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INDEPENDENT COMMISSION AGAINST CORRUPTION

PATRICIA McDONALD SC  
COMMISSIONER

PUBLIC HEARING

OPERATION DASHA

Reference: Operation E15/0078

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 10 JULY, 2018

AT 9.30AM

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: Yes, Mr Ronalds.

MS RONALDS: May it please the Commissioner, I seek leave to appear for Mr Demian who is I understand the next witness.

THE COMMISSIONER: Right. You are authorised to appear.

MS RONALDS: Thank you. And could we have a section 38 declaration.

10 THE COMMISSIONER: Yes, that will be fine.

MS RONALDS: Thank you.

THE COMMISSIONER: Before we start, any administrative matters?

MR BUCHANAN: No, Commissioner.

THE COMMISSIONER: Right. Mr Demian. Now, I understand you take an oath?

20

MR DEMIAN: Yes, I do.

THE COMMISSIONER: Mr Demian, I understand that Ms Ronalds has explained the direction under section 38 to you?---Yes.

10 Can I just emphasise, there is one very important exception to the protection given by a section 38 direction, that is if you give false or misleading information to the Commission, your answers could be used against you in a prosecution for that offence.---I understand.

It's a very serious offence. It brings with it a maximum period of imprisonment.---I understand.

20 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.**

THE COMMISSIONER: Mr Buchanan.

40 MR BUCHANAN: Commissioner. Mr Demian, I'll be asking you questions largely about the period 2014-2016, but I do want to go back to some years before that as well, but I'll indicate that. If you're in any doubt as to the period I'm asking about, please just ask.---Sure.

In the period 2014-16 you had an office in Parramatta. Is that right?  
---That's correct.

And was that at Charles Street, Parramatta?---Yes, correct.

In the period 2014-2016 did you have a mobile phone?---Yes.

How many mobile phones did you use in that period?---Mainly a couple.

And can you remember their numbers?---Look, at least two of them. So [REDACTED] I think, from memory.

And was there another number that you used, [REDACTED]  
---Probably once or twice, not very many times.

10 When you used the numbers other than the number ending in 0-0-0 - - -?  
---Yes.

- - - were you using the one handset and these calls came through those other numbers to the same handset or how did the technology work?  
---Well, one of them is a car phone which is pretty much in the car the majority of times and - - -

Which one was that?---The 0-4-8-8. And the second one is a hand-held I take everywhere with me basically.

20 And did calls to the number in the SIM card in that phone go to the 0-0-0 number? That's [REDACTED]---What about that number?

Did calls to that number go through to that phone you've just mentioned - - -?---Of course.

- - - that you carried around with you?---Yes.

30 Calls to the number [REDACTED] what did they go through to?  
---Oh, look, I can't even remember that number. Must have been some time ago.

Were you ever in the habit of carrying around more than one mobile phone at the same time?---Occasionally, yes.

Did you use in the period 2014-16 technology which allowed you to receive calls on the one mobile phone that were being made to more than one telephone number?---No, I didn't have any diversions from any one handset to the other.

40 Now, you are a property developer. Is that right?---That's correct.

And in let's say 2013-16 you were indeed – no, sorry, I'll go back. In 2012-16, that period, you were a property developer?---Correct.

You used various corporate vehicles to do the things that you wanted to do, including purchasing properties and carrying on proposals for development. Is that right?---Correct.

There was one vehicle in particular though, Statewide Planning Pty Limited?---Correct.

Which had more significance than the others. Is that right?---No, Statewide Planning is a, is a planning company.

Yes.---And that works for all of the entities right around the portfolio.

And did you control and own that company?---Yes, I did.

10

But otherwise you used special purpose vehicles for different developments or development proposals.---Correct.

Is that right?---Yes.

In the period 2013-16 what proportion of development projects in which you had an interest were located in the Canterbury local government area?  
---I controlled all of those projects.

20

Yes. And I'm just asking about their geographic location. How many of them were located in the Canterbury local government area as against some other local government area in New South Wales or Australia?---Oh, look, probably about 10 per cent.

Were in Canterbury?---That's correct. 10, 15.

And well, you said 10 or 15. You're talking about percentage?  
---Percentages, yeah.

30

Just your best rough estimate is what I'm after now.---Sure.

In the period 2013-16 how many development projects were you pursuing in the Canterbury local government area?---Five.

We're going to be talking about three in particular, 548-568 Canterbury Road, 570-580 Canterbury Road and 998 Punchbowl Road, although I appreciate that's on the corner of Canterbury Road.---I understand.

40

So they're three and that's what we're going to be focusing on in the next day or so. Can I ask you, what were the other two that you had in the Canterbury local government area in the period '13-16?---677 Canterbury Road and, from recollection, 742 Canterbury Road, both in Belmore.

Now, I just want to go through your relationship with a number of people whose names I'm going to give you. Tim Stewart, who was he?---He's my town planner.

And did he work for you?---He was a consultant.

And did he, was he associated with an entity called DDC Urban Planning?  
---I believe that's his company, yes.

And in respect of any of the three developments that I've indicated that we're focusing on in this inquiry so far as concerns your evidence, did he contribute to the development proposals?---Well, he was the town/urban planner for those projects, so he wrote all of the reports.

10 He wrote all the reports?---Well, as far as the planning is concerned, yes. The statement of environmental effects and the likes.

And did he, to your knowledge, have contact with Canterbury Council staff in relation to those projects?---Yeah, that was one of the functions. He was supposed to keep in contact with the staff and provide for outstanding inquiries or provide any information required.

And to the extent that he did, he was doing that on your behalf?  
---Absolutely, yes.

20 Matt Daniels. You knew him?---Yes, he was one of the, one of my consultants.

Now, did he have an entity that he worked for or was associated with?  
---Well, he was a consultant so he actually worked for Statewide Planning on a consultancy basis.

And did he do consultancy work on any of the three properties that I've mentioned, 548, 570 and 998 Punchbowl Road?---Yes. Yes.

30 On all three or just one or two?---On all three.

On all three. What was the sort of work which Mr Daniels did?---Well, he's a strategical planner and a planner at the same time, so he had provided advice on strategical outcomes.

And did he have a background in strategic planning outcomes?---I understand he had, yes.

40 What was that background you understood he had?---Well, I understand he was a director at the Department of Planning some time ago and also filled in a role as planning director at Liverpool Council.

At Liverpool Council?---That's correct, yes.

Did he contact, to your knowledge, Canterbury Council staff from time to time about planning issues in relation to your project?---That was one of his tasks that he had to undertake.

And again to the extent that he did that he was doing that on your behalf?  
---That's correct.

Bechara Khouri.---Yes.

Who was Mr Khouri?---Bechara was a business adviser.

Yes. To you?---To me, yes.

10

And - - -?---And the group.

And the group. Thank you. How long had you known him?---I think the first time I've commissioned Bechara was back in 2003.

And how did you come to meet him in the first place?---Oh, look, I can't recall. In the business community, I suppose.

20

What was the work that you got him to do in 2003?---More like business advice. Property transactions, either purchase or sales. Sourcing products, contractors. More on the, on the high-level business advice.

And was that the role that he undertook for you after 2003?---Well, as I said, he was on and off. It wasn't continuous. He was on and off.

Did he have planning qualifications?---Not that, not that I'm aware of, no.

Did you see a curriculum vitae or a résumé for him?---No, I did not.

30

Did he work in the planning field?---Not that I'm aware of.

Thinking now, 2013-16, what was the nature of your relationship with him? Business advisor still?---Business advisor, that's right.

On a consultancy basis?---That's correct.

40

Did he have political connections in the Canterbury area in the period 2013-16?---Oh, I understand he's been around for a long time so I don't know what sort of contacts he had.

But did you believe that he had political connections, particularly in the Canterbury area in the period 2013-16?---I understand that he was well known, yes.

You understood that he?---I understand that he was very well known.

Yes. By whom?---Well, by the business community.

What about politicians?---I understand that he, he is from the Labor Party and he's known politicians, yes.

And was he known to politicians on council, that's to say councillors who were aligned with one party or the other?---I honestly don't know.

You honestly don't know?---That's correct.

10 Did he have any association with councillors on Canterbury Council, as far as you know?---I understand he has, yes.

And what was the nature of his association with councillors on Canterbury Council in 2013-16 as far as you were aware?---I don't know.

You don't know?---That's correct.

Is that an honest answer?---Absolutely.

20 What did you ask him to do or expect him to do in the period 2013-16 when he was doing consultancy work for you in relation to the Canterbury area? ---Well, he wasn't working for me specifically in relation to Canterbury area. He was working across portfolio and one of his functions that he was doing was introducing or trying to introduce investors in the portfolio and sourcing products from offshore.

Was there anything that you knew that he did to progress any of your proposed developments in the Canterbury area?---No.

30 Nothing at all?---No. Nothing at all.

Do you believe that to be the case or are you saying, "I don't know what he did"?---Look, he, he attended two meetings with me to council but that's from – based on my recollection that's as far as it went.

What were those two meetings?---Oh, just town planning meetings.

Yes. In relation to which project?---I think they were in relation to 548-568 and 570-580.

40 And so, there was one meeting in respect of 548 and one meeting in respect of 570?---Both meetings would have had relationships to both of those projects.

When did those meetings take place?---Oh, look, sometimes in, I would say in '15-16.

And where did they take place, what was the venue?---At the council.

And where at council?---Canterbury Council chambers.

And were you there?---Absolutely.

And whereabouts in the building?---Well, in the meeting rooms on I think level 2 from memory.

Were you ever present at the general manager's office when Mr Khouri was there?---No.

10

But you were frequently in the general manager's office, weren't you?---I wouldn't say frequently. I would say once, I, I think we met once only in his office and maybe once or twice in the boardroom.

How many meetings did you have with the general manager in the period 2013-16 in the council chambers building?---Look, there would have been several, maybe half a dozen. I don't, I can't remember ever one of them.

20

You don't think there may have been more meetings that half a dozen in the period of 2013-16?---No. I don't, I don't believe so. There would have been more in 2014 and at point in 2015 I would say.

So thinking of the meetings at which Mr Khouri was present, who else was present at the meeting that involved 548?---There would have been my architects from our side, I think our town planner would have been there, director of planning from Canterbury Council, and on one occasion an urban designer for the council and one of the council staff.

30

Who was the director of planning who was present on that occasion?---I believe it was Stavis.

And why was Mr Khouri present at that meeting?---At my request.

Why did you ask for him to be present?---No reason.

What was the contribution that you thought he might be able to make or would make by being present?---Pretty much nothing.

40

Well, that doesn't make very much sense, sir.---It does.

Do you often do things for no reason?---I don't do anything for no reason.

Thank you. Why was Mr Khouri there?---On that occasion there was no, more of a presence.

Did Mr Khouri organise the meeting?---No, he did not.

Mr Khouri you knew however was good at organising meetings at the local government level, wasn't he?---Not for my case he wasn't.

Now, the meeting in respect of 570 Canterbury Road at which Mr Khouri was present, who else was present?---Look, usually would have been the same people I said. From my side would have been the architect, the planner, from council's would have been the director of planning and council staff.

10 Okay. So when you say would have been, does that mean that you don't have a distinct memory of the meeting?---No, I have a very distinct memory. I don't recall their names.

Was there any councillor present at either of those meetings?---Not those two meetings, no.

Why was Mr Khouri present at the meeting to do with the 570 Canterbury Road development proposal?---I just asked him to attend.

20 I'm sorry?---I asked him to attend.

Yes. Why did you ask him to attend?---Well, no reason.

Yes.

THE COMMISSIONER: I thought you never did anything for no reason? ---No, no. Well, what I've asked him to attend, not for any contributions that he could make, just to be present in those meetings to understand the, the things we have to go through basically in those meetings.

30

MR BUCHANAN: Why was it of advantage to you for him to understand what was going on?---Well, he's a consultant of mine.

Yes?---So the more he understands, the better off he becomes. It's more of an experience for him as well.

The better off he becomes in relation to the planning issues and the progressing of your development applications?---Well, Mr Khouri is not a planning expert, he doesn't really have much knowledge at all in planning and it's - - -

40

So what's the point of having him there?--- - - - advantageous for him to get a general understanding of the lengthy processes we go through.

In 2013-16 did you understand that Mr Khouri had any sort of relationship with Mr Montague, the general manager?---Oh, I understood that he knew him.

Did you understand anything more than that?---Not really.

When you say not really, what did you understand about the relationship between Mr Khouri and Mr Montague in the period 2013-16?

10 ---I understood he's known him for a long time but when I, I think I understood, there was a discussion once about that and he explained that he doesn't have much to do with him on a planning level and two of his, of Mr Khouri's colleagues actually had litigations at the Land and Environmental Court relating to cases in the actual LGA. So that's pretty much all I know about him.

And you're speaking there of Mr Khouri?---That's correct.

In relation to Mr Montague?---That's correct.

Did you understand that there was a business relationship or a friendship, what was the character of their relationship?---I have no idea.

20 In the period 2013-16 did Mr Khouri have a relationship with a councillor called Michael Hawatt?---I understand he knew him, yes.

And what did you understand about the relationship between Mr Khouri and Mr Hawatt in the period '13-16?---I don't know.

Did you understand in the period 2013-16 that Mr Khouri had any sort of relationship with a councillor by the name of Pierre Azzi?---That's correct.

You did understand that?---I did understand that he knew him.

30 And what was the nature of that relationship as you understood it?---Asking the wrong person.

You didn't have any understanding that there was any degree of friendship between Mr Khouri on the one hand and Councillor Hawatt. Is that right?  
---I have no idea.

You didn't understand in the period 2013-16 that Mr Khouri had a friendship with Councillor Azzi?---No idea.

40 Did you ever ask Mr Khouri to convey a message to or intervene with or have any particular dealing with Councillor Hawatt or Councillor Azzi?  
---No.

Did you ever see Mr Khouri in the same room as Councillor Hawatt or Councillor Azzi?---Once or twice, yes.

And what was that room?---I think that would have been at Mr Azzi's home.

And what was the occasion?---That would have been a Friday afternoon, I wanted to have a discussion with Mr or Councillor Azzi at the time. He suggested I see him after 6.00pm. When I arrived there were some people there.

And Mr Khouri was there too?---On one or two occasions he was, yes.

10 Did Mr Khouri go with you to Councillor Azzi's house?---No, he did not.

Did you ask Mr Khouri to do work for you because of relationships you understood he had with Mr Montague?---Which year?

Oh, sorry, in the period 2013-16.---No.

Did you ask Mr Khouri to do work for you because of the relationship you understood he had with Councillor Hawatt?---No.

20 Did you ask Mr Khouri to do work for you in the period 2013-16 because of a relationship you understood he had with Councillor Azzi?---No.

Did you have an understanding that Mr Khouri knew a lot about the potential of property and the potential for opportunities and planning?  
---It's a very general question you're asking, but I understand that he's got some knowledge in property but not in planning.

30 And did you understand that he knew about rezonings?---Mr Khouri was never used for any planning, I've had much more qualified consultants that advised me on planning.

But there's a difference between the technical aspects of planning and the political prospects of planning proposals succeeding, isn't there?

---That's not - it was - - -

You know that.---No, I don't know that. I think merit is the only driver when it gets to planning proposals.

40 How in the period 2013-16 did Mr Khouri get remunerated?---It was a consultancy, it was a retainer that varied from time to time, so it was on a yearly basis.

And by whom was he paid?---Statewide Planning.

And did you manage the arrangement with Mr Khouri in terms of his remuneration?---Well, it was an agreement, so he would, he would provide or issue an invoice once a month and that gets claimed and paid.

THE COMMISSIONER: And was that based on the work that he did? For example, if he spent a week working - - -?---No, no, wasn't, wasn't, wasn't time-based, it was more on a retainer, annual retainer, so that would be - - -

So he got paid the same each month?---Yes.

MR BUCHANAN: When did that retainer commence?---Well, as I said, it was on and off since 2003, but in that period would have been 2012 I would say.

10

In the period 2013-16 was Mr Khouri paid anything by way of a retainer?  
---Yes.

What was he paid?---Well, a monthly retainer.

And what was the sum?---Well, it varied somewhere between five and 15.

And how did the sum progress, did it increase or did it reduce?---Oh, look, it was, it did really, was all over the place from recollection. It started, it got  
20 higher, it got lower, depending on the works, on the work that he had to undertake.

But this must have been by agreement with you?---Absolutely.

You would say yes, I agree to pay you X for the past month or for the next month?---No, it doesn't work that way. I would say, yes, I will pay you X per month for the next six months.

30

Yes.---And then he'll invoice based on that and get paid based on that.

And what would happen at the end of that six months?---It gets reviewed.

By you?---That's correct.

Now, was Mr Khouri on a regular retainer of about \$15,000 per months, including GST?---At one period, yes.

40

What period was that?---Oh, I can't remember, '13-16, '13-15, that range. Somewhere in between.

For how long was he being paid about \$15,000 per months plus GST?  
---I would say at least - - -

Sorry, including GST.---I would say at least six month.

And did that figure change?---I think I said earlier it did change and it did change based on review from time to time.

And what did it change to?---I think I said the same thing, somewhere in the range between five and 15.

When did it change?---Well, in that period.

2013-16?---That's correct.

Yes. Are you able to be more precise than that?---No.

10 You don't think that it reduced to about 11,000 per month in late 2015?  
---Possibly.

And do you think that it's possible that in mid-2016 it reduced again?---I did say five to 15, didn't I? So in that range - - -

I'm asking the questions.---Within that period of time - - -

I'm asking the questions, Mr Demian. I'd ask you to just listen to my question. If you don't understand the question, tell me. I'll reframe it.  
20 ---Well, reframe it, please.

But I'm asking you to answer my questions, if you don't mind, please.  
---Sure.

Now, thinking of the period mid-2016, is it possible that Mr Khouri's retainer reduced again?---Possibly. I don't recall.

Did Mr Khouri attend any meeting with Marcelo Occhiuzzi when he was director of city planning?---I don't remember. Actually, I don't, I don't  
30 believe so.

So the only director of planning that you understood Mr Khouri met was Mr Stavis, is that right?---From memory, yes.

And how often, as you understood it, did Mr Khouri have dealings with Mr Stavis?---I have no idea.

But you were present on one occasion when Mr Khouri was in the room and Mr Stavis was in the same room at the same meeting?---Twice. Twice.  
40

Twice.---That's correct.

Once each in respect of 548 and 570.---And I said they would have been combined projects but two meetings, yes.

Did Mr Khouri do any other thing for you in relation to 548 to 568 Canterbury Road?---No.

Did you seek his opinion when that property was purchased?---No.

You're quite sure about that?---Absolutely.

Excuse me a moment. Commissioner, I make an application for variation of a section 112 order in respect of evidence given by the witness on 30 November, 2016, at page 478.

THE COMMISSIONER: Which line?

10

MR BUCHANAN: I do apologise, Commissioner. Line 32 to 37. I'm sorry, yes. Can I extend the scope of the application to line 41?

THE COMMISSIONER: Pursuant to section 112 of the Independent Commission Against Corruption Act, I vary the non-publication order made on 30 November, 2016 to exclude the evidence given by Mr Demian recorded in the transcript at page 478, commencing at line 32 and finishing at line 41.

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**VARIATION OF SUPPRESSION ORDER: PURSUANT TO SECTION 112 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I VARY THE NON-PUBLICATION ORDER MADE ON 30 NOVEMBER, 2016 TO EXCLUDE THE EVIDENCE GIVEN BY MR DEMIAN RECORDED IN THE TRANSCRIPT AT PAGE 478, COMMENCING AT LINE 32 AND FINISHING AT LINE 41.**

30 MR BUCHANAN: Mr Demian, I'm going to read from a transcript of evidence that you gave to the Commissioner on 30 November, 2016, and then I'm going to ask you questions about it.---Sure.

Question, "Okay, and how did you become aware that Mr Khouri knew Mr Montague?" Answer, "Because we were using him on, on other projects in Blacktown and Bankstown and when the opportunity arose for the Harrison's property, that was the first property we purchased in the area there. We informed him and sought [sic] his opinion that was one of the things we did." Question, "That was one of the things that he said to you?"

40

Answer, "Well, no, no. We informed him that we have undertaken or taken an option on, to purchase the property and asked for his input into it." Now, when you gave that evidence, were you talking about Mr Montague or Mr Khouri?---I was talking about Mr Khouri. Well, I - - -

That's not the same as the evidence you gave today on the subject, is it? ---Oh, it's absolutely the same. The question I refer to Mr Khouri at that time would have been about the property and its economics in the area, as it was the first transaction in, in that location or in that area as a whole.

THE COMMISSIONER: So, you were seeking his opinion when you purchased the property?---Yeah, about, about the, the value of the assets and pricing in that particular area as far as the marketing viability of a project, and I think at that time it was only in the tender process, back in late 2012, but I hadn't have control of the property at that stage.

10 So, he did give you his opinion on the economics and the value of the property?---Yeah, he advised that the area is a pretty good area and it's, it's a strong area as far as the residential marketing is concerned, as far as residential units.

MR BUCHANAN: Why did you tell the Commissioner this morning that you did not seek Mr Khouri's opinion?---My understanding, you were asking about planning matters with Mr Khouri.

I didn't say that, did I?---Well, I understood it to be the case.

20 I want to suggest that you gave false evidence to the Commission this morning on the subject of whether you sought Mr Khouri's opinion when the Harrison's property was bought in that area.---I don't give false evidence.

Thinking now about the property at 570-580 Canterbury Road, did Mr Khouri - - -?---Sorry, 570?

570-580 Canterbury Road. Did you, did Mr Khouri do any work on that project?---Not necessarily, no.

30 When you say, "Not necessarily," what do you mean?---Well, again, it would have been more on the asset base and its viability and whether, you know, sort of, one of the trusts that Mr Khouri was, is, was basically in relation to investments and possible sources for money and the rest of it.

40 So, are you saying that, yes, Mr Khouri did do work on the 570-580 Canterbury Road project in relation to asset base and viability and sources of finance? Is that a true answer?---He may have, and as I said, it's, Mr Khouri's consultancy was in general to all of the portfolio, not just one or two assets. It may have come up in discussions from time to time but that would have been it.

And are you saying that you have no recollection of any work that he did on that property specifically?---The work he would have done would have been advice.

That's not my question. I'm asking you about your recollection. I understand you're saying what he say have done or would have done, I'm asking about your recollection about what he did, if you have a recollection,

on that particular property?---Look, based on recollection, it would have been very minimal if any.

Can I ask about the property at 998 Punchbowl Road?---Yes.

Did Mr Khouri do any work on that project?---No, he didn't.

10 Why is it that he did no work on that project but that he at least may have on the other projects?---Because I've owned that project for about, I would say 15 years or so. The property is a current running service station site, so he would have had no reason to have any input in that. So there was no purchase and no sale on that property.

And you never understood that Mr Khouri was providing you with information about how your projects were being viewed politically at Canterbury Council, whether by staff or by councillors?---No.

20 And you never understood that Mr Khouri was doing any work for you politically in terms of liaising with staff or councillors – by staff I mean general manager as well?---No.

Did Mr Khouri receive any remuneration specific to those three properties or any of them?---No, it was just a general retainer.

Thank you. Now, in 2013-16 you knew Michael Hawatt?---I would say more like 2014 onward.

30 What was the occasion on which you first had dealings with him, sir?  
---I think it would have been about mid or later on 2014, I contact him via his mobile phone and asked whether I can meet him.

And so it was Mr Hawatt who first contacted you, was it?---No, I contacted him.

Oh, you contacted him.---That's correct.

And was there a particular occasion or reason for that contact?---Yeah, there was a reason for that contact.

40 And what was that?---Well, at that stage in 2014 we, I was interested in seeing whether we can actually separate our planning proposal from the comprehensive draft LEP and pursue it on a standalone basis.

For any particular project?---It was 548 at the time.

And was this during the Residential Development Strategy process?  
---That's correct, yes.

Did you have any discussions with Mr Hawatt with a view to loosening development controls that applied to either 998 Punchbowl Road or 548-568 Canterbury Road during the Residential Development Strategy process?  
---No.

Can you think of the time when you first met Mr Hawatt face-to-face. When was that?---Look, would have been I would say in the third quarter of 2014.

10 Excuse me a moment. Commissioner, I apply for a variation of the 112 order made in respect of this witness on 30 November, 2016 in respect of evidence recorded in the transcript commencing at page 442 and going over to 443, and on page 442 commencing at line 29 and ending line 19, sorry, line 18 on page 443.

THE COMMISSIONER: Under section 112 of the Independent Commission Against Corruption Act I vary the non-publication order made on 30 November, 2016 to exclude the evidence given by Mr Demian recorded at transcript page 442 commencing at line 29 and finishing at page  
20 443 at line 18.

**VARIATION OF SUPPRESSION ORDER: UNDER SECTION 112 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT I VARY THE NON-PUBLICATION ORDER MADE ON 30 NOVEMBER, 2016 TO EXCLUDE THE EVIDENCE GIVEN BY MR DEMIAN RECORDED AT TRANSCRIPT PAGE 442 COMMENCING AT LINE 29 AND FINISHING AT PAGE 443 AT LINE 18.**

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MR BUCHANAN: Mr Demian, I will read from the transcript and ask you a question about it after I have finished reading it to you. Question, "Okay. Did you make any submissions on relation to your property at a council to, 548 Canterbury to council during the negotiation period?" Answer, "I think we, we, we've made, as I said early submissions in 2013 from recollection." Question, "Were you seeking an increase in the height zoning for that property?" Answer, "Yes, we were." Question, "And why were you seeking that?" Answer, "Well, considering that the property is a sizeable  
40 one, we usually do a master plan. We call them for projects of that nature and we were seeking a ten-storey height with certain setbacks and better outcomes and that was our initial discussions with the council in 2013." Question, "And who did you have those discussions with at council?" Answer, "Look, the majority of the time would be the director of planning and usually an officer or two from council offices, our architects and planners." Question, "And you said you also contacted councillors about an informal planning proposal, is that the same informal planning proposal?" Answer, "One of the things that we do is when we, before we submit a

planning proposal, we call it informal discussions. We try and, try and speak to councillors if possible, or if they're interested, and we put them what we, what our intentions are and try and gauge whether they're prepared to enter into something of that nature or otherwise." Question, "And who did you speak to in 2013?" Answer, "Look, I think we've put a, we've put a, an expression through the director of planning to see whether they'd invite interested councillors or ward councillors for an informal presentation by ourselves." Question, "And did you have that presentation?" Answer, "The first one was declined." Question, "Okay. Was there another one accepted?" Answer, "Look, there was multiple meetings over, over the years." Question, "Okay. Well you said you first met Mr Hawatt in relation to 548 in 2013." Answer, "That's correct." Was that evidence correct?---Absolutely. Within the exception, look, I can't recollect, recall the date I met Mr Hawatt. I believe it wasn't in 2013, it would have been in 2014 but our consultation with council and first submission, the submission was made in June of 2013, during the exhibition period and within the exhibition period, would have had multiple meetings with the director of planning and other council officers as well as our consultants and, yes, our submission was based on what we believe the merit would have been for a, a key site like that.

The point of my question, though, is the evidence you've given this morning about first meeting Councillor Hawatt in 2014, it's not correct, is it? In fact, it was 2013?---No. It wasn't 2013. Look, I can't recall the precise date but I do believe, strongly believe that that would have been in 2014 sometimes.

In the period of 2013-16, thinking the whole of that period, what was the nature of your relationship with Mr Hawatt?---Oh, it was, I did call him from time to time when we had delays in the application processing. I have raised my concerns with him on a number of occasions. The majority of times he had a different councillor with him or Mr, Councillor Azzi with him as well and the discussion was pretty much around the, the time delays and the processing of our applications.

You've partially answered this question but I will ask it separately if I may. What was the extent of your contact with Councillor Hawatt in that period? ---It wasn't regular event. I think a lot of the contacts or attempted contacts would have been between mid-'14 and early to mid '15 in particular.

Early to mid-'15?---Well, the, the, that was the period that we, we would have made a number of you know, contacts with the councillors.

No contact or very little contact from late 2015 into 2016?---Oh, there would have been, there would have been a contacts but not as many as that period of time based on my recollection.

Did you have a social relationship with Mr Hawatt in the period 2013-2016?---No.

Now, can I just go through the three properties - - -?---Sure.

- - - that the Commission is inquiring about - - -?---Yes.

- - - today.---Yes.

548-568 Canterbury Road.---Yes.

10 The Harrison's development project.---Yes.

Did you have contact with Councillor Hawatt about that?---I would say, as I said earlier, around the mid-'14 I would have had probably several contacts with them in relation to that property.

The property 570-580 Canterbury Road, did you have contact with Councillor Hawatt about that?---I would say that may have been around the mid-2015. You said 570, didn't you?

20 Yes, I did.---Yeah, that would have been around mid-2015 I would say.

That you had contact with Councillor Hawatt?---Well, inquiries sort of basically, yes, yes, that's correct.

In relation to the 998 Punchbowl Road project, did you have contact with Councillor Hawatt?---Yeah, that would have been again '14-15 period.

Did you have any business association with Councillor Hawatt?---No.

30 At any time – you know the council amalgamated – sorry, I'll start that question again. You know the Canterbury Council amalgamated with Bankstown Council in May of 2016?---12 May, 2016.

If I give you the date 12 May - - -?---I just said that.

- - - and ask you to assume that?---Yes.

40 At any time before council, Canterbury Council was amalgamated with Bankstown Council, did you have an understanding that Michael Hawatt was interested or might be interested in helping you sell any of your developments or any part of your developments?---Oh, look, occasionally he would say he's got this Chinese investor that wants to invest in the area and that's pretty much as far as it went at that time.

When did he start saying that to you?---It would have been around early 2016 through the period of up to mid-2016 approximately or even a bit later.

And how much contact was there between you and Councillor Hawatt on that subject?---Look, there weren't very many contacts. I mean there was, I think he may have tried to contact me a number of times and SMS me a number of times which resulted in some meetings that took place.

And was he present at any of those meetings?---He was present in a couple of them, yes.

10 And were those meetings where the subject of the sale or potential sale of any of your properties was being canvassed?---One of those meeting was in relation to 548-568.

Yes, yes.---And another meeting that would have been more of a generalised-type discussion on property investment possibilities.

And just thinking as best you can, when was the meeting about the potential sale of 548 or any part of it?---I think it would have been somewhere around the late May 2016.

20 And when was the meeting which Councillor Hawatt was present at where there was more generalised discussion about the sale of properties that you had an interest in?---Oh, look, would have been around that period of time or a bit later, maybe June 2016.

Thank you. Now, thinking of the original question I asked, using 12 May, the amalgamation date as the dividing line, what contacts were there between you and Councillor Hawatt about the potential sale of any property you had an interest in before that date?---Look, nothing, nothing, nothing that really, that I can recall.

30 You seem in the answer you've given to allow for the possibility that there might have been a contact or more than a contact.---No, no, absolutely not. I mean, the property at 548 was exclusively marketed by CBRE between February, about the 12<sup>th</sup> or thereabouts in February, up until about mid-May 2016, and I think I would have provided notification around mid-May 2016 that from there on it will become on a non-exclusive basis. So that's probably the good indicator.

40 A good indicator of what?---Exclusivity between 12 February, 2016 up until about mid-May 2016 by CBRE.

And if you could just step me through, however, how that affects the question of the extent of or whether there was in fact any contact with Councillor Hawatt about potentially selling one of your properties before 12 May.---Look, there may, there may have been an inquiry at one stage that there may be an interested party, and I suggested that whoever that party is should contact CBRE, yeah, to sort of discuss whatever with them.

And this is an inquiry from Councillor Hawatt?---I think, look, this is a vague memory, but based on recollection it was at one time said that there was a Chinese interested party in the project when he became aware that the property is on the market. And I suggested that whoever that party is be referred to CBRE, you know, for advice and, and, and the rest of it.

And so are you saying that contact was during the period of exclusivity?  
---From recollection, it may have been, yes.

10 Was there any contact before the commencement of the period of exclusivity with CBRE?---No. No.

Can I turn now to Councillor Azzi, Pierre Azzi?---Yes.

In 2013-16 you knew Mr Azzi.---I thought, from memory again, based on my recollection, it would have been late '14, early '15 or even a bit later than early '15 I would have met Councillor Azzi for the first time.

20 And what were the circumstances in which you met him, sir?---I think he came along with Councillor Hawatt to a meeting I requested.

At council?---I think we met at Belmore. The very, the very first time ever, from, from recollection, would have been at Belmore.

Are you talking about a site inspection or - - -?---No, no. I wanted to catch up with them. I think he was working on (not transcribable) in the area I've learnt at that time, and we met at a coffee shop in Belmore.

30 And what was the name of the coffee shop?---Oh, look, it's on the corner, middle of the shopping strip. I can't recollect any name of it.

Salvatores?---No. No, definitely not. That, that would have been in Earlwood. We're talking Belmore here.

And just thinking of that, that was a meeting, was it, at a coffee shop between you and those two councillors. Was anyone else present?---No.

40 And why did that meeting occur?---Well, I've had some town planning issues at the council. I believe at that time that the application had been on frozen for some six or even longer months.

Which application, sir?---Both the, in particular the 548 but also the, the second one, 570.

And who organised the venue for the meeting? Sorry, I'll withdraw that. Who proposed that the venue be a coffee shop?---I think it may have been Councillor Hawatt.

And how was it that Councillor Azzi was there as well?---Well, I think was, would have been at the invitation of, possibly would have been the invitation of Councillor Hawatt.

You didn't ask Councillor Hawatt to bring Councillor Azzi with him?---No, I did not.

And thinking of that occasion, was Mr Khouri involved at all in the fact that it happened?---No.

10

Why did you approach Councillor Hawatt with a view to arranging that meeting?---Well, why wouldn't I? I mean, I had town planning - - -

Well, there were a number of other councillors on Canterbury Council. Why not approach Councillor Vasiliades, for example?---I think that may have been generated from the meeting on the, council meeting on 24 October, 2013. Councillor Hawatt seemed to have been leading the debate on the increase in height between 18 and 25 metres, and that probably was the reason that I contacted him.

20

Can I just check that I – I might have misheard the year that you said that meeting at council occurred.---So there was, there was a, a, a council meeting, from recollection, on 24 October, 2013.

'13.---Where the council resolved to increase the height from 18 to 25 metres. That would have been probably the only meeting I've ever gone to a council meeting at Canterbury, and Councillor Hawatt was leading the debate on the increased height and the, and the business of the LGA of, of the Canterbury Council.

30

And that increase in height, as you recall it, was that applicable to one or both of 548 or 998?---Well, at that time, in October 2013, that was applicable on that day, that 24<sup>th</sup> would have been applicable to 548-568.

Thank you. So, can I just explore a little bit the relationship with Councillor Hawatt in this regard?---Sure.

You saw him perform at a particular council meeting?---That's correct.

40

Had you had contact with him before that meeting?---No.

Were you surprised that Councillor Azzi turned up to the coffee shop meeting?---No, I wasn't surprised.

Why not?---Why would I be surprised? I mean, two councillors, more for the better. So I, as I said, look, my, it was planning issues and I want to put my point forward and my concerns forward.

From that meeting on 24 October, 2013, had you understood that Councillor Azzi had a role in the votes on council in relation to planning issues?

---From, from recollection, it was all councillors bar one that voted to increase the height from 18. I think it was only Councillor Eisler from recollection that voted against the motion and the rest from Bankstown were, were actually voted in favour of the increase in height.

10 At the time of this meeting at the coffee shop in Belmore, did you understand that Councillor Azzi had any particular relationship with, or association with Councillor Hawatt?---Well, as councillors, of course, yes.

Other than that?---I don't know.

You didn't understand that they operated together politically?---I don't understand the question.

Well, they are from two different parties.---That's correct, Labor and Liberal.

20 And you understood that at the time?---That's correct.

They seemed to work together, didn't they, on planning issues on council from your experience generally?---They both appeared to be pro-development but that's as far as I understood it to be.

30 And not confining yourself to the period of this coffee shop meeting in 2013, but just for the 2013-16 period, you understood, didn't you, that before amalgamation, Councillor Azzi and Councillor Hawatt controlled the numbers on council?---I have no idea.

You never had any idea at all as to whether or not if they were in favour or something, then it was practically inevitable that the vote would be in favour of what they were in favour of?---Look, from the council minutes of the meeting that we downloaded from time to time, it appeared to be there was only about one or two councillors that voted against and all other councillors voted in favour of things.

40 But you also would have noted, wouldn't you, who moved and who seconded motions for resolutions at council in relation to planning issues, wouldn't you?---Well, only as far - - -

Yes or no, sir? Did you note, when you read those minutes, who was moving the motions for the resolutions or not?---I didn't pay attention.

You didn't notice a certain frequency with which the person moving the motion for a planning resolution in council was Councillor Hawatt or Councillor Azzi?---My answer was I did not pay attention.

Why wouldn't you be interested in knowing who seemed to be the driving force for planning resolutions made by Canterbury Council?---I've noted that it was the majority within the exception of two councillors.

That's not the question I asked you. See, if you pay attention to who moves and seconds resolutions, you can sometimes derive an understanding as to who the driving force is for planning resolutions on that council, can't you? ---And the answer was and is, I did not pay attention.

10 Well, that doesn't make any sense, sir, because you had an interest in those planning resolution when they applied to your properties, didn't you?---Of, of course.

Yes. And so it doesn't make much sense that you wouldn't pay attention to who on the record seemed to be the driving force for those resolutions. ---The answer remains the same. I did not pay attention nor was it important to me at that time.

20 And you tell us that you didn't have any understanding that Councillor Hawatt or Azzi controlled the numbers on council, particularly in relation to planning issues?---The answer was that both of those people appeared to be pro-development. That was my answer.

I'm asking you about something else. When I say "control the numbers" I mean achieve a resolution the way they want it to be.---You're asking the wrong person.

30 But, sir, you had a distinct interest in the decisions that were made by the consent authority in the Canterbury local government area, didn't you? ---Absolutely. Yes, yes, I did.

You had a serious financial interest, didn't you?---Yes, I did.

And you paid no attention, is that what you're telling the Commission, to the politics of the decision-making of planning decisions by that consent authority? Is that what you tell us?---I understood the majority of the councillors were in support of the increased height and the developments along the Canterbury Road Residential Strategy.

40 And was a reason that – I withdraw that. You had meetings after the meeting in Belmore with Councillors Azzi and Hawatt in that coffee shop. You had numerous meetings subsequently with those two gentlemen, didn't you?---That's correct.

How many meetings did you have subsequently with councillors other than Councillor Azzi and Hawatt?---None.

It would tend to suggest that you thought it was a more useful use of your time, a more fruitful use of your time, having regard to your interests, to pay attention to those two councillors, wouldn't it?---I've noted that they were pro-development and that they, I won't deny it, in particular Councillor Hawatt was pretty active on the night in leading the debate, and their resolution got up so I've made a decision to contact Councillor Hawatt.

But you maintained contact with only those two councillors. That's your evidence, isn't it?---That's correct. That's correct.

10

For the next few years, next couple of years.---That's correct. That's correct, yes.

You've told us that you noted that, with the exception of two councillors, all the councillors seemed to be voting in favour of these resolutions.---No, I said most councillors with the exception of one or two that seemed to go against resolutions.

20

So what you haven't provided us with is an explanation as to why, after your first meeting with these two gentlemen, you pursued your relationship with them rather than other councillors who were voting in favour of these resolutions. That's what we need to understand, if you don't mind.---There was no reason. As I said, the only reason was that those two councillors led the debate in, in as far as the increase in height, and I recall, remember from the night there would have been one, possibly two, but I do recollect only one that voted against that resolution. So the rest of the councillors on that night seemed to be in accord with the other two councillors.

30

How many face-to-face meetings did you have after that first meeting with Councillor Hawatt?---Oh, look, a few. I don't know. Half a dozen or thereabouts.

No more than six to eight, is that what you tell us?---Possibly, yeah.

No more than six to eight?---Look, there could have been – between 2013 and '16 there would have been, I would say, around that sort of number. In mid-'16 there would have been a few other meetings outside the council business.

40

And how many face-to-face meetings did you have with Councillor Azzi? ---Again, would have been probably, you know, sort of several.

How many is that, sir?---Oh, look, I can't remember how many dates or times I've met with them.

Is it possible that you had so many meetings with those two gentlemen that you can't remember how many there were?---I wouldn't say so many. I would say a few.

You had frequent meetings with them, didn't you?---I wouldn't say frequent but I would have had periodical meetings with them as I needed, yes.

And the occasion of needing them was to progress your development applications, is that right?---That's correct.

And how many times did you meet them on their own? When they were together, first of all.---Oh, look, there would have been several times.

10

How many times did you meet Councillor Hawatt alone?---Few. Very few.

How many times did you meet Councillor Azzi alone?---Again, very few, if any.

Was Bechara Khouri present on any occasion when you met Councillor Hawatt or Councillor Azzi?---Yeah, on a couple of occasions.

20

Did you have any discussion with Mr Khouri at any time about the wisdom of you maintaining a relationship or making contact with Councillors Azzi or Hawatt in order to progress your development applications?---No.

Did you get any understanding that there was a relationship between Mr Khouri and either of those two councillors?---I understood that they knew one another, yes.

Did you understand that there was any closer relationship between Mr Khouri and those councillors than that they simply knew each other?---No.

30

You were present on social occasions, weren't you, when particularly at Councillor Azzi's house when Mr Khouri and Councillor Azzi were there? ---I wouldn't say social. Councillor Azzi could only meet me after 6.00pm on my requested times from time to time and that was the reason I had to meet him at his place from occasionally, and it's always been, I don't know, every occasion I've been there, there have been several other people at that meeting or unrelated meetings.

I'll just fasten on that particular last answer if you don't mind.---Sure.

40

Was there any occasion when you had a meeting at Councillor Azzi's house but it wasn't a social occasion, that is to say there weren't any other people there to enjoy Councillor Azzi's hospitality?---Well, I didn't go there for the hospitality or the socialising, I went there for a business matter of mine which related to council matters and that was the purpose of my, my visit.

On every occasion that you were at Councillor Azzi's house, you weren't there for a social occasion, you were there to pursue your business interests. ---That's correct.

Particular business interests at that time.---Planning.

Is that right?---Planning, council business, yes.

With whom?---Well, again, when I contacted him it became more of a place to meet with him and Councillor Hawatt and put my concerns forward to them and that's, that's how it became.

10 THE COMMISSIONER: But when you attended there after 6.00pm - - -?  
---Yes.

- - - did you take anybody with you to participate in the discussion about your planning issues?---No, I went alone.

All right. But there were other people there who appeared to be attending - - -?---Other businesses, unrelated to my business.

20 Or maybe socially?---Or maybe socially, yes.

And did that include Mr Khouri?---On a couple of occasions, yes.

MR BUCHANAN: Did you drink alcohol at Councillor Azzi's house?  
---Probably a little, yes.

What was the longest period of time you spent at Councillor Azzi's house in terms of hours?---Oh, probably I'd say about an hour or so.

30 Never more than that?---Could have been. It depended on the situation.

There was no social occasion that ever occurred where you left quite late at night?---Not to my recollection, no. Would have been standard time.

Never a social occasion where Councillor Azzi was present, Jim Montague was present and you left quite late at night?---I would say there would have been a couple of occasions that Mr Montague had been there and he left before I did.

40 You I want to suggest had a good friendly social relationship with Councillor Azzi and with Mr Montague.---No.

But did you have a good friendly social relationship with Councillor Azzi?  
---No.

Did you have a good friendly social relationship with Jim Montague?---No.

Can I just ask you about a particular occasion?---Sure.

I've been asking you about social occasions - - -?---Understand.

- - - at Councillor Azzi's house, I want to ask you to think back to an occasion on Friday, 18 December, 2015.---Okay.

It was the Friday before Christmas.---Yes.

10 And I want to suggest to you that there was a social occasion at Councillor Azzi's house and that you were present on that occasion.---I don't recall, but I could have been.

Do you recall that you left at about midnight?---Look, again I can't recall.

And do you recall that at the time you left, Mr Montague and Mr Khouri were still there?---Again, look, it's, I can't recollect. I usually don't stay that late.

But it's the Friday before Christmas.---So what?

20 Can I ask you about the mayor, Brian Robson?---Yes.

Did you have any contact with him in 2013-16?---I've been to his fundraisers once or twice.

Had you ever called him?---I don't believe so. Maybe once.

30 Did you ever meet with him? As in pursuing your business interests type thing?---Look, only as far as the – I mean I have seen him at the fundraisers and I have seen him on the JRPP panel as well. He was a member of the JRPP, the Joint Regional Planning Panel.

Did you speak to him on his mobile telephone?---I don't believe I have, no.

But you spoke to Pierre Azzi and Michael Hawatt on their mobile telephones?---That's correct.

40 Can I ask you, was there a reason why you spoke to those two gentlemen, Messrs Azzi and Hawatt, but not the mayor?---Well, they positively led the council debating to increase the height to 25 metres. That was my interest, that's as far as it went. So, I contacted them for that reason.

Did Councillor Robson vote against that?---No. From recollection, on 24 October, he voted in favour of the increase in height.

So, did he not seem to you to be an attractive candidate to lobby to pursue your property development interests?---Look, I didn't look at it that way. He didn't debate that much. I think he had a couple of running in with one

of the councillors against the motion that was heated up, but apart from that he didn't debate the motion at all from, from recollection.

And so, from the evidence you've given us, you selected out the – at least so far as Councillor Hawatt was concerned – the people who drove the debate - - -?---Well, it really started - - -

10 - - - in your favour?---I've started contacting Councillor Hawatt and at one stage he brought along with him Councillor Azzi and that's when my contact with Councillor Azzi started.

Why did you continue to have contact with Councillor Azzi after that first meeting?---Well, again for planning reasons. There was a lot of concerns and issues regarding the planning projects going nowhere. Council staff were not conducting certain things in a certain manner. So there was major concerns regarding that.

20 But again he was one of a number of people who voted in the majority on that night in favour of a resolution which favoured your business interests. Why continue contact with Councillor Azzi after you'd first met him and not instead pursue some other councillor?---I'll repeat again, he led the debate, he was positive, he increased, he debated the increase in height and reasons for it. I've contacted him, I've had planning issues from time to time and I've continued contacting him for those planning issues.

30 I see. So, I'm sorry, I might have misunderstood your earlier evidence. You're saying that on that particular night, I think 24 October, 2013, Councillor Azzi also took a leading role in the debate, did he?---I can't, I, I, I can't remember everyone debating but I know that Councillor Hawatt was definitely the leading debater on that night and I, I believe, the majority of councillors had something, one thing or the other to say about the increased height and the importance of growth in the area and from memory again, I think all but one, possibly two, but one in particular that voted against the motion.

40 Yes, but I wonder if you can just help us understand, apart from the fact that Councillor Hawatt brought Councillor Azzi with him to that first meeting that you had in the coffee shop in Belmore, why was it in your interests to pursue Councillor Azzi? You've explained Councillor Hawatt but there's been no explanation from you as to why you continued to have contact with Councillor Azzi in pursuing your business interests?---Well, from that meeting with both the councillors, it became both the councillors going forward from that date.

Yes, but why, why both? Why not continue with just Councillor Hawatt? ---Okay, I'll repeat again. Whether I contacted Councillor Hawatt or Councillor Azzi, they both would have attended the meeting that was

requested. So from that meeting time onward, it became the two councillors you know, sort of meeting to discuss any points of concern I had.

You see, from what you've told us it would seem from your conduct that you thought it was in your best interests to continue communicating with Councillor Azzi as well as Councillor Hawatt, and what I'm just trying to explore is why did you think that it was in your best interests to continue contact with Councillor Azzi?---Well, I'll repeat again, I had planning concerns and issues - - -

10

No, no, no. I'm sorry. We're talking about Councillor Azzi as against all the other councillors. Just is it because Councillor Hawatt said, "Look, you can rely on this man I've brought along here," and you thought, "Okay, that's good enough for me. I'll take the two of you"?---Those two councillors were interested in planning concerns at the council and I decided to continue meeting with them regarding any concerns I had.

It's not because you had any clue that Councillor Hawatt and Councillor Azzi combined drove planning decisions on council?---No.

20

I have to say to you, sir, that is evidence that is very difficult to accept. ---That's your issue.

Mr Montague. In 2013-16 you knew him.---I would have met him several times in – or when I say several, a few times in 2013, from what I recall, pre-submissions or pre, pre - - -

Pre-DAs?---Pre-DAs or pre-submissions because it was submission at that time.

30

For a planning proposal?---For a planning proposal.

Yes.---And we would forward our planning thoughts and merit for the site. For example, height versus better setbacks and better amenity. The council officers were of the opinion that they were not going to support anything above a certain height, which I understood at the time that the council officers were recommending about 21 metres in height versus 18 or versus 25. We suggested that there would be better outcomes with increased site separation from Canterbury Road and increased height. They didn't agree to it. We've amended our submission in line with those discussions, which would have been, from recollection, 24.6 metres in height, which would allow eight-storey buildings with the desired setbacks as per those meetings. That submission was made in June of 2013, I believe.

40

My question was in 2013-16 you knew Jim Montague. Is that correct?---In, yes.

When did you first know Jim Montague?---In 2013.

Any earlier than that?---No.

And what was the occasion of first meeting Mr Montague?---I think, I believe in the boardroom when we actually presented to Mr Montague and the planning director our sort of arguments or our merit-based investigations for a better outcome of that site.

10 Did you subsequently have dealings with Mr Montague, meetings, phone calls, conversations?---Well, several, he attended several meetings that were organised by the consultants and might have attended another meeting with councillors.

So that sounds like, perhaps, five, at the most six.---There would have been a few in 2013, would have been a couple in '14 and maybe a couple in '15, I would say.

20 Any in 2016?---I don't recall. There would have been occasions but I can't recall the purpose of those occasions.

And you definitely did not know Mr Montague before that presentation, I think? Is that a fair description for it in 2013 at council?---Yeah, that would have been my first meeting with Mr Montague.

And from that time until 2016, how would you describe the nature of your relationship with Mr Montague?---Professional.

Did it ever change into one that was more than professional?---No, never.

30 How would you respond to the suggestion that you were a business acquaintance of Mr Montague's?---I don't respond to suggestions, but no, the answer is no, there was no business relations with Mr Montague.

Were you a friend of his?---I wasn't a friend of Mr Montague.

40 Did you meet Mr Montague on an occasion other than a meeting of the whole of council, did you ever meet Mr Montague on an occasion where Mr Azzi or Mr Hawatt were also present?---Yeah, there was a meeting requested via the councillors, I think that was around mid-2015, where I've had some serious issues regarding my, my projects.

Which ones, sir?---I think at that time mid-'15 would have been both or actually all three of them that are in question.

Yes.---And I've called up on a meeting where the councillors organised a meeting with Mr Montague and Mr Stavis and that was - - -

The councillors organised it, did they?---I've requested that the, well, I've met with the councillors and they said they will, they will organise a meeting, which they did, yes.

Right. Mr Khouri wasn't involved in organising the meeting?---No.

Mr Khouri wasn't present at the meeting?---No.

10 But you had previously met with those two councillors together, do I take your evidence correctly?---That's, that's, yes.

And they, and you asked them to organise a meeting with Mr Montague and Mr Stavis?---Well, what I did is, I've raised concerns on issues in particular. They said look, they can't, they don't understand nor can they help me with those issues, but will organise a meeting to investigate, is a proper word of using I suppose.

20 And as best as you can recall, they both said or indicated they would both organise the meeting. Is that right, not one or the other?---No, I don't, I don't remember (not transcribable) and I think one of them would have contacted the, or did contact the general manager to arrange a meeting.

And at that meeting that occurred - - -?---Yes.

- - - there was present Councillors Hawatt, Councillor Azzi, Mr Montague, Mr Stavis and yourself?---That's correct.

Any planner?---No, that's it.

30 No planner from council, no planner from your side?---That's it.

Was any other councillor present?---No, that's it.

When you had contact with him, what was the purpose of your contact with Mr Montague?---Well, planning and progression of my projects and concerns regarding delays in those projects.

40 And what was it that you thought you could achieve by approaching him with those concerns?---Well, as I said earlier, one of the points of interest I had is that whether it's possible for us to remove our site from the draft comprehensive or Canterbury Road Residential Strategy and continue with it on a standalone basis with the Department of Planning to undertake what the Department of Planning had required to be undertaken, which I understood at that time the council officers were not pursuing.

But, sir, that's one particular issue that you had. You've indicated to us however that there was more than one meeting that you had with Mr Montague, there were a couple of meetings in 2014, a couple of meetings in

2015, there would have been meetings in 2016, there were a few meetings back in 2013. What was it, taking all of those occasions together, that you thought you could achieve by talking to Mr Montague?---In 2013 was more a pre-submissions meetings.

But sir, sir - - -?---You've asked me, I've answered.

- - - what could you achieve by talking to Mr Montague about it?---He's the general manager of the council, isn't he?

10

Yes. What did that mean to you?---Well, it means if I have an issue he'd be the highest authority I can talk to, to resolve that issue.

And what did you expect him to do or think that he had the power to do about your issue?---Investigate and advise.

20

Investigate and advise?---Well, investigate, resolve what the issue is or try and tell us what the issue is. For example, RMS was an issue that we understand RMS had resolved but the council staff were not dealing with it, and that was pretty major on our part. We understand that the Department of Planning had issued a Gateway Determination in May of 2014 - - -

30

Sir, can I, I do apologise for interrupting you, but what you're doing is giving us a recitation of things that you had concerns about or understood, but actually what I'm asking you is a different question. I'm asking you, generally speaking, considering all the times you had contact with Mr Montague, 2013 through to 2016, what was it about the fact that he was the general manager that meant that there was a prospect or the potential for your interests to be advanced?---Well, I was trying to explain to you when you stopped me. Obviously we had issues with planning and we needed to resolve those issues for anything to go forward. And I can explain if you want me to.

I'm not interested in a particular issue. I'm just asking you to sort of, if you can, roll them all up into one.---Well, you can't.

You're expecting to achieve for you things in different ways on each occasion?---No, you don't expect that.

40

Or did you expect him to do the same sort of thing on each occasion?---The, if we had planning issues, obviously you go to the authorities that can look into them to determine what those issues are, if any.

How's that going to assist your interests if Mr Montague investigates something and finds out about it and then just sits there and turns to the next file he's going to open? How does that assist you?---Well, I don't tell him, I don't tell him how he does his job. I just ask him and tell him what issues that we have, and it's up to him to undertake what he does.

What did you expect him or hope that he would do, sir?---Well - - -

Apart from investigate.---As I was trying to say to you earlier, we had planning issues which we believed at that time council officers were not performing on, and we wanted to highlight those issues to be investigated and to resolve.

10 What did you expect Mr Montague to do? Having discovered, if he did, that your complaints were well-founded, what did you expect Mr Montague to do?---Bring the, bring the, bring the submissions forward if possible.

Are you talking about your planning proposal submissions?---Yes.

And when you say bring them forward, do you mean progress them?  
---That's correct.

20 So you expected Mr Montague to intervene insofar as there were planning proposal issues? To intervene, is that right?---No, I didn't expect him to intervene.

What did you expect him to do?---I expected him to do his job and look into the problems and resolve them.

Resolve them?---That's correct.

30 So if he looked into it and found out that there was indeed a problem such as you had described to him, you expected him to then solve the problem, is that right?---I don't understand what you mean by solve the problem, but obviously - - -

Well, you're the one who used that expression, not me, sir.---And you're, you're repeating it.

What did you mean a moment ago when you said you expected him to solve the problem?---I will give you an example.

40 No, sir. What do you mean when you said a moment ago that you expected the man to look into the problems and solve them?---I expected him to do his job.

MR ANDRONOS: Objection. Objection. Commissioner, this is not my witness's – that wasn't his evidence.

MALE SPEAKER: No, it wasn't (not transcribable)

MR ANDRONOS: The word was "resolve". I think everyone else in the room heard it.

MR BUCHANAN: "Resolve".

MS RONALDS: I was about to object. It's quite different.

MR BUCHANAN: I'll take the point.

10 MS RONALDS: And I also, may I object, it's not fair on the witness. The witness is plainly trying to demonstrate through an example what his expectations were and he's being unfairly denied that opportunity, and then he just completely misrepresented what he actually said. This whole section of cross-examination is completely unfair to the witness.

THE COMMISSIONER: Well - - -

MR BUCHANAN: I'm happy to reframe the question. Instead of "solve" we'll use the word "resolve".

20 MS RONALDS: Well, that's the word he used.

MR BUCHANAN: Thank you. You said "resolve", did you?---That's correct.

Thank you. When you said "resolve the problem", that's what you expected Mr Montague to do, how did you expect him to resolve the problem? ---Well, to, to do his job and make sure or hopefully get the assessment of those applications to continue in due process and get them through to, to a stage where a decision can be made on them.

30 How did you expect him to be doing that?---Obviously by communicating with his employees and resolving or trying to working through the problem.

So you did expect him to intervene?---I wouldn't use the word "intervene". He is the CEO of the council and I've expected him do his job and nothing more.

40 What was it, though, about his job that you expected would assist you in achieving a resolution of the problem?---I expected him to do his job as a general manager and look into the issues that we raised.

Sir, you're not answering my question.---Your questions can't be answered except for my answer. I'll answer them the best I can.

When you said that you expected him to look into your problems and resolve them, you mean by that, I take it, resolve them favourably to your business interests, is that correct?---No, don't, don't take anything. And the answer is not correct, no.

Why isn't that correct?---Because, one, I don't make assumptions when I tell you what it is, and the answer was and it still is and it will continue to be I expected him to do his job as a general manager if there was an issue that we raised, a serious of issue of concern that we had.

You wouldn't make the effort and spend the time of communication with Mr Montague about an issue that you had unless what you wanted was a resolution that was in your favour, would you?

10 MS RONALDS: I object. There's at least five assumptions in there, none of which have previously been put which would properly underpin the questions. An entirely unfair question.

MR BUCHANAN: I press the question, Commissioner.

MS RONALDS: I press the objection.

THE COMMISSIONER: No, I'll allow the question.

20 THE WITNESS: Ask it again.

MR BUCHANAN: Mr Demian, you spent time and effort – I'll take my friend's point, you spent time and effort, did you, with Mr Montague, yes or no?---That's my job.

THE COMMISSIONER: So, that means you did?

MR BUCHANAN: Did you spend time and effort with Mr Montague?---In those meetings, I have.

30 Was it to advance your business interests?---It's to put forward my case.

Was it to advance your business interests?---It's to put forward my case.

If you thought that putting forward your case would be futile, you wouldn't bother spending time and effort, would you?---That doesn't make sense. I said we had issues, planning issues, I had to put my case forward.

40 See, for some reason you seem to be reluctant, Mr Demian, to acknowledge the obvious, and that is you don't waste time doing something that you think it going to be futile, you do something because you think it was going to help your business interests, isn't that correct?---I do my job.

Your job is to advance your business interests, isn't it?---That's correct.

Yes. And what you wanted Mr Montague to do was to use what influence he had to intervene in the problems that you identified and had them resolved to your satisfaction. That's fair, isn't it?---That's rubbish.

Why is that rubbish?---Because I said over and again and I will say it one more time for you - - -

No, no, no. Just answer my question, why is that rubbish, Mr Demian, please?---Because the question is nonsensical.

10 Why is it nonsensical that a businessman would intervene with a third party to try to get problems resolved in their favour? What's nonsensical about that?---A businessman does not ask people to do inappropriate things like you are suggesting, sir.

Oh.---Oh, very good.

Why did you think that my questions were implying that you were asking Mr Montague to do inappropriate things?---Because you suggested that I have asked them to intervene in favour.

20 Yes. If he's talking to his - - -?---And what I said - - -

If he's talking to his staff members and saying, "Well, I don't want you to do it this way, I want you to do it that way," that's intervening, isn't it?

THE COMMISSIONER: Do you agree with that or not?---Yes.

30 MR BUCHANAN: And you thought, did you, that my questions were implying that any intervention on Mr Montague's part with his staff would be improper, is that right?---You used the word, "In favour," and I said, "No." That wasn't what Mr Montague would do or nor would I ask him for that.

Well, what I want to ask you is this, what is wrong, what is improper about asking a general manager to intervene with their staff to resolve a problem in your favour? What's wrong with that?---Well, he cannot ask them to resolve in my favour. He can ask them to deal with the issue and assess it and try and find a determination one way or the other.

40 He had the power, as you understood it, to take an issue to a staff member, such as the director of city planning, and ensure that there is an outcome which favours your interests.---You're asking the wrong person.

But you understood that he had that power, didn't you?---No, I did not.

Why did you not understand that he had that power to intervene with his staff to procure an outcome that was favourable to your interests?---Because I did not have that expectation.

Sir, that was the very reason you were spending time and effort with Mr Montague, wasn't it?---Well, let me use the word nonsensical.

What's nonsensical?---Your questions. I do my job, I go to as many meetings as necessary to do my job however long that takes, to pursue my applications for the entities. That's my job.

10 Can I ask you this, was Mr Montague the only general manager of a local government authority that you met with about your business interests?--- That's across other LGAs?

Yes.---Yes, I've met with other general managers from time to time.

How frequently or to what extent, sir?---Well, it's based on the necessity. If there was issues with our planning proposal, we'd request a meeting and we'd go and put our case forward and we'd take it from there as it comes.

20 And was the reason why you intervened – sorry, was the reason why you approached general managers in other local government areas the same as the reason that you approached Mr Montague in the Canterbury local government area when it came to taking to him issues that you had? ---That's correct.

Was it your understanding that other developers did the same thing? That they would take their issues to the general managers of the local government area in which their project was located?---I understand that some may have, yes.

30 And so the relationship between a council general manager and developers or potential developers in their local government area can be quite important for the developer? You'd agree with that?---Yes.

Would it be fair to say that you did your best to maintain a good relationship with Mr Montague?---Yes.

40 And would it be fair to say that you did that in order to protect or advance your business interests?---I maintained a professional relationship with Mr Montague and requested meetings from time, you know, from time to another.

But I'm asking you about the reason why you, if I can – I'll withdraw that. You endeavoured to maintain good relations with him because it advanced your business interests, isn't that right?---No, the way you're putting the question is, is, is not correct.

Well, what's incorrect about it? You tell us.---I've, I've requested meetings from time to time when I had issues. It wasn't a personal relationship. It

was a professional one. And those meetings were arranged via his office, had serious points of concern.

Can I ask you – I'm going to take a step to one side.---Sure.

I'm still sort of thinking about the approaches to the general manager but also director of city planning and the like.---Sure.

10 Obviously there were these development controls in the LEP – I'm thinking of Canterbury now – in the LEP, in SEPP 65 and in the council control of the Development Control Plan.---DCP, yeah.

These controls meant that you couldn't get a building approved, a development approved, if it contravened those controls unless some exception was made, as a rule. Is that fair to say?---That's not fair to say.

What's wrong with that?---There's a planning process that you have to undertake to be able to determine such a decision.

20 Yes.---Would you like me to continue?

Yes, please.---Sure. So when we buy a development site, we usually try and assess on merit what could be achieved on that site. In that particular time there was a public exhibition for submissions to be made. We make our submission. If the council resolves to agree with it, it goes to the Department of Planning. The Department of Planning will, will determine what investigation is to be undertaken. More importantly, RMS. When we satisfied the requirements of those three departments, that becomes a time to either go forward with a planning proposal or to seek to use the clause 4.6  
30 variation to, to progress your applications.

The development applications?---The development applications or planning proposal, depending on which direction you're going to take.

So when you said you would assess on merit what you could achieve on a site, was that having regard to existing controls?---Having regard to existing controls and having regard to the Apartment Design Guide, which is a State Government SEPP 65.

40 That's another control.---That's another control.

Yes.---Which, and then following that, obviously, we, we, we look, consider the council development controls and how that we can actually apply some of those and it's around the character of the site, location of the site. All of that comes into it. We ask professionals to undertake investigations. So there's a host of things that we'd have to do before we determine the best direction for a particular site.

But I just want to understand, if I can, the role or the position of development controls when you made your assessment as to the merit of a proposed development on a particular site, you knew they were there and you might, taking everything into account, decide well, we think that control is too restrictive for what the site merits be done, and we will institute a process of seeking to have that control loosened in some way. Is that an approach you would make?---No, the approach would be, is, we try and put our plans forward at the beginning and try and gauge what the council is likely to accept.

10

Yes.---Once we establish that, then we go back and work on what we call the planning outcomes, which is basically taking into consideration the SEPP 65 ADG requirements and try and continue from that point forward. Like for example, in 548 council resolved to increase the height to 25 metres, so we took that 25 metres on board and worked on our urban designs, planning outcomes, we submitted a development application shortly after October 2013 for an eight-storey building, based on 4.6 variation within the application.

20

I'm sorry, sir, but we haven't actually got as much time as I'm sure you would like to tell us the story and we will be, I promise, coming to 548 - - - Sure.

- - - and the history of it.---Yep, yep.

30

But can I take you back to something you said at the beginning of that answer. You in the beginning of your answer did answer my question. You said that your practice would be to try to gauge what council was likely to accept by way of loosening of planning controls. Is that right?---No. I didn't say loosening the planning controls.

No, no, I appreciate that's my words.---That's your words.

But that's what you meant, wasn't it?---No, that's not what I meant, that's not what I said.

40

Well, when you said, when you said, "We were trying to gauge what council was likely to accept," what was it that you were trying to gauge what council would be likely to accept?---Well, are they going to accept 50 metres in height, 86 metres, 25, 20.

That's a loosening of planning controls.---No, that's not loosening of anything. That's a planning proposal submission that could be made to be investigated and possibly approved or refused in due course.

And the outcome would be one which loosened that particular planning control.---No, it doesn't loosen it. Jesus. What it does - - -

It allows you to build something bigger. Correct?---It allows you to put a planning proposal based on understanding - - -

Sir, sir, it allows you to build something bigger than the existing planning control allows you to build.---What does?

Isn't that fair to say?---Well, I don't even understand what you're asking.

10 If you put through a, if you get a planning proposal through council and it goes through the hoops with the department and then goes on public exhibition and then gets adopted and an amendment - - -?---Gets gazetted.

- - - is made to the LEP, you get a change made to the development control that allows you to build a bigger building. Correct?---That's correct, yes.

20 Yes. Now, when you say, "Try to gauge what council would be likely to accept," are you talking about you tried to gauge whether council would be likely to accept a particular planning proposal that you could make to lift the height for example, the maximum building height, or to increase the density of floor space ratio so that you could build a bigger building?---That's correct.

When you tried to gauge what council would be likely to accept, did you talk to councillors?---No. We start with our consultants talking to council staff and then from there we elevate it to senior management and try and work out what the council as whole is likely to accept.

30 And talking of Canterbury Council, who is that senior management?  
---Well, the meetings started initially with the planning director via our consultants and on a couple of occasions Mr Montague attended the meetings.

And so you would run these proposals past the director and the general manager to see whether the proposals would be likely to be accepted - - -?  
---Yeah, we do our presentation.

- - - so far as they were concerned?---We do our presentation.

40 Yes.---And they give us their feedback on what their thoughts and whether it's hopeless or otherwise and as I said, look, we started with a 10-storey building height, workshops with them, and they said, "Look, that's not going to happen," so we had two options - - -

No, no. I think we understand your answer, thank you very much.---Sure, okay.

When you said you were trying to gauge what council would be likely to accept, did you in that practice, we're talking about a general practice that

you had in the period '13-16 in the Canterbury area, also talk to councillors or any councillor?---In, I would say '14-16, yes.

In '14-16?---I would say yes.

All right. And was that Councillor Hawatt and Councillor Azzi?---That's correct.

10 And so, you would run the proposal past them before you would actually lodge it?---Well, no, no. The, the discussions with them, the proposal had already been lodged at council.

And I'll just make sure we are on the same wavelength, but you would run the idea behind the proposal past the director and perhaps the general manager as well before you would actually lodge it, is that right?---That's correct.

20 Thank you. So, was it your practice then, in conducting your property development business, to try to push the envelope as far as you could to allow for the largest possible building to be erected to maximise your lot yield?---I would not use the word, "Push the envelope," I would use the word, "Assess an envelope," and put in an application.

With a view to expanding the boundaries of the envelope?---Based on design principal outcomes, yes.

30 You would not consider – I'll withdraw that. I'm asking a question now about your business practice in 2014-16. You didn't consider adopting the approach of looking at a site, looking at the development controls and – obviously with professional advice – working out what it was that you could develop, what you could use that site to develop within those planning controls so that any application, the development would be compliant?---So, we do what we call an initial urban analysis of the site and how the site fits in the with the planning principals required. Some of those sites are infill sites we all them, such as the Harrison or 548.

40 THE COMMISSIONER: Sorry, what did you just describe it as?---Infill site. So, that would have been an old industrial within a residential catchment area, and that usually becomes what we call or refer to as a key site which is suitable for a master plan. A that time with that one, as I said, the council had already been, or was on exhibition for the Canterbury Road Corridor and we did our planning assessments and made a submission to council. So, that's our practice.

MR BUCHANAN: But what I'm asking I suppose is this, it seems from your evidence that it was not your practice to assess a site and work out what you could construct by way of development within the existing planning controls and then design such a development with a view to

submitting a development application for such a project.---Obviously you don't understand my answer so I'll explain it again.

THE COMMISSIONER: No. Sorry.---The answer is - - -

No, just listen. You have been treated with respect by Mr Buchanan. I expect you when you answer to treat him with respect.---Okay.

10 And I don't appreciate prefacing your answer with the comment you just made and also the comment you made a couple of answers ago when you said "Jesus". So if you could listen to the question and answer it with respect.--- I will do that for sure.

Thank you.

MR BUCHANAN: So, Mr Demian, my question is, it wasn't your business practice to assess a development site with a view to submitting a development application which would be compliant with existing development controls. Is that right?---What I was trying to say is that  
20 within the - - -

Are you able to say yes or no?---No.

Why can't you say yes or no?---Because I was trying to explain and you don't want me to.

I'm not after an explanation at the moment. I'm simply trying to establish it was or was not your business practice to assess a site and establish the business, what the development controls were, design a development which  
30 would comply with those development controls and then submit a development application for a compliant development. Is that right?---For which site would that be?

Any site at all as part of your general business practice.---It doesn't work that way.

Why doesn't it work that way?---Would you like me to explain?

40 That's what I'm asking for now.---Sure. Okay.

But not a story.---No, no, I'll keep it brief.

Thank you.---When we do the initial urban analysis for a site we determine, one of the parts of the analysis is the current controls that apply to that particular site and then based on professional advice that we seek we determine whether we should go with a development application based on those controls, on compliant development we call it, or whether we should pursue a planning proposal to amend those controls.

Now, can I just ask you to pause there. You say based on professional advice. These are from consultants or planners in Statewide Planning that were reporting to you. Is that right?---We used both, internal as well as external consultants.

Yes. And you say they would propose non-compliant development to you. Is that right?---They don't propose non-compliant. What they suggest is if we seek to amend the planning controls of a particular site then that can  
10 only happen via a planning proposal and - - -

But the question is, why would they propose that you seek to amend?---It's really the loss of opportunity for a good site.

So can we just take a step to one side? You had an interest, a financial interest, in maximising lot yield, didn't you? Yes or no?---Yes.

Thank you. And if you changed, sorry, if you procured a change to the development controls that allowed you to maximise your lot yield, that's the  
20 approach you took, wasn't it?---Please rephrase the question.

I'm sorry? Yes, certainly. I'll ask it another way.---Sure.

It was in your interests to try to – I used the word “loosen” development controls but you don't like that expression.---We don't use it in our profession.

It was in your interests for development controls to be changed to allow you to build bigger buildings to maximise your lot yield, wasn't it?---Yes.  
30

Can I ask about Canterbury now?---Yes.

Did you have a view that the development controls that applied in Canterbury, particularly in the LEP, were unsuitable for development on the sites that you owned or had an interest in?---We believed some of those sites are worthy of increase in height.

That suggests that you thought, for some sites, that you thought that controls were unsuitable for that site, having regard to all the circumstances.---You  
40 can say that. You can say that.

Is that right?---That's correct.

What the Commission has heard is evidence that in this period, 2013-16, there was pressure to develop along Canterbury Road – not just from you, by any means – and that there was a view that for historical reasons, particularly in the LEP, the development controls were unsuitable for the era, the new era that had arrived of development along Canterbury Road. I

hope I summarised the effect of the evidence correctly. What would you say to that?---Okay. Canterbury Road is, is, had very old developments which are, we call as outdated. At the time of my involvement the council was going through a comprehensive review of the LEP in the area and we've - -

Can I just interrupt? Do you mean the Residential Development Strategy?  
---That's correct.

- 10 Thank you. Yes.---And I understand that in early 2013 that strategy or that study was on, for public exhibition, so, which opened the door for people to actually put forward their thoughts on their sites, and we've made a submission based on that, to increase the height.

- Yes, I understand that's what you did but I'm just asking for your professional opinion about whether there was a particular issue as to the suitability in 2014-16 of the development controls, particularly in the Canterbury LEP 2012, for the Canterbury Road corridor. Did you have a professional opinion about the modernity, the suitability of those controls?  
20 ---It needed renewal, as far as my professional opinion of that time was.

And I'm not asking you for a particular site now.---In general.

Why did you think it needed renewal?---Well, the bulk of the developments along the strip were of some commercial or industrial old zoning which, in our opinion, surrounded by residential properties, became unsuitable. And those sites became sustainable, I would use the word, for a better outcome going forward.

- 30 Why were they unsuitable?---Because you have industrial surrounded by residential, for example. Like, for example, the, a lot of these older sites had been either abandoned, no longer functioning, outdated, and need, were in need of redevelopment. So we analysed the surrounding areas around those sites and the characters of those sites, and based on our expertise came up with a suggestion of what could be developed on those sites.

I think I understand your evidence. Thank you. I note the time, Commissioner.

- 40 THE COMMISSIONER: I will adjourn for the morning tea break. We'll resume at 10 to 12.00.

## **SHORT ADJOURNMENT**

**[11.31am]**

THE COMMISSIONER: Mr Buchanan.

MR BUCHANAN: Commissioner. Mr Demian, have you been to Mr Hawatt's office in Haldon Street, Lakemba?---I don't believe I have, no.

I'm sorry, I didn't hear your answer?---I, I don't recollect having been there, no.

Did you know that Mr Hawatt had an office for his private business in Lakemba?---I understand he works from Lakemba, yes.

10 And what did you understand his business to be outside of council?---I think some finance brokerage, as I understand it.

I wonder if you could think of the period, please, late 2014, early 2015. There was an attempt by councillors to remove Mr Montague as general manager.---Yes.

You were aware of that occurring at the time?---Yes.

20 What was your first awareness of that?---I think it was about 2015, early 2015. I was, I believe I remember that there was a motion put forward to remove Mr Montague.

And what was your source of information for that?---Just council website.

You didn't hear about what was happening in that period from any of the people involved?---Just industry gossip. I can't remember who and how but there was a general understanding that there was a, a move to remove Mr Montague.

30 You knew Councillor Hawatt at this time?---That's correct.

And you knew Councillor Azzi at this time?---Not at that time, no.

Not at that time?---Not at that time, no.

There hadn't been this meeting at the coffee shop before 2015?---Not with, not with Councillor Azzi, no. Would have been around mid '15, that meeting I was referring to.

40 You knew Mr Montague at this time in late 2014, early 2015?---Yes.

He was obviously involved?---In what?

In the controversy and the conflict, the political conflict that occurred in relation to the attempt to sack him in relation to whether there was a contract to employ Mr Stavis or not?---I had no idea.

Do you mean you have no idea now or you had no idea then?---Then.

Well, are you quite sure that's right?---Yes. I understood that the planning director had resigned from council but that's as far as I knew at that time.

And that planning director was Mr Occhiuzzi?---That's correct.

And when had you understood he had resigned?---Late '14, possibly September.

10 Had he left, as you understood it, by about October-November, 2014?---I don't know. Around that time, September-October. I don't know.

And did you follow the controversy or the conflict between councillors and Mr Montague that was occurring?---No, I didn't.

Were you involved in it at all?---No, I wasn't.

Did you try and intervene in it at all?---I did not.

20 Did you, in about January 2015, telephone Mr Hawatt and indicate that you were calling on behalf of Mr Montague and that you wanted to try and find a solution to the conflict between Mr Montague and Councillor Hawatt?---I don't believe so. I don't recall.

When you don't believe so, are you admitting of the possibility that you did?---No. I, I don't recall ever interfering in that process.

30 Well, you would recall, wouldn't you, if you had gone to Mr Hawatt's office at Haldon Street, Lakemba with Mr Montague to discuss the conflict with Councillor Hawatt? You would remember if it had occurred, wouldn't you?---Yes.

And it did occur, didn't it?---I don't recall. We had a coffee meeting in Lakemba but next door to where Mr Hawatt's office is. I don't remember that we had it with Mr Montague though.

When you told the Commission that you didn't intervene in the conflict, that was a lie, wasn't it?---No, absolutely not.

40 You were approached, I want to suggest, by Mr Montague who asked you to accompany him to see Councillor Hawatt with a view to trying to mediate a resolution to the conflict between him and Councillor Hawatt.---No, that's not correct.

And I want to suggest that you went to Councillor Hawatt's office with Mr Montague and had a meeting there with Councillor Hawatt.---Look, I can't recall that happening. I know I've met with Councillor Hawatt at the coffee shop next door, but I don't recall that meeting, no.

Well, you would recall a meeting like that, wouldn't you, you wouldn't easily forget a meeting where you had been asked by the general manager to accompany him to essentially a mediation meeting with Councillor Hawatt about an attempt by Councillor Hawatt to sack Mr Montague?---I wasn't

---

You would remember that, wouldn't you, if it had occurred?---That's correct.

10

Yes. And you say you have no memory of that.---I don't recall that meeting, no.

I want to put to you a series of propositions that I invite you to respond to. ---Sure.

I want to suggest that you had a reason for wanting to assist Mr Montague for intervening on his side in that conflict.---No, no reason at all.

20

Well, you I want to suggest were a friend of Mr Montague's, despite the evidence you've given here.---No, that's not the case.

You I suggest had an interest, a financial interest in ensuring that Jim Montague stayed as general manager.---I wouldn't say that, no.

Well, he was a person that you could talk to, to protect your business interests and to advance your business interests in his position as general manager, wasn't he?---I wouldn't put it that way.

30

And certainly having Mr Montague in that position of general manager was preferable to the unknown, that is to say, any replacement of Mr Montague's, wasn't it, so far as your business interests were concerned? ---I wouldn't say that.

Why not?---Because I did not know Mr Montague that well at that period of time and had only met him on a professional level a number of times.

And can I ask you this. By early 2015 you knew Councillor Hawatt? ---That's correct.

40

Would it be fair to say that it appeared to you that Councillor Hawatt respected you at that time, in early 2015?---I'm not sure what his opinion is of me.

And would it be fair to say that you formed a view about the conflict between those two men at that time that you thought what was happening was wrong?---I expressed it was damaging our applications, that there was no director of planning at council, that's as far as I commented.

To whom did you make that comment?---Possibly, I recall having that discussion once with Councillor Hawatt.

Was there anyone else present when you had that - - -?---I don't recall.

- - - conversation?---I don't recall.

10 And when was that conversation?---Oh, look, I don't know, would have been sometimes in early 2015.

So would it be fair to say that you made an intervention in the conflict to the extent that you expressed a view to Councillor Hawatt which was intended to convey that it wasn't a good thing that he was trying to get rid of Mr Montague?---I've raised a concern about the applications being frozen that time.

20 Well, that wasn't a good thing from your point of view, was it?---Well, the application being frozen, no, absolutely.

Was it possible that you had an opinion that what was being done to Jim Montague was the wrong thing?---My opinion was not relevant at the time.

Well, what was your opinion in relation to whether Mr Montague was being treated fairly or correctly?---I didn't form one. I don't know the circumstances or didn't know the circumstances.

Can I ask you questions about Mr Stavis, please.---Yes.

30 Before – I withdraw that. I'd ask you to assume that the date when he started work as director of city planning at Canterbury was 2 March, 2015. ---I don't know.

Just if you would assume that.---Possibly, yeah.

Did you know Mr Stavis before the date he started as director of city planning at Canterbury?---No, I never met him.

40 Never met him. Had you ever spoken to him?---Never spoken to him.

Had you ever had any dealings with him as a planner or an assessment officer?---Look, I recall his name from Strathfield Council some years ago but never had any dealings with him or never spoken to him before.

And how was it that you came to know his name from Strathfield Council? ---We had a, we got a property in that area and as we started dealing with Strathfield Council I became aware that he may have been working or could have worked there. I don't know. I can't remember. That's some time ago.

And what was the property?---A property at Homebush.

And what was the name, what's the address?---Loftus, corner of Knight and, corner of Knight Street in Loftus.

Thank you. Once Mr Stavis started work at Canterbury Council did you meet him outside of council chambers?---No, never.

10 Did you meet him at Councillor Azzi's house?---I can't remember but late in 2015 I might have seen him once for about two, you know, not even two minutes.

At Councillor Azzi's house?---That's correct.

Is it possible that you had more than one encounter with him at Councillor Azzi's house?---No. Never.

20 Is it possible that you spoke to him in a little detail about issues you had with one or more of your planning projects when you encountered him at Mr Azzi's house?---No, absolutely not. Zero.

Did you ever speak to Mr Montague at Councillor Azzi's house?---Possibly but not on a business level.

You didn't ever talk to him about any of your projects when you met Mr Montague at Councillor Azzi's house?---That's correct. I did not.

30 You were just socialising with him on those occasions were you?---Well, I was there for a different purpose and he happened to be there.

And just for clarity, what was the purpose?---Just raising some of my concerns to the councillors at that time.

And was Mr Montague one of the people who was within earshot at the time you were raising your concerns with councillors at that time?---With, with what, sorry?

40 Was Mr Montague, like, there in a group, you're all holding a drink and you're holding forth about issues you have with your projects?---I didn't talk in public so obviously I had to wait for some of those people to leave.

Was Mr Montague present and listening at least if not taking part in a conversation you had at Councillor Azzi's house about any of your developments?---No.

Did you ever lobby Mr Montague about any of your projects when you and he were at Councillor Azzi's house?---No.

You're quite sure about this?---Absolutely.

Not possible that you could be wrong?---Absolutely not.

Did you meet Mr Stavis anywhere outside of council chambers, leaving aside Councillor Azzi's house?---No.

10 Changing the subject now to a different person. Can I ask you about George Vasil.---Yes.

In 2013/16 did you know Mr Vasil?---I'd say more like about '14 onwards.

And through to the end of 2016?---Till now, yes.

20 And what did you know of Mr Vasil in that period?---Well, he's real estate agent and I understand that he's possibly the owner of a number of properties in the area so we've had discussions regarding, you know, some of that from time to time. It wasn't, generalised discussions, nothing specific, within the exception of 2016. I apologise.

And what was the nature of your relationship with Mr Vasil in that period? ---Professional.

And when you say professional, what, developer to real estate agent? ---That's correct.

30 So were you trying to sell properties through him or buy properties through him?---I wasn't doing either one of those, no.

Was he trying to sell properties to you or buy properties from you? ---No. In 2016, I would say early 2016, he made a telephone call suggesting that he might have an interested buyer and I've referred him to Frank Oliveri from CBRE at that time.

That's 2016, did you say?---That's correct.

40 And when you say he made a telephone call, was that to you?---That's correct.

And what did he say about he may have had an interested buyer?---He may have, he became aware that the property was on the market and he might have an interested purchaser, and I suggested that the property or advised him that the property was in exclusive marketing agency with CBRE and that he may contact them.

Was there more than one contact, that is to say was there any contact with him in 2016 beyond that telephone conversation?---Yes. About I would say

mid to late May when the property came off exclusive agency period, there was a further contact that he has another real estate colleague that has an interested party in purchasing the property.

Did he identify that other party?---I ended up meeting with them and I understand the person to be John Dabassis or something of that nature.

10 And so how many contacts did you have with Mr Vasil in 2016 about purchasing property or someone purchasing property?---I'd say possibly about three or four times.

THE COMMISSIONER: And that was 548?---That was 548, that's correct.

MR BUCHANAN: Would you just excuse me a moment. Was there ever a conversation with you and Mr Vasil about whether he could get the seller's agency for the sale of 548, the Harrison's site?---No.

20 Did he seem to want to get the vendor's agency for the Harrison's site?  
---Not that I'm aware of, no.

He wasn't trying to get what CBRE got, namely the vendor's agency for the Harrison's site?---No. He only became aware of that from the marketing that CBRE had done and I had signed an agency on 12 February, 2016 with CBRE.

And what was the length of currency of that agreement?---Up until about mid-May 2016 when I've notified them in writing that the exclusivity will terminate the following week.

30 Sorry, who notified whom?---I've notified CBRE that the exclusive agency will, I gave notification I will terminate the exclusivity within one week from that date, so it would have been late May that would have become unexclusive.

And was there a reason why you did that?---Well, we weren't successful in the marketing so I decided to try another marketing agency.

40 And what agency was that?---The later one? I've actually come across Mr Dabassis from recollection where I provided them with a 12-day agency in, on 14, or between 14 June and 26 June, 2016. I've provided a further, recall one day, which is more of a specific purchaser with JLL in late (not transcribable) for a period of one week to see whether a purchaser is available, so that was a specific purchaser type agency, following that we listed it with Savills for a period of time.

Thank you. I'll come back to that topic later, if I can. I'd like if I could now to go to particular development projects, the three that we've spoken of. Firstly, can I just establish the state of affairs in terms of development

controls for the site, 548-568 Canterbury Road, Belmore and that was the Harrison site.---Yes.

It was zoned B5, business development?---Correct.

There was no FSR control?---That's correct.

And there was a building height limit of 18 metres?---That's correct.

10 Turning now to 998 Punchbowl Road.---998.

998, sorry.---Yes, that's okay.

It was zoned R3, medium density residential?---That's correct.

With an FSR limit of 0.5:1?---That's correct.

And a building height limit of 8.5 metres?---That's correct.

20 Now, we've spoken of the Residential Development Strategy, but can I go into that in a little bit more detail, but first of all thinking of the Harrison site, 548-568 Canterbury Road, did you acquire the site?---Yes.

When did you acquire the site?---I think we took an option in February of 2013.

And did you exercise that option?---Yes, I did.

30 When did you exercise it?---I'm, trying to remember. I think it would have been around August of 2013 from memory or thereabouts.

How did you finance the purchase?---Funding, investor funding.

And how was the investor funding organised?---Via loan agreements.

With whom?---Abacus Property Group.

Abacus, A-b-a-c-u-s?---Abacus, that's correct.

40 And how did that arrangement work? Just in terms of the mechanics, a very brief summary of the mechanics.---I understand. So we put a proposal forward and - - -

To Abacus?---To Abacus. Abacus will consider it, came back with a counter proposal and then enter into loan, documentation, mortgages, guarantees and, and the likes. Very briefly.

But did you have to pay interest?---Absolutely, yes.

And was the arrangement limited in terms of time?---There were usually annual loan periods which we extended a number of times.

Now, if we could show, please, the witness a volume 11 from Exhibit 52 and we might be able to bring up on the screen, page 40.---Thank you.

Now, there's a copy on the screen in front of you of the first page of this document.---Yes.

10

Please do feel free to consult the hard copy if it'll assist you but I just want to just go in order through what was dealt with. This is a document from City Plan Services and they say, you can see in the first line of the letter, "We have been instructed by our client, Statewide Planning Pty Ltd, to make this submission to the Canterbury Residential Development Strategy, which is currently being prepared." They identified the site as 548 Canterbury Road, Campsie and they summarise the submission as that the height control on the site be raised to facilitate the redevelopment of the site for a mixed use development of eight storeys. You see that?---Yes.

20

That was done on your instructions?---That's correct.

Thinking now of how this submission was progressed, did you have any contact with Mr Montague about this submission?---I think there may have been at least one meeting prior where we presented the council with the design plans that we had.

When you say prior, prior to?---Prior to our submission being made.

30

Did you come away from that meeting with an impression that Mr Montague looked favourably upon it or what?---No, he, he didn't at the time because we had plans to up to 10 storeys with bigger separation and setbacks from Canterbury Road and I understand that in the meeting council's position was that they're unlikely, highly unlikely to resolve any height of that nature.

40

And so did you instruct then that instead the submission should be for a building height limit of eight storeys?---The director of planning at that stage suggested there could be a possibility of one, possibly two levels of increase in height but that it was up to us to put our submission forward.

And eight storeys, just to clarify, would be about 24.5 metres?---24.6 metres is what we submitted.

Thank you. And that's as against the control of - - -?---18 metres.

- - - a maximum of 18?---That's correct.

Did you have any contact with Mr Hawatt before this City Plan Services submission was presented?---No.

After this City Plan Services submission was presented and before it was considered, before council considered the draft Residential Development Strategy did you have any contact with Mr Hawatt?---Sorry, do you mind rephrasing.

10 I'll reframe that. In between the submission on 27 June, 2013 by City Plan Services on your behalf and before it was, before the draft Residential Development Strategy was considered by council, which I want to suggest was on 11 July, 2013, did you have any contact with Mr Hawatt?---The answer is no, and the resolution was resolved on 24 October, 2013.

I take that correction by the way. Thank you, Mr Demian.---Sure. That's okay.

20 Can I ask you this though, did you have any contact with Mr Montague between the date on which this document was submitted and the draft Residential Development Strategy was considered by council?---I'm just trying to understand. Are you saying prior to the 24<sup>th</sup> or post the 24<sup>th</sup>?

Prior to the 24<sup>th</sup> after this went through?---No. No, there was no, no further meetings after our submission was made.

Now, I'm going to change now to 998 Punchbowl Road.---I understand. Sure.

30 You acquired that site. Is that right?---That's correct.

You used a special purpose vehicle for that purpose?---No, no, it was part of a development investment company that we had some years ago. So that's a very long time ago.

But you nevertheless owned it. Is that correct?---That's correct, yes.

Through that vehicle?---Yes.

40 And when you say a very long time ago, how much time before say 2013? ---2000, maybe even earlier.

If we look at volume 11, page – excuse me. I just withdraw that for a moment, please. I apologise.---That's okay.

I made the wrong reference in my notes. Can we go to page 2, please, of volume 11.---Yes.

The front page is in front of you on the screen.---Yes.

You can see it's dated May, 2013. It's from Inner West Town Planning.  
---Yes.

It's got a receipt date of 14 May, 2013 on it and it identifies the site as 1499 Canterbury Road, Punchbowl. That was the Canterbury Road address of the 998 Punchbowl Road property.---That's correct.

10 Is that right?---That's correct, yes.

Turning to the next page, it indicates in the first paragraph that this proposal seeks to facilitate an amendment to the LEP to allow a development with a maximum floor space ratio of 2.5:1.---That's correct.

And a maximum height of 18 metres.---I can see that, yes.

20 Did you have any contact with Mr Montague in relation to this submission?  
---I think there may have been a meeting organised by the architect at that time.

Were you present at the meeting?---Yes, I was, yeah.

And Mr Montague was present?---I believe he was.

And was any councillor present?---No.

Was the director of city planning present?---That's correct.

30 And again the purpose of that meeting was to try to progress the submission, is that fair to say?---Just put forward our urban assessment of that site at that time and again see what the director of planning, you know, response was.

Now, again this was made during the period that the draft Residential Development Strategy was being considered by council.---That's correct.

40 Was it your intention or hope that the strategy would reflect the controls, increases in controls, that you sought in these two submissions?---If I understand it correctly, yes. That was the answer. We, we assessed the site and believed that it has merit for a certain height and that was our proposition at that time.

And you hoped that by making these submissions during the course of the Residential Development Strategy being considered by council that an outcome would be that the strategy would reflect those same dimensions that you were seeking in the changes of the controls.---Yes, that's correct, yes.

If I can go to page 54 of volume 11, please. This is the first page of the draft Residential Development Strategy. You can see it's been prepared for Canterbury City Council, dated October 2013, and it's been prepared by consultants GLN Planning. If we go to page 61, the recommendation is to amend the height limit for 548 Canterbury Road to 21 metres for a six-storey development. Do you see that on the right-hand column?---Yes. Yes, I can see that.

10 And so far as concerned Punchbowl Road, if we go to page 63, the recommendation on the right-hand column was to "retain existing zoning and associated planning controls".---Yes.

So neither of those outcomes were really what you had asked for, although the increase in height for 548 to allow for a six-storey development was some advance, is that fair to say?---Well, they didn't agree with our submission at that time.

20 If I could ask we go to page 89. This, sir, is a multi-page document. You can turn the pages to see that it goes for three pages. And it's, I'd ask you to assume, Mr Occhiuzzi's response to amendments to the draft Residential Development Strategy proposed by Councillor Hawatt that he had circulated. You understand that?---I understand that.

And you can see that on page 89 Mr Hawatt had proposed a zoning which would allow for a maximum building height of 25 metres applying to a list of properties on the bottom half of the page, and that included 548-568 Canterbury Road (Harrison's.) Do you see that?---I can see the address of Harrison's, yes.

30 Then if I can ask you to go to page 90, you can see at point 5 or paragraph 5 the proposal apparently by Councillor Hawatt was to rezone the land at 998 Canterbury Road, also known as 998 Punchbowl Road, to R4, that's high-density residential, as you understood it?---Yes.

With a height limit of 14 metres.---Yes.

40 Now, did you have any contact with Councillor Hawatt between your submissions being made in respect of those two properties and those proposals for amendment to the draft Residential Development Strategy being circulated by Councillor Hawatt?---I didn't, no.

Did you have any input into the changes that were being circulated there by Councillor Hawatt?---Well, I had submissions.

I'm sorry?---Submissions, the submissions that were made to council.

Yes. But these changes weren't exactly what you had sought, although - - - ?---It's less.

- - - there's some similarity in respect of 548.---Yes.

But you didn't have any other conversation with Councillor Hawatt?

---I don't believe so, no.

When you say that - - -?---Okay. I - - -

10 - - - do you mean that there's a possibility that you did?---Highly unlikely.  
So - - -

Why is it highly unlikely?---Because we've made our submissions, we had our pre-DA meeting, so there was really no reason to speak to anyone at that time, and I didn't, I didn't know Councillor Hawatt at that time.

Then if I could just ask if we could go to page 100 in volume 11. This is the first page of the officers' report.---Yes.

20 I can ask you to resume that it's written by Mr Occhiuzzi.---Yes.

And essentially, if we go to page 125 - - -?---Yes.

- - - his recommendation was to agree with the draft Residential Development Strategy in respect of the property 548 Canterbury Road, that's against the number 5, and with the draft residential strategy recommendation in respect of 998 Punchbowl Road, that's item 7. Do you see that?---I'm just trying to read it.

30 I'm sorry, on the column on the left-hand side there's some numbers.  
---Yes, number 7.

And number 5 is re 548 - - -?---548, yes.

- - - Canterbury Road?---Yes.

And number 7 is re 998 Punchbowl Road?---That's correct, yes.

40 And then if you go over to the right-hand side, the comments on the RDS recommendation by Mr Occhiuzzi are agreed and agreed.---Yes.

If you go to page 133, please.---Yes.

You can see starting from here that amendments – I'm sorry. This is - - -?  
---Yeah, that's of the meeting.

I should have introduced it.---That's okay. I understand.

This is the minutes of the meeting of 31 October, 2013.---Yes.

Were you present at this meeting?---No, I wasn't.

Did you get a report about what happened at this meeting or did you read the minutes?---I, I heard about the meeting, yes.

10 There were amendments moved by Councillor Hawatt, seconded Nam, in respect of various items. At the very bottom of page 133, amend 3.8 to read 25 metres instead of 21 metres, and if we go to page 137, or rather 136, you can see the resolution and then 137, item 3.8, about a third of the way down the page - - -?---3.8. Where did you say 3.8?

I'm sorry, on page 137.---Yes.

I apologise.---Oh, 3.8, yes, I can see that.

And the resolution was, "Increase the maximum building height applying to 548 Canterbury Road, Belmore from 18 metres to 25 metres."---Yes.

20 Did you have any input into that amendment being moved?---Well, our planning submission of 24.6 metres.

Was there any other input you had by, for example, speaking with Councillor Hawatt?---No.

But nevertheless, this was what you had been asking for?---That's the whole strategy, yes, yes, that's correct. It's a bit higher than we asked for.

30 If you go then to page 134, you can see the amendment moved by Councillor Hawatt, this is the draft Residential Development Strategy, "Rezone 998 Punchbowl Road to R4, FSR to 1.8 and height to 15 metres." Can you see that?---Yes, I do.

If we go to page 137, item 3.13 and you can see that that amendment was passed?---Which item, sorry?

Oh, I'm sorry, 3.13 at about just a bit over - - -?---I can see it, yes.

40 About halfway down the page.---Yes.

That amendment was passed?---That's correct.

Did you have any contact with Councillor Hawatt about the changes that you were seeking to the development controls in the respect of that particular property before he moved that amendment?---No, I didn't.

Do you know where the figure 1.8:1 came from at that time?---No.

There was no attempt, as you understood it, to compromise between what you had sought at 2.2:1 and what the current control was, which was recommended stay in place, no compromise that - - -?---With whom?

By Councillor Hawatt?---Not I'm aware of, no.

And you didn't - - -?---No, I did not.

- - - have anything to do with him - - -?---No.

10

Effectively it was compromise, though, wasn't it?---I don't know.

Well, in the outcome, it was a compromise?---Yes.

Now, there was moved and resolved, at page 136, that a planning proposal be prepared to implement all of those changes to the Residential Development Strategy that had been resolved upon by council. Do you see that there?---Yes.

20

And you were aware that that resolution was passed by council soon after it was made, I assume?---Yes.

Were you aware that, if I can ask – take you to page 153.---Yes.

About a third of the way down the page, there's a discussion there but essentially the Department of Planning notified council that it gave Gateway approval to the planning proposal resolved upon 31 October, 2013 and said it could proceed to public exhibition. That was the outcome you understand, I take?---That's correct, yeah.

30

At some stage after this (not transcribable) had occurred?---Yeah, May 2014 was the Gateway determination.

Now, can I take you then to 2 October, 2014. This is page 222 of the same volume. So, you can assume that exhibition has occurred and it's come back to council, the planning proposal and at page 222, you can see that there are amendments moved, Councillor Hawatt seconded Councillor Azzi. Do you see that a few lines from the top of the page?---I'm just trying to figure out your, your question. You said, "Exhibition." Exhibition is not - -

40

-  
After exhibition had occurred.---There was no exhibition in 2014. There was some – and which, which item on that page am I looking at? 548.

The item that commences with the word in bold "amendment".---Yes.

"Moved Councillor Hawatt, seconded Councillor Azzi."---Yes.

And then there's a series of amendments that are under the heading, "The planning proposal to amend Canterbury Local Environment Plan 2012 be progressed and submitted to the Department of Planning because et al in relation to the following sites and as per the maps and summaries identified in this report." You see that?---Yes, I'm reading that.

All I'm doing at the moment is drawing your attention to the first paragraph against the number 1, almost a third of the way down, quarter of the way down.---Yes. Yes, yes, I can see that.

10

Now, if you then go to the middle dot point, can you see the 998 Punchbowl Road?---Yes, I do.

And it says, "998 Punchbowl Road, Punchbowl, to rezone the land to R4 with a height of 15 metres and an FSR increased to 2.2:1."---Yes.

20

Do you know how it came to pass that Councillor Hawatt, seconded Councillor Azzi, proposed that amendment?---I think it were requested by the council to provide a justification for the FSR and whether the site is capable of delivering that. So we've amended our planning submission by redesigning and demonstrating that a 2.5:1 is achievable, and we submitted that back to council.

I'm sorry, I do apologise.---That's okay.

Can I just check something, sir? Won't be long.---Sure.

30

So do you know anything other than the fact that you amended your submission that would explain why Councillor Hawatt moved that amendment?---I think around mid-2014 I may have had a discussion with Councillor Hawatt and also presented a copy of our submission to him.

THE COMMISSIONER: The amended submission?---That's correct, yes.

MR BUCHANAN: And when you may have done that, was anyone else present?---Not in that, not in that, from memory, not in that meeting, no.

And where was that meeting held?---I can't recall.

40

And did you convene the meeting? Did you organise for the meeting to occur?---I've, I've requested the meeting, yes.

Now, why did the meeting occur with Councillor Hawatt?---Well, I would have - - -

Sorry, I'll reframe the question.---Sure.

My mistake. Why did the meeting occur with Councillor Hawatt and no-one else?---Well, as I said at that time, I formed the opinion that he was the leading, you know, sort of individual on increasing the heights in that strategy, and I wanted to, him to have first-hand our consultant's submission that the site is capable of accommodating the height, sorry, the FSR that we were requesting within the height.

10 Had you seen him performing, in operation, in council by this time?---In October, 24 October, '13, is when I saw him at the council chambers.

Was this the first time you'd ever had a meeting with him?---Face to face, yes.

And did you have any further meetings with him or contacts with him before 2 October, 2014, the date of this meeting at council?---Yes. The meeting would have been around the middle of 2014, so shortly after our submission, I would say.

20 Did you have any further contact with him after that meeting and before 2 October, 2014?---I don't recall but I don't believe so.

Did you get the impression from Councillor Hawatt in that meeting that he looked favourably upon what you were asking for?---No, he didn't, he didn't form an opinion at all. He said have to look at the assessments, director's assessments, and he will take it from there.

30 Did it come to you as a surprise that he moved that the FSR be increased to 2.2?---It, it wasn't a surprise because we believed that the merit existed for that.

Where did the figure of 2.2 come from as far as you were concerned?  
---Look, that would have been I assume another compromise.

It wasn't something sought by your planners?---No. We put 2.5:1.

Were you aware of any planning document that supported 2.2 at that stage?  
---No.

40 Then if we can continue on the page down another three dot points to 548-568 Canterbury Road.---Yes.

It says there "to increase the height limit to 25 metres" and that was no change.---That's correct.

And then that amendment passed. If you look at page 225 in respect of Punchbowl Road at the top of the page and then in respect of 548 the last dot point on page 225 going over to page 226.---Yes, I see that.

It would have seemed to you by now that Councillor Hawatt and I would suggest Councillor Azzi were driving planning decisions in respect of properties which, sorry, in respect of properties which included your properties on Canterbury Council?---You're asking me to comment on this page?

I'm asking you to comment by 2 October, 2014?---I have no idea.

10 It didn't appear to you from what you had observed in 2013/14 that Councillor Azzi and Hawatt were driving planning decisions at Canterbury Council?---I've went, I've went to one council meeting in October, '13 and I did not attend any further meetings after that. General meetings I'm talking about.

Is your answer no, it didn't seem to me that they were driving planning decisions?---I knew they were pro-development but that's as far as I knew.

20 I do need to put it to you, sir, that you're answers are less than frank and it would have been obvious, particularly to a person with your interests in planning decisions in council by this stage, that those two gentlemen were driving planning decisions at council?---I don't appreciate the assertion and the answer is no. It was no importance to me.

THE COMMISSIONER: It wasn't important to you. Is that - - ?---Who was leading the councillors.

MR BUCHANAN: That's a less than frank statement too isn't it?---Well, again, I don't appreciate that.

30 Well, Mr Demian, can you assist us in understanding why you weren't interested in your own interests being advanced by council?---I understood that the council resolution in October, '13 was to increase the heights within the Residential Development Strategy along Canterbury Road and from past experience once the council resolved something like that it usually sticks to it, and where it moves on from council to the Department of Planning and RMS from there.

40 Out of all the councillors in your experience of council resolutions in 2013 up to 2 October, 2014 who was most active in procuring those outcomes? ---Asking the wrong person.

THE COMMISSIONER: But you obviously read at least on the website of council the various resolutions passed by council?---Commissioner, sometimes I do but I usually get advice by the in-house project manager that we have on the night whether something has passed or not. We don't usually go on details on who moved what and how many councillors. We understood for example on the evening of October, '14 that the resolution was passed but that's as far as I go.

MR BUCHANAN: You didn't read the business papers or the minutes of the meeting?---No. We do save them. We do save them on our system.

Did Mr Khouri provide you with intelligence as to what was happening in the decision making on council in 2013/14?---No.

Excuse me a moment. Now, the outcome of that meeting of 2 October, 2014 as you understood it was that a planning proposal should go forward to the department from council along the lines of the resolution?---I understood that to be the case, yes.

Can I ask you to have a look, please, at page 232. This a letter to the department, if you go over to page 233 you can see it's from Mr Montague. ---Yes.

And it's dated 23 December, 2014.---Yes.

And it says at the bottom of page 232, "In relation to the sites identified in the Roads and Maritime Services submission as requiring further traffic assessment, council will progress these sites once the traffic assessment work has been undertaken and RMS concerns have been overcome." Did you understand that that extended to 548 Canterbury Road – I'm sorry, I withdraw that question. Did you know that this communication or communication with this effect was being made to the department? ---Development planning?

Yes.---Regarding 548?

Yes.---Yeah, I was aware of the Gateway Determination and we, but I wasn't aware that council did the three items that the Gateway required for them to go forward, at that time.

Right. Going to the next page, 233, Mr Montague says, "Separate planning proposals will be submitted for the land at, dot, dot, dot, 998 Punchbowl Road, Punchbowl, to reflect the changes to floor space ratio from the original planning proposal as resolved by council on 2 October, 2014." Did you know that that communication or communication to that effect was coming from council to the department?---I wasn't aware of this letter but I was aware that 998 was excluded from the requirement of traffic management or modelling for that site and it may proceed forward as a standalone, or when I say standalone, as a council item with other excluded items.

As a standalone planning proposal?---Well, my understanding at that time, there was that site and other sites within the RDS outside the Canterbury Road corridor that were excluded from requiring, requiring traffic

management or traffic reporting to be, to be finalised before it can go any further.

Yes, I understand that, but - - -?---And that was, that was one of the sites.

10 What I'm trying to find out is, did you understand that council was hiving off 998 Punchbowl Road and saying this is not going to go forward as part of the Residential Development Strategy, the 2014 planning proposal in relation to a whole lot of properties, it's going to be the subject ultimately of a separate planning proposal?---The understanding I had is that this particular item was being allowed to go through while the other ones had been delayed until further investigations. So as I understood it, this planning proposal which we didn't (not transcribable) council's planning proposal for that site as well as other sites that were excluded from the RDS Canterbury corridor, were to go forward at that stage for Gateway Determinations by the department.

20 Yes. When did you first learn that council proposed to the department that there would be a separate planning proposal for 998 Punchbowl Road?  
---We understood from RMS, our consultants and advice from - - -

Sir, sir, sir. If you could just answer my question.---Sure.

Leaving aside the RMS, leaving aside any reason for it, as you understood it, when did you first learn that as written here in this letter, 998 Punchbowl Road would be separated out and be the subject of a separate planning proposal at a later stage?---Sometimes late in 2014.

30 You learnt in other words, fairly soon after that letter, because it's dated 23 December, 2014.---Look, at the time I wasn't aware of this letter but I was aware that through the planning that was submitted to the department, yes.

Okay. Was it Mr Montague who told you that?---No, it was council staff.

Do you remember who?---No. Look, my two consultants that would make the fortnightly inquiries would have advised me of that, of that progress.

40 I see. Okay. Now, did you become aware at any time that in relation to 998 Punchbowl Road, the department advised the council that increases to the FSR, to use the department's words, "Constitute intensification that has not been strategically justified." In other words, they queried the intensity of the FSR that was proposed by council in its October '14 resolution.---If I can recall correctly, the department requested further justification by an urban design to be provided.

Was that the first you knew of the department's concerns in that regard?  
---That's correct.

Excuse me a moment. Can I take you back, please, to 548-568 Canterbury Road. On 26 November, 2013, Statewide Planning lodged a DA for the construction of an eight-storey development at 548-568 Canterbury Road?  
---That's correct.

And for the record, that DA number was 509/2013.---If you say so.

10 And it proposed a 22.4-metre height, is that right?---No, it would have been higher than that. Eight storeys would have been around the 25-point-something metres.

If I could take you to volume 18, page 91, please.---Page 91, did you say?

Yes but first of all we've got to get you the right volume. Volume 18 in Exhibit 52.

MS RONALDS: Sorry, what page?

20 MR BUCHANAN: Page 91. It's part of Exhibit 69, I'll stand corrected.  
---Thank you. Yes.

That was the, if you're looking there at the front page of the development application itself, and can I just ask you in relation to it, there was lodged a request to allow a height variance under clause 4.6 from the 18-metre limit in the Canterbury LEP, is that right?---Sorry, where is that written?

Oh, no, no. I'm just asking.---Oh, different question?

30 Yes, different question. Thinking of that particular development application, a clause 4.6 variation application or submission was lodged?  
---That's correct.

In respect of a height limit?---That's correct.

40 And your memory, I'm not saying you're wrong, was that the height limit that you sought was?---Eight levels, which would have been about 25-point-something metres plus the lift overrun, which would be a further 2-point-something metres. So, it would have been – if you could count the lift overrun, that would have been about 2.7 metres and the building would have been about 25 metres in height.

Now, on page 92 against the numeral 7 is, "Estimated cost of the development," and there is no numerals after the dollar sign but there is typed in, "Please see QS report." Quantity surveyor report?---That's correct.

You submitted a quantity surveyor report with this development application?---Yes, we did.

And do you have a recollection of the ballpark figure that the quantity surveyor came up with?---No, look, I don't but it would, would have been a high figure.

Over 20 million?---Yes, yes far over 20 million.

10 And you understood the threshold for determination by – sorry, the threshold for the consent authority determining the application, being council, the upper limit was 20 million. Beyond that it would go to JRPP?  
---That's correct.

And so, you expected this to go to the JRPP and it did, is that right?---That's correct, yes.

20 Did you have a reason for lodging a development application for a development which significantly exceeded the 18-metre height limit rather than wait for the conclusion of the process for amendment of the LEP to allow a 25-metre height?---Yes.

What was that reason?---The Department of Planning circular of 2008, I think they had a couple released in 2008, that explains to the council about the use of 4.6, the five-part test of a 4.6, and especially when a council resolves to increase the height and possibly abandon the LEP height by allowing different heights on certain properties in the area.

30 And what was it about that circular that meant that it was a reason for lodging a DA before getting an outcome of the planning proposal?  
---Well, we, I understood it personally and from representations that was made to myself is that the 4.6 is a flexible instrument that the Department of Planning had put in use for some years and years ago that would provide or allow departure from those variations. Now, the only variation we had was the height and that was following a council resolution which in my opinion at that time, that was deemed to be, deemed to be acceptable, and in different councils as well there was similar applications for much higher use of the 4.6, but that was my understanding at that time.

40 I'm just trying to understand, and I do note the time but I won't be long, Commissioner. I'm just trying to understand though why you had a two-tract approach rather than taking one approach or the other, that is to say an option for you - - -?---Sure.

- - - I just want to suggest, is that you could have simply lodged a DA without spending time and money and effort pursuing, making these submissions for the planning proposals.---Look, I was of the belief, professional belief at that time, that following or post a council resolution increasing the height to what we were requesting in the application and on advice from the department at other locations or sites, including those

circulars in 2008 and 2011 and similar applications elsewhere, the decision, I formed the opinion that the JRPP will or is likely to support it and that's the reason we decided to, to, to submit it.

10 But you knew enough about planning law to know, didn't you, that a development application was assessed not against a council policy but against existing legal planning controls.---I understood at that time, and that's to the best of my knowledge, is that when council resolved in October to increase the height, that has become council policy. And the 4.6, clause 4.6, is a clause in the LEP of Canterbury City Council which permitted flexibility in circumstances like this site to be considered under that planning principle.

20 You knew enough, again I put to you, about planning law to know that council policy was not a relevant consideration when considering whether the grounds for variance set out in clause 4.6 had been established by a proponent such as yourself.---I understood that the council LEP did permit the use of clause 4.6 because that's the clause that exists within the LEP, and that's for situations similar to our application post a council resolution.

I apologise for going over a little bit, Commissioner. This will be a convenient time.

THE COMMISSIONER: I'm sorry, Mr Tyson, did you want to raise something. You're just leaping to your feet.

MR TYSON: I was just pre-emptively anticipating lunch.

30 THE COMMISSIONER: All right. We stand adjourned until 2 o'clock.

**LUNCHEON ADJOURNMENT**

**[1.04pm]**