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INDEPENDENT COMMISSION AGAINST CORRUPTION

PATRICIA McDONALD SC
COMMISSIONER

PUBLIC HEARING

OPERATION DASHA

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON FRIDAY 10 AUGUST 2018

AT 9.38AM

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

MR BUCHANAN: Commissioner, I don't think we have any administrative matters this morning.

THE COMMISSIONER: All right. Mr Stavis.

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10 MR BUCHANAN: Mr Stavis, yesterday when we finished, I was taking you through a short history of the Harrison's site so far as it had been dealt with by council, and when we concluded, it was at the point of you acknowledging, I think, that when you arrived in March 2015 at Canterbury Council, there was an undetermined DA lodged by Statewide Planning in December 2014 for the construction of two additional storeys to the six-storey approved development and there was an undetermined section 96 application by Statewide Planning lodged in November 2014 to modify the original consent seeking approval for the construction of additional car parking to accommodate the additional residential units, the subject of the additional two storeys. You recall that when you arrived in March 2015, those matters were on foot in council?---Yes.

20 Now, can I just also take a step slightly to one side and ask whether it was also the case that there was before council an undetermined development application, DA 591/2014, by Statewide Planning to demolish and construct a six-storey mixed-use development on 570-580 Canterbury Road - that's, as I understand it, the property to the west of Harrison's?---Is that the one on the corner?

Yes, that's right.---Yes.

30 And it was accompanied by a submission to exempt the DA under clause 4.6 of the LEP from height controls. We'll be coming to that context a little bit later, but obviously whilst in this setting we're trying to deal chronologically with particular sites, you had to deal at the time with multiple applications simultaneously, in essence?---That's fair, fair comment.

40 Could I take you, please, to volume 19 in exhibit 69, page 82. You started work on a Monday. Do you remember that that was the day of the week you started at Canterbury Council?---I believe so, yes.

If I tell you that was 2 March 2015, you could accept that?---Yes.

If we go to page 82 in volume 19, that's an email to you from your PA, Ms Rahme, on 4 March 2015 at 5pm. She starts

10 it by saying, "Another one" - you were a popular person at the start of filling the job, the job not having been filled actively, of course, for some months, for a few months - "Matthew Daniels from Statewide Planning" and then she gives a mobile number, and underneath that, "Properties DAs 548 Canterbury Road and 570 Canterbury Road", and then she identifies a planning proposal for another address at Canterbury Road in Belmore. Before we leave that, if we go over the page to page 83, an email from Ms Pettenon. That was a member of Mr Montague's staff; is that right?---That's right, yes.

She had emailed Mr Montague and you to indicate that a meeting was to be organised or needed to be organised in respect of 548-580 Canterbury Road, Belmore and that the person seeking it was Mr Demian and provided his mobile number. Do you see that?---I do, yes.

20 The next day, 10 March - sorry, this is page 84. On 10 March there is another email of the same type from Ms Pettenon about trying to organise a meeting with Mr Demian and Mr Montague. Do you see that?---I do, yes.

On page 85 we have an extract from one of your exercise books, and can you see there that you've recorded "Meeting with Charlie D on 11 March 2015 re 548-568 Canterbury Road". Do you see that?---I do, yes.

30 And then on the next page, page 86, there's another email from Ms Pettenon to you and Mr Montague in relation to a meeting for Mr Demian. This is on 11 March 2015, which might perhaps indicate that the note on page 85 is not of a meeting that actually occurred but of a meeting that was scheduled but, for some reason, didn't happen?---That's possible, yes.

40 If we go, please, to page 96, this is an email from Koula Petas to you dated 17 March 2015. Mr Demian appeared to have rung seeking a meeting in relation to the DA for 548 Canterbury Road, Campsie. Do you see that?---I do, yes.

From whom did that email come, if you could just assist us?---Koula was one of my staff members, an admin person.

In your office, though?---That's right.

Then the next page, page 97 in volume 19, is a calendar meeting entry for a meeting with Mr Demian in relation to "548 Canterbury Road and next door DA" - that would have been a reference to 570 Canterbury Road, given Mr Demian's interest in that property?---Yes, I believe so, yes.

10 And that was for Tuesday, 17 March 2015. Do you recall having a meeting or meetings with Mr Demian at an early stage in your career at Canterbury?---I'm sure that I did, but I don't really recall the details of those meetings, to be honest with you.

All of these entries are entries that suggest the meeting would have taken place, if it took place, at council chambers?---I believe so, yes.

20 When you say you're sure you did, what is it that you base that on?---Oh, I recall Jim Montague organising a meeting early in the piece, but I'm not sure if it was in those time frames, between myself, Jim and Charlie Demian, and I'm not sure if he had any of his consultants there early in the piece.

Do you recall what the issue or issues were?---No. No, not really.

And you don't have a recollection of being roused on particularly at a very early stage in your time?---No, no.

30 If I can take you, please, to volume 20, page 245. What I've taken you to, Mr Stavis, is not the right reference. I apologise for that.---That's okay.

No, I'll have to move on. I apologise. Do you have a recollection of having contact with Mr Azzi and/or Mr Hawatt at a relatively early stage in your time at Canterbury in relation to Mr Demian's developments?---No, I don't, not early in my time.

40 If I show you a text message extracted from Mr Hawatt's phone, volume 20, page 260 - no, I think I'm taking you out of chronological order. I do apologise to you and to the Commission and to the parties for this.---That's okay.

Volume 19, page 102 should be back in sequence. This is an email to you from Ms Rahme on 10 April 2015. Again, the topic is Mr Demian, and it's "re: 548 Canterbury Road,

Campsie". Do you have a recollection of having multiple contacts with Mr Demian at a relatively early stage, within the first couple of months of you being at Canterbury Council?---I'm not sure how early in the piece, but it was fairly early in my tenure at Canterbury Council that Mr Demian was trying to make contact with me, yes.

10 Did he actually make contact with you, that is to say, meetings were arranged?---That I'm not a hundred per cent sure, but it's likely.

Page 105, Mr Demian called again, it seems, an email from Ms Rahme to you dated 28 April, indicating Mr Demian and his phone number and that it was in relation to 548 Canterbury Road. Do you recall what Mr Demian wanted to talk to you about?---My first recollection in either meeting or discussions with Mr Demian was in relation to a meeting that we had with the general manager, and it was on the basis of Mr Demian presenting the applications that he had before council that were on foot. I'm just not sure about what the detail of that was, but it was more of - in that early piece, it was more of him putting his case forward in support of those applications.

So it was multiple sites?---I think it was only the two sites at that point in time, from memory.

The adjacent sites, Harrison's and 570?---Yeah, yeah. Yes.

30 And if I can take you to page 106, that's an email from you to Ms Rahme on 28 April 2015 asking her to please arrange for Gil and you to meet with Charlie Demian for catch-up on his projects. You didn't need anyone else, and then you identified the time and date. Do you see that?---I do, yes.

40 There is then a calendar entry on page 107 for 5 May 2015 for a meeting with Mr Demian in relation to 548 and other projects. This is scheduled to be in a meeting room at council. Do you see that?---I do, yes.

Do you have a recollection of any contact with Michael Hawatt and/or Pierre Azzi in relation to Mr Demian's projects?---There were numerous contacts. Unfortunately, as I sit here, I don't - I can't give you a time frame in terms of when they were, but it was definitely during the life of those applications that were on foot at the time.

And were those contacts by telephone or face to face or both?---I think both.

I assume, thinking of Mr Hawatt, Mr Hawatt was asking you to do things? You weren't asking him to do things?---No, no.

10 So he was asking you to do things in relation to Mr Demian's projects?---Yeah, mainly along the lines of having a look at them and seeing, I guess - with a view to expediting.

In the case of 548, the main project was the undetermined DA for the additional two storeys, and there was of course a breach of the building height control, and that was a major issue, if not the major issue, as far as you were concerned?---It was an issue, absolutely, yes.

20 And the question of whether clause 4.6 could be satisfied in respect of that breach?---Correct.

Is that something that was raised with you by Mr Hawatt or you with him?---I believe at some stage I raised it with him as a concern that I had.

To try to explain what the issues were?---Yes.

30 Was it something that was discussed between you and Mr Azzi?---Absolutely. Most of the time in relation to that property, not all, but most of the time, both of them were in the discussions or meetings, yes.

Can you think of the first time you went to Mr Azzi's house, and tell us whether that was before you had actually started work as director of planning or whether it was after you had started work?---I believe it was after.

40 I just want to be clear about this?---Sure.

Are you sure there wasn't a meeting at Mr Azzi's house before you started work?---Not that I can recall.

Are you able to recall that occasion - sorry, the occasion when you first went to Mr Azzi's house, as you recall it, after you'd started work at Canterbury?---I don't recall the first time, to be perfectly honest with you.

Was it an occasion, the first time, where there were people there apart from Mr Azzi and/or Mr Hawatt?---My first recollection of a meeting in Mr Azzi's house was in relation to a meeting that either he called or Mr Hawatt called, and I believe there was Mr Khouri there, obviously Mr Azzi, Mr Hawatt, and Mr Demian, and obviously Mr Azzi's wife.

10 How many times had you seen Mr Khouri at this stage since the time that you first met him, as you've described to us, with Mr Vasil in the coffee shop in I think Earlwood - - -?---Yes.

- - - at an early stage in your application for the position, how many times had you seen Mr Khouri since then before you started work at Canterbury?---Not many. I don't believe it was many times. I just can't - I just can't be sure of the number.

20 Where had you met Mr Khouri in that period?---Not in that period. I don't believe I met him in that period at all.

At all?---At all, after that initial meeting.

It was just talking on the phone?---I believe so, yes.

30 And so the occasion that you have a recollection of that you've just told us about in Mr Azzi's house, was that the first time you'd seen Mr Khouri since the time you had been with him and Mr Vasil in the cafe in Earlwood?---No, I think there were some early meetings that we had at council in relation to Mr Demian's projects where Mr Khouri was present at those meetings. Now, I can't be a hundred per cent sure if that was before or after meeting him and seeing him at Mr Azzi's house.

40 And those meetings you're now thinking of were at council chambers?---Yes, yes.

So do you have a recollection of the first time you saw Mr Khouri with Mr Demian?---I believe it was at that - at those meetings at council.

That is to say, they were meetings that had been scheduled between you and Mr Demian, and Mr Khouri turned up as well?---Correct.

Do you have a recollection of any surprise that Mr Demian turned up as well - I do apologise - Mr Khouri turned up as well?---No, I don't recall that, no.

10 Does that mean that you had already worked out that Mr Khouri was a person who worked with or associated with Mr Demian?---No. I just don't recall being surprised when I saw him, only because I knew that he obviously was some sort of advocate representing various people, so it didn't surprise me, no. Well, I don't recall being surprised, I should say.

When was it, as best as you can recall now, that you first learned that Mr Khouri was an advocate for various people?---It may have been at Strathfield Council, when I was at Strathfield Council.

20 When he was, in your experience, associated with Ziad and/or Marwan Chanine?---That I don't recall, but I remember hearing his name through various planners and the like.

Did you meet Mr Khouri while you were at Strathfield Council?---I don't believe I did, no.

So you didn't see him in the company of Mr Chanine?---I don't believe I did, no.

30 When Mr Khouri was present in a meeting or meetings with Mr Demian at council, what role did you see and hear Mr Khouri play?---Mediator.

If you could explain how - - -?---Sure. He didn't say much, but he was sort of advocating for the proposal but at the same time being sympathetic to the issues that I was raising. So that's what I mean by a mediator.

40 THE COMMISSIONER: That sounds like sitting on the fence. A mediator, sorry, usually tries to resolve or assist the parties in resolving the dispute. Was he doing that?---He was. He was, in his own way, yes. Yeah.

When you say "in his own way", how would he do it?---Well, I've been part of court mediations before, so it wasn't that way. But, I guess if I had to categorise it, he was more of an advocate. But at the same time, whenever

I raised issues, he would - well, to my face at least - be sympathetic to those issues and express to Mr Demian, you know, that he needed to do something to address those issues, yeah.

10 MR BUCHANAN: This arose from me asking you questions about your recollection of the first time you went to Mr Azzi's house, and I appreciate the tentative nature of your recollection, and you've been making that clear, but nevertheless, to the extent that you have one, you tell us that it was that Mr Azzi was present, Mr Khouri was present, Mr Demian was present. Mr Hawatt?---I believe so, yes.

Now, were there other people present, that is to say, was it any sort of social occasion happening as well?---No. No.

20 Was it an event that you had been, as it were, called to attend?---Correct.

Do you remember by whom you had been called?---More often than not, it was Mr Hawatt.

So this was a pattern you're indicating?---Yes.

30 And you're not saying that Mr Khouri would always be there, but when you were going to Mr Azzi's house and having meetings, as it were, interactions with developers, it was Mr Hawatt who would, as it were, call you to that meeting, more often than not?---More often, yes.

And how often, can you give us an estimate, did you see Mr Demian at Mr Azzi's house? How many different occasions?---As best as I can recall, maybe two times, three times, yeah.

40 Were they concentrated together in one period or were they spread over a period?---They were spread over a period.

On each occasion that you saw Mr Demian, was Mr Khouri there as well?---No. I distinctly remember one meeting where he wasn't there, no.

Just think of that meeting, if you wouldn't mind?---Sure.

Who else was there?---I believe it was only Mr Azzi.

And not Mr Hawatt?---No.

10 What occurred at that meeting?---Again, it was a case where I was called to go to Mr Azzi's house by Mr - I believe it was Mr Azzi, and so I turned up, and Mr Demian was there and I believe it was in relation to his projects at the time that he had on foot and, in particular, issues that I had raised previously. Now, at that meeting, I'm not sure if it was only the Canterbury Road projects or whether it was in relation to other planning proposals that he had as well or looking at putting in.

20 When you say "planning proposals", that's a generic term for proposed developments, is it?---No, no. It was actual planning proposals that - I remember he had purchased a few properties on Canterbury Road and was looking at rezoning those. So, you know, as far as the detail goes, I'm a bit hazy in terms of what was actually said, but it was certainly - in every meeting that I had with Mr Demian, no matter whether it was at council or in the presence of councillors, he was always very forceful and always advocating and pushing the merits, so-called merits, of his proposals.

30 In respect of the planning proposals that at that particular meeting he talked about, they were planning proposals, do I understand you correctly, that were not then on foot but that he was proposing to make a submission to get council to propose?---Not necessarily get council. He could lodge - I think he was more advocating lodging those planning proposals himself.

40 But you understood the system, the way the system worked. It needed council to adopt it as a planning proposal which could then be submitted to the department for Gateway Determination?---No, that's not correct. You can actually lodge a planning proposal as an applicant, fill in an application form and instigate a planning proposal. They used to call them spot rezonings. He was more inclined doing that, and I believe that those initial discussions were around that.

But you knew that a rezoning meant changing the LEP?---Absolutely, yes.

And the LEP couldn't be changed without the department's

involvement, could it?---Absolutely.

So you understood, didn't you, that at the end of the day, the submission or application would have to be put to the department by council?---Correct, correct.

And by a council resolution?---Correct.

10 Because you yourself, Mr Stavis, didn't put forward planning proposals to the department without the backing of a council resolution; is that right?---Yes, that's correct.

20 So, in respect of those planning proposals that were Demian was foreshadowing at that meeting, what was he trying to get from you?---Look, as I said, the detail of those discussions was very hazy at that point in time. I think it was more a case of making me aware that he had purchased those properties or whatever, had options over them. I don't remember ever discussing any detail around those planning proposals at that meeting. I think that meeting was more taken up by more of the applications that he had on foot more so.

And did that include 548 and 570?---I believe so, yes.

Did it include 998 Punchbowl Road?---That I can't be a hundred per cent sure.

30 Now, is it possible that you met Mr Demian at Mr Azzi's house more than two times?---Look, I'm not sure. I thought it was maybe two or three times, thereabouts.

40 Now, I'm not suggesting that what I'm going to, in a moment, put to you is different from what you've just said, but I do want to put something to you, but I first of all need to make an application to the Commission, and that is, Commissioner, to vary a non-publication order made on 1 December 2016 in respect of evidence given by this witness and recorded in the transcript at pages 590 to 592, starting at line 1 and concluding - sorry, 591, not 592, at line 13.

THE COMMISSIONER: I vary the non-publication order made on 1 December 2016 to exclude the evidence recorded at transcript page 590 line 1 and concluding at transcript page 591 line 13.

I VARY THE NON-PUBLICATION ORDER MADE ON 1 DECEMBER 2016 TO EXCLUDE THE EVIDENCE RECORDED AT TRANSCRIPT PAGE 590 LINE 1 AND CONCLUDING AT TRANSCRIPT PAGE 591 LINE 13.

MR BUCHANAN: Commissioner, I have just appreciated that I should ask that the order include lines 49 and 50 on page 589, for proper context.

10

THE COMMISSIONER: Sorry, which lines on 589?

MR BUCHANAN: Page 589 lines 49 and 50.

THE COMMISSIONER: I'm being pedantic - 48 and 49?

MR BUCHANAN: No, there's no pedantry about it, Commissioner. Lines 48 and 49 is likely to be correct, yes.

20

THE COMMISSIONER: Well, 47, 48? 47, 48, sorry?

MR BUCHANAN: You're right.

THE COMMISSIONER: All right. I vary the non-publication order made on 1 December 2016 to exclude the evidence given by Mr Stavis as recorded in the transcript at page 589 lines 47 and 48.

30

I VARY THE NON-PUBLICATION ORDER MADE ON 1 DECEMBER 2016 TO EXCLUDE THE EVIDENCE GIVEN BY MR STAVIS AS RECORDED IN THE TRANSCRIPT AT PAGE 589 LINES 47 AND 48.

MR BUCHANAN: Mr Stavis, if you could listen to me read to you from the transcript of evidence that you gave on 1 December 2016 to the Commission, and then I'll ask you some questions about it:

40

Did you ever attend a Friday meeting at Mr Azzi's house?---No, I don't believe I did.

But you attended other meetings at Mr Azzi's house?---Yes, on other occasions, yes.

And who arranged those meetings?---Normally it would have been, I would have got a phone call from Pierre Azzi or Michael Hawatt generally.

And you said that you attended some meetings with Charlie Demian?---Yes, he was there.

10

You attended more than one meeting when he was there?---Yes.

How many do you think you attended?---Maybe a couple.

Do you remember when those meetings took place?---Not exactly I'm sorry. It would have been around the time when his, one of his applications was in council.

20

Do you remember which property?---Yeah, 548 Canterbury Road.

Any other properties that were discussed?---The other one was 998 Punchbowl Road.

Okay. What was said at those meetings at Mr Azzi's house when Mr Demian was there?---I don't, I don't recall exactly what was said but it was along the lines of, you know, why are you giving these guys a hard time, blah, blah, blah.

30

Who said that?---Pierre Azzi on occasions, Michael Hawatt on occasion and it was - they were only very short meetings.

40

How long did they take?---Not long. Probably 15 minutes/20 minutes, thereabouts, yeah.

So Councillor Azzi and Councillor Hawatt said to you words along the lines of why are you giving these guys a hard time?---Yeah, and I - - -

What did you say?---It was always a case of me sort of defending myself and trying to articulate the reasons that, yeah.

Did Mr Demian say anything at those meetings?---Oh, he was putting his case forward as to the merits of his proposals, yeah.

10

Were you asked to do anything specific at those meetings?---No, not really, no. It was a case of me articulating what the concerns were with the applications and, yeah, that was generally the tone.

20

Did you draw any inferences from what people were saying to you at those meetings about what was expected of you in relation to Mr Demian's developments?---Oh, absolutely.

What inferences did you draw?---Oh, they wanted me to back down I guess, yeah.

Did they want your support for the development?---By backing down. That's what I'm inferring.

30

By backing down.---Yeah.

Yeah.---Yeah.

You heard me read you that part of the transcript, Mr Stavis. Was that true evidence?---Yeah, I believe so at the time, yes.

40

Is there any change that you feel you need to make to it?---No. That's probably a better recollection, because it was closer to the time, I guess.

MR BUCHANAN: And, Commissioner, can I make a further application to vary the non-publication order made on 1 December 2016 in respect of evidence recorded in the transcript at pages 604 to 605, page 604 commencing at line 24, and on page 605 line 33.

THE COMMISSIONER: I vary the non-publication order made on 1 December 2016 to exclude the evidence of Mr Stavis as recorded in the transcript commencing at page 604 line 24 and finishing at transcript page 605 line 33.

10 I VARY THE NON-PUBLICATION ORDER MADE ON 1 DECEMBER 2016 TO EXCLUDE THE EVIDENCE OF MR STAVIS AS RECORDED IN THE TRANSCRIPT COMMENCING AT PAGE 604 LINE 24 AND FINISHING AT TRANSCRIPT PAGE 605 LINE 33.

MR BUCHANAN: Again, Mr Stavis, I'll read to you from the transcript of evidence that you gave to the Commission on 1 December 2016 and I'd ask you to listen to it, and then I'll ask you some questions after that:

20 *That's all right. You said that Mr Khouri was also present at Councillor Azzi's house on occasion. How many times would you say he was there while you were there?---I'd say most of the time.*

Most of the time?---Yeah, I'd say so.

Including in these meetings with Mr Demian?---No.

30 *Okay.---No, no. I don't recall a meeting where he was present, yeah.*

Were there any other developers at these meetings at Mr Azzi's house?---Marwan Chanine.

Ah hmm.---On occasion.

40 *How many times was Mr Chanine there?---Oh, I don't know. I can't really answer that, yeah.*

Okay.---Yeah.

And what was discussed on the occasions that Mr Chanine was there?---Look, it was always a case of typical - just, generally speaking, planning applications that he may

have had in council at the time. But it was always - it was always, like, how can I put it? Just trying to think. Basically them spruiking his applications.

Ah hmm.---Yeah.

Anybody else present at any of these meetings?---Not that I'm aware of, no.

10

Did you ever have any meetings with Mr Hawatt or Mr Azzi at other places outside council premises?---Yeah. I mentioned to you about Pierre Azzi's house.

Yeah. Apart from their houses.---Oh, not that I'm aware of. I can't remember, yeah.

20

Any cafes or anything like that?---Not since - and I stand to be corrected.

Mmm.---But I don't - not since that first time before.

Before you were actually employed?---Yeah, yeah.

30

And did you feel under pressure as a result of these meetings at Councillor Azzi's house?---Yes.

What sort of pressure were you under?---Oh look, you know, just pressure. I mean, and look I always, I'll always remember that, the views of Jim Montague and the discussions I had early on.

40

And the potential threat to your employment?---Yeah, yeah.

So you understand that that was connected to these conversations you were having [at] Councillor Azzi's house?---Well, it was about, it was about servicing, yeah.

Were any particular threats, any specific

threats made to you at those meetings at Councillor Azzi's house?---No, not that I'm aware of, no.

You've heard that evidence read to you, Mr Stavis.---Yes.

Was that true evidence?---I believe so, yes.

10 When you told the Commissioner, in answer to the question, "What sort of pressure were you under?", "Oh look, you know, just pressure. I mean, and look I always, I'll always remember that, the views of Jim Montague and the discussions I had early on", what were you referring to when you used the words "I'll always remember that, the views of Jim Montague and the discussions I had early on"?---Early on in - when I had those initial meetings with Jim, my pre-employment, where he made mention of the fact that there was concern with the previous director. And I can't remember - this happened over the course of maybe
20 a few meetings with Jim but where he basically told me that the former director was under extreme pressure and ultimately led to his demise. So it was always that sort of - that's what I was referring to there.

And in relation to what, did Mr Montague indicate? That the former director was under extreme pressure, it led to his ultimate demise - did Mr Montague indicate whether the previous director was under extreme pressure in relation to anything in particular?---That I can't recall. I think -
30 you know, I assumed it had to do with the way the department was operating, I guess. I don't remember him specifically saying at those initial meetings what the cause was.

Did you have any occasion to hear Mr Montague say anything about what you should do in relation to Mr Hawatt and/or Mr Azzi?---Yeah. Not only in my presence but in - I think I've given evidence before about - - -

40 You have?---Yeah, in a meeting, one of the executive meetings that we had, he made it clear that we were here to service the councillors and, in particular, Mr Hawatt and Mr Azzi.

Was it that one occasion, or was there any other occasion Mr Montague said anything in relation to Mr Hawatt and Mr Azzi to you?---I'm just trying to think. That one

stands out. I really don't remember if there was another one.

Can I take you, please, to volume 19 in exhibit 69, page 115. This is a text to you from Mr Hawatt on 12 May 2015 at 1.52pm, which reads:

10 *Can you meet with Matt Daniel before or after Thursday re his submission/DA. He has issues which needs to be resolved. Thanks. Michael Hawatt.*

Can you tell us what that was in relation to?---That I'm not sure about.

Was it your experience that your contacts with Matt Daniel were always about Demian proposed developments or planning proposals?---I believe so, yes.

20 And how frequent were the contacts you had with Mr Daniel whilst you were at Canterbury?---Certainly not as frequent as Mr Hawatt, but they were frequent enough. I can't put a figure on it, but they were frequent, yes.

 And both face-to-face meetings and telephone contact and email contact?---Yeah. He also met with my staff as well, I believe, but it was always a case, if he wasn't satisfied with how things were progressing, he would then escalate it and I would either get a call from the general manager or
30 Mr Hawatt or he would contact me, Matt Daniel, that is.

I just didn't hear the word you used before "manager". Did you say "general manager"?---Correct, yeah.

Thank you. If I could take you to page 155, in the middle of the page there is what could be either a text or an email, but it's some sort of contact from Michael Hawatt to you. Do you see that?---I do, yes.

40 You then included what Mr Hawatt had sent you in an email to Ms Dawson, cc'd to Ms Rahme?---Yes.

This is dated 18 June 2015, and Mr Hawatt gave you a list of requests or issues, is that right, four in particular that he identified?---Yes.

And the second one was:

Can you arrange a meeting re Jimmy Maroun sites on Canterbury Road Campsie with Jim Montague as well?

Do you see that?---I do, yes.

10 The suggestion there is that you had previously received a request from Mr Hawatt to arrange a meeting with another developer's sites with Mr Montague. Do you see that? Do you read that into it or not?---No, I don't read that from that, I'm sorry.

So you read "as well" as simply being something in addition to item 1?---Yeah.

20 Okay. Of course, though, one of Mr Maroun's sites on Canterbury Road was 538 Canterbury Road, do you recall that, on the eastern side of the Harrison's site?---That's the one on the corner, the other corner, I believe.

That's right?---Yes, yes.

Item 4:

Also for Charlie Demian and Matt Daniel re Canterbury Road Campsie.

30 What do you understand that request to be? Was it to arrange a meeting?---I believe so. I'm just trying to - well, in part it was, for a number of these ones, obviously, a number of those points. But I'm not sure if point 1 was actually to arrange a meeting or just to give him an update. And the same goes for point 4. But certainly 2 and 3 categorically say, "Can you arrange a meeting".

Mr Hawatt went on in this message to say:

40 *There are others but this will do. Do you want me to speak with Montague or you will?*

Did you understand that to be in relation to arranging meetings with Mr Montague?---I believe so, yes.

And then it went on to say:

*Thanks for your assistance.
Michael Hawatt.*

You then said to Ms Dawson:

*Can you give me an update and any associate
[documents] for the relevant sites below.
My meeting is on at 3.30pm tmrw.*

10 Which would have been 19 June. Do you see that?---I do,
yes.

Do you know with whom that meeting was to be?---No, sorry,
I can't - I don't recall.

And looking at the email, you can't deduce who the meeting
was to be with, whether it was to be with Mr Hawatt or
whether it was to be with Mr Montague?---Well, I mean, the
inference is that it would have been with Mr Montague,
20 I would say, but I can't be a hundred per cent sure.

Then if I can take you to page 157 in volume 19, can you
see that these are text messages extracted from Mr Hawatt's
phone on 19 June with Mr Hawatt talking to Mr Demian, in
the first instance, trying to arrange a meeting either that
day or the next day, but he goes on to say, can you see in
the middle of that message:

30 *I am also catching up with Spiro at 3.30pm
to discuss a number of matters including
yours.*

Signed "Michael". With that additional information, would
that suggest that the email back at page 155 to Ms Dawson
was a meeting with Mr Hawatt? This is the same time, the
same day?---Yeah, I'm not sure if it is related to that
email or it was a meeting that we had, anyway,
irrespective. But I don't remember the meeting, so I can't
be a hundred per cent sure.

40 When you say that, you are referring, aren't you, to the
fact that there was a pattern of regular meetings with
Mr Hawatt in particular in which you reported to him, in
essence, on how things were going in respect of projects or
properties in which he had expressed interest?---That's
fair comment, yes.

Sometimes those meetings were also with Mr Azzi but sometimes they were with Mr Hawatt by himself; is that right?---That's correct. Most of the meetings with Mr Hawatt, when he was alone, were in council, from what I recall.

In council chambers?---Yes, yeah.

10 Now, apart from your own exercise book notes, to the extent that you made notes - and we have seen some - you didn't make notes of those meetings and provide them to your staff, did you?---No. As I said before, the notes were normally reminder things for me or actions which were as a result of the meetings that I had. So in terms of providing minutes or things like that, I don't believe I did, but I used to follow up with my staff, yes.

20 But nothing, as a rule, would go on to council files to indicate that you had had a contact with Councillor Hawatt and/or Councillor Azzi in relation to the matter the subject of that file; would that be right?---I can't say definitively no, but it wasn't common practice for me to do that, anyway.

30 Going back to page 155, the system whereby contacts with councillors - or, more accurately, inquiries from councillors and responses to those inquiries that existed at council, which was administered, so far as you were concerned, so far as your contacts were concerned, by Ms Rahme, was something into which, as you understood it, this email quite possibly did or should have been entered, because Ms Rahme was cc'd into it; is that fair to say?---No, look, in most emails, I always used to cc Eva at the time just to keep her informed, because she used to field a lot of my phone calls, so it was more to keep her in the loop. That's the best of my recollection, anyway.

40 Because she had an input into your diary?---She had an input into the diary and also - yeah, and also, on occasion, there would be requests from councillors that I used to forward to her and she'd enter into that register that we spoke about previously.

But unless there was a contact which you forwarded to Ms Rahme, then the fact of the contact or particularly a meeting with Councillor Hawatt and/or Councillor Azzi would not get into the register that we spoke of

earlier?---It was a fairly common practice for me, after meetings with councillors in general, that I would make inquiries of staff and the like. Now, in terms of entering it into the register, I'm sure there were occasions when I did, but I can't be a hundred per cent sure that I did it every single time.

10 But you didn't personally enter anything into the register, I think you told us?---No, no, that's right. I meant to say - - -

Provided it to Ms Rahme with a view to her entering it into the register?---Yes. Correct, correct.

20 And so far as staff were concerned, if you took a matter up with them as a result of it having been discussed at a meeting with Councillor Azzi and/or Hawatt, then the staff wouldn't know it originated from such a meeting unless you told them?---That's fair.

30 You certainly didn't have a practice, did you, of telling them, "Oh, look, I've just come from a meeting with Councillor Azzi and/or Hawatt and they've raised this particular issue with it and I'd like you to chase it up, please"?---Yeah, I used to - more so with the managers, in particular George Gouvatsos and Gillian Dawson at the time. I mean, I remember it was very common for me to tell them that I had inquiries from X or Y councillors, yeah.

30 Thank you. Can I take you, please, to page 161 of volume 19. This is a text message to you from Mr Hawatt on 20 June 2015 at 4.35pm, which reads:

*Hi Jim/Spiro
Can we meet with myself, Pierre and Charlie
Demian on Tuesday to discuss Charlies
developments along Canterbury Road.
Please let me know?
Thanks Michael Hawatt.*

40 If I can take you then to page 163, you can see the same text has been sent to Mr Montague?---Yes.

I can tell you that 20 June was a Saturday, so that was sent to you by Mr Hawatt on a Saturday. And the Tuesday was 23 June 2015. If I can take you, then, to page 165, please. This is 21 June, so it's a Sunday and Mr Hawatt is

texting you at 7.12pm - I apologise, you're texting Mr Hawatt on 21 June at 7.12pm and you say:

*Hi Mike,
Just checked my messages.
Re Charles Demian's jobs, the GM said well
meet later this week. FYI, I met with
Charlie 2 weeks ago re the Cnr
Chelmsford/Canterbury Road DA --*

10

that's 570 Canterbury Road --

*and he agreed to make the changes and I'm
waiting for amended plans. Re the
Harrison's site, we're waiting for RMS as
discussed, but he agreed to submit further
supporting info.*

20

You then talk about another site and another person's job. If I could take you, please, then to page 169, a text from Mr Hawatt to you on 22 June 2015 at 7.28pm, which reads:

*I have confirmed meeting on Thursday 4pm
with Charlie Demian at council. Pierre and
I will be attending as well.*

So that's the first text on that page. The second one is from you at 7.44pm:

30

*Ok, no worries, do you know what Charlie
agreed to do at my last meeting with him?*

Mr Hawatt replied at 7.50pm:

*He has made changes but needs to discuss
further. He is running out of time. His
project is nearly 3 years of waiting.*

40

Signed "Michael". Then you responded at 7.55pm:

*I know Michael, I really do understand
don't forget I used to represent private
clients and understand their commercial
pressures. I can definitely deal with his
DA on Cnr of Chelmsford/Canterbury Road if
he's made the changes I recommended, but
it's the Harrison site that I don't feel*

comfortable dealing with until I get our traffic study to say it's ok which I should get next week. Anyway happy to discuss.

Then at page 170, on Thursday, 25 May there's an email from Ms Rahme to you indicating a meeting in relation to Mr Demian's various properties, or possibly with him, with the GM. Do you see that?---I do, yes.

10 Can I take you, please, to volume 20, page 177. These are texts on 24 July 2015. The first one is from Mr Hawatt to you at 11.24am:

Any news on the legal advice re Charlie Demian?

You responded at 12.15pm:

20 *I've already told Charlie Demian via email 2 days ago it will be mid to end of next week. I'm sorry Michael but it's not an easy one and I'm doing my best to help.*

30 You can see then that Mr Hawatt forwarded that text to Mr Demian at item 3 on that page. Can I ask why you used the words to Mr Hawatt "I'm sorry Michael but it's not an easy one and I'm doing my best to help"?---I believe that was in reference to the 548 Canterbury Road application and the fact that what he was proposing I wasn't comfortable in supporting in that form.

This is the two additional storeys that breached the height limit substantially; is that right?---That's right.

And there were both RMS issues as well as clause 4.6 issues, is that fair to say, by this stage?---By that - yes, yes.

40 But it's the expression, in response to the mere inquiry, as it reads here, "Any news on the legal advice re Charlie Demian?", that you responded, "I'm sorry Michael but it's not an easy one and I'm doing my best to help." It suggests a sensitivity on your part, to at least the particular inquiry to which you're responding, being one that you regarded as pressure on you and you defending yourself?---It was more - yeah, I mean, I think that's fair. I think that's fair.

And can I take you to that part of that sentence that says "I'm doing my best to help". That was indicative, wasn't it, of the fact that you were doing your best to progress the Harrison's DA for two additional storeys to approval?---Ultimately, yes.

10 You were doing your best to help Mr Demian?---I think it was more a case of trying to get - to find a solution that I felt comfortable in supporting. Look, I had no relationship with Mr Demian, so I didn't feel that I had a need to help him per se, but I understood that there was an urgency around his applications at that time, so I was doing my best to try and find sort of a solution. And at that time I wasn't - I don't believe I was happy with what he had provided or proposed.

20 Well, the question is why were you doing your best to try to help, to provide a solution which would involve an approval in circumstances that satisfied you, if you weren't trying to satisfy Mr Demian?---Look, I mean, my tenure of employment was to try and - and it was made very clear by the general manager even before I started that I had to be a solutions kind of guy and to progress applications as best I could, and I believe it was in my key performance indicators as well. Like I said, I mean, it was nothing personal with Mr Demian. I mean, I had no relationship with the guy. I accept that, as a result of satisfying me and ultimately getting an approval, it would help him, yes.

30 But as well, you were conscious of what had happened to your predecessor?---Look, yeah. As I said before in evidence, that was always at the back of my mind, yes.

40 And your understanding was, wasn't it, that your predecessor had left as a result of pressure generated in the first instance by Councillors Azzi and Hawatt in particular?---That was my understanding, yes.

And in the second instance, that your predecessor had received pressure as well from Mr Montague?---I don't know if that was the case.

That wasn't your understanding?---Not really, no, no.

It wasn't your understanding that your predecessor had

received pressure not just directly from Councillors Azzi and Hawatt but also indirectly from those two councillors via Mr Montague?---That is possible, but I don't recall any conversation with the general manager other than those initial conversations I had where he pointed out to me that I was in a really sort of - a position where I had to get things moving, I guess.

10 But you had a clear understanding of what had happened to your predecessor, and you tell us that your understanding was that it resulted from pressure that Mr Occhiuzzi had received from Councillors Azzi and Hawatt, but you knew, didn't you, that the employment of Mr Occhiuzzi was in the hand of the general manager?---Yes.

20 So if these councillors pressured Mr Occhiuzzi to such a degree that he felt he had to leave, then you didn't draw an inference from that that Mr Montague didn't try and stop that from happening?---That Mr Montague didn't?

Failed to stop that happening, at the very least, even if he didn't take an active role himself - - -?---Sure.

- - - in pressuring Mr Occhiuzzi, given that he controlled the employment of the man, he didn't stop Occhiuzzi being pressured out of the job?---It's my understanding that Mr Occhiuzzi resigned, anyway.

Yes.---Yeah.

30 And there was no intervention - surely you deduced this - no intervention on the part of Mr Montague to insert himself between Councillors Azzi and Hawatt and Mr Occhiuzzi to prevent Mr Occhiuzzi from receiving unwarranted pressure to the point there that he felt he had to resign?

40 MR ANDRONOS: Objection. I'm not sure if this is being made entirely clear, but if counsel assisting could simply make clear that what he's asking about is the witness's understanding at the relevant time rather than putting it as a fact, which the witness is to opine on.

MR BUCHANAN: That can only be the case and I thought I had made it clear.

MR ANDRONOS: You might have. I'm not sure if I picked it

up.

10 MR BUCHANAN: I'm only asking you about your understanding at the time. Hadn't you deduced from all that you knew that Mr Occhiuzzi had resigned as a result of pressure, on what you understood, that came from those two councillors and that the man who was responsible for the employment of Mr Occhiuzzi - namely, Mr Montague - had failed to prevent it happening?---I'm not sure how he could have failed to prevent it from happening, because my understanding is that it's the councillors that hire the general manager. Look, I wasn't around back then, but my understanding was - - -

20 It's only your understanding that I'm after?---Sure. My understanding was that the gentleman, my predecessor, felt pressure, and I only got that information initially from the general manager of how - not exactly how, but who the pressure was coming from, and that was Councillor Hawatt and Councillor Azzi. As far as what Mr Jim Montague did or did not do, I mean, I don't know, I can't answer that.

Did you think that, look, Mr Montague isn't going to be able to do anything to protect me from Councillors Azzi or Hawatt, because he's employed by council, and those two men control council?---It was clear that those two men controlled the council and - yes.

30 And that they controlled Mr Montague?---It became eventually obvious to me that obviously they were the ones who were putting pressure on people, and I could only imagine that they did the same with Mr Montague as well.

You didn't have an understanding or belief that Mr Montague essentially had his job at the pleasure of Councillors Azzi and Hawatt?---Eventually I did, yes, yes.

40 When did that become apparent to you, if not from the outset, having regard to what had happened over the fact of your employment in December, January, February of 2014-15?---Sorry, I stand corrected, yeah, it was very early on, yes.

MR BUCHANAN: Commissioner, could I ask, please, for a direction varying the section 112 order made on 1 December 2016 in respect of evidence given by the witness recorded at page 578, and to give it proper context it's going to overlap, commencing at line 18 and concluding at

the last line of the page, whatever number that is.

THE COMMISSIONER: I make it 47.

MR BUCHANAN: Thank you.

10 THE COMMISSIONER: I vary the non-publication order made on 1 December 2016 to exclude the evidence of Mr Stavis as recorded in the transcript commencing at page 578 line 18 and ending at page 578 line 47.

I VARY THE NON-PUBLICATION ORDER MADE ON 1 DECEMBER 2016 TO EXCLUDE THE EVIDENCE OF MR STAVIS AS RECORDED IN THE TRANSCRIPT COMMENCING AT PAGE 578 LINE 18 AND ENDING AT PAGE 578 LINE 47.

20 MR BUCHANAN: Mr Stavis, I'm going to read to you from an extract of the transcript that's the subject of the direction that the Commissioner just gave, but, for the record, that includes as well material the subject of a previous direction and therefore commencing at line 1 on page 578 and concluding at line 47:

30 *Thank you.---And Andy was, I don't know, I don't know the specifics of it but Andy - basically Andy wasn't doing what Pierre wanted and Jim Montague made it clear at that meeting, he said, "Whatever these guys want you give them." He said that.*

And did he tell you what would happen if you didn't give them what they wanted?---No but you can - it was inferred that, you know, these guys had the power I guess to make our life hell.

40 *They had the power to get rid of you?---Yeah. That's what I took out of it anyway.*

It's the General Manager's role to appoint staff at council.---Correct.

Is that right?---Correct.

But you understood that Mr Montague would do what the councillors wanted in relation to staff?---Oh, not - I don't know in relation to staff.

Okay.---No. I'm not sure about that.

Right.---Yeah.

10 *How would the councillors have been able to get rid of staff?---I don't know but it just, just the general conduct of the place was that the General Manager was doing - not afraid - afraid is the wrong word, but he was intimidated by those two obviously from what had happened before.*

20 *And by that do you mean - - -?---In terms of his employment - - -*

- - - what had happened to his employment?---Yeah, yeah.

Did you ever make any inquiries about what happened to the former director of planning?---Not that I recall, no, no. I think it just came out.

30 *Did you ever learn about what happened to him?---Yeah.*

Yeah. How did you learn about it?---Jim told me, Montague.

What did he say to you?---It was something along the lines of well, you know, that Pierre Azzi and Hawatt were giving him such a hard time that he quit.

40 *He quit?---Yeah.*

But it was, you understood, because of Mr Hawatt and Mr Azzi?---Yes.

You heard me read that extract from the transcript. Was that true evidence?---Yes.

10 And so looking again at the second text on page 177 of volume 20 of exhibit 69, when you told Mr Hawatt on 24 July 2015, "I'm sorry Michael but it's not an easy one and I'm doing my best to help", is it fair to say that there was an element in what you said in that text of setting up a defence against a perception on the part of Mr Hawatt that you weren't doing enough to progress Mr Demian's application?---I don't think it was that sort of conscious, I guess. I don't remember thinking that at the time. So if I have to answer that, I'd say, no, not really.

Well, the question would remain why you said it. Why did you type those extra words, that you were sorry but that you were doing your best to help? Why did you put that in there unless you were trying to ward off some unpleasant thought on the part of Mr Hawatt about you?---I really don't know. I really don't.

20 Is there any other explanation you can give us?---Only that I was obviously brought in there to find solutions to issues, obviously, so maybe it was in reference to that. I really - I really don't recall.

Can I take you, please, to page 199 of volume 21. Do you see that that is an email from you to Ms Rahme, cc'd to Mr Hargreaves, dated 22 September 2015 at 5.38pm, in which you say to Ms Rahme:

30 *Rearrange the meeting for mid to end of next week.*

I'm sorry, the heading is "Charlie Demian":

Rearrange the meeting for mid to end of next week. I've spoken to Councillor Azzi and all ok.

40 Are you able to assist us as to why you said to Ms Rahme, "I've spoken to Councillor Azzi and all ok" in that email?---I believe it might be in reference to the meeting, I guess, yeah.

So it's a reference to a meeting involving Councillor Azzi and either about or also with Mr Demian?---I believe so, yes.

If I can take you back, please, to page 245 of volume 20,

this is an email from you to a Stuart Harding at Willana, cc'd to Mr Gouvatsos and Rita Nakhle, dated 6 August 2015 in respect of 548 Canterbury Road, and the heading reads "Urgent Urgent". Do you see that?---I do, yes.

Mr Harding was a planner at an external planning consultancy called Willana; is that right?---That's right, yes.

10 You say to him:

Your letter needs to also say that based on the information currently provided ... there is not enough info to support the clause 4.6 submission (list what we need in bullet points and more detail).

You go on to say:

20 *Also, I need you to prepare a SEPP 65 compliance table (unit by unit) of the approved versus proposed scheme. Must be detailed please.*

If I could skip the next sentence:

30 *I have a meeting with the applicant tomorrow at 3pm so if you provide all this to me before then that would be appreciated. I want to prove to him what we are saying is true.*

So far as you talked there about a meeting with the applicant "the next day", it's 7 August. You were essentially asking Mr Harding to provide an excerpt from a draft report, officer's report; is that right to say?---No. To the best of my recollection, it's a letter outlining the issues of concerns that we had at the time and certainly he raised with me as well.

40 That Mr Harding raised with you?---I believe so.

Can I take you to page 242 in volume 20. There's a text from you of 4 August to Michael Hawatt at 8.33am:

Hi Michael, I'm seeing the lawyer and planning consultant on Thursday re Charlie

Demian's job. Can you please tell him to hang in there. I'll call him on Friday to arrange a meeting with him. This is a tough one mate given the Ashfield court case.

The Ashfield court case is about the clause 4.6 construction; is that right?---Yes, I believe so.

10 And you're asking Mr Hawatt to ask Mr Demian to wait and not get too impatient; is that right?---Yes.

And it's because you were taking advice from council's solicitors about the proper construction of clause 4.6 and whether it was possible for council to accept - whether it was open for council to accept the clause 4.6 submission that council had been given?---I don't know whether it was - actually, come to think of it, I'm not sure if it was specific on that issue or whether it was just generally in terms of the application of clause 4.6.

20

But was the legal advice that was sought in the context of the DA for the additional two storeys at 548 Canterbury Road?---I believe so, yes, yes.

30

I'm reminded that back earlier in the same volume, starting at page 1 but towards the bottom of the page, there is correspondence from Mr Jackson at Pikes & Verekers Lawyers to you on 15 July 2015 at 9.23am. Do you see that?---I do, yes.

There is a summary there of a legal opinion provided by Mr McEwen SC, a copy of which commences over the page at page 3. Do you see that?---I do, yes.

40

Can you see that the heading of that advice is in relation to 548-568 Canterbury Road and whether it is open to council to grant development consent pursuant to clause 4.6 of the LEP despite a contravention of the height standard in clause 4.3?---I accept that's what the heading says, yes.

And do you recall this consultation with council's solicitors and the retaining of senior counsel to provide advice?---I do, yes.

You responded to Mr Jackson at the top of page 1 on 15 July

at 9.47am indicating some dissatisfaction with the advice. Do you see, "I don't believe it goes far enough", in terms of answering the particular questions that you had?---Yes.

Can I just ask you to note one aspect of Mr McEwen's advice. Firstly, you can see on this copy of it that extends from pages 3 to 13 of volume 20 that you reviewed it - this is a copy that you reviewed?---Yes, I believe that's the case.

10

It's your annotations, is it not?---Yes, I believe it is.

And at page 10, at the bottom of the page you noted the material, and I'll just read out the material that you've highlighted and underlined:

Clause 4.6 only becomes relevant in the event of breach. Further, the magnitude of the breach may be taken into consideration but does not oblige a refusal of the application.

20

And although you haven't highlighted it, it goes on over the page to say that each case will depend upon its own circumstances and whether the departure is justified in the context of the site and the impacts which the departure of the standard - I think he means cause. So you had, from the material that we've seen, had you, made a decision that legal advice needed to be taken about what could be done under clause 4.6 in respect of the breach of the height standard for the DA to add two storeys to 548 Canterbury Road?---Yes.

30

Was there a reason why you had sought that advice?---Primarily at that point in time I became aware of the recent court judgments in relation to Ashfield Council, where there was - and I can't - you know, it's been a while since I've dealt with clause 4.6, but it had changed the circumstances by which you look at the reasonableness of accepting a clause 4.6 argument. So I felt it necessary that (a) I wanted to know to what extent you could vary the standard and (b) in what circumstances.

40

A copy of that decision commences at page 18 in volume 20, and we can see that the date of it was 3 June 2015, the Ashfield Council decision?---Yes.

You told Mr Hawatt and/or Mr Demian that you were seeking this advice; is that right?---I don't recall whether I did, but it's likely that I would have, yes.

We've seen a text in which you referred to legal advice in explaining to Michael Hawatt what might otherwise be seen as a delay in processing the DA?---Yeah, I do recall that text, yeah, being shown that text, yes.

10 Once you had received this advice, was a copy of it shown to or given to Mr Hawatt or Mr Demian?---That I'm not sure about.

Is it possible that you did provide a copy?---I don't believe so.

Did you indicate to Mr Hawatt or Mr Demian the effect of the advice?---Absolutely. Mr Demian for sure, yes.

20 With a view to obtaining material that would satisfy the requirements that had been identified in the advice?---I think at that point in time he needed to make amendments to his proposal.

Sorry, amendments to the proposed development?---Yes.

So plans, not just a clause 4.6 submission?---Oh, and the clause, obviously. That goes without saying.

30 MR BUCHANAN: Commissioner, I note the time. Would this be a convenient moment to adjourn?

THE COMMISSIONER: Yes. We'll adjourn for morning tea and resume at about 5 to 12.

SHORT ADJOURNMENT

[11.34am]

40 MR BUCHANAN: Mr Stavis, can I take you, please, to volume 21, if you have it there, page 205. That's an email from Mr Montague to you of 24 September 2015 at 4.43pm, headed "Old Harrison's site on Canterbury Road DA", and it says:

Spiro
Any chance we can get the DA up to the
October meeting of CDC?

*Thanks.
Jim.*

If I can take you to page 206 in volume 21, you responded at 5.16 cc'ing in his staff, your staff and also Mr Harding at Willana:

Hi Jim

10 *I was aiming for the November CDC Council.
The October CDC deadline has closed anyway.
We received the amended plans on 17th (last
Thursday) and I am waiting for him to
provide a peer review as well.*

*I am also meeting with Charlie next Friday
(20oct) at 2pm to go over the details
relating to the dedication of units for
affordable housing as previously agreed.*

20 Do you see that?---Yes.

Was this sort of request from Mr Montague as to whether it was possible to meet the deadline for a meeting of council or of the CDC which might consider an application usual or unusual, in your experience?---Usual.

30 And did Mr Montague ever say anything to you which indicated to you why he sent you those requests?---Not that I can recall, no.

Now, although on page 206 there's a reference to a meeting with Mr Demian on 2 October relating to the dedication of units for affordable housing, that was something that ultimately did not in fact proceed; do you recall that?---I believe that's the case, yes.

40 Can I take you to page 213, please. It's an email conversation, going over on to page 214. It commences at 1.28pm with an email from Ms Nakhle on 13 October 2015 but then goes through to the middle of page 213 at 3.51, Mr Gouvatsos says to you:

*Rita has referred this on to Mine to
provide you with an update. You mentioned
that this needs to be renotified??*

Can I just draw your attention to the fact that down the bottom of page 213 is the subject heading for earlier emails, which is "Bowermans site DA". Do you see that?---Yes.

But the email that you sent to Mr Gouvatsos that is printed at the top of page 213 in volume 21 at 4.18pm has a fresh heading "Re: Harrison's". Do you see that?---Yes.

10 You say:

Yes please sooner rather than later as the GM wants it to go to November meeting. Michael from Stuart Harding's office has been writing the report I believe Hassan organised a revised package to be sent to him and renotification (I think) in Mine's absence.

20 Could I just ask you to assist us. Do you recall this conversation or an association between the progressing of the Bowermans site DA and the Harrison's site DA for the extra two storeys?---Not really, no.

30 Could you go, please, to page 296 in volume 21. It's an email conversation commencing at the bottom of page 296 and going over to page 297 with an email from Michael Brewer of Willana dated 6 November 2015 to you and to Mine Kocak, cc'd to Stuart Harding of Willana, in relation to 548 Canterbury Road, Campsie. Although there are a large number of calculations which appear in the email, the email commences:

40 *I have spent quite a considerable amount of time trying to sift between all of the (misleading?) Information, reports and plans relating to the original DA (DA 509/2013, the S.96 to amend the DA 509/2013 and the subsequent DA for the 2 additional levels (DA 592/2014). The documentation provided by the applicant is confusing to say the least and in fact conflicting in instances. Since being advised by the applicant late yesterday afternoon of what the plans for the Section 96 were, I have been amending my assessment and my reports. What I have only just been able to*

10 *clarify - and this is directly because of the discrepancies between the written documents and the plans - that there is a shortfall in the car parking. The applicant's documentation skips around the actual quantum of car parking required by the original development, plus the additional parking required by the additional 2 levels and does not quantify how they have arrived at an additional 79 parking spaces.*

He then sets out a set of calculations, in between two tables of which he says essentially:

... the applicant's numbers do not stack up ...

20 Do you recall receiving this email from Mr Brewer?---No.

What was it Mr Brewer was doing or, as you understood it, Willana was doing in relation to 548 Canterbury Road, Campsie?---We had engaged them to do the assessment of the proposal for 548 Canterbury Road.

The two additional storeys?---And also the section 96, from memory.

30 And the section 96 was for additional car parking that was meant to relate to the additional units in the additional two storeys?---I believe so, amongst other things, because I'm not sure - because, I mean, this took a bit of an evolution in design with all the discussions that we were having with Mr Demian about the appropriateness of his designs, and I'm not sure if the section 96 actually included - I believe so; I believe it included changes to the original approval as well to try and make those units or the development a better development.

40 That is to say, the development the subject of the approval?---Correct.

That had already been granted by the JRPP?---Correct.

Now, you forwarded this email to yourself, your private email address, and in the body text said:

Hi Mike

See below. It will get sorted out but this is how it is dealing with Charlie's stuff. Ordinarily I would have refused this DA long ago. I hope now you understand what I've been going through with his applns. It's always the same story, not submitting information, ignoring issues and then pressuring us to finalise his DAs.

10

I hope he appreciates the effort I put in. It's not right mate, he needs to listen and play ball!!!

Anyway, just so you know.

Do you see that email?---Yes.

20

Why did you send it to yourself?---Probably to remind myself to talk to Mr Hawatt, because, as I said before, he had taken, obviously, an interest in this particular application. Just that's what I used to do on occasions.

But can I draw your attention to the fact that in the body text of your email to yourself, you say "see below", which suggests that the reason you sent it to yourself was so that when you got home, you could send it from your private email address to Michael Hawatt?---I can't discount that, I'm sorry.

30

Did you send that email to your private email address in order to cover your tracks in making this communication with Mr Hawatt?---No. No, sir.

There's a fairly unusual statement that you made in the body text, "This is how it is dealing with Charlie's stuff. Ordinarily I would have refused this DA long ago". Do you see that?---Yes.

40

So what you're saying in that email to yourself is that if it had not been for some special factor, you would have refused the DA long ago?---Yeah, and that was, I guess, the interest that the councillors and the general manager were having in relation to this application.

Was it because it was a Demian application that you didn't

refuse it, even though you would have if it had not been a Demian application?---No, look, as I said, I mean, I didn't have any relationship with Demian. It was more so a case that the general manager and those two councillors had taken considerable interest in this application.

10 And it's more than considerable interest, isn't it? It's not a case of, "Oh, that looks interesting"? It was rather, "When is this going to be approved?"?---I think that's fair comment, yes.

And, "Why the delays in getting it approved?"?---Yes, I think that's fair.

And Mr Montague trying to get it on to the next available council or CDC meeting?---Yes.

20 And so if it wasn't for the influence on you by Mr Hawatt, Mr Azzi and Mr Montague, you would have refused that DA long ago?---And mainly because of Mr Demian's conduct and lack of listening to issues and lack of providing information when he said he was going to provide information. In my experience, when you're dealing with applicants like that - yes.

30 Yes, what? If you could finish the sentence, "when you're dealing with applicants like that" - - -?---Yes, I would - you know, it's obvious - it's an obvious situation that if they're not going to listen, then the best thing to do is just to refuse the application.

And that's because your job, or the job of your division, was to assess the application, not try to make the application for the applicant?---Look, it was about trying to find an amicable solution. That was my whole ethos in dealing with applications.

40 But you went the extra mile in the case of Mr Demian's applications because of the influence of Messrs Hawatt, Azzi and Montague; is that right?---I think that's fair, yes.

And to indicate that in writing as you, I suggest, did in that email is the explanation as to why you did not send it from your council address directly to Mr Hawatt but, instead, sent it to your home address?

MR ANDRONOS: I object to that. To indicate what in writing? The last question dealt with a different issue to the subject of the email. My friend should make clear what it is that is being dealt with in writing and the impact that has on the decision to send it from the private address.

MR BUCHANAN: I take my friend's point.

10 In that email, you showed very clearly, didn't you, that you were favouring Mr Demian over other applicants in the same situation?---As you rightly put it, I went the extra mile, yes.

And that's the reason why you sent it to your private email address rather than sending it directly to Mr Hawatt; you were trying to cover your tracks in making that admission in writing?---No, I don't believe that to be the case.

20 How many times did you send an email to yourself with the body text being a text to Mr Hawatt, forwarding also a text to you complaining about an application in which Mr Hawatt had shown interest, to use your term? How many times have you done that?---Not often. I can't give you an exact number.

And it wasn't often, was it, that you put in writing that you were favouring an applicant over other applicants, was it?

30

MR PARARAJASINGHAM: I object. I object. That's not what's in writing, that he's favouring an applicant over other applicants. I object.

MR BUCHANAN: We'll take it the long way around. I withdraw the question.

You said in that text very clearly, "Ordinarily I would have refused that DA long ago", didn't you?---Yes.

40

You were indicating that you were favouring Mr Demian, weren't you?---No.

Over other applicants?---No. My rationale or thinking with this application was because of the fact that I was getting considerable pressure by the GM and the two councillors, so I wanted to make it clear to them that given, I guess, the

conduct of Mr Demian in his dealings certainly with me and with my staff that ordinarily I would have refused the application.

THE COMMISSIONER: Mr Stavis, about a couple of minutes ago, Mr Buchanan put to you that in your email you showed you were favouring Charlie Demian over other applicants, and my record of your answer was "yes", so you conceded, when that question was put to you --

10

MR PARARAJASINGHAM: With respect, Commissioner, my note, or my instructing solicitor's note, is that that question was asked, and, in answer to that question, the witness said something to the effect of, "Yes, I agree I went above and beyond what I did for others." So it actually wasn't adopted by this witness. I stand to be corrected, but that's my instructing solicitor's note of what just transpired.

20

THE COMMISSIONER: My note was that Mr Stavis agreed with the proposition. Can anybody else assist?

MR BUCHANAN: Yes, Commissioner. Ms Mitchelmore's note is, "In the email you were showing very clearly that you were favouring Mr Demian over other applicants in the same situation", and the answer was, "As you rightly put it, I went the extra mile." That's a summary of the answer.

30

THE COMMISSIONER: Can I just ask our transcribers? We have:

In that email, you showed very clearly, didn't you, that you were favouring Mr Demian over other applicants in the same situation?---As you rightly put it, I went the extra mile, yes.

So that is what has been recorded and, I'm sorry, where does that leave us?

40

MR PARARAJASINGHAM: That accords with my instructing solicitor's note, and so the witness answered the question in a slightly different way. That's his evidence. I'm happy for counsel assisting to take it from there, but I just wanted that to be clear.

THE COMMISSIONER: Clarified. All right.

MR BUCHANAN: I'm happy to do that, Commissioner.

You provided a service to Mr Demian which other applicants didn't receive, didn't you?---No.

10 That's what you're saying in that email. When you said, "Ordinarily I would have refused this DA long ago", you're saying Mr Demian is getting something that other applicants ordinarily would not receive?---Probably my patience because of his conduct in the fact that - at the risk of repeating myself, the way he was dealing and being dismissive of the submission of applications - sorry, not providing information when he said he was, and in a lot of the cases, not providing adequate information.

Mr Stavis, I'm asking about your conduct?---Sure.

20 I'm not at the moment asking about the reasons for your conduct, and when I ask you about your conduct, you tell us about the reasons, but you don't come square up against the question and answer what you were doing, and I'm asking you not for the reasons why you did it but what you did.---Sure.

And what you did was you favoured Mr Demian by giving him a service that other applicants in the same situation did not receive from you; isn't that what you were saying in that email?---No.

30

Why isn't that the case? Why isn't that what you were saying in that email?---For the reasons I outlined before.

No, no, I'm asking about your conduct.---Sure.

40 I'm not interested in the reasons for it. I'm not interested in Mr Demian's conduct. I'm not interested at the moment in Mr Hawatt's or Mr Azzi's or Mr Montague's conduct. I'm just talking about you. When you say "I would have refused this DA long ago", what you're saying there is very clearly in an ordinary situation, which you're saying this is not, I would have refused the DA long ago. That's what you're saying, isn't it?---I don't know how else to put it, but ordinarily you wouldn't have a person who was so dismissive. I don't know how to answer - - -

You're determined not to answer the question, aren't you?---I'm sorry?

MR PARARAJASINGHAM: I object.

MR BUCHANAN: You're determined not to answer the question, aren't you?---No, that's not right.

10 MR PARARAJASINGHAM: I object. Two points, Commissioner. Firstly, perhaps the witness can be allowed to finish his answer. Secondly, and, with respect, we've seen this over the last few days, frankly, this witness has adopted at times a nuanced position on things, and, with unfeigned respect to learned senior counsel, what is put to him does not reflect what he is telling the Commission. That's more by way of noting a matter, but my objection is that this witness should be allowed to answer the question and finish his answers.

20 THE COMMISSIONER: All right. I will allow Mr Stavis to finish answering the question, but can I reflect that I am getting frustrated because my view is that you're not answering Mr Buchanan's question. Mr Buchanan has raised with you that, at the moment, he's not asking you for the reasons why you expressed these views in the email that you sent yourself, but he's focusing in the context of where you're forwarding on Mr Brewer's criticisms of Mr Demian's applications and making comments such as "the applicant's numbers do not stack up", et cetera. You used what I think
30 is not a nuanced statement but, rather, quite a straightforward concession, "Ordinarily I would have refused this DA long ago". So, Mr Stavis, please finish your answer if you can remember it, and I apologise if you've now forgotten it, but I would ask you, please, to listen to Mr Buchanan's questions and answer them.---Okay.

Now, can you remember the rest of your answer?---No.

40 Do you want Mr Buchanan to go back to it?---Yes, if you don't mind.

MR BUCHANAN: All right. The word "ordinary" means in this context "usual", doesn't it?---Yes.

In other words, "If it was not Mr Demian, I would have refused this DA long ago". That's what you're saying there, isn't it?---Yes, for the reasons that I stipulated

before, but, yes.

Which means that you were providing a service, you're admitting in that sentence that you were providing a service to Mr Demian which ordinarily applicants would not be provided?---Can you elaborate on "service"?

10 You were processing his DA and trying to get it to approval, whereas if it wasn't Mr Demian, for the reasons that are outlined in the email, you wouldn't have provided that service. You would have refused it, as you say?---I'm not sure how to answer this without - if I am answering your question, but that was not unusual for me. Yes, I agree that obviously Mr Demian - ordinarily I would have refused the application, yes. But the service that you refer to I've provided to many, many applicants, mum and dads - from mum and dads to developers.

20 What you're saying in that sentence is that, "If the same situation arose with any other applicant, I would have refused this DA long ago", isn't it?---Because of who he was.

No, no, no.---Oh, sorry, okay. Look, for me, that's the relevant reason.

30 It may well be the reason, but what we're trying to establish is two things: what you meant when you said, "Ordinarily I would have refused this DA long ago"; and, secondly, why you sent this email to your private address and yet it's plainly an email to Mr Hawatt. We're trying to look into those two questions, and I suggest that they're linked. Do you understand? I am suggesting that you sent it to yourself with a view to sending it on to Mr Hawatt when you got home, because you knew that you were making a statement which incriminated you in your job?---No, no.

40 In the discharge of your duties as the Director of City Planning At Canterbury Council?---No. I disagree with that.

And you can't give us any other explanation as to why you sent it to yourself rather than sending it directly to Mr Hawatt?---I can't.

I'm going to pass on to a related document, Commissioner.

Can I take you please to page 298. This is an email which is also on 6 November sent at 5.59pm. That's at page 296. This one is sent at 6.16pm. Do you see that?---Yes. Yes, I do.

It's an email to Mr Montague and it has the same heading as the email to yourself but with body text to Mr Hawatt, "Forward: 548 Canterbury Road, Campsie". Do you see that?---Yes, I do.

10

If you go over to page 299, finishing on page 300, you can see that the email you sent to Mr Montague at 6.16pm on 6 November included Mr Brewer's complaint, which you included in the email you sent to your home address at 5.59. Do you see that?---I do, yes.

But there's a difference in what you said to Mr Montague from what you said in the email to yourself with the body text commencing "Hi Mike ", and the difference is that it doesn't have in it, "Ordinarily I would have refused this DA long ago". Do you see that?---Yes, I do.

20

But otherwise there appears to be a fair bit of similarity in the content in the main paragraph that you sent to Mr Montague?---Yes.

You see, you were using Mr Hawatt as your sort of confessor, weren't you, a person to whom you could open up and tell him what you really were doing, whereas you couldn't tell Mr Montague, "Ordinarily I would have refused this DA long ago", could you?---No, I don't agree with that.

30

Why did you not include in the email to Mr Montague on the same subject as the email that you had sent to your home address with the body text commencing "Hi Mike" the sentence, "Ordinarily I would have refused this DA long ago"?---I really don't know.

40

Well, you certainly couldn't say to Mr Montague, could you, "Ordinarily I would have refused this DA long ago"?---Of course I could.

You don't think that that would have been an indication to the person who had the power to discipline you or to take your job away from you that you were providing a different service to Mr Demian to the service that you would provide

other applicants in the same situation?---No, I don't agree with that.

There is a little bit of extra material as well that you included in the email to Mr Montague on this subject, and if I could take you to the second sentence:

10 *It's always the same story, inconsistent plans, blatant disregard for councils controls and I'm left with trying to massage to an acceptable level. Quite frankly, that's not our role.*

Do you see that?---I do, yes.

20 That was a statement essentially that you were providing Mr Demian with a service which other applicants in the same situation were not provided, wasn't it, namely, that you would massage their applications to an acceptable level?---That's not true. As I said before, I've provided that service - if you want to call it that - to many applicants.

30 THE COMMISSIONER: Even though it wasn't your role?---Commissioner, in many of these applications, it involved inputs in meetings and what have you where you would scribble on a bit of paper or on some plans or what have you to try and articulate issues to them and to provide some clarity for them. But it's not necessarily a case where you just design the buildings for them. That's what I was meaning by that.

MR BUCHANAN: When you said "that's not our role", that was a reference to "trying to massage to an acceptable level", wasn't it?---Yes.

40 So that was a statement of your opinion about the role of you and your division that it wasn't your proper job to try to massage an application to an acceptable level, wasn't it?---Sorry, can you repeat the question?

Yes. That was a statement to Mr Montague that it was not your role or that of your division to massage development applications so that they could achieve an acceptable level?---What I meant by "massage" is actually designing the buildings for them. Of course that's not our role.

But you say in that case that that's what you were doing with Mr Demian's?---No. What I'm saying is - - -

What were you trying to do? You were trying to - you expended effort on massaging an application to get it to a level where it could be approved?

10 MR PARARAJASINGHAM: I object to that, Commissioner. The sentence reads, "Blatant disregard for councils controls and I'm left with trying to massage to an acceptable level". He's talking about the task that he's left to do. That does not necessarily adopt that that was what in fact took place. Just looking at the syntax, that's how that appears in that sentence, in my respectful submission, so I think that needs to be made clear to the witness.

20 THE COMMISSIONER: I think Mr Buchanan was putting to him a particular construction of the email, which Mr Stavis could have agreed or not agreed to, and now you've put another construction on it in your objection.

MR PARARAJASINGHAM: In my submission, what was put does not reflect the face of the document, and that's why I objected. It was unfair in that respect, because the language is clear in what it says, and what was put was contrary to that. That's why I took the objection.

30 THE COMMISSIONER: I saw it more as an alternative construction which was open on the wording there.

MR BUCHANAN: Could I take on board my friend's point and, with respect and gratitude, adopt it.

Let's focus on the words "I'm left with". That was a statement by you that once you have a situation of "same story, inconsistent plans, blatant disregard for council's controls", the consequence was - that's what "I'm left with" meant, didn't it?---Yes.

40 And the consequence was that you had to put effort into massaging the application until it reached a level where it could be approved?---No.

Why not?---Well, because, quite frankly, I didn't. I mean, certainly I gave him - in meetings, I gave him, I guess, comments and scribbles and what have you on plans, but I wasn't - like I've said in my previous evidence the other

day, that was more a case of trying to clarify the issues.

The question, though, that I'm asking is why did you say to your supervisor that the consequence of the "same story, inconsistent plans, blatant disregard for council's controls" by Mr Demian was that you had to put effort into massaging his application to an acceptable level?---I don't know why, sorry.

10 Well, the reason was that you were trying to get Mr Montague to understand what you had to do as a result of the state of Mr Demian's applications?---I think that's fair.

And "acceptable level" means a level at which it could be accepted, doesn't it?---Yes.

20 And "accepted" means approved in that context?---Well, a recommendation for approval.

Yes, and then you said, "Quite frankly, that's not our role", and that can only be read, can't it, as an expression of opinion by you that it was not the role of you or your division, in a situation like that, to try to massage a development application to a level where you could recommend approval?---Look, can I clarify, "massage", ordinarily the way I term it, is actually "design a building for them".

30 "Massage" means taking an existing body of flesh and moving bits of it around, doesn't it?---Well, not necessarily. I mean, it depends on the extent of changes that are required to satisfy issues of concern.

40 The fact that you tell us that you did this frequently for other applicants as well, if it's measured against the opinion that you expressed in that email, that it wasn't your role to do that, simply means that you were telling Mr Montague that you frequently took that approach to applications that you had to process in your division?

MR ANDRONOS: Objection.

MR PARARAJASINGHAM: I object.

MR ANDRONOS: That's not what he - if that is being put as what is the import of the email - - -

MR BUCHANAN: No, I said it's the import of this witness's evidence that he did it for others. That's what I'm grasping now.

MR ANDRONOS: But not that he was telling Mr Montague he was doing it for others. That's what I understood the question was directed to. If I'm wrong, then I withdraw the objection.

10

MR BUCHANAN: I'll rephrase it if I got it wrong.

You were telling Mr Montague, were you, that you were doing this for other people as well? Is that what you're telling us?---No, I don't say that, no.

No, and so you were telling Mr Montague that you did this just for Mr Demian?---I didn't do anything, sir, with respect - - -

20

No, no, you said here, "I'm trying to massage to an acceptable level" - - -

MR PARARAJASINGHAM: I object. With respect, we've been through this. This witness has drawn a distinction between - he has interpreted or given an explanation for what he meant in that sentence, which was, to use his words, designing to an acceptable level. He has accepted that is not his role, but he has accepted that he has done something short of that, so he has drawn a distinction in what that sentence means, and I think that has been conflated by counsel assisting.

30

THE COMMISSIONER: Was there another objection or was it only Mr Pararajasingham on this point? Okay. Mr Buchanan?

MR BUCHANAN: Commissioner, I'll withdraw that question and approach it from another position, another vantage point.

40

Commissioner, can I make an application to vary the non-publication order made on 12 October 2017 in respect of evidence recorded in the transcript at pages 1220 to 1222, commencing on page 1220 at line 24 and concluding at 1222 at line 20.

THE COMMISSIONER: I vary the non-publication order made

on 12 October 2017 in respect of the evidence of Mr Stavis and I exclude the evidence recorded in the transcript commencing at page 1220 line 24 and concluding at transcript page 1222 line 20.

10 I VARY THE NON-PUBLICATION ORDER MADE ON 12 OCTOBER 2017 IN RESPECT OF THE EVIDENCE OF MR STAVIS AND I EXCLUDE THE EVIDENCE RECORDED IN THE TRANSCRIPT COMMENCING AT PAGE 1220 LINE 24 AND CONCLUDING AT TRANSCRIPT PAGE 1222 LINE 20.

MR BUCHANAN: Mr Stavis, I'm going to read to you from a transcript of evidence that you gave on 12 October 2017. If you could listen to what I read out, please, and then I'll ask you some questions:

20 *I'll take you to another document, this time. Relating to 548 Canterbury Road.---Yeah, yeah.*

What I'm showing you, Mr Stavis, is an email. You forwarded an email in the bottom half from Mr Michael Brewer at Willana to - - -?---Oh, yeah.

30 *Well, it's been, it appears you forwarded it to a Gmail address. Is that your Gmail address at the top of this email?---Yeah.*

Can you read the content of the email at the top there? So the email from your Canterbury address to your Gmail address.---Yeah.

You've read that?---Can I read, what, 5 - - -

40 *Yes, you can read the whole thing if you'd like to, but what I'm going to focus on is the top email.---Read the first email, you mean?*

Yes, please.---"Hi, Mike. See below. I'll get it sorted out."

To yourself is fine, Mr Stavis,

sorry. ---Oh.

Sorry for the misunderstanding. ---Yeah.

Okay. ---Yeah.

So you sent this email to a Gmail address. ---Yeah, I, I - - -

10 And that's your Gmail address? ---It is.

Did you then send this email anywhere else? ---I can't recall, to be honest with you.

Why did you send it to your Gmail address? ---I don't know. Sometimes it - I don't know whether it was done by mistake or what, but I, I can't answer that.

20

Who do you think was the intended recipient of the email? ---Oh, well, the only person I used to call Mike would have been Mr Hawatt.

And you said, "See below. It will get sorted. But this is how it is dealing with Charlie's stuff." And that's a reference to Mr Demian? --- (No audible answer).

30

And you say, "Ordinarily I would have refused this DA long ago." Does that reflect what your position was at the time? You would have refused Mr Demian's DA in other circumstances? ---Yes. Yes.

Yes. And why did you not refuse Mr Demian's DA? ---Because I would have known the repercussions of doing it.

40

And once again, the repercussions were those we've discussed today, the repercussions on your employment? ---Exactly, exactly.

Right. And you've said, "I hope you now understand what I've been going through

with his applications", I assume. "It's always the same story, not submitting information, ignoring issues and then pressuring us to finalise his DAs." Is that an accurate representation of Mr Demian's approach to his applications in council?---Yes. Yes.

10 "I hope he appreciates the effort I put in".---Well, that's just a throwaway line, I guess.

Okay.---More than anything else.

20 So is this a fair summary of what was happening with Mr Demian's applications in council? You would ordinarily have refused a lot of them but there was so much pressure on you to get them, to get them done that you - - -?---Yeah, yeah, sorry.

That's all right. Take your time, Mr Stavis.---Sorry.

That's all right. Take your time. There's water and everything there.---Okay.

30 I'll ask the question again when you're ready, but tell me when you are.---Yeah. Yeah. Okay.

Okay. So ordinarily you would have refused a number of Mr Demian's applications, but while you were employed at council you felt that you were under so much pressure that you could not refuse them?---Yeah.

Right?---Yeah.

40 And therefore you put in a large amount of work to help Mr Demian get his applications approved?---Yeah.

And did you do anything that you thought was dishonest in relation to those applications in the exercise of your functions?---I don't know if "dishonest" is

the right word. I don't think so. I was comforted by the fact that I was getting, I had legal advice on matters pertaining to varying standards, development standards, and also to a large extent getting in independent consultants to look at applications. But I accept, yeah, the responsibility was with me, yeah.

10 Was that true evidence?---I believe so, yes.

MR BUCHANAN: Commissioner, can I make an additional application, please, to vary the same non-publication order, again in respect of evidence given by the witness on 12 October 2017, commencing at the end of the last passage, that is to say, page 1222 line 20, but in fact in this case commencing at line 22 and concluding at line 41.

20 THE COMMISSIONER: The non-publication order made on 12 October 2017 in respect of the evidence of Mr Stavis is varied to exclude his evidence recorded at the transcript page 1222 line 22 and finishing on the same page at line 41.

THE NON-PUBLICATION ORDER MADE ON 12 OCTOBER 2017 IN RESPECT OF THE EVIDENCE OF MR STAVIS IS VARIED TO EXCLUDE HIS EVIDENCE RECORDED AT THE TRANSCRIPT PAGE 1222 LINE 22 AND FINISHING ON THE SAME PAGE AT LINE 41.

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MR BUCHANAN: Mr Stavis, I'm going to read to you from the transcript of evidence that you gave on 12 October 2017, which continued immediately after the passage which I just read out to you:

40 *And we have looked at an example this morning of Mr Demian's application where the independent consultant, you accepted earlier, wasn't really independent.---Yeah.*

You had framed and almost massaged their report to a point where it would support Mr Demian's application.---Yeah. That, that, whilst that is true for that one, I think in this particular one Michael Brewer and Willana in general, from what

I recall, was generally supportive of the proposal.

Right.---Yeah.

10 *And Mr Demian was effectively given some favourable treatment compared to other applicants, because nobody else really got the same level of opportunity and engagement that he got from you?---I absolutely agree with that.*

And again you did that because you say you were under a large amount of pressure in relation to your employment?---Yeah.

Was there any other reason why you were doing that?---No.

20 Did you hear me read that further extract from your evidence on 12 October 2017 to the Commission?---I did, yes.

Was that evidence true?---Well, I just can't recall giving that evidence, but there was no reason for me to give false evidence at that point in time. But I wouldn't use some of the words that I used back then today, I guess.

30 And are the words you wouldn't use today "I absolutely agree with that" in answer to the question, "And Mr Demian was effectively given some favourable treatment compared to other applicants because nobody else really got the same level of opportunity and engagement that he got from you"?---Yes, to the extent that, if I could clarify that point, I certainly provided - it was a proactive - in a proactive way solutions for other applicants to try and help them, but, yeah, he - because of the pressure I was under with this particular application, yeah, he would have got more than that, yes.

40 This wasn't the only application with which you were dealing from Mr Demian. There were two others - 570 and 998 Punchbowl Road?---Yes.

And your email both to yourself but addressed "Hi Mike" of 6 November 2015 and to Jim Montague was to the effect, "I wanted you to see what I've been going through with

Charlie's applications. It's always the same story", so it was a reference certainly to 548 Canterbury Road, Campsie, but explicitly, really, a reference to all of Mr Demian's applications that you were having to deal with, wasn't it?---I agree with that.

10 And when you said then that as a consequence of the state they were in when they were provided to you by Mr Demian, you were left with "trying to massage them to an acceptable level"?---Again, I think I've clarified what I meant by "massage". I don't believe I massaged them.

Can I just get you to assist on that little point there. Have I misunderstood your evidence? Are you trying to say that you meant by "trying to massage them to an acceptable level" design them? Is that what you're saying?---Yeah. Yeah.

20 But, in fact, you said "I'm left with", the consequence is "I have no alternative but to work to massage them to an acceptable level", so do you mean by that that you had to design them?---I never did.

No, I know you didn't. That's why "massage" suggests that really what you were doing is what you did sometimes in other cases of changing the application around so that it could meet with approval at the end of the process?---And this is getting back to - and I'll answer that question, I'm sorry, but I just want to - - -

30 If you wouldn't mind?---Sorry, can you repeat the question?

Yes. What you said there was "I'm left with trying to massage to an acceptable level" - you're referring to Mr Demian's applications, plural?---Yes.

And you're certainly not trying to say "I had to design them"?---No.

40 So what you were saying was that as a result of the state they were in, the consequence was that you had to try to put them into a state where they could be approved?---No.

What else could you possibly have meant?---That's a matter for them to put to us. I merely articulated to them the issues. Now, as I said, on bits of paper, on the plans. I can't answer it any other way. I'm not trying to be

evasive here.

MR BUCHANAN: I note the time, Commissioner.

THE COMMISSIONER: All right, we'll adjourn for lunch and resume at 2 o'clock.

LUNCHEON ADJOURNMENT

[1.04pm]

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