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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 MONDAY 13 AUGUST 2018

AT 9.40AM

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

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

MR BUCHANAN: We have no administrative matters,  
Commissioner.

THE COMMISSIONER: Right. Mr Stavis.

<SPIRO STAVIS, sworn

[9.44am]

10 MR BUCHANAN: Mr Stavis, at the end of proceedings in the  
afternoon of 9 August, you were provided with a folder of  
copies of pages from your exercise books and diaries which  
had entries on them with a view to you perusing them and  
identifying any which refer to a meeting with Peter Annand.  
Have you had an opportunity of doing that?---Yes, sir.

And have you identified any such pages?---Yes, I have.  
I've tagged them for you.

20 Thank you very much. Could you pass them to the  
Commission, please. So there are three tags; is that  
right?---I believe so, yes.

Thank you. Mr Stavis, what we'll do is make copies of  
those pages that you've tagged and come back to them at  
a time when everyone else can see what it is that we're  
looking at.---Sure.

30 So I'll pass that back to the Commission. Can I take you  
to the evidence you were giving at the conclusion on  
Friday, 10 August about the email you sent to Mr Montague  
at 1.25pm on Monday, 30 November 2015 in volume 22,  
page 124. You can see that on the screen, can you?---Yeah.  
It's a bit difficult on the screen. Sorry, my eyesight  
isn't the best, yeah.

Just say so any time you have difficulty reading it, and  
we'll see what we can do. This was the email in which you  
proposed a motion that could be moved or a memo from  
Mr Montague to councillors along the lines of:

40 *Council is generally in support of the  
proposed development and delegates the  
determination of the DA to the GM once  
concurrence is obtained from the RMS.*

?---Yes.

You then said:

*I await your advice.*

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

10 You told us on Friday, at transcript page 3814, that you made that proposal because you knew that the general manager had expressed on numerous occasions to you that the matter had to go before the CDC meeting, and you went on to say:

*And I distinctly remember talking to our solicitor and asking him whether that was in fact - and, to be honest with you, I don't know whether I suggested that or the solicitor suggested that might be a way of moving the application along.*

20 I asked you a few more questions about it. You said at page 3815, "I don't recall whether he proposed it", and you identified the solicitor you were speaking about as Peter Jackson of Pikes & Verekers Lawyers.---Yes.

30 And you went on to say "or whether I thought of it and asked for his opinion, but I do remember having a conversation with him about it." I asked you, "When did you have that conversation?" Answer, "It would have been around that time." And after you said you probably were the person who initiated the call, I asked, "Why did you call Mr Jackson?", and you said, "Because I was trying to ensure the GM's wishes of trying to progress the application or making it or having it go to that particular CDC meeting." My question to you this morning is: what is it that you recall Mr Jackson indicating to you?---Well, I believe he was - his advice was that it could be done, yeah.

40 Was there any discussion about the implications of taking that approach to approving a DA when there hadn't been satisfaction of the requirements of the SEPP for the Sydney Trains or RMS to be consulted beforehand?

MR ANDRONOS: Objection. The proposition wasn't that the DA be approved. My friend has misstated the effect of the proposition.

MR BUCHANAN: I withdraw the question.

Was there any discussion about the implications of the proposed motion with Mr Jackson?---Yeah, sure - look, all I can remember is that we discussed it at some length, and I felt comfortable after those discussions, or that discussion, with Mr Jackson that we could proceed to go before the CDC meeting as per the GM's request on that basis.

10 When you say you were comfortable after that discussion that you could go forward - - -?---Sure.

- - - do you mean legally that you could go forward?---Yeah, because I consulted obviously, our lawyer, that's right.

Did you then have a discussion with the general manager?---Yes.

20 And what was that discussion? Can you tell us as best as you can recall what the effect was of what you said to the general manager and what the general manager said to you?---I remember talking to him about my discussions with Peter Jackson, or my discussion, I should say, with Peter Jackson, and outlined to him that Peter Jackson was comfortable in this approach. And then he instructed me to proceed accordingly.

30 Was that a discussion you had with Mr Montague in his office or somewhere else face to face or was it on the phone or - - -?---I believe it was actually in his office.

Excuse me for seeming to go into the detail, but did he call you into his office or did you go up to him? What was it that happened?---I believe I went up to him.

As a result of having made that proposal and seeking his response?---Yes.

40 That's talking about the 1.25 email that we looked at earlier, the 1.25pm email on 30 November 2015?---Yes, yes, the one that's on the screen, that's right.

MR BUCHANAN: Commissioner, can I make an application, please, to vary the non-publication order made in respect of the evidence given by this witness on 21 November 2017 commencing at page 1287 on line 37 and concluding on

page 1289 at line 46.

THE COMMISSIONER: I vary the non-publication order made on 21 November 2017 to exclude the evidence of Mr Stavis recorded in the transcript commencing at transcript 1287 line 37 and concluding at transcript page 1289 line 46.

10 **I VARY THE NON-PUBLICATION ORDER MADE ON 21 NOVEMBER 2017  
TO EXCLUDE THE EVIDENCE OF MR STAVIS RECORDED IN THE  
TRANSCRIPT COMMENCING AT TRANSCRIPT 1287 LINE 37 AND  
CONCLUDING AT TRANSCRIPT PAGE 1289 LINE 46**

MR BUCHANAN: Mr Stavis, I'm going to read to you from the transcript of evidence that you gave to the Commission on 21 November 2017. If you could listen, please, to my reading of that part of the transcript and then I will ask you some questions about it. Can I indicate this for the parties and the Commission, at one point in the transcript that I'm going to read, there is a reference to exhibit C39 and a particular email. The evidence of that email is before the Commission in this inquiry at volume 21, page 296, and we will be able to pull that up on the screen. If we could blow up the top of the page, please. So the reference to exhibit C39 and following is a reference to the email that's on the screen now of 6 November 2015 at 5.59pm from Mr Stavis to himself, commencing, "Hi Mike". It has been the subject of evidence already. Reading the extract from the transcript of evidence given on 21 November 2017:

*I'd like to take you to the next page which is page 330. This is another email from yourself spiros@canterbury.nsw.gov.au on 30 November, 2015. ---Yep.*

40 *You've sent it to evar@canterbury.nsw.gov.au. Who is that? ---Oh, Eva was my personal assistant.*

*And also to Mr Montague. Is that right?*

I'll just pause for a moment, Commissioner, and ask could we now see volume 22, page 126. What is on the screen now is volume 22, page 126. After you said to the Commission, "Oh, Eva was my personal assistant", you went on:

*And also to Mr Montague. Is that right?---Yep, that looks like that.*

*And it's about 548-568 Canterbury Road.---Yep.*

*I'll just let you read that email.---Yep.*

10 *All right. So this appears to be what you've told us already that you suggested that that could be a way forward?---Yep.*

*Yes. Did you seek any advice about the drafting of that condition?---I don't recall. Sorry.*

20 *What about the delegation of council functions to the general manager?---Sorry, what was that?*

*What about did you seek any legal advice in relation to whether it was permissible for council to delegate their approval functions to the general manager?---I may have. I don't recall. Sorry.*

30 *Was this the first time that this had happened?---I'm not sure to be honest with you.*

*All right.---I think as I said before, this, it was unusual.*

40 *We explored this on the last occasion, but what did you think would happen if the matter wasn't ready to go on 3 December if you couldn't find a way forward?---Well, I don't know exactly what would happen but I always, like I said before, always at the back of my mind was it had repercussions from above, yeah.*

*Would you say that this application jumped the line?---Yes.*

*And again? Why was that?---Reasons that*

*I stated before, that there was, obviously there was an urgency and I was asked to progress that application, yeah.*

*By - - -?---From Jim and Pierre Azzi and Michael Hawatt.*

10 *Thank you. Commissioner, I'm going to - Mr Stavis, we looked at an email earlier where you said ordinarily you would have refused Mr Demian's applications, and that was on 6 November, 2015, leading up to 3 December, 2015, we've been looking at. Was that email about this application to add two additional storeys?---Was that an email that you showed me?*

20 *So I can go back to that email if you'd like.---Yeah.*

30 *Exhibit C39, please. So in fact the preceding text, I think, below. We can see that there's a referral in the email below to the amending DA, which is the 509. So it's amending 509 of 2013, and the subsequent DA for the two additional levels, DA 592/2014, which we're looking at, that went to the 3 December, 2015, meeting. And if we could scroll up again, you can see that this email says ordinarily you would have refused this DA long ago.---Yeah.*

40 *Is it your evidence that you believed that you could not refuse Mr Demian's DA? You could not recommend it for refusal?---Yeah, I mean, it was always about trying to find a solution to applications. So, yes.*

*And you didn't consider one of the solutions being to refuse the DA?---Yes.*

*That wasn't one of the options on the table for you?---No.*

*And why was that?---Because of the pressure from above.*

*From Mr Montague, Mr Hawatt and Mr Azzi?---Yeah.*

*Thank you. I'll just put that to one side. All right, Commissioner, I'm going to move on from that topic unless you have ...*

And then the Commissioner asked:

10

*Can I just ask you, you were asked about the delegation of the council function to the general manager and whether you had received legal advice on that issue, and you said "may have". Would have that been legal advice specifically for that resolution or more general legal advice?---No, I think it would have been more specific if it was - - -*

20

*Dealing with that application?---I'd say so, yeah.*

*And the legal advice, would you have sought that legal advice from Peter Jackson?---Normally that would be the case, yes.*

30

*And the advice would be in writing?---Normally, yes, yes.*

*And if you obtained it should have it been on the council file for that application?---It should be, yes.*

40

*When you sought advice from Mr Jackson and his firm, I take it would they open a particular matter that would refer to the DA or was it under some kind of general advice retainer?---I'm not sure how they operate internally, but normally it would have been specific, so I would imagine they would open up the file.*

*And you would build (sic) by reference to that specific- - -?---Yeah.*

- - - DA and the advice that you received?---Yeah, yeah, normally, yeah.

Okay. Thank you.

Then there was a question from Ms Ellis:

10           *Mr Stavis, while you were at council, were there any other solicitors that you went to for advice, apart from Mr Jackson?---I don't recall, to be honest with you, sorry.*

THE COMMISSIONER: Mr Buchanan, can I just raise one matter. Page 1289 line 38, my recollection was the question was not "and you would build by reference"; it was "and you would be billed by reference", which makes more sense.

20           MR BUCHANAN: B-I-L-L-E-D rather than B-U-I-L-D?

THE COMMISSIONER: Yes.

MR BUCHANAN: Thank you.

So can I just explain to you the correction that the Commissioner just made. When referring to how Mr Jackson and his firm would respond to your inquiry, she asked:

30           *And you would be billed by reference to that specific - - -?---Yeah.*

- - - DA and the advice that you received?---Yeah, yeah, normally, yeah.

Do you understand that?---I do, yeah.

40           Was the evidence that you gave to the Commission on 21 November 2017 that I've read you, subject to that correction, true and correct?---I believe so, but I'm quite sure that I did actually seek advice from Peter Jackson.

Do you know what the matter was in respect of which you sought advice, that is to say, what the council file was?---Sorry, I'm not quite understanding the question.

Well, you rang Mr Jackson to seek his advice?---Yes.

It was about an issue on a council file?---Yes.

And my question is which file? Which DA?---It was in relation to 548.

And are you quite sure?---Yeah, yeah. I believe so, yes.

10 If we could go, please, to volume 27, page 269. The email concerned is at the bottom of page 269. We might need to go over to page 270 as well. There's an email from you to a Jim Tsirimiagos at Sydney Trains on 25 November 2015 in relation to 212-218 Canterbury Road, Canterbury, DA No 168/2015. Can you see that your email says:

*Hi Jim*

*I left a phone message for you today.*

20 *I need an URGENT favour regarding this matter.*

*My staff have not followed up Sydney Trains' concurrence and this DA is already on the agenda to be determined on the 3 December 2015 council meeting. It is recommended for approval.*

30 *Is there any way you can please provide concurrence before the 3 December 2015 subject to conditions even if they are deferred commencement conditions. Any assistance would be greatly appreciated and I apologise for any inconvenience caused. The DA has to be determined on 3 December 2015.*

40 Can I just pause there. The 3 December CDC meeting - we're talking about exactly the same meeting as was the meeting that you were trying to get the 248 Canterbury Road DA to for determination?---548?

I'm sorry, thank you very much. 548, yes, Mr Stavis.---Yes.

You appreciate that?---Yes, I do, yes.

So if I can take you, then, back to page 269, can you see that there's an email with a number of paragraphs that Mr Tsirimiagos sent back to you at 10.19 at night on 25 November 2015 saying that essentially they were unable to consider deferred commencement. In the next paragraph, the site has a number of issues, and he then identifies some of them, going down to the last paragraph, in which he says:

10            *In other similar situations in other LGAs some Councils have decided to endorse the development as presented, but delegate the determination of the DA to their GM once concurrence was obtained and not substantial changes needed as a result. This way Councillors can give it the tick without actually issuing a determination. Is this possible?*

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

And that's on 25 November, which is five days before your email to Mr Montague at page 124 in volume 22 in relation to 548 Canterbury Road, in which you proposed a similar motion. Do you appreciate that?---I do, yes.

You forwarded Mr Tsirimiagos's email to Marwan Chanine?---Yes.

30            At 12.31pm on 26 November 2015. This is the top of page 269. You said:

*FYI. Maybe you can pass on to your legal team to review and advise.*

*As we said, worse case is that we add to the recommendation that Council delegates determination of the DAs to the GM once concurrence etc is obtained.*

40            This suggests that you sought legal advice but from the legal advisers of a developer?---All I can say is I do recall having conversation with our - council's legal - Peter Jackson about that matter. I'm not sure if it was - I also asked him about 212 Canterbury Road, but I remember talking to him about 548 Canterbury Road. Maybe I was just asking him to, you know, get his legal team to review it,

I guess. But as you pointed out before, even the representative from Transport NSW suggested something similar that other councils in the past have done as well.

Did you get a response from Mr Chanine as to what his legal team thought of the proposal?---That I can't recall, I'm sorry.

10 Did you convey to Mr Jackson what Mr Chanine's legal advisers thought of the proposal?---I don't recall that, sorry.

Are you saying it's possible that you did, and you just don't have a recollection, or do you think that it didn't happen?---I really don't recall one way or another.

20 Is it possible that you have made up the evidence of having a memory of talking to Mr Jackson about this device to deal with a situation where, as it were, concurrence of what amounted to a concurrence authority had not been obtained in time for the application to be determined by council?---No, I don't believe that to be the case at all. In fact, I even remember talking to Mr Gouvatsos about that approach, George Gouvatsos.

30 Yes, but I'm not suggesting you didn't speak to Mr Gouvatsos about it. What I'm asking is, is it possible that you've made up the evidence of talking to Mr Jackson about it?---No, I don't believe so. No.

THE COMMISSIONER: Mr Tsirimiagos from Sydney Trains, what was his position there?---From what I recall, he was a manager in the section that dealt with council referrals.

40 MR BUCHANAN: Now that I've taken you to the email from Mr Tsirimiagos of 25 November 2015, I'm not trying to put words in your mouth, do you think that his email was the source of inspiration for the suggestion that you made to Mr Montague in relation to 548 on 30 November 2015?---Sir, in all honesty, I have a recollection of talking to Peter Jackson about this issue. I don't believe that was the source. Maybe that was obviously reinforcing a way, but I distinctly remember speaking to Peter about it.

Can I take you, please, to volume 2, page 288. While that's coming, you know that council had an IHAP policy?---Yes, sir.

And you knew at the time that council had an IHAP policy?---Yes, sir.

If we look at page 287, you can see that's the front page of the IHAP policy from council's policy register. It's on the screen, if that is of assistance.---It's a bit hard on the screen for me, sorry. Yes.

10 If you can go to page 288, you can see that under the heading "Principles" appears:

*The Independent Hearing and Assessment*

*Panel will:*

- \* Review development applications*
- \* Conduct meetings with applicants, objectors and interested parties*
- \* Make recommendation to Council.*

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

By making the recommendation that you made to the general manager as to how the matter could be progressed to the CDC meeting of 3 December 2015 in view of the IHAP recommendation in the case of 548 Canterbury Road, were you trying to circumvent council policy in relation to the IHAP?---No, sir. I actually - if you recall from my last evidence, there was evidence that I had made contact with the general manager about that issue, and he instructed me just to proceed.

30

I'm sorry, if you could just remind me what you're talking about there?---I recall that I was shown some emails from myself to the general manager, and I believe it was from Andy Sammut as well, where Andy Sammut's section gave some advice about that issue. So I forwarded that - or that was forwarded to the general manager, and I remember the general manager telling me to proceed notwithstanding.

40 So are you saying if it's anyone's fault, it's Mr Montague's fault?---Look, I haven't read the IHAP policy for a long, long time, but I was instructed. That's the best way I can put it.

You proposed it in the case of 548 Canterbury Road, didn't you?---I don't believe I proposed it, no.

I'm sorry, if I could just take you back to page 124 in volume 22. Do you have volume 22?---No.

It's on the screen in front of you. You say:

10                   ... the DA was referred to RMS today. To overcome this issue I propose to provide you with a motion that can be moved off the floor or as a Memo from you to the Councillors recommending the following ...

So you proposed it, didn't you?---For the application, but not - I didn't make the decision not to go back to IHAP.

20                   Did you discuss with Mr Montague whether it should go back to the IHAP?---I don't recall whether I had any conversation with him about it other than what was presented in those emails before, but I do remember him advising me to proceed for the matter to go to the 3 December CDC meeting. I don't recall any sort of detailed discussions about it.

Why wouldn't you have drawn Mr Montague's attention to the recommendation of the IHAP that the development application be deferred until the application has been referred to the RMS?---I think it was stated in those emails you showed me before that were forwarded to the general manager.

30                   MR PARARAJASINGHAM: Commissioner, could I just raise a matter. I think the witness is referring to volume 22, page 125 and page 124. In fairness to the witness, that's what he appears to be referencing. Whether that answers my friend's question is a separate matter, but in fairness to the witness, that is what I believe he is drawing to my learned friend's attention.

MR BUCHANAN: I take that point.

40                   What I'm trying to explore is whether you thought the IHAP recommendation was anything that needed to be actioned in any way as far as complying with at least the spirit of council's IHAP policy?---Well, I believe we did that through advice through Andy Sammut's section.

To whom?---Well, I'm just having a look at the emails. Andy's response in relation to my email dated 30 November, where I said:

*Andy,  
The GM wants this DA to go to 3 December  
CDC meeting and asked for it to be  
circulated as a late item, notwithstanding  
IHAP's deferral request.*

10 And then on 30 November 2015 at 1.19, Andy forwarded me an  
email that was prepared by Brad McPherson, and  
I subsequently referred that to Jim Montague.

Was there any intention to pass to the IHAP whatever you  
got back from the RMS for its consideration?---That I can't  
answer. I don't recall.

Did you pass whatever you got back from the RMS to the IHAP  
in relation to 548 Canterbury Road?---I don't recall that,  
I'm sorry.

20 The exercise that you've drawn our attention to and the  
emails on 30 November 2015, volume 22, page 124, are simply  
all about dealing with the question of how the meeting of  
the CDC of 3 December can deal with the matter, given the  
imperative that it be dealt with at that meeting? Isn't  
that the case?---No. No.

Could you just draw my attention to what I've missed,  
then?---Sorry, because Andy Sammut says:

30 *Hi Jim  
As per your instruction the report will be  
going to the 3 Dec CDC, but just so you are  
aware of Anthony Hudson's is of the opinion  
that it can't be determined without  
referral to RMS because as outlined more  
fully below ...*

40 By making the proposal that you make at the top of  
page 124 - that's to say, your email at 1.25pm on  
30 November 2015 - you were trying to circumvent the  
requirements of the State Environmental Planning Policy  
(Infrastructure) 2007, clause 104, weren't you?---No, sir.

As far as you were concerned, by making that proposal, who  
was going to determine the DA?---Well, as that says,  
council would have delegated it to the general manager to  
determine it once concurrence was obtained from the RMS.

10 You knew that the requirement of the SEPP was that before determining a development application for development to which the clause applied, the consent authority was required to give notice of the application to the RMS within seven days after the application was made and then take into consideration any submission the RMS provided in response, amongst other things?---Look, as far as I was aware, prior to these emails, I believe that the RMS had been notified as was contained in part in the report that was prepared. So as soon as I became aware that potentially it may have been an issue, then these emails referred to on pages 124 and 125 were instigated, I guess, and prior to that discussions, I believe, with Peter Jackson.

20 Is it the case that with that proposal, you were trying to circumvent the fact that in the context of clause 104 of the SEPP 2007, the consent authority for the DA was council?---I really didn't think about it in that context, sorry.

Can I take you, then, to page 126 of volume 22. This is a copy of an email at 4.48 that afternoon, 30 November 2015, to Mr Montague in relation to 548, and you say:

*Here is the commentary and motion for the Harrisons applications as discussed.*

30 And then you set out five paragraphs. Do you see that?---I do, yes.

Were you providing that for a general manager's memorandum?---I believe so, yes.

40 Just so that there's no doubt about it, when you said in the first paragraph "as discussed", you had received authority or a direction from Mr Montague to proceed that way?---Yes, sir.

You're quite sure about that?---I believe so, yes.

In the third paragraph, the reference to the "original DA", is that a reference to the DA for the six storeys, the approved development?---I believe so, yes.

Just looking at the third paragraph, commencing "The

applications", that was correct, was it, the applications were not referred to the RMS?---Obviously if I - if I've stated it, obviously I became aware that they weren't, yes.

The fifth paragraph reads:

*In order to avoid any delay ...*

10 Why were you trying to avoid any delay?---Because I was instructed to avoid any delay. I was instructed that it had to go to the 3 December by Mr Montague.

20 If Mr Montague hadn't given you that instruction, what would you have done?---I don't know. I guess with the benefit of hindsight, we could have waited to get the concurrence or the referrals back from the RMS. I might add, though, that I believe that the staff at the time, or the consultant who wrote the report, didn't believe - and we had that legal advice - didn't believe it required referral because of the fact that it was below that threshold. But I think I recall in a previous email that I was shown that I said just as a safeguard that that process could take place or should take place.

The process of referral?---Yeah, yeah.

30 Did you have any contact with Michael Hawatt or Pierre Azzi about this proposal to use this device in respect of the DA going to the 3 December 2015 meeting after the IHAP report had been published, as it were, you'd received it?---I can't remember if I did. It is possible.

Did you have any contact with Mr Demian in between the IHAP report being handed down and you making that proposal?---Again, I don't recall. But it is possible.

40 Mr Demian's interest, obviously, was in the earliest possible decision approving his DA; you'd accept that?---Yes, sir.

And you'd accept, wouldn't you, that the public interest lay in observance of council's IHAP policy?---Yes.

Compliance with the SEPP (Infrastructure) 2007?---Yes.

And the fact that the consent authority for the DA was council?---That I can't be a hundred per cent sure of,

whether council is in reference to council, as in the councillors, or whether the general manager had the power as a council representative.

Are you saying that even without your proposal on 30 November 2015 providing a motion that could be moved off the floor, you thought the general manager had the power to determine the DA?---No. No, no, I'm not saying that at all. Just in reference to the word "council".

10

Under the Environmental Planning and Assessment Act, the general manager of a council isn't made the consent authority?---No, no.

So your actions in this matter favoured the development proponent over the public interest, didn't they?---No, I wouldn't say that. I was under instructions to proceed with the application.

20

That's your explanation.---Sure.

But the effect of what you did was to prefer the interests of the development proponent over the public interest, wasn't it?---No, I don't believe that's the case.

30

Now, can I just take you to page 131 of volume 22. That is a document which was an agenda for a meeting being held with the RMS on 2 December 2015; is that right?---I'm not sure. I don't recall. But I do recall having numerous meetings with the RMS about Canterbury Road and about specific applications. But I'm not sure if that's - - -

Well, it looks like an agenda for a meeting with the RMS on 2 December 2015 about the traffic impact assessment following on the Canterbury residential development strategy planning proposal, doesn't it?---It does, yes.

And it has your handwriting on it, doesn't it?---It does.

40

Going over the page, that's the obverse side of that document, that's your writing and drawings as well?---Yes, I believe so.

You added on page 131 under "Any other matters" "548 Canterbury Road and 212-220 Canterbury Road". Do you see that?---I do.

Do you recall that a similar issue had arisen in relation to 212 Canterbury Road, now that I've taken you to the email with Mr Tsirimiagos?---Yes. Yes, sir.

And did you raise those two issues at that meeting?---It's possible, but I just don't recall the detail.

10 Did anything happen in relation to 548 Canterbury Road or 212-220 Canterbury Road as a result of you attending that meeting, that's to say, whether it was at the meeting proper or in the corridor, as it were?---Sorry, could you repeat that?

Did anything happen as a result of you attending that meeting in relation to 548 Canterbury Road or 212 Canterbury Road?---I really don't recall.

20 At page 133, this is an email conversation that I think starts, strictly speaking, on page 136 but probably more accurately on page 135. You can see there that there appear to be a header from an email from you to Mr Tsirimiagos at 2.35pm on 25 November, and then, above that, in other words copying in that header, is an email that commences on page 134 from you to a woman called Rachel, Rachel Nicholson at the RMS at 10.36pm on 25 November 2015. Do you see that?---Yes, sir.

30 And you're asking for an urgent favour - you emphasised the word "urgent" - in terms of getting a response from the RMS?---Yes.

Do you see that?---I do.

40 And going to the middle of that page, you escalated the matter, is that right, to a person called Andrew - no, I apologise. You forwarded this to Andrew Hargreaves - I misread it - asking him to send Rachel a package in relation to 548 and that it was very critical. Do you see that?---I do, yes.

I'm sorry, it's my mistake again. I apologise. In relation to 212-218 Canterbury Road. Then going over to page 133, on Friday, 27 November at 10.09pm, an email from you to Ms Nicholson in relation to 212:

*Just touching base to see when I can expect your comments?*

Do you see that?---Yes, sir.

Then you get an email from Ms Nicholson on 2 December at 5.18pm, set out in about the middle of page 133, indicating what she is doing to progress your request. Do you see that?---Yes.

10 Then at the top of page 133 is an email from you to Ms Nicholson saying:

*It's more critical to get comments for 548 Canterbury Road, the others can follow after. Please I need this before close of business tmrw.*

20 *RMS have already provided comments for this development previously. This DA is for alts/adds to add 2 extra floors to accommodate 70 extra units.*

*Please Rachel.*

Do you see that?---Yes, sir.

Why was it more critical to get comments for 548 Canterbury Road than for 212-220 Canterbury Road?---That I'm not sure about, I'm sorry.

30 Can I take you to page 137. If one goes through to pages 140 and 141, it seems that you've taken the conversation that you were having with Ms Nicholson and copied it in to an email to a Gordon Trotter at RMS. Was he Ms Nicholson's supervisor, as you understood it?---I believe so, yes.

This is in relation to 548 Canterbury Road?---Yes.

40 You say in the third-last paragraph:

*As you know, the DA is being considered at a council meeting tomorrow night and therefore RMS's advice prior to this meeting would be greatly appreciated.*

*I am willing to provide you with any resources to assist you if required.*

*Please call me tomorrow to discuss.*

Essentially you were pleading with the RMS to provide you with comments, weren't you?---I think that's fair, yes.

Which would tend to suggest that you were under considerable pressure to produce such comments?---I think that's fair.

10

Was it the case that you hoped to avoid having to use the GM delegation device to get around the IHAP recommendation by getting the RMS comments before the meeting of the CDC?---No, I think I was just trying to get RMS comments, if I could, before, because to the best of my recollection they were dragging the chain on a lot of applications that we had at the time. But I don't have a conscious memory of actually thinking that that would circumvent the motion that was put forward.

20

In fairness to the RMS, you had asked them for an urgent response at the last minute, hadn't you?---Yeah, but there were other applications not related to any of these ones that we've discussed that they were basically taking their time.

What was the source of the pressure that you felt you were under that caused you to adopt that pleading tone with the RMS?---As I said before, it was mainly the general manager, but obviously Mr Hawatt and Mr Azzi as well.

30

Did the general manager indicate a diffidence or a reluctance to use the delegation device?---No, not that I can recall.

Can I just take you back to page 127. This appears to be a one-page memo from Mr Montague to the councillors. It's dated 1 December 2015. It's about late items for the city development committee meeting on 3 December, and it indicates that those late items are 548-568 Canterbury Road, the DA and the section 96 application. Do you see that?---I do, yes.

40

It says in it:

*Please note that the recommendation by the Director City Planning differs from that*

*proposed by the Independent Hearing and  
Assessment Panel.*

That would appear to be simply a reference to the recommendation that's in the officer's report?---I believe so, yes.

10 And there doesn't appear to be, in that memo, the material that you provided to the general manager in your email to him of 30 November 2015 at 4.48pm on page 126 by way of explanation as to why the matter needs to be delegated to him?---Not from what's contained in this package, no.

Do you know whether there was more material that explained what needed to be done in respect of 548-568 Canterbury Road for the councillors at the 3 December CDC meeting?---I remember we prepared a memo - - -

20 You're not mixing it up with 212?---Maybe I am. I'm sorry.

Because you did certainly prepare a memo there.---Yeah. I don't recall, sir, sorry. I might be getting mixed up with the two, yeah. Yeah.

30 It's just that there's nothing in that memo that actually suggests what the recommendation should be other than referring to the recommendation by you, and you've agreed that the recommendation by the Director City Planning is a reference to your recommendation in the officer's report rather than in a fresh document?---I can't be a hundred per cent sure, but if I'm just reading this memo, yes, the inference would be that it would be a reference to the assessment report.

And, of course, your recommendation in the officer's report was not along the lines of delegating authority to the general manager?---Not in the assessment report, no.

40 Can I take you, then, to page 228 in volume 22. At the bottom of page 228 is agenda item 17, 548-568 Canterbury Road, Campsie: modification to approved mixed use building including additional basement parking. Can you see that the resolution reads:

*The General Manager be authorised to issue  
the consent for modification application*

*DA 509/2013/A, once concurrence is received from the RMS, subject to the conditions as recommended in the Director City Planning's report and any other conditions that arise as a result of the RMS concurrence.*

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

10 And there's also another component, and that is that the committee decided not to accept the IHAP recommendation given that the application has now been referred to the RMS and resolved to accept the officer's recommendation. If I can just, whilst we're here on page 229, take you to agenda item 18 in respect of the same site but in respect of the DA for the construction of two additional levels, and can you see that an almost identical brace of resolutions appear?---Yes.

20 That the general manager be authorised to issue the consent once suitable concurrence is received. Do you see that?---Yes, sir.

Now, that's not the wording that you proposed. Page 124 of volume 22, if I could just remind you. You proposed two different versions of the motion. The first one is on page 124 in your 1.25pm email on 30 November 2015 to Mr Montague:

30 *Council is generally in support of the proposed development and delegates the determination of the DA to the GM once concurrence is obtained from the RMS.*

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

Then a little later that day, at 4.48pm - this is at page 126 - you suggested a different version, that the section 96 application and the DA:

40 *... be approved in principle and once the suitable concurrence is received from the RMS the General Manager be authorised to issue the consents, subject to the conditions as recommended in the Director City Planning's report and any other conditions that arise as a result of the RMS concurrence.*

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

Are you able to assist us as to what happened in between your emails of 30 November 2015 and the resolutions by the CDC on 3 December 2015 as recorded on pages 228 and 229 in volume 22 to result in a different wording?---No, I can't, sorry, sir.

10 Were you present at the meeting of the CDC?---I believe I was, yeah. Yeah.

Where did the wording of these resolutions come from?---As they appear in the actual - the committee report?

Yes.---I'm not sure, sir. I don't recall.

20 Were you consulted as to a third version of the proposed motion along the lines of the resolutions that appear on pages 228 and 229?---I can't remember, I'm sorry. I don't recall.

Was there any discussion of which you are aware which occurred as to precisely how the motion should be worded?---Not that I can remember. Sorry.

30 You can see that a big difference is that the word "approval" doesn't appear in these resolutions, nor does the word "determination"?---Yes, I do see that, yes.

Do you know how come the resolutions don't include the word "approval" or "determination"?---No, I'm sorry, I don't. These are minutes that came as a result of that meeting, I suspect, isn't it?

Yes.---Okay. I'm not sure, sir. I don't know how it transpired. I can't recall.

40 You see, you were quite alive, I want to suggest, from your emails of 1.25pm and 4.48pm on 30 November 2015, pages 124 and 126, to the need for there to be an actual approval and, indeed, if not that, then at least a determination; you understood the need for that, because that's the language of the Act, isn't it?---Yes.

But somehow that language doesn't appear in these resolutions, and therefore one can assume not in the

motions. You don't recall any discussion at all about whether it was wise to include the word "approval" or "determination" in the motion?---No, I don't, sorry.

If Councillor Azzi is recorded as the person who moved these motions, do you know whether he got the motions from somewhere?---Not that I can recall, I'm sorry. But it was not uncommon for councillors to present motions at meetings. But as to where he got that from, I'm not sure.

10

Did you have any conversation with Councillor Azzi between 30 November 2015 and 3 December 2015 at the time these motions were passed about the wording of the motions?---Not that I can recall, no. I don't believe so.

And you didn't provide that wording to him in a form of a written document?---Not that I can recall, no.

20

Can I just ask you - I'm sorry to harp, but just one more question on at least this particular point. Did you and Mr Montague draft these motions that were passed at the meeting on 3 December 2015?---No, not that I can recall. I don't - I have no recollection of how these motions came up before council, sorry.

30

Is it possible, then, that the fact that they don't include a reference to "approval" or "determination", and the fact that your proposed motions did, suggest that someone else intervened between you, on the one hand, and Mr Azzi moving these motions, on the other hand?---That's possible, yes.

Did you have any understanding that the device of approval in principle and authorising the general manager to issue a consent subject to conditions might not be lawful?---No.

It never came to your attention that there was legal authority in the form of a court decision to the effect that it was not lawful?---No, sir.

40

So in your conversation with Mr Jackson, he never said anything to you to the effect that this device was not lawful?---No. Otherwise I wouldn't have proposed it.

Or otherwise you didn't have a conversation with Mr Jackson?---No. I remember having a conversation with Mr Jackson about it.

How many other times in your experience has a device of this sort, whether lawful or not, been used to overcome the absence of concurrence from what amounts to a concurrence authority to ensure that a DA is approved urgently by a council or its committee?---Not many.

So there's 212-220 Canterbury Road?---Yes.

That's one illustration?---Yes.

10

548 Canterbury Road is another illustration?---Yes.

Are you aware of any other instances anywhere?---Nothing that comes to mind at the moment.

You drew our attention to the fact that Mr Tsirimiagos said other councils had done it. Do you know of any other councils that have done it?---Nothing that comes to mind.

20

And you didn't contact Mr Tsirimiagos and ask him for assistance as to precedents?---No, I don't believe I did, no.

Certainly no other applicant than Mr Demian and, in the case of 212-220 Canterbury Road, Marwan and Ziad Chanine received this advantage of an urgent approval of their DA, notwithstanding the absence of concurrence from what amounted to a concurrence authority, did they?---Not that I'm - - -

30

From Canterbury Council?---Not that I'm aware of, no.

So as a result of progressing Mr Demian's applications urgently, regardless of RMS concurrence, he got an advantage which other developers and property owners did not at Canterbury Council; that would be fair to say, wouldn't it?---In terms of timing, yes, I believe so.

40

And there was a public interest, wasn't there, having regard to the IHAP report in both the RMS issues and the height variation issue identified by the IHAP being investigated before the DA and the section 96 application were determined, wasn't there?---Sorry?

There was a public interest - - -?---Sure.

- - - in having those issues identified by the IHAP

resolved before the DA and the section 96 application were determined, wasn't there?---I don't believe so, because I think there was enough information from a traffic perspective to suggest that those applications were approvable. And obviously if we didn't get the concurrence from the RMS or if they raised issues, then that approval - well, the motion that I had put forward, that approval would not have been forthcoming, and obviously there would have needed to be changes made to those applications or at least whatever issues were raised by the RMS.

You preferred the interest of Mr Demian in this DA and section 96 application over the public interest, didn't you?---No, that's not right, no.

If the witness could be shown exhibit 210, please. If I could take you to page 14, please. Can you assist us with the entries on this page, please. There appear to be two different entries, but they're both dated 23 March 2016. Do you see that?---Yes.

The second entry in blue ink reads, "Phone call, Pierre Azzi". Do you see that?---Do you mean the first entry on the top of the page?

No. The second entry, "Phone call, Pierre Azzi"?---Yes.

And there's what looks like a tick next to it indicating that it has been done; would that be a fair construction or is that over-reading it?---Probably over-reading it.

Then there are entries in red ink and there are four asterisks. You have beautifully legible handwriting. Can you assist us in the context of the whole of that page as to what the entries in relation to "Harrisons" refer to?---Sorry, I didn't hear that.

In the context of everything you see there, what do the two entries in red ink concerning "Harrisons" refer to?---Probably the first asterisk is whether - as it says, whether the consent has gone out. There's a question mark.

Do you mean physically left the building and gone to the developer or the proponent?---That's the way I read it, yeah.

And is this a record of something that you were going to do or is it a record of something that was raised with you? What's it a record of?---I believe - I can't be a hundred per cent sure, but normally in these recordings, these notations that I make, it's in reference to telephone calls that I would have received or notes that I've made to myself. I can't be a hundred per cent sure, though, in this instance how that was - how this transpired.

10 Is it possible that you had to make a call to Mr Azzi on 23 March 2016, and then you made the call and this is a record of what was discussed?---Again, it is possible if that's what you're asking.

Yes.---Yeah, it's possible, but I can't be a hundred per cent sure.

20 There's nothing to indicate that it was a meeting with or a call involving Mr Hawatt?---No.

Or am I wrong about that?---No, I don't recall, from this information, whether that happened, no.

But it's fair to read it as being a contact with Mr Azzi concerning the subjects identified in the red ink?---As I said before, it's possible. I can't be a hundred per cent sure.

30 Thank you. That's all in relation to that exhibit. Can I take you, please, to volume 15 and I'd like to ask you some questions about the DAs for 570-580 Canterbury Road, Campsie. You arrived, as we have discussed before, in March 2015 at Canterbury. You remember that?---Yes, sir. Yes.

40 Do you remember that when you arrived, there was a DA for the construction of a six-storey mixed use development on 570-580 Canterbury Road?---Is that the one on the corner of Chelmsford and Canterbury Road?

Correct.---Yes.

So you would have learned of it within a period of time after arriving at Canterbury in early March 2015?---Yes, sir.

Did you receive any contact in relation to that DA from

Pierre Azzi or Michael Hawatt?---At some point in time, I believe I did, yes.

How much contact did you receive from them in relation to that site?---Probably to the same extent as I did for the one next door at 548, so I can't tell you exactly.

For 548, of course, the proponent was Mr Demian, and 570, the proponent was Mr Demian?---Correct.

10

Do you have an actual recollection of contact from Mr Azzi or Mr Hawatt in relation to 570 as against 548 Canterbury Road?---They were always - I mean, it was always - to a large extent, they were both discussed at the same time, really. I can't give you any specific conversations or when it actually first happened or when the first contact was made, but, as I said, both of those sites were discussed.

20

In relation to 570-580 Canterbury Road, Campsie, did you have any contact from Mr Demian?---Oh, yes. Yes.

And in relation to that site, did you have any contact from Mr Montague?---Yes.

30

What sort of contact or how frequent was the contact from Mr Montague?---It was probably the same as 548, in the sense that contact would be made, primarily either a meeting with him in his office or phone calls, yeah. And the only - and I'm not - in my opinion, contact would have been made once the applicant had made contact with the GM, I guess, inquiring about his application.

40

I'm not saying you're wrong about that, but can I just ask you to think about, when you said that was in your opinion, what was it you were thinking of that caused you to have that opinion?---Because there were occasions where the general manager would ring me and actually stated to me that Mr Demian had contacted him and wanted to know what's happening with X, Y and Z, yeah.

Now, if I could take you, please, to volume 15, page 3 in the first instance. This is the beginning of a report to the city development committee meeting on 14 May 2015 by you. Do you see that?---Yes, I do.

It's in relation to 538-546 and 570-572 Canterbury Road,

Campsie, and 576-580 Canterbury Road and  
2 Chelmsford Avenue. Do you see that?---Yes, sir.

This is your report?---Well, I didn't physically write it,  
no, but it's under my department, yes.

You would have approved it?---I believe so, yes.

10 If I can just ask you to peruse the summary, the dot points  
under that subheading, that there had been submissions to  
the planning proposal for the implementation of the  
residential development strategy for land at the identified  
sites, to increase the maximum building height from the  
current level of 18 metres to 25 metres. There was  
identification that 548-568 Canterbury Road is currently  
the subject of a separate planning proposal to do the same,  
and the matter is now in abeyance pending the results of  
that traffic study that we've referred to from time to  
20 time, to progress a number of sites on Canterbury Road.  
That's the planning proposal, that is.---Yes.

And there's the information that a maximum building height  
of 25 metres would generally enable eight-storey  
development. There's some argument there. There's  
a reference to Chelmsford Avenue there. And then:

30 *In this context, a planning proposal to  
increase building heights to 25 metres  
could be supported for 538-546 and  
570-580 Canterbury Road. Increasing the  
height for 2 Chelmsford is not supported as  
it directly adjoins low density, single  
storey residential and potential amenity  
impacts and streetscape transitions need to  
be addressed.*

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

40 The recommendation appears on page 11, that a planning  
proposal be prepared to increase the maximum permissible  
building height for 538 and 570 to 25 metres and be  
forwarded to the department for a Gateway Determination,  
et cetera. Do you see that?---I do, yes.

Then the resolution to do that appears on page 13. That  
was at the meeting of the CDC of 14 May 2015. It's agenda  
item 3. Do you see that?---Yes.

Then the planning proposal was sent off to the department. The letter is at page 14. The letter is dated 6 November 2015. Sorry, page 14.---Yes.

Page 16 is the commencement of the planning proposal itself, which goes through to page 56. Do you see that?---Yes.

10 That's a little bit of a gap in time between the date of the resolution and the time it was submitted in November 2015, but nevertheless that was the state of affairs by the end of 2015, that it had been submitted for Gateway Determination?---Yes.

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

20 I just should take you to volume 20 for the DA, pages 193 to 238. I'm not taking you to the actual DA. I'm taking you to, I hope, the officer's report in respect of 570 Canterbury Road, the construction of six-storey mixed use development. This is commencing at page 193. Can you see that?---I can.

That's the first page of your report there?---Yes, I can see that.

There's a summary of it in the second half of the page, and at the end of the summary, you said:

30

*The Director City Planning has recommended the application be approved by way of deferred commencement, subject to conditions.*

I should have indicated that this is the business papers for the meeting of the IHAP on 3 August 2015. Do you see that?---Yes, yes, sir.

40 The IHAP, page 222, at its meeting on 3 August 2015 recommended a deferred commencement consent. Page 222. Can you see that that's set out there?---Yes, sir.

And thereafter follow the conditions that were recommended?---Yes.

Can I take you back now to a little earlier in time,

June 2015, volume 19, page 169. I'm taking you to an SMS conversation on 22 June 2015 that you had with Mr Hawatt. At the top of that extraction, there's a text from Mr Hawatt to you at 7.28pm on 26 June, which says:

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

10

You responded at 7.44pm:

*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.*

20

Then you said 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.*

30

Have I provided you with enough context now for you to assist us with whether you recall recommending changes that Mr Demian make to his plans for 570 - this is the approved - this is the six-storey development, you understand?---Yes.

40

As at June 2015?---I don't recall whether I asked - whether that was in reference to the six-storey development or the extra two storeys he was looking at.

If I can provide you with this assistance, the DA to add two storeys to the approved six-storey development at 570-580 Canterbury Road was lodged on 27 October 2015.

That's volume 23, pages 7 to 10.---Okay. Okay.

So this must be in relation to the six-storey development, or proposed development. Do you recall recommending that Mr Demian make changes to that?---I believe - I believe he did make changes, yes.

10 But do you recall recommending that he make the changes?---I expressed concern of what he was proposing at the time. I remember that. Whether I recommended - well, I did recommend he make changes, obviously, because in order for him to address the issues, the concerns that we had, yes.

20 What were the issues that you recommended he make changes to address?---Oh, just general design issues more than anything else, and compliance with - I believe at the time he purported to comply with SEPP 65, and our staff, or the assessing officer at the time thought otherwise, and there were other bits and pieces as well, which I don't really recall exactly.

I took you to the report to the IHAP, which would have been the same report to the city development committee meeting in volume 20, pages 193 to 222, and in that, if I could just assist you - if I can take you to volume 21, page 31. I've put you straight into the report to the city development committee for its meeting of 13 August 2015. At the top of page 31, you said:

30

*Having regard to the [material that preceded it] it is considered appropriate in this instance to support the submission under Clause 4.6 of [the Canterbury LEP 2012] and vary the height standards to permit the proposed development.*

40 Do you recall there was some exceedance, but of course as a six-storey building in an 18 metre building height control, it wasn't a large exceedance?---Yes, I believe that be the case, yes.

As we've seen, you recommended a deferred commencement approval.

MR BUCHANAN: I note the time, Commissioner. I'm about to move on to the next stage of this matter.

THE COMMISSIONER: Is that an appropriate time?

MR BUCHANAN: Yes.

THE COMMISSIONER: All right, I will adjourn for the morning tea break, and we'll resume at 5 to 12.

10       **SHORT ADJOURNMENT     [11.27am]**

MR BUCHANAN: Mr Stavis, do you have volume 21 there? If not, we can provide it.---Yes, I do.

You do?---Yeah.

20       If you could turn, please, to page 4, this is a report to the CDC meeting of 13 August 2015 as to the report of the IHAP meeting of 3 August. Do you see that?---Yes, sir.

Page 5, the first item in the minutes of that meeting was 570-580 Canterbury Road, and can you see that there was an IHAP recommendation that the DA be deferred to allow the applicant to provide additional information as required and for council to assess any additional information and provide an updated report to the panel. Do you see that?---Yes.

30       Can I take you to page 6. In the middle of the page, under the heading "Panel Assessment", the second paragraph reads:

*The Panel is of the opinion that the site is appropriate for this type of development. However, there are a number of specific matters which the Panel is not satisfied about at this stage in terms of appropriate information and level of detail.*

40

*The Panel is of the opinion the matter should be deferred to enable the following matters to be addressed ...*

And then the first of those was identified as "Site Isolation". Do you see that?---Yes, sir.

That was the isolation of the premises at 2 Chelmsford Avenue?---Yes.

If we go over the page, page 7, towards the bottom of the page, then there were a series of design changes/details, which the panel sought. Do you see that?---Yes.

10 Going over to the top of page 8, there was also further information sought in relation to site contamination and garbage storage and recycle areas and disposal. You would have received the report of the meeting of the IHAP that was held on 3 August 2015 very soon after it had met?---I believe so, yes.

20 And what did you think of the recommendation at page 5 that the DA be deferred to allow the applicant to provide additional information as required and to allow council to assess any additional information and provide an updated report to the panel?---I can't recall what I thought at the time, I'm sorry. Yeah, I'm sorry, I just don't have a recollection what I thought at the time.

30 Can I ask for you just to take a step back from this particular matter and to think about your experience while you were at Canterbury of dealing with IHAP reports. How often was it that you received a report which essentially meant that the matter couldn't go to the meeting of council or the CDC which was next scheduled?---To the best of my recollection, I don't believe there was a prohibition of sorts for matters to go to a CDC because they didn't get a decision from IHAP that was either favourable or not. The common practice was to actually put a report up which had both recommendations for council to consider.

40 How often was it that, in your experience at Canterbury, the IHAP recommended that the matter be deferred to allow further work to be done on the application?---I think it happened - it happened on occasions, yeah. I can't tell you exactly - - -

What proportion of reports?---I don't - I can't give you any sort of definitive answer in terms of their decision to defer matters, but they always had - there was always recommendations - it was quite common to have recommendations for changes to be made. As I sit here today, I can't recall how many were deferred or recommended for deferral.

From your previous answers, it would seem as if you weren't really interested in what the IHAP's opinion was; all you cared about was that there be, before the CDC or council as the case may be, a recommendation from the officers and a recommendation from the IHAP. Is that right?---Can you say - - -

10 Did you really care what the outcome was of the IHAP's consideration of an application and, indeed, the officer's report?---Yes, I did.

You did care?---I did care, of course.

20 Did you care sufficiently to think to yourself, "I would prefer to follow the IHAP recommendation rather than leave it up to the CDC or council to choose between my recommendation and a deferral recommendation", or a refusal recommendation, for that matter, "from the IHAP"?---No, I can't recall that at all, but I think the process was - it's been a while - that we prepared our report, IHAP prepared their report, then they were bundled together and referred to the CDC or council, for that matter.

Yes, you've told us that.---Sure.

30 I'm taking the next step and asking, I understand that that was what happened, but did you care if the IHAP said, "No, it shouldn't go any further. There's further work that needs to be done on this application"?---Yeah, look, I did, of course I cared.

40 And what did you do about that care?---Well, some of the recommendations I believe - I'm not sure whether we were afforded the opportunity to actually make - to adopt recommendations from IHAP by way of the process that existed at the time. But I believe there were occasions where we incorporated - some of the issues that were ultimately raised by IHAP we had already raised before as well. So there was overlap there, but of course I did care what their opinion was.

It doesn't sound as if you did, can I put that to you?---I did. I mean, I can only answer - - -

Did you ever implement a recommendation that an application be deferred to allow further work to be done on

it?---I believe there were occasions where I recommended deferral, yes.

No, no, I'm after what you did when you got recommendations from the IHAP that the application be deferred to allow further work to be done on it?---I don't recall what I did, I'm sorry.

10 You see, didn't it require, when an IHAP recommended deferral, a positive step to be taken in order to put the officer's report before the committee, the city development committee, or the council as the case may be?---Sorry, can you repeat that question?

Yes. Was it the case that when the IHAP recommended that a matter be deferred, it didn't in fact go to the CDC meeting or the council meeting unless the matter was included as a late paper by the GM?---No, that's not true.

20 Okay, can you tell us what was the case, then?---Sure. As I said before, they used to go together as part of one business paper. So there was - ordinarily, from memory, it was the recommendations of the director and then there were the report and recommendations by IHAP, and then council had a choice of going with whatever recommendation they wanted, when it actually ultimately went to CDC.

30 I could have a faulty recollection of the evidence that we have received, Mr Stavis, but my memory of evidence that we got from Mr Sammut was that if the IHAP recommended deferral, then the matter didn't go to the succeeding CDC or council meeting unless it went as a late paper which required the intervention of the GM.

THE COMMISSIONER: Or I thought it could be called a resolution from the floor.

MR BUCHANAN: Thank you, Commissioner. Thank you.

40 Yes, there were two ways - so I'll start the question again. If the IHAP recommended deferral, then there were two ways it could get to the CDC meeting or council meeting next scheduled. One was it was included as a late paper at the instance of the general manager, and the other was that it could be called up on the floor of the meeting of the CDC or council, as the case may be, but it didn't automatically go to that council or CDC meeting?---That's

not my recollection, sorry.

Did you, after receiving this report or learning about it, have any conversation with Pierre Azzi or Michael Hawatt about the matter?---That I can't be sure of, I'm sorry.

Did they have a conversation with you, or either of them?---It's possible, but I just don't recall if they did.

10 You know it was a Demian matter?---Yes.

A Demian application?---Yes.

What are the chances that someone had a word with you about it?---About the IHAP or about just the - - -

20 About the application in view of the recommendation by the IHAP?---I don't know whether - because the process happened fairly quickly from the point of view of when the director's report was prepared or being prepared and when IHAP had made their report, so I don't know whether in general terms there would have been enough time or whether they would have known about IHAP recommendations, "they" being the councillors, unless I got a phone call or something like that or the general manager asked of me and was inquiring about it. But in terms of this specific matter, I don't have any real recollection about receiving a call from either Mr Hawatt or Mr Azzi. But, look, in general terms about the application itself and the report,  
30 I'm sure I did, yes.

And you're sure you did, because it was a Demian matter?---In respect of those councillors - - -

Yes.- - -and the GM, yes.

Because of their interest in Demian applications?---Correct.

40 On what you've told us of what the procedure would have been, councillors would have received notice of the recommendation by the IHAP when they got their business papers for the meeting of the CDC on 13 August 2015?---Yes, sir.

And they would have got those a few days before the meeting?---I believe so, yes.

So that would have been an interval, sufficient time to put them on notice and to provide an opportunity for them to intervene if that was what they wanted to do?---Yeah, I believe the notice period was about a week prior, yeah.

Just while I'm at it, what was the average period between providing the officer's report I assume to Mr McPherson - - -?---Yes.

10

- - - who looked after servicing of the IHAP, is that right, and the IHAP meeting itself? What was the average interval between providing the officer's report to the IHAP and the report of the IHAP, or the meeting of the IHAP?---Somewhere between a week to ten days, thereabouts.

So, specifically do you remember contact from Mr Montague about this IHAP report?---No, sir, I don't.

20

If Mr Sammut's evidence is right, then it is practically inevitable that there would have been contact from Mr Montague if the matter was considered at the CDC meeting of 13 August; do you accept that?---That's the two scenarios - - -

Because it would require a late paper?---Yes, sir.

30

Mr Montague wouldn't be providing a late paper to the CDC without talking to the director concerned; would that be fair to say?---I believe so, yes.

Did you make a recommendation to Mr Montague about how this matter should proceed in light of the IHAP recommendation from its meeting of 3 August 2015?---Not that I can recall.

Did he ask you for a recommendation?---Not that I can recall.

40

Or advice?---Not that I can recall.

If I can take you back to volume 20, please, page 243, that's an email that you sent to Mr Demian on 4 August 2015, the day after the IHAP meeting about the 570 Canterbury Road DA. Do you see that?---Yes, sir.

But its heading is "548 Canterbury Road". Do you see that?---I do, yes.

Did you talk with Mr Demian on the phone at all between the date of the IHAP decision and the decision of the CDC on 13 August 2015?---I'm not sure if this - I can't be - I'm not entirely sure about when the matter for 548 was determined and whether this email actually relates to that matter, because it is headed "548 ".

10 Can I take you back, please, to volume 21, page 81. Can you see that towards the bottom of the page, second half of the page, this is from the minutes of the meeting of the city development committee held on 13 August 2015. Agenda item 11 is 570-580 Canterbury Road, Campsie, and it's the construction of a six-storey development, and there's a resolution recorded, moved Azzi, seconded Hawatt, that the development application be approved, and then conditions are set out. Do you see that?---Yes, sir.

20 Can you assist us as to how come that resolution was passed in view of the IHAP recommendation that the DA be deferred to allow additional information to be provided and for council to assess it and provide an updated report to the panel?---Not that I can recall, but as I said before, they would have been furnished with both reports, and it was up to them to determine which recommendation they preferred, I guess.

30 Can I go back to the question of whether you cared about the IHAP recommendation. Did you care about this particular IHAP recommendation?---Yeah, I cared about all IHAP recommendations.

What did you do to implement it?---It wasn't my - it wasn't my position to implement IHAP's recommendations. We were responsible for providing, as a department, our assessment. We were obliged to provide the recommendations of IHAP contained in one report. So it wasn't a matter for me to do anything about IHAP recommendations.

40 So no-one would have told the applicant to provide the additional information?---The applicant - to the best of my recollection, the applicant would have been present, or their representatives, at the IHAP meeting, so they would have been able to hear the concerns or issues, any issues that were raised, that was common practice, as well as objectors voicing their opinions as well at the IHAP. So they would have been aware of any issues that IHAP may or

may not have raised at that meeting.

But it was council which was assessing the application, was it not?---Correct.

And this was advice to council as to what should be done in respect of the application; correct?---Their opinions, yes.

10 Yes, and the only person who could do that was you, wasn't it?---That wasn't - - -

The planning department?---That wasn't the way IHAP operated. IHAP were there to provide their opinions, obviously, and to get their thoughts, but it wasn't our responsibility as a department to adopt their opinions. We may or may not have agreed with their opinions.

20 So did you agree or disagree with this opinion?---I don't recall, to be honest with you.

So you don't recall whether you did anything to implement it; is that right?---To implement IHAP's opinions?

Yes, in this case.---I don't recall whether we did anything, but it wasn't common practice to do that, anyway.

We're still looking at page 5 of volume 21. You can see that that's the recommendation that's there?---Yes.

30 That the DA be deferred to allow the applicant to provide additional information as required, and that additional information is set out in detail in the succeeding pages, 6, 7, 8; do you agree?---Yes, sir.

And no-one sent the applicant a letter to say, "Look, the IHAP has made this decision, I draw it to your attention", just so that there's a record of it?---I'm not sure if we did at the time.

40 Well, there wasn't a practice of doing that, I take it?---I don't think there was, no. As I said, the lead time between when you received the IHAP report and ultimately a matter went to CDC wasn't that long.

But it sounds as if your approach to the IHAP reports was that it didn't matter what they said; they'd simply proceed on their merry way to the meeting of the council or CDC

which was next scheduled, and it was a matter for council as to what they did with it?---Because by that stage we would have already made our assessment on the application itself, because as you rightly pointed out earlier, the IHAP were furnished with the package, I guess, prior to the meeting and there was always a representative from our planning department who attended that and had their views, because the members of IHAP used to always discuss proposals prior to the meeting, their meeting. Our  
10 assessment would have progressed to the point where we would have, in general terms, felt comfortable with a proposal. I mean, to the best of my knowledge, there was no - I know that there was no requirement for - sorry, there was no requirement, because IHAP didn't have the determinative powers, they were there as a referral body to source their opinions. Now, in this particular case, I'm not sure what happened in that way. But that was the common practice of how IHAP operated.

20 But this is an instance where the IHAP has essentially said that the assessment is defective; there's material that should be there that's missing. That didn't concern you?---I don't recall, to be honest with you, at the time.

But this is not the first time we've seen an IHAP report which essentially says, "Your assessment is defective. There's material missing and it shouldn't proceed further until that material is obtained"?---And I'm not sure whether we did actually receive the material they were  
30 asking. I haven't read this in detail, so I can't be a hundred per cent sure.

But didn't you think, having seen it, "Oh, I need to assess this on its merits to see whether I agree", and if it is, then to implement it?---It wasn't my responsibility. It was the assessing officer's responsibility to do that.

40 But you're the person who's responsible for the assessing officer's conduct, aren't you?---Yes. Yes.

Did you have a system in place to make sure that there was an assessment that was conducted of the validity of an IHAP recommendation where it purported to criticise the assessment as being defective or incomplete?---I relied on my staff to provide that - their expert opinions in that regard.

So what happened in this case?---Sir, as I said before, I don't recall what happened.

It was a Demian matter, so you were paying attention to it?---I would have been, yes.

10 So did you talk to the assessing officer to say, "Well, how come you didn't provide that information that they've identified as being missing?"?---I don't recall having that conversation.

You didn't have it, did you?---As I said, I don't recall.

20 What about the part of the recommendation that reads that the application be deferred to allow for council to assess any additional information and provide an updated report to the panel - wasn't that something that you, your division, was being required or asked, in the opinion of the IHAP, to do?---Sorry, where are you reading that from?

Page 5, volume 21, the recommendation, item (b).---Yes, and what was your question, sorry?

Aren't the words "for council to assess", "for council to provide", an indication that you were being told that council should do something about what was missing and provide it?---That's what that says, yes.

30 So you didn't take that on board as being an indication that you should set about making sure that information was obtained and provided?---I don't recall. I really don't.

Well, it being a Demian matter, the chances are that it's quite unlikely that you did in fact set about obtaining that information and providing it, because if you did, you would have a memory of it, it being a Demian matter, isn't it?---Can you ask the question again, sorry?

40 Yes. Because it's a Demian matter, it's a matter you paid close attention to?---Yes.

And they stuck in your mind - 998 Punchbowl Road, 548 Canterbury Road and 570 Canterbury Road?---Yes, they have.

They've stuck in your mind, haven't they?---Well, they have, but I'm not fully over the detail of what actually

transpired in this case.

But if you had been told that your assessment was defective, and it was, after all, your report to the IHAP, and the IHAP told you that your assessment was defective, it being a Demian matter and the CDC meeting being 13 August, you would have panicked, wouldn't you?---No.

10 And if you had panicked, you would have a memory of it?---I don't recall panicking, no.

No, and so you didn't intend complying with that at all, did you?---No, that's not right. I mean, IHAP did recommend, from what I can see here - oh, sorry, they did recommend deferral. Okay, yeah. But I don't recall, I'm sorry.

20 Could I take you to the IHAP operational rules, please, volume 20 again, page 278. Perhaps the first page, just so that you can see where we are in the material I'm putting in front of you, page 275.---Yes, sir.

That's on the screen in front of you. The IHAP operational rules, you can see on page 278, were adopted by council resolutions?---Yes, sir.

And therefore were council policy?---Yes.

30 If I can take you to page 278 in volume 20, the fourth page of IHAP operational rules, can you see clause 19.2?---Yes.

It states:

40 *When additional information is sought by the panel, upon submission of that information, the application will be referred back to the Panel for final consideration prior to determination by the City Development Committee or Council.*

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

Did that occur in this case?---I can't remember if it did, sorry.

Well, you know it didn't, don't you?---Well, I don't,

I just told you I can't remember.

You'd remember if something like that had occurred, it being one of the three Demian matters?---Not necessarily, no. I just don't recall whether it did go back.

10 Did you cause anything to be done to comply with clause 19.2 of the IHAP operational rules in this case?---Not that I can recall, but if you use the example of the 548, I think it was, where I asked for - because this policy came under the governance section of council. So if you go from what I said - the advice that I sought from governance in terms of 548, perhaps I did the same here, but I don't recall, to be honest with you, sir.

20 THE COMMISSIONER: Sorry, was that referring it to Mr Sammut?---No, that was in response to that email I got - I sent to Mr Sammut asking - telling him that the GM wanted that matter to be - - -

Mmm-hmm.---Yeah, so it was in that context, yeah.

MR BUCHANAN: You'd accept, though, wouldn't you, that to implement the council policy in relation to IHAP and its operational rules would be in the public interest where that policy applied? Don't think about the next question, Mr Stavis. Just think about this question.---I am. I'm trying to think about what you're asking.

30 It would be in the public interest to implement council policy where it applied, wouldn't it?---Yes.

And you didn't apply it in this case, did you?---I don't recall whether I did, I'm sorry.

You don't recall doing anything to implement it; is that right?---I just don't recall whether I did anything.

40 You don't recall doing anything to implement it?---Correct. Correct.

Could I ask you was there anything wrong with complying with the recommendation by the IHAP in this case?---No, I wouldn't say there was anything wrong, no.

Any reason it shouldn't be followed?---Again, I'm not au fait with their detail in terms of I haven't read their

rationale, but - so I can't really answer that with any authority.

Well, the problem was, wasn't it, that as you understood it, the DA was not to be delayed; that was what was wrong with it?---Absolutely, yeah.

10 So if you have no recollection of doing anything to comply with the recommendation, that might be because, as far as you understood it, the DA was not to be delayed; it was to be approved as quickly as possible?---All I can say, the only way I can answer that, is that I know that I had the general manager and the two councillors chasing me about Demian's applications, yes.

And specifically in respect of 570 Canterbury Road?---That one as well, yes.

20 If I take you to a couple of SMS messages on Mr Hawatt's telephone - volume 20, page 262. Can you see that the first message extracted is on 8 August, so we're in the time in between the report from the IHAP and the meeting of the CDC in relation to 570 Canterbury Road. It's at 8.42am, and Mr Demian says to Mr Hawatt:

*Ok see you there.*

Which would suggest a meeting, wouldn't it?---I believe so, yeah.

30 Could I take you back to page 260 in the same volume. You can see that it is a text message from Mr Hawatt to Mr Demian on 7 August, the day before, at 9.37pm, and it reads:

*10am at Pierre.*

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

40 So the combination of the two would suggest the setting up of a meeting at Mr Azzi's house at 10am on 8 August 2015 involving Mr Hawatt and Mr Demian and, in all likelihood, Mr Azzi; you'd accept that?---I would.

Did you attend that meeting?---Not that I can recall, no.

Did you meet Mr Demian at Mr Azzi's house at a time when

570 was before council?---As I said in my previous evidence, there were - every time I met Mr Demian at Mr Azzi's house about his applications, they were always - you know, they were always spoken about together, I guess, so I'm sure I did. I'm sure that application was raised.

10 Do you have a recollection of being at Mr Azzi's house when the question of the IHAP recommendation in respect of 570 was discussed?---No.

Namely, that the matter be deferred and, if it was implemented, there was going to be a delay?---No, I don't recall that. No.

20 Can I take you, please, to volume 20, page 263, and if we go over the page, you can see that the start of the conversation is on page 263. It is an email to you from Mr McPherson of 10 August 2015, but it extends over to cover the whole of page 264 as well. Do you see that?---Yes, I do.

This is an email which refers to a conversation that morning that apparently you had had with Mr McPherson about the possibility of the report on 570-580 Canterbury Road being put as a late report to the city development committee meeting on Thursday night. Do you see that?---Yes, I do.

30 So can you tell us about that conversation with Mr McPherson to which he refers in that email?---I really don't remember, don't recall.

But can you see there it discusses the possibility of the item being put in as a late report?---Yes, sir, yes.

40 That's not consistent, is it, with your understanding that you told us about a moment ago that it would go before the committee, in any event, as a matter of course? It suggests that Mr Sammut's evidence that I summarised to you is correct and that it required intervention by way of, in one instance, a late report in order for it to get to the city development committee in the circumstances of the case, namely, a deferral recommendation?---In relation to deferral, yeah. But the common practice for IHAP reports was that they went all together with the director's report. But in terms of deferral, it might be right, Mr Sammut

might be right.

So that would then explain the first paragraph of that email?---The one from - - -

From Mr McPherson to you of 10 August at 1.15pm.---Yes.

10 So you understood at the time, did you, that it was necessary for the matter, if it was going to be considered by the city development committee, to be put before it by way of a late report?---That's what it says, so yes.

You must have understood it, mustn't you?---At the time, yes, probably.

Mr McPherson goes on to say:

20 *As you know, IHAP deferred the matter to allow ...*

And then he sets out the content of the recommendation. Then he sets out from halfway down page 263 over to almost the bottom of page 264 that part of the panel's report which detailed the information which it considered needed to be obtained and assessed and then a further report sent back to the panel in relation to that information. Do you see that?---I do, yes.

30 Do you see that Mr McPherson went on to say - this is towards the bottom of the page, not in italics:

*I refer to section 19(2) of the IHAP Operational Rules endorsed by Council (copy attached) that states:*

40 *When additional information is sought by the panel, upon submission of that information, the application will be referred back to the Panel for final consideration prior to determination by the City Development Committee or Council.*

Mr McPherson continues:

*The IHAP rules form part of the Council endorsed IHAP policy. The above provision requires the information to be resubmitted*

*to the Council prior to its consideration by the City Development Committee. Council staff will be in breach of this policy if the report is submitted to Thursday's meeting.*

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

10 If we go to page 266, you can see that the attachment is set out, that is to say, the attachment being council's IHAP policy. Do you see that?---Yes, sir.

And that it indicates that it was adopted by council on 23 June 2011. Can you see that in about the middle of the page?---Yes, yes.

And that clause 19.2, which is reproduced on page 278 of volume 20, was in that attachment?---Yes.

20 You would have read that at the time, wouldn't you?---I don't recall reading that at the time, no.

But you would have read it at the time, wouldn't you?---Not necessarily, no.

Why would you not have read it at the time? What could possibly explain why you would not have read it at the time?---Because this was - the IHAP policy fell under the jurisdiction of governance.

30 But he's talking to you?---Yes.

He is the man responsible for governance?---Yes.

He's responsible for council governance across all the portfolios. You administered one of those portfolios?---Correct.

40 And Mr McPherson is talking to you and drawing your attention to council policy in respect of IHAP reports. IHAP came directly under your portfolio in terms of the content that it considered?---Yes.

You provided reports to it?---Yes, we did.

Although apparently you never implemented their recommendations?---As I said before, it wasn't my position

to implement their recommendations.

That's a nonsense, isn't it?---No.

10 Who else was going to implement their recommendations, if not you?---There was no necessity for IHAP's recommendations to be adopted by council staff. I mean, it was their recommendations, just as we have recommendations, we put forward recommendations. It doesn't make them right or wrong.

Can I ask you about clause 19.2?---Sure.

You were provided it in the body of the email. You were provided it in the attachment to the email constituting the IHAP policy document.---Yes.

And it said:

20 *When additional information is sought by the panel, upon submission of that information, the application will be referred back to the Panel for final consideration prior to determination by the City Development Committee or Council.*

30 Who did you understand was responsible for implementing that, where it applied?---Well, I believed at that point in time that I - obviously there was a commitment that the general manager had put on me, or a direction, to actually have the application determined at that particular CDC meeting, and as you can see from the email, I've actually included Mr Montague in that advice and I've said to Brad, "This is a governance issue which may need to be taken up directly with the GM", because in the context of what was happening at the time in relation to this application, there was an urgency that the GM put on me to get that matter to that particular CDC.

40 That's the answer to my next question.---Sure.

The question I'm seeking an answer to is who do you believe was responsible for the implementation of clause 19.2 where it applied?---I take responsibility for that.

Yes, so that means basically that the evidence that you've been giving us for the last 20 minutes on the subject is

wrong, doesn't it, that you had no responsibility for implementing IHAP recommendations of deferral or providing further information?---That wasn't the practice, though, sir, to be honest with you. In relation to that clause, as I read it now, yes, I accept responsibility for that. But that was not the practice ordinarily.

10 When you say "not the practice ordinarily", you mean under your regime it wasn't the practice?---I'm not sure what happened prior to me, but when I was there.

No, and you don't know what happened after?---Correct, correct.

So all you're saying is, "I never paid any attention to this"?---Right or wrong, I deferred the responsibility or asked direction from the general manager in that regard.

20 Well, you did in this instance; correct?---Yes.

But I just want to establish, it was your practice to pay no attention to that council policy embodied in clause 19.2 where it applied?---I don't believe it applied a lot of - on a lot of occasions.

So it was your practice to ignore it on the few occasions that it applied; is that your evidence?---Not consciously, sir.

30 When you say "not consciously", do you mean you didn't care?---No. It's not that I didn't care. I didn't actually - at the time, I didn't believe that there was a requirement, obviously.

But your attention was drawn to it?---Sure.

40 And I'm just trying to establish what your practice was, your attention having been drawn to it, and your indication is that your practice was to ignore it?---No. My practice was actually to leave it for the general manager to make the ultimate decision.

To give direction to your staff, to go around you and give direction to your staff to go and obtain information, to assess it - what, the general manager should assess it?---No, sorry, let me clarify. Just in terms of matters that were urgent, and he had instructed me that certain

applications go to a particular meeting - in those instances, I would always go back to the general manager and say, "Look, what do you want to do?"

But it sounds as though your practice was to not comply with clause 19.2 whenever it applied, even though it was only a few occasions?---Again, not consciously. That wasn't something that I really thought about at the time.

10 So taking you back, then, to page 263, you replied to Mr McPherson, copying in Mr Montague, to the effect:

*This is a governance issue which may need to be taken up directly with the GM.*

20 And you did that, do I understand your evidence correctly, because this was a matter on which you had been given direction by Mr Montague to progress it to approval as quickly as possible; it doesn't matter what the impediment or obstacle?---Yes.

THE COMMISSIONER: Why did you blind copy it in to Mr Montague?---I don't know. Maybe that was just - I don't know.

MR BUCHANAN: Did you expect Mr McPherson to take it up with Mr Montague?---Yeah, I believe I did at the time because that's what I think I'm inferring, too, in that email.

30 Did you have a discussion with Mr Montague about this, about the subject matter of these emails?---It's likely that I did.

And what was said in that conversation?---I can't recall, to be honest with you, exactly what was said. But I would not have progressed these applications unless I had the GM's advice.

40 I just need to clarify that, because that's why I've been asking you questions about your general practice. It doesn't sound as if you would have done anything different. If it had been a recommendation on an application where the proponent was not Mr Demian, it doesn't sound as if you would have done anything different by way of complying with the recommendation there, either?---Those circumstances were so rare that I can't really answer that, to be honest

with you. I don't know what I would have done.

MR BUCHANAN: I note the time, Commissioner.

THE COMMISSIONER: We'll adjourn for lunch and resume at 2pm.

**LUNCHEON ADJOURNMENT**

**[1.00pm]**

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