with him, to know that an honest answer to that question is that, yes, of course it was in his interests.---Mr Buchanan, I have reiterated the fact multiple times in my statement and to you that Mr Demian handled his planning himself without anyone coming. He had a massive team. He was doing all the work himself, and you'll find from other witnesses that is the case and I am telling you through truth. The, the fact that when I said – and  
40 I'll repeat this, the misunderstanding between us here – that when I said he owed me big because I looked at the assistance and the opportunity I brought and what I ended up with. There's a massive gap in my contribution to Mr Demian in the past, the last 17, 18 years, starting from Ultimo and on. Mr Buchanan, Mr, 10 or 12 years ago, Mr Demian was nearly bankrupt. I had to go physically and borrow \$800,000 from a friend just to keep him afloat. So, when I tell you these sort of things is to support that statement that I have done a lot for this man. I respected him. He is a friend. I

encouraged him. I encouraged other people. This is the actual value to what I'm talking about. But that doesn't mean I've given up. I mean - - -

THE COMMISSIONER: All right, Mr Khouri. You've made that point. I see the time, can I just ask you just a clarifying question. When you were asked about the council, and you broke it down in to Labor, Liberal and a Green, I just missed, you said something about the Labor caucus and then did you say it was divided in to three?---Yes.

10 And what did you mean by that?---Look, since that council took over, and this is information I know because it's from the Labor Party, since that council took over there was a war of attrition between the councillors - - -

Within Labor?---Within Labor, within Labor and others as well later on, starting with Labor. There was a war between the mayor and Mark Adler, and this is not a, not a secret, it got very personal, it got very ugly and I tell you more - - -

No, no, no.

20

MR BUCHANAN: Was there a war between the mayor and Councillor Hawatt?---Yes, there was a war with everyone. I - - -

Thank you.

THE COMMISSIONER: Sorry, I've just got to stop you. Within Labor Mr Robson, there was, I'll put it a dispute or sorry, different factions, do I describe it that way, between Mr Robson and Mr Adler?---It's not faction.

30 All right.

MR BUCHANAN: Sections I think was the witness's word.

THE COMMISSIONER: Sections?---Sections.

MR BUCHANAN: Yes.

THE COMMISSIONER: All right. Was there any other section within Labor?---Yes, at the beginning there was - - -

40

MR BUCHANAN: 2014/16.

THE COMMISSIONER: 14/16, that's what I'm interested in.---Oh, yeah, yeah, there were others. There were Kebbe, Azzi - - -

I know they're members but are they different - - -?---They're different, yeah.

All right.---They were, they were - - -

We'll leave it then.---What I was trying to tell you too, I mean that's very important.

MR BUCHANAN: Could - - -?---Sorry.

We'll just pause there if we could.

10 THE COMMISSIONER: We'll never get lunch, Mr Khouri.---Sorry, apology.

MR STANTON: Well, we're counting the councillors, Commissioner.

THE COMMISSIONER: Sorry?

MR STANTON: Well, we're counting the county councillors.

20 THE COMMISSIONER: All right. We will adjourn till 2 o'clock.

**LUNCHEON ADJOURNMENT**

**[1.04pm]**