

DASHAPUB07375
01/05/2019

DASHA
pp 07375-07400

PUBLIC
HEARING

COPYRIGHT

INDEPENDENT COMMISSION AGAINST CORRUPTION

PATRICIA McDONALD SC
COMMISSIONER

PUBLIC HEARING

OPERATION DASHA

Reference: Operation E15/0078

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY 1 MAY, 2019

AT 12.00PM

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

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

THE COMMISSIONER: Just a second. First thing, Mr Buchanan, any administrative matters?

MR BUCHANAN: No, thank you, Commissioner.

THE COMMISSIONER: All right. Before you resume, Mr Moses, we'll just administer the oath.

THE COMMISSIONER: All right, thank you. Mr Moses.

MR MOSES: Thank you, Commissioner. Mr Hawatt, when we adjourned yesterday, you might recall I was asking you some questions about the telephone calls that took place on 9 May, 2016, between yourself and Mr Maguire?---Yep.

10

And as we agreed yesterday, I think you were still a councillor of Canterbury Council at the time of those conversations?---Yeah, just.

And in relation to the discussion that you heard yesterday between yourself and Mr Maguire, do you also recall agreeing that part of the discussion related to the Harrison site being a potential site that might interested persons that Mr Maguire was speaking to?---He was enquiring about it, yep.

20

And do you also recall in that discussion that there was a discussion in relation to percentages that might arise as a result of payments for the sale of the property?---Mr Maguire was talking about it, yep.

Yes, okay. And I think your evidence was yesterday that if you were to receive any sort of payment in relation the sale of the Harrison site, that would be something that you would characterise to be, in effect, a broker's fee, correct?---Well, that's correct. If I, if I took action on it, yes.

30

And in terms of any fee that you would have received from the sale of the Harrison site, if it went ahead, that would have been proportionate to the sale price. Is that the theme of the discussion?---I, I, I didn't, I just listened to what Mr Maguire was talking about and I take people who call me, whatever they talk to me about, I, I listen to them and I take it with a grain of salt but I don't go into details because it's all just talk, nothing, nothing solid.

40

Do you agree that then with this, that any fee that Mr Maguire was talking about that he would receive from the sale of the Harrison site, that it would be proportionate to the sale price, a percentage?---I, I did, I did look into the details and he was talking and I was just listening. There was no, nothing solid that I could sort of talk to him about. It just, it's a passing discussion.

But did you understand from what we played to you yesterday that the fee that was to be received – and I'm talking about him now – from the sale of the Harrison site would be proportionate to the sale price?---Look, I, he was talking figures, different figures from the top of his head so I just, nothing I could, solid about it, no.

Commissioner, can the witness be shown transcript page 7001. It's evidence that the witness gave to the Commission. Transcript 7001. Just bear with me Mr Hawatt, I just want you to see the transcript of your evidence and I just want to ask you a question about some evidence that you gave. If you go to just after line 30, Mr Hawatt, you'll see there that you were asked some questions by Mr Buchanan in relation to what occurred after amalgamation. So "Did you get involved after amalgamation in trying to introduce purchasers to the owner of property located in the Canterbury local government area?" and then you said, "Well, you know I did with
10 Daryl Maguire. There was a phone call in regards to linking him to, he, one of the existing DAs and I've introduced him to Charlie, Charlie Demian at the time, yeah." I just want to ask you a question about that. In the phone call that we listened to yesterday, 9 May, 2016, that's the phone call you're referring to there in that evidence that I've just drawn your attention to?
---Yeah, most likely, yeah, yeah,

And then Mr Buchanan asked you this question, "And is that something that you actually did after amalgamation?" And then you I said this, "There were some enquiries before but I kept at arm's length." Do you see that?
20 ---Yep.

Now, in terms of the inquiries before amalgamation, that is the one of 9 May, 2016, correct?---No, no, the inquiries before is regarding the other guy, John, John, John - - -

Dabassis?---Yeah.

Okay. Well, what about, just going back to your answer here, if you can just bear with me, where you're asked the question by Mr Buchanan, "And
30 is that something that you actually did after amalgamation?" You answered, "There were some inquiries before but I kept at arm's length." The inquiries that you're referring to there, is that in relation to inquiries by Mr Dabassis?---Yes.

Right. What about the inquiry from Mr Maguire of 9 May, 2016, was that also - - -?---Well - - -

Let me just finish the question.---Yeah, yeah.

40 Was that also an inquiry in relation to property within Canterbury?---Well, that inquiry, you heard the phone call, it, he asked me about if there was any existing DAs, it wasn't anything else, it was just something that's current, and it happened to be that Mr Demian had one up for sale that was on the market, nothing new about it, and I just passed it on. I arranged a meeting and just continued with the, with the meeting.

Just going back then to your reference to the term, "But I kept at arm's length," when you say, "I kept at arm's length," what were you meaning to

convey to the Commissioner by the use of those words, "But I kept at arm's length"?---Because I, yeah - - -

10 What did you mean by that?---Well, at arm's length is, at that time I was, you could say I was a councillor while on the, on the 9th is sort of knew that we were all going anyway, so I, I just listen to people and I, I do keep, I do take it in the back of my mind that if, if I was, as a councillor, even though I introduce people to do it, I try to avoid being too much involved in, in regards to whatever activities they want to do and I, I try to pass it on and let them talk to each other, without getting involved.

And that's what you mean by using the words, "I kept at arm's length"?
---Yeah.

20 Okay. Do you agree with this proposition, that in relation to the telephone call with Mr Maguire on 9 May, 2016 in which you discussed the Harrison's site, that that was not a discussion that you've kept at arm's length. Do you agree with that?---Yeah, that was a respectful discussion from a person that I knew and he, he spoke, I can't control how people speak and what's, what's in the back of their mind, and I respect people for that and, and I address it based on his comments and as I said, if there was activities and something did happen within, within my rights as a part-time person, as a councillor, then yes, I would declare, at the time I would declare interest on behalf of anything that whoever that association was involved with.

30 So is your evidence to the Commissioner that had the council not been amalgamated post 9 May, 2016, you would have disclosed this discussion with Mr Maguire prior to any meeting in which the Harrison's site was being discussed?---If there was, if there was, like, if there was activities and, and there was actual discussions regarding doing something, commissions and everything else, yes, 100 per cent.

That's your evidence?---Yes.

Thank you. Now, I'm going to ask you some evidence about Mr Khouri.
---Mr?

Bechara Khouri.---Sorry?

40 Mr Bechara Khouri.---Oh, Bechara, yes, sorry.

I'm going to ask you, I'm just giving you just the topic I'm going onto so you can understand where I'm going. You gave evidence on 10 April that you had known Mr Khouri for many years, but you didn't have a close relationship or friendship with him until about two years before amalgamation.---Ah, it's, the only time I got to, got to know him when somebody complained to, to me and I, I don't recall the dates, about his activities basically, yeah.

But do you recall giving that evidence that you had known Mr Khouri for many years but you didn't have a close relationship or friendship with him - - -?---Well, I didn't like him.

- - - until two years before amalgamation?---I didn't like him during that period, no, because he was, he was working against me politically.

10 I'll come to that in a minute. So just the reference to that evidence, Commissioner, that I just relayed to the witness, I don't think it needs to be shown, that is 6388 of the transcript. You also told the Commissioner that you knew him, that is Mr Khouri, as a lobbyist and he would lobby everyone. Do you recall giving that evidence?---Well, that's, that's, that's my first understanding of him, yes.

And what do you understand a lobbyist to be? What do you understand a lobbyist is?---A person, a person who, who, who lobbies on behalf of his clients.

20 To do what?---To help them, assist them with their, whatever they have.

Okay.---A lobbyist could be lobbying for a whatever, it doesn't have to be a development, could be anything.

But a lobbyist is somebody who assists for instance - - -?---For whatever clients he has.

30 - - - with a development to get, to get a development through?---Doesn't have to be, could be anyone, developer, non-developer, could be anyone, yeah.

And you alluded to earlier that, you said that you and Mr Khouri were enemies at one stage.---Correct.

Basically Labor/Liberal enemies?---Correct.

40 But you became friends or you became a friend of his. Correct, you gave that evidence?---Well, I became, look, after I met with him when I made a complaint to Mr Montague, I remember that, and somebody called me after that complaint, he must have told him, and somebody called me after the complaint to meet up with him for coffee and I did meet up for coffee and, and he put his point of view across that he wasn't the person that I thought he was and it sort of, it broke the ice you basically could say and he was a bit more softer, he wasn't the person that I was thinking about, he was a better person than I expected, put it that way, yeah.

And you also became friends with Mr Azzi, a Labor Party councillor?
---Mr Azzi, when, when, when he became a councillor, yes.

And you knew also that Mr Khouri was a lobbyist on behalf of Mr Demian and Mr Chanine. Correct?---Well, he, he was representing them, so I found out he wasn't an official lobbyist.

So you found out that he wasn't an official lobbyist but somebody who was representing their interests.---No, but he was just working for them or something, yeah.

10 And Mr Khouri lobbied you on behalf of Mr Demian, didn't he?---No, he actually, no.

He didn't?---No.

No. Okay.---Because Mr Demian was quite specific in regards to he, he did everything himself.

20 So Mr Khouri never spoke to you about any of the properties that Mr Demian's company owned in the Canterbury Council area?---He might have spoken about it but not like, as we say, lobbied for it, put it that way.

So when you say you might have spoken about it, do you recall sitting here today a distinct conversation in which Mr Khouri raised a property that Mr Demian's company owned in the Canterbury Council precinct?---Look, he might have mentioned it, as I said, he might have mentioned it, but Mr Demian did his own work.

30 And Mr Khouri, did he lobby you on behalf of Mr Chanine and his interest in relation to property within the Canterbury Council precinct?---Again, again he, he might have spoken but again Mr Chanine has my phone, he can call me as well.

Okay.---So whoever's got my telephone, they can call me direct.

When you say he may have lobbied you on behalf of Mr Chanine - - -?
---The same, he might have spoken about something he had, but end of the day Mr Chanine called me if, if he needed anything.

40 With Mr Khouri, did he ever provide you with any documents in relation to the Doorsmart site of the Chanines'?---No.

And in relation to Mr Khouri, did he provide you with any documents in relation to the Harrison's site?---No.

You've given evidence that you would have meetings or hold discussions with persons who are developers. Correct?---Yes.

And you would make representations on behalf of development proponents, correct?---Whoever called me for assistance, I made representation on their behalf, yes.

Well, that's not exactly correct, is it. You only would make representations on behalf of development proponents of applications that you believed in. Correct?---No, I look at every one. If I, if I had a vision in regards to Canterbury Road for example and somebody comes up and says, look, I've got something to put on Canterbury Road, to me it's like it rings a bell
10 saying, look, this is something that I have vision and I'll, and then I look into what they want and I check to see what the issues are and I take it from there. If I, if I felt it had merits I follow it through from A to Z and, and that's the way, that's the way I do it.

And if it didn't have merit then you wouldn't make representation?---Well, then, well, then find out what, what are the issues, why it hasn't merits, if it's for example it needs laneways, it's on a corner site, it had a good building envelope, it doesn't affect the residents, it does, there's lot of, it's not just one thing fits all, it's many, many things you've got to look at, yeah,
20 any complaints from the residents as well, yeah.

Do you accept that in relation to your meetings with these developers, that is Mr Maroun, if I can use Mr Maroun as an example, you didn't take council staff with you to meetings at his home at the gym, correct?---No, no. It was, most, most, 90 per cent of the time was, like, a social thing.

90 per cent of the time?---90, even more. Even more.

And what about the percentage that it wasn't social, you didn't have council staff at the gym?---No, well, he, look, he, if he calls then you go, you know, as I said, he's a, he drinks heavily, I have to say about it and he can't, he can't drive so most of the time I'm in Earlwood, he calls, just goes on and waffles on about a lot of things and you just sit there and you, and you just talk to him. He talks to you about one thing and then suddenly the, the drinks are out and everything and it became, like, he's just looking for somebody to talk to for the sake of it, it just became that way.
30

Mr Hawatt, do you accept that by 2016 you were a very experienced councillor on Canterbury Council, weren't you?---Yeah, by then, yeah. 20
40 years, nearly, yeah.

And without having to replay the telephone intercepts, you were talking about the fact that, in effect, you ran Canterbury Council, didn't you?---I didn't run Canterbury Council.

Well, despite being a Liberal, you said in the telephone conversation, didn't you, that you in effect were controlling the council, weren't you, with the Labor Party?---Oh this is, look, it's not correct. I don't, look, as I said if I

have an influence in regards to my knowledge, it's like, it's like somebody who, a teacher teaching a, a group of kids or something. They listen to him with the knowledge you have, with the experience you have and you teach them this and, and I had probably the most experience out of all the councillors and whenever something came up, I had a, I was a good debater and I understood the issues and, and, and I was able to, to do that and if the councillors, each councillor, I have respect for all of them, they all have their own independent mind and it's up to them to, to support or not to support. Always not the case, but 90 per cent you need to realise that there's recommendations and, and the recommendations are moved and, and seconded, and moved and seconded. Unless there's specific issues associated with a complaint or something comes up, then that's a very tiny per cent so, yes, I do move 95, 98 per cent of, of the motions that are put to the council in the business papers. It's not because, and everybody supports it, because I control it and everybody follows it, it's just the way it is, it's always been like this, yeah, and, and if you want to look at it as controlling council, well, I don't.

Well, just the third thing I wanted to put to you is that in 2016 you were busy operating your own business, you had your own - - -?---I've always had my own business, yeah, for a long time.

And you were somebody who was investing a lot of time, both in your business and in council work, correct?---Well, yeah, I was trying to balance both, yeah.

Yes, and are you suggesting to the Commissioner that, in effect, you would go running to somebody's house who was a property developer to meet with them after hours in order to discuss matters concerning development applications because that is what you would do for any person who would contact you? Is that your suggestion?---No.

No.---It's your suggestion, not mine.

No, that's right. Because the reason why – this is the case, isn't it – the reason why, for instance, you would go to Mr Maroun's house in order to meet with him was so that he could discuss with you concerns in relation to his property development application that was before council, correct? That's why you would go there?---Look, as I said, you said, your comments are incorrect and I'll tell you why it's incorrect.

Okay, please do.---Because you're generalising about I run to developer's house. I don't know any developer's house that I've been to except for Maroun because I used to be in Earlwood very, quite often and he knew that. He knew that I'm always in Earlwood and a lot of the complaints and work that I did was from there and he was, like, five minutes away. It's easy for me to drop in.

Where do you live?---I live in Oatley.

Yes. And the ward that you represented on Canterbury Council, did it take in the street where Mr Maroun lived?---I, I represented - - -

I'm asking you the ward. What ward were you in?---It's, I don't go by wards, even though each one we have wards, I represent every person who calls me from every ward, there is no restrictions that you only look after those wards, you look after everyone in Canterbury, and that's what I've
10 done, including Earlwood, and most of the complaints were from Earlwood.

And what were you doing in Earlwood that you said that you were in Earlwood quite a lot?---I was with George Vasil, I go meet him, I met up with Con, we met before in regards to elections, strategies for elections for the council elections, we socialise, I go to the gym there, we walk, we exercise, that's generally what I do. Keeping fit.

So you actually yourself didn't live in Canterbury Council?---I did.

20 Well, you lived in Oatley.---I moved.

I'm sorry?---I moved, I moved.

You moved when?---My last election I was living in Canterbury, in Campsie.

So at the time you originally were elected you weren't actually living in Canterbury?---I was living in Canterbury.

30 When were you living in Oatley, sir?---I moved when I bought my house and I only moved to live there during the, the last renovation I did on the house.

Well, it's going to be quite easy to check this out with, with the registration papers and when you were a candidate.---You can.

And when you bought that property and the bills, so just tell us now, to be blunt about it, because this is a good chance to give correct evidence. When did you commence living in Oatley, sir? Answer the question.---When?
40

Yeah.---I moved to Oatley, I bought the house but it wasn't liveable, the house I bought, you couldn't live in it.

Look, it's nearly 12.30. Just answer the question. When did you commence living in Oatley? You must know.---After the renovations of the house.

Yes. Give us a time.---After, after the elections, of the last elections of the council.

Well, the Commissioner doesn't know that, so when did you commence living in Oatley? Give us a year.---I bought the house in 2009.

2009.---But I didn't live in it because you couldn't live in it.

So when did you commence living in Oatley?---Oh, it was the last election we had, it was in 90, 2000, look, I remember it was just after the, the elections.

10

THE COMMISSIONER: Sorry, Mr Hawatt, that was going to be my question.---I can't remember the dates.

You're focussing on the last council elections.---Election, correct. I was in Campsie because the house was being renovated because I was living in my mother's house at the time in Campsie and, and my wife had to go overseas because she wouldn't live in it, there was asbestos in the house, so we moved out.

20

So it's after the last council election?---Correct, yeah.

MR MOSES: So three years of renovations?---No, there was, look, there was - - -

Do you know why I'm asking you the question?---There was stage, there was a stage where I moved, I moved back and forward, I had to send my wife overseas because she couldn't live in it, there's too much asbestos in the house. There were stages where I went back and, and, and, and back and in future - - -

30

Do you understand why I'm asking the question, don't you?---Wait on a second, I, I know what you're trying to get at. You go and check my driver's licence. Whenever I moved I changed my driver's licence, so check my driver's licence and it will tell you the address. So whatever I've done, I've done it within my rights. I was in Campsie, I have neighbours who knows I was living in Campsie during the last council election, yes, I was there and I can prove it, no matter what you say.

40

Did you move in, are you saying you moved into your mother's house, did you?---Yes, this is, this is the family home, because my mother was overseas and I took over the house.

So did you move into it in order to make yourself eligible to be a councillor at Canterbury Council?---No, I was, no, no, there was, I couldn't live, I couldn't live in my house, it had asbestos.

But is that your evidence? Because I'm giving you an opportunity, is that your evidence?---That is my evidence, yes.

Okay, thank you.---Yes.

Thank you. I want to ask you some questions now about dealings with councillors. Did you ever source financial contributions to support the election of any Canterbury Council councillor?---Source. What do you mean, source?

10 Did you ever seek donations in order to support the election of councillors?
---Well, we had fundraisers.

Yes.---Yeah.

Did you, in terms of those fundraisers, what were they, barbecues or what were they?---No, just fundraisers at restaurants or at whatever. I can't remember. I didn't have too many of them by the way.

And did Mr Demian go to those fundraisers?---No.

20 Mr Maroun?---I don't recall, maybe he might have, he might have turned up, I don't recall. Look, I don't, I don't control the financial, we don't as a, as a, as a candidate, we don't control the financial, other people do it on our behalf, as a candidate whoever comes up, comes up, but we don't control who pays for what and who donates for what.

Did you invite Mr Maroun to go to it?---I might have. I don't recall. I might have.

30 And what about in relation to Mr Chanine? Did you invite him to go to any fundraisers?---I don't, I don't, I don't remember him coming to any.

But you have a memory of Mr Maroun coming?---Mr Maroun, it's like vague. That's probably a while back.

Did you yourself ever make any financial contributions to support the election of any other councillor? That is, you personally?---I might have, I don't recall.

40 You might have?---I don't recall. I might have, yeah. We always donate to other candidates.

Well, was it a gift or were you borrowing the money for their political campaign?---What do you mean? It's a candidate, it's, it's a donation.

It's a donation. And can you, sitting here today, remember whether you did that, sir?---I don't, I don't recall. I don't remember that, you know, it's been a while since I've done a fundraiser.

If you did make a contribution to somebody's campaign, do you recall whether it was in cash or whether it was a cheque?---Depends on the amount. If it's, if it's a big amount, it's probably cheque, if it's small amount, probably cash. I, I just can't recall.

It's true, isn't it, that in terms of your election returns, did you ever disclose – well, I'll put a positive proposition. Did you ever disclose these gifts or these donations to - - -

10 MR DREWETT: Well - - -

MR MOSES: Can I finish the question, sir, please? Just calm down. In relation to - - -

MR DREWETT: (not transcribable)

MR MOSES: Let me finish the question.

MR DREWETT: No, excuse me.
20

MR MOSES: Let me finish the question, You keep interrupting me. Sit down, please.

THE COMMISSIONER: Excuse me - - -

MR DREWETT: Commissioner - - -

THE COMMISSIONER: No, Mr Drewett. Now, at a minimum, we'll let Mr Moses finish the question. If you then have an objection stand up and make the objection and I'll hear your objection but I think we do need to hear the question from Mr Moses.
30

MR DREWETT: I understand that but I, with great respect, would say it is absolutely unacceptable and intolerable for senior counsel to be telling anyone at the bar to sit down. That is certainly not his domain - - -

MR MOSES: I was addressing the Commission.

MR DREWETT: That is the domain of you, Commissioner.
40

MR MOSES: Well, I was on my feet and you shouldn't be on your feet when I am on my feet.

THE COMMISSIONER: All right. Mr Moses, finish your question, please.

MR MOSES: Thank you. Did you disclose the fact that you had made donations to another candidate to anybody?---If I did - - -

MR DREWETT: I object.

THE WITNESS: If I did, it would be legally done.

MR DREWETT: I object.

THE COMMISSIONER: Hold on. No, no, Mr - - -?

10 THE WITNESS: I don't recall, Commissioner. I don't know where he's coming at. I don't know what he's - - -

THE COMMISSIONER: Mr Hawatt, your counsel has made an objection which means I've got to hear the objection to see if the question should be put.

THE WITNESS: I apologise.

THE COMMISSIONER: That's all right. Now, Mr Drewett?

20 MR DREWETT: Well, the question's been answered but the question presupposes that my client has accepted the proposition that he did make a donation. His evidence is he can't recall. In my respectful submission, it is not only fruitless but it's unfair to ask a person in those circumstances how that donation was made when he had given evidence that he can't recall making such an donation.

30 THE COMMISSIONER: My note was he might have made a donation to other candidates, which I think's a little bit stronger than "I can't recall." He might have. Mr Moses, are you pressing the question?

MR MOSES: Well, it's been answered, Commissioner, and I'm just going to ask the individual one other question concerning the issues if I can, Commissioner, because he did answer the question.

THE COMMISSIONER: And sorry, can I just, sorry, in the to-and-fro, what was your answer?---I, I don't recall what, how much we - - -

MR MOSES: I think the answer was - - -

40 THE WITNESS: I do evidence legally, whatever we, we do it, we have to register it legally and we've done that.

THE COMMISSIONER: All right. So you would have complied with your requirements?---Yes, correct.

MR MOSES: Thank you. So in the election returns that a candidate submits after each election, if you had made such a donation to another

candidate, whether it be in cash or cheque, you would have disclosed that?
---If, if I made it, yeah, if I made it.

Thank you. Because you knew that was a lawful obligation that you had, correct?---Correct.

Thank you. Now, in terms of your pecuniary interest return that was submitted pursuant to section 449 of the Local Government Act, do you know what the purpose of that is?---So, we have to do it annually.

10

Yes, but do you know what a pecuniary interest return is?---Yeah.

Yes, so what is it?---It's just a, an interest of what we're, what property do you own, do you have, what businesses you've got, what income you received. You know, what, whatever, just, just register of assets and properties that you have.

And in that document, you would list, would you, debts that you had, correct?---Yes.

20

And you would list any money that you had borrowed for another person, is that right?---Yes.

Commissioner, can the witness now be taken to the code of conduct that existed in 2015? It's Exhibit 52, volume 2, commencing at page 47. You're familiar with this document, aren't you?---Not really.

I'm sorry?---I don't recall, I mean - - -

30

You don't recall.---Vaguely, as I said, just a sort of, just a general understanding of it, but not specific understanding of it.

Well, I'm just going to ask you the question directly about this. You, by 2015, were a very experienced councillor, correct?---Yeah.

Yes. And you understood that as a councillor, you had statutory duties under the Local Government Act, correct?---Yeah.

40

And you understood that the position you held was one that required you to have a solemn trust with the ratepayers and residents of Canterbury Council, correct?---Yep.

Yes.---Yep.

And that you would act in their interests, correct?---Correct.

Yes.---Yeah.

And you would act in the public interest, correct?---Yes.

And you understood as a councillor that you were not a lobbyist for developers, correct?---I, I'm not a lobbyist for anyone.

No.---Yeah.

You were not a poodle for lobbyists, for developers, were you?---I'm not a poodle for anyone.

10

MR DREWETT: I object to that.

MR MOSES: No? Okay. Thank you. He answered the question, Commissioner.---A poodle for - - -

MR DREWETT: Well, no, excuse me. When a question is improper, as that is - - -

MR MOSES: It's not improper.

20

MR DREWETT: - - - under the Evidence Act, it is required to not be published. The question and the answer – which is clearly meant to offend and insult – needs to be, an order needs to be made, not only that it's an improper question, it's an unanswerable question, but the question should not be published. Section 195 of the Evidence Act.

MR MOSES: Commissioner, the witness answered the question. My learned friend's referred to the Evidence Act. I'm not sure what provision he's referring to. I'm entitled to put the question. The witness answered it. He denied the proposition. And I'm going to take him now to the code of conduct and take him to express provisions of it and ask him, in light of reading those provisions, whether he accepts certain issues.

30

THE COMMISSIONER: Mr Moses, can I just say, I hadn't come across the use of the word "poodle" in that way. It actually didn't help me.

MR MOSES: Well, then, if you don't, I won't be, I won't be using the word "poodle" - - -

40

THE COMMISSIONER: But if you can pursue your line of questioning.

MR MOSES: Yes, thank you. If you go to page 47 of this document, which is the volume 2 of the exhibit, you've said that you're vaguely familiar with this document, correct?---Yeah, just use common sense approach, yeah.

If you go to the document, you agree, do you, that "It is the" – this is the third paragraph – "It is the personal responsibility of council officials to comply with the standards in the code and regularly review their personal

circumstances with this in mind.” You understood as a councillor that it was your personal responsibility to comply with the code of conduct and to review your personal circumstances with this in mind, correct? That’s not surprising to you?---Well, yeah, we, we put it a return every year.

And you understood, if you go to the next paragraph, that the failure by a councillor to comply with the standards of conduct prescribed under this code constitutes misconduct for the purposes of the Local Government Act. You understood that, didn’t you?---Oh, yeah, that’s obvious. If there’s a
10 complaint made against you for any – well, there hasn’t been any complaints against me, that’s for sure.

Well, when you say if, in terms of if there were complaints against you, you understood you had positive obligations as a councillor under the code, correct?---Look, we don’t, as, as councillors, I think you need to understand, we’re not lawyers. I think you need to realise, as councillors, we respond to calls. We respond to people. We don’t think in the back of our mind the legal act about the code of conduct, or the - - -

20 We’ll just stop you there.---Or, or the laws of the, the local government.

Mr Hawatt, you’re speaking about - - -?---Wait a second, wait a second.

You’re speaking about yourself.---Oh, well, do you want to - - -

Don’t, don’t insult - - -?---You, you want to be insulting.

Don’t insult other councillors - - -?---No, no, you, you wait a second.

30 - - - by using the word “we”.---We, we respond - - -

You’re talking about yourself.---In the back of our mind is not based on the code of conduct or the Act or the laws. We respond based on human activities. Human discussions. And, and we respond to that. And that’s the way it is. All, every councillor does that. So I don’t know what you’re trying to make out here.

Okay, thank you.

40 THE COMMISSIONER: Now hold on, Mr Hawatt.---Ridiculous, this question.

Now just - - -?---Sorry, Commissioner, but it’s just - - -

No, no. Just calm down, deep breath, and let Mr Moses continue with his questions, all right?---Very insulting, Commissioner.

MR MOSES: Page 49 of Exhibit 52, volume 2. What I was referring to there, sir, was that you understood, as a councillor, did you not, if you look at 3.1(c) as an example, that you must not act in a way that was improper or unethical.---I've never acted improper.

I'm asking you, you understood - - -?---I'm telling you, I've never acted improper, so you take it.

You're not listening to the question.---I'm listening to the question.

10

You understood - - -?---I don't recall these details but I've never, one thing I, I, I recalled, I've never acted improper, I've always done in an honourable, decent, decent way.

So do you accept that you knew that as a councillor you could not act in a way that was improper or unethical, correct?---I think - - -

Do you accept that?---I think it's common sense, yes.

20

And if you go to 3.1(d), you could not act in a manner that was an abuse of power or otherwise amounts to misconduct. Correct, you understood that? ---Well, there would have been a complaint against me if that was the case, yeah.

That's not the question. You understood - - -?---I don't understand the documents in there.

30

You don't understand the documents.---We had, we had, the way we, we act as councillors, if we have any issues the general manager always there to assist us in, in regards to code of conduct, in regards to queries from councillors, in regards to not sure if we declare this or not declare this, we always raise it with the GM in regards to saying do we need to declare this, do we need to say this, do we not, not to – and this is how we, we operate, not based on the document, it's based on the verbal discussions we have with the general manager or any senior director. We ask the question if we have doubts. Now, you coming into details about a, specific details about documents that you ask any councillor what's in those documents, I don't think anyone would be able to address and answer it, anyone.

40

Are you finished?---Yeah, I'm finished.

What I'm asking you is whether you understood, you understood as a councillor that you must not act in a way that is improper or unethical. ---I've never acted improper. I told you.

And you understood that you must not act in a way that is an abuse of power - - -?---I've never abused my position.

- - - or otherwise amounts to misconduct. Thank you. And if you go to 3.1(j), you understood as a councillor that you must not act in a way that may give rise to the reasonable suspicion or appearance of improper conduct or partial performance of your public or professional duties. You understood that, didn't you?---I've never done anything that's, that I believe is incorrect.

So yesterday - - -?---Common sense.

10 Well, yesterday, that's actually not a true answer you just gave.---Yes, that's a true answer, of course it is.

No, no. Yesterday you gave evidence that you accepted in hindsight that your discussions with Mr Maguire on 9 May, 2016, looked bad and that if you had your time again you would not have had that discussion.---Look - - -

Do you recall giving that evidence – let me finish. I'm trying to put a proposition to you. Do you recall giving that evidence yesterday?
20 ---I - - -

Mr Hawatt - - -

THE COMMISSIONER: No, no, no, Mr Hawatt, step - - -

MR MOSES: Yes or no?

THE COMMISSIONER: Mr Hawatt - - -

30 THE WITNESS: Yes, I spoke about it, yeah.

MR MOSES: And the reason was that that discussion may give rise to the reasonable suspicion or appearance of improper conduct or partial performance of your public or professional duties, because listening to that conversation, as we all did in this hearing room, it appeared to give the suggestion that you were discussing with Mr Maguire the potential sale of a property that was the subject of a pending development application before Canterbury Council in which you would receive money. Correct?---No, it's incorrect. You're twisting it, completely twisting it. You don't want to hear
40 the truth, so don't - - -

Well, you say I don't want to hear the truth?---No, because I, I try - - -

What do you say is the truth, sir?--- - - - and explain it to you and I told you and I'll repeat, I've already explained it, if there was, firstly, firstly and foremostly there was, we knew there was few days left for in regards to, to council amalgamation, this is quite open, everybody spoke about it, we knew that, secondly if there was activities I would have had to declare it,

secondly and thirdly, if there was a pending, whatever pending, there's no pending from, from memory that I, that I knew as an existing DA he was after, nothing is pending, and, and knowing if I did anything, if it happened, I would declare it.

Okay.---Within my rights.

Is that your evidence?---That's my evidence, yes.

10 If you go to clause 3.5 at page 14, you understood as a councillor that you must always act in the public interest. Correct?---I've always acted in the public interest.

What do you understand to be the public interest, sir?---To, I have a vision and I believe the public interest is to look after their, their, their concerns, to improve the area, beautify the area, make, make sure that the garbage is collected correctly and the roads are maintained, the buildings are up to standards and up to scratch, there's laneways where people can access through, nice trees, what else would you like?

20

Thank you. Clause 3.6. And you understood as a councillor you must not act for an ulterior purpose or on irrelevant grounds? You understood that? Do you understand what that means?---Oh, you tell me.

You don't understand what that means?---Oh, you, you sound like you're - - -

So you must not act for an ulterior purpose.---You, you seem to know it better than I do. You tell me what it means.

30

So when you are exercising a power, for instance, to approve a development application, you must not exercise it, as an example, because you would receive a benefit out of it.---Who's receiving a benefit?

I'm asking you.---No. I've never received any benefits.

But did you understand that, that when you're exercising your power to vote on a development application, you had to do it for what purpose?---I just told you.

40

Yes, but tell me for what purpose.---For the, for the benefit of the public and, and, and as a councillor.

In accordance with what?---In accordance with the, with the Act, with, as a, being a councillor to do the right thing. So over, over years, over years, as you, you as a, as a barrister to lawyer, surely you would have, you, you would have to keep referring back to your, to your books, I think, from memory that you have, from experience, you, you maintain that over the

years and that's what I do, of experience and time and you build it over the years and you know what's right and what's wrong generally.

If we could go to page 50, clause 3.10.

THE WITNESS: I wasn't spreading, spreading rumours either.

10 MR MOSES: "You must ensure that development decisions are properly made and that parties involved in the development process are dealt with fairly. You must avoid any occasion for suspicion of improper conduct in the development assessment process." You understood that when you were dealing with development applications?---I, I wasn't, I, I don't refer to this whenever I deal with people. I use common sense.

Well, I'm talking about the obligation here. Did you understand, as a councillor, because what the Commission is trying to understand here is whether when you did certain things you acted in bad faith, whether you - - -?---Hold on, excuse me?

20 Whether you acted contrary to your obligations, whether you understood what your obligations were but still acted despite that. So what I'm trying to - - -?---I acted in good faith.

So what I'm trying to understand from you is, if you look at clause 3.10, did you understand that when development decisions were being made that the parties involved in the development process were to be dealt with fairly, correct?---I've never taken those into consideration whenever I made, I, I act for people. I don't - - -

30 Whenever you act for people?---Wait, wait a second, this is 2013 document. 2015.---2013 on that.

It they're 2013 and 2015, yes. Go ahead.---Yeah. I don't, I don't have that sitting there as a, as, as my reference guide. I don't. I, I use common sense.

You state when you act for people. Do you understand that as a councillor you do not act for anybody?---We represent.

40 Well, are you saying to the Commissioner that you - - -?---I'm saying to you.

No, you're giving evidence to the Commissioner, not me.---You're asking me the question, I - - -

No, but you're here to give evidence to the Commissioner, not me, so please understand that.---But I'm explained to you, yeah.

So in relation to your evidence, are you saying to the Commissioner that you represented developers?---I represent whoever calls me.

Is that what you thought your function was as a councillor, to represent developers?---Well, they can call themselves whatever they like. I represent applicants, I call them as applicants, they could be applicants for cleaning the rubbish, could be applicants for putting a, a two storey house on it, could be putting up a garage, could be putting up a, a high-rise building or could be something with a, a, issue with a tree. It's all the same to me. No
10 difference.

So are you saying that you actually thought that part of your job as a councillor – and I'm sticking here with developers for the moment, Mr Hawatt – was to represent developers?---Represent the applicants of council, ratepayers.

To represent applicants of council, what do you mean by that?---And, and ratepayers, yes.

20 To represent the applicants of development applications?---Whoever calls me, yeah.

Was Mr Demian a ratepayer?---Yeah, he's a ratepayer.

Mr Demian's a ratepayer of Canterbury Council?---He owns properties, of course he's a ratepayer.

So you're representing his interests?---I'm not representing his interest. I'm representing his, his, his complaint and concern that he had.
30

See, do you actually know what your role as a councillor was when it came to dealing with development applications?---My role is to answer people and help.

Your job was to decide these matters, wasn't it? You were a part of the decision making body.---My job, my job is to answer, to answer and represent people and find out what the issues are, and concerns and try to assist them and help them.

40 How could you represent the interests of property developers whilst at the same time then adjudicating upon their applications? Do you think that's a bit of a problem, Mr Hawatt?---No, I don't think so.

You don't think so?---No.

Okay. Thank you. In relation to clause 3.11, it states that you had an obligation that "In determining development applications you must ensure that no action, statement or communication between yourself and applicants

or objectors conveys any suggestion of willingness to provide improper concessions or preferential treatment.” Did you understand as a councillor that you should not do that?---I, I don’t, again I don’t refer to this document. I believe in, in the vision that I have in what they’re doing and how they’re doing it, and if I believe in it and I have a strong feeling towards I’m a, improving in the area, then I will support it. It’s the way it is. I don’t sit there leaving it to the, to – the reason they call us is because there’s a big hole in between what the council staff do in regards to the objectives of the codes and everything else, and they seem to be ignoring it, and we are the
10 people in the middle that are trying to resolve this, this, this issue or problem.

What, you thought you were a fixer?---No, we, we assist. We’re assisters. We assist people.

You’re assisters. Okay, so you’re an assister.---Yeah, not fixers. We assist people. Trying to help them.

Do you accept this proposition? There was no public interest in you as a
20 councillor introducing buyers to Mr Demian for his Harrison site. Do you accept that?---I just passed on information between the two parties.

Can you answer the question?---I, I, that’s the way I am. I assist people and I pass information on.

Yes, I know you say you assist people, you like helping people. You’ve made that clear a couple of times. I’m asking you this specific question. Do you accept as a public official there was no public interest in you introducing buyers to Mr Demian for his Harrison site? Do you accept that
30 proposition?---Look, all I can say is, to me, thinking again about it, I, I, I wouldn’t do that again. I wouldn’t, I wouldn’t get myself involved in, in those areas again, but it was my call at the time and I felt that there was no issues with it. That’s my call at the time. I felt there’s no issues. But now thinking about it I would say I wouldn’t do it again (not transcribable)

And because your call was wrong, wasn’t it?---No. It was, look, that was my call, my decision at the time. It was a right decision, the right call. I believed it. But thinking about the headache associated with it, it’s, it’s not worth it. I wouldn’t do it again.
40

Because you’ve been caught out.---I haven’t been caught out.

Okay.---I haven’t been caught out. Just the way it is. I, it’s not worth, not worth the headache. Caught out for what?

THE COMMISSIONER: Sorry, what’s the headache?---The headache of we’re, we’re doing now, the inquiry that’s going through because of wrong assumptions have been going on.

MR MOSES: Do you accept this proposition, Mr Hawatt, that there was no public interest in you discussing commissions for the sale of the Harrison site? Do you accept that?---It's up to the person who's talking. I can't, I can't control their discussion and their, and their – they want to talk about it, they talk about it.

But again - - -?---As I said, wait a sec, if I, I already answered that question. If, if I did take any actions or whatever, I would have to declare it. That's it.

10

But do you accept there was no, there was no public interest, for instance, in you negotiating with Mr Demian commissions in relation to the sale of the site? Do you accept that?---I've already explained my position on that.

But do you accept that?---I already explained. I'm a, look, I am a part-time councillor, not a full-time councillor. You're, you're asking me questions based on my – I'm not a hundred per cent obliged to council because we are not full-time, we're part-time. We have a business to run as well, so sometimes there's crossovers between your business and, and, and what you do in council, it crosses over and you make the call whether it's a, a call, the right call, the wrong call or to declare it, not to declare it. You make it as you go along, the judgement.

20

Mr Hawatt, you didn't owe part-time obligations as a councillor, you accept that, correct?---What do you mean?

Well, at all times when you were a councillor, you were obliged to comply with your statutory obligations as a councillor, correct?---Yeah, I, I believe I've, I've done that.

30

And by just giving the answer that you've given, you're not suggesting to the Commissioner that in respect of your discussions with Mr Demian or Mr Maguire in relation to the Harrison's site that that was part of your business as a finance broker and that it had nothing to do with your functions as a councillor? You're not suggesting that, are you?---No. What I'm saying, I introduced, somebody asked me, there was, it's like, it's, it's a general, general understanding about a person who's selling someone, knowing the person is selling it, a person inquiring about it, saying, yeah, there's a guy who's selling his house.

40

Mr - - -?---You pick things up along the way knowing who's, who's selling their house or selling their property or selling, and then, yes, I know someone who's selling it.

Mr Hawatt, there seems to be a fog in terms of the explanation you've given, because do you accept that it was not appropriate for you to be introducing buyers to a property developer for a site in Canterbury Council that was the subject still of a pending development application, do you

accept that, before the council?---There was no pending, there was no pending - - -

You don't accept that?---I don't accept because to me there's no, nothing pending and there was nothing to go back in order to discuss and nothing to, to debate and, and vote on. There was – that was the end of it.

10 THE COMMISSIONER: Mr Hawatt, what about if there was a pending development?---I would, I would, I would have, and there was no councils going, because otherwise I would have had to declare interest, I couldn't vote on it.

So your answer is, if there was pending you still would have undertaken the action but you would have declared - - -?---I never - - -

- - - the interest.---No. I never looked at a pending application.

20 No, no, no, I'm just changing the facts, I'm just trying to work out where you're coming from. So if we assume that there was a pending application for the Harrison's site you would have still had the discussion with Mr Maguire.---He - - -

Is that correct?---Look - - -

30 No, no, no, just answer that question, yes or no.---I might have as I, the problem with, I respect people and I listen to what they're saying and what they're talking about. I don't, I don't cut people off to stop talking or stop, and this is one of the, probably the bad habits I have, I have to say, instead of nipping it in the bud immediately I just let people continue talking.

MR MOSES: Commissioner, I note the time. I don't have long to go, if at all, of Mr Hawatt, but I just want to confirm something over the luncheon adjournment with those instructing me, and if I do have question so they should be no more than five minutes afterwards.

THE COMMISSIONER: All right. Can I just confirm, then I believe we're moving to Mr, sorry, we're not, we've changed the batting order slightly.

40 MR NEIL: Subject to your approval, Commissioner, Mr Andronos and I have agreed that we would exchange our positions.

THE COMMISSIONER: Yes, that's fine.

MR ANDRONOS: Yes. I expect I'll be about an hour, Commissioner.

THE COMMISSIONER: All right. Okay, thank you very much. We'll adjourn until 2 o'clock.

LUNCHEON ADJOURNMENT

[1.03pm]