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INDEPENDENT COMMISSION AGAINST CORRUPTION

PATRICIA McDONALD SC
COMMISSIONER

PUBLIC HEARING

OPERATION DASHA

Reference: Operation E15/0078

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON FRIDAY 5 APRIL, 2019

AT 10.00AM

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THE COMMISSIONER: Mr Pullinger.

MR PULLINGER: Commissioner, I am in a difficult position and that is this, I commenced addressing a jury in a criminal trial yesterday afternoon.

THE COMMISSIONER: Oh, goodness.

10 MR PULLINGER: And it's a trial with three co-accused, Judge Weinstein and a jury, and His Honour was kind enough to delay the commencement of the trial this morning so I could be here to explain my dilemma. The situation is, I anticipate that my address would be finished before 11.30 and I would then seek leave and I anticipate I would obtain leave to return here. Now, I don't know whether, Commissioner, you'd be capable or able or willing to accommodate my absence by delaying the commencement here until I get back. I've spoken with Counsel Assisting and I understand that he'll be very gentle with Mr Azzi in my absence if that should occur.

20 THE COMMISSIONER: Can I just ask some questions. You're at the Downing Centre?

MR PULLINGER: Thank you, Your Honour.

THE COMMISSIONER: No, no. Mr Pullinger, the trial's at the Downing Centre?

MR PULLINGER: Yes, Your Honour, Commissioner.

30 THE COMMISSIONER: And, sorry, when has Judge Weinstein adjourned the trial to? What time are you due back there?

MR PULLINGER: I am due back there at 10.30 this morning.

THE COMMISSIONER: 10.30. And you think you will be another hour down there, so back here at 11.30, and your application is for us to adjourn until you can return.

MR PULLINGER: That's my first application, yes.

40 THE COMMISSIONER: Mr Buchanan.

MR BUCHANAN: Your Honour, I don't wish to be heard other than to provide the Commission with the information that, as presently inclined, I estimate that the balance of my examination of Mr Azzi should not exceed one hour by very much.

THE COMMISSIONER: Now, may I enquire from other counsel. Mr Moses, how long did you anticipate you'd be?

MR MOSES: Between 30 minutes to 40 minutes.

THE COMMISSIONER: Mr Andronos, you're next in batting order.

MR ANDRONOS: 20 to 30 minutes.

THE COMMISSIONER: Where am I, Mr O'Gorman-Hughes?

10 MR O'GORMAN-HUGHES: Unlikely I'll have any questions, Commissioner. I don't think I'll have any questions at this stage, Commissioner.

THE COMMISSIONER: And Mr Pararajasingham?

MR PARARAJASINGHAM: Perhaps 20 minutes.

20 THE COMMISSIONER: Now, Mr Pullinger, can I ask, when Mr Pararajasingham finishes, are you ready to commence any questions you have of Mr Azzi?

MR PULLINGER: No. I'd require time to confer with Mr Azzi.

THE COMMISSIONER: And how long, as presently advised, would you be seeking?

MR PULLINGER: Well, it's Friday. I could probably attend to what I need to attend to over the weekend.

30 THE COMMISSIONER: I'm sorry, can I just – Mr Buchanan, putting to one side Mr Pullinger's immediate application, let's assume we just continued and then at a particular point today we're up to Mr Pullinger and he made an application for the weekend to confer with Mr Azzi.

40 MR BUCHANAN: I'd object to an adjournment of that length, in my respectful submission. There shouldn't be need for much more than perhaps 30 minutes, at the absolute outside an hour, in my submission. I mean, as Commissioner, you have seen the approach I have tried to take is of ensuring that if there are circumstances or reasons why Mr Azzi has done or not done something the subject of my examination, then I have given him the opportunity of identifying those circumstances or reasons, and accordingly there would be little that I would respectfully expect that Mr Azzi would be instructing needs to be canvassed that hasn't already been canvassed by way of examination by his counsel.

THE COMMISSIONER: Mr Pullinger, do you want to reply to that?

MR PULLINGER: Well, Mr Azzi's been giving evidence, answering questions from Counsel Assisting for quite a number of days, from January

in this year. I was precluded from conferring with him in the break and so there's a fair amount of material that I would need to cover in the conference.

THE COMMISSIONER: All right. What I'm going to do is, I'm just going to adjourn for five minutes and I know, Mr Pullinger, you're only five minutes away and you can run, but I just need an adjournment for five minutes.

10 MR PULLINGER: Thank you, Commissioner.

SHORT ADJOURNMENT

[10.14am]

THE COMMISSIONER: All right. Very quickly, Mr Pullinger. I'm sorry, Mr Azzi, please sit down. Mr Pullinger, I am going to adjourn the hearing until 11.30 so you can bolt down the road and I hope finish addressing your jury. I will note I will recommence at 11.30 and your instructing solicitor
20 will have to take notes and we might be able to see if we can get the transcript a bit earlier if you miss any of it. We will recommence at 11.30. We will sit then through to 1.00pm and then we will see how the afternoon goes as to your application. I am minded to give you some time obviously to confer with Mr Azzi, but how long I think may depend on where we reach this afternoon.

MR PULLINGER: Thank you, Commissioner.

30 THE COMMISSIONER: All right. We're adjourned until 11.30.

SHORT ADJOURNMENT

[10.25am]

THE COMMISSIONER: Now, are we ready to resume? I'll just have the oath administered.

THE COMMISSIONER: Thanks, Mr Buchanan.

MR BUCHANAN: Mr Azzi, in the period 2014/2016, you knew that Bechara Khouri did work for Charlie Demian on Mr Demian's development projects, didn't you?---No, he said he quit.

10 You should have declared an interest in Mr Demian's development projects that were before Canterbury Council because of your relationship with Bechara Khouri, shouldn't you?---Mmm, Mr Khouri said to me he's not working anymore for him.

When did he tell you that?---Oh, a while ago. He didn't, he didn't consult me with anything related to Mr Demian (not transcribable)

When did he tell you that he had stopped working for Mr Demian?---Oh, it's, it's a while before. I never heard - - -

20

A while before 2014?---Oh, I don't remember when, but what he said to me clearly, I'm not doing any work for Mr Demian, or, that's what he said to me.

Commissioner, there are four documents which I propose to tender, if it's convenient, as one exhibit, and there are electronic copies of it, of them available, if I could read onto the record what they are. Minutes of the meeting of Canterbury City Council held on 25 July, 2013; a memorandum from the general manager to the mayor and councillors dated 31 July, 2013; 30 a business paper for the meeting of council held on 22 August, 2013; the minutes of the meeting at Canterbury City Council held on 22 August, 2013. If I could provide paper copies.

THE COMMISSIONER: Thank you. Any objections?

MALE SPEAKER: No objection.

MALE SPEAKER: (not transcribable)

40 MR BUCHANAN: I'm sorry, if there was an objection, they're all public documents.

THE COMMISSIONER: Look, what I'll do is I'm going to admit them. When people have had a look at them, if there's some issue, you can raise it, and I can revisit the tender. So the bundle of documents consisting of minutes of the meeting of Canterbury Council on 25 July, 2013; a memo from the general manager to mayor and councillors dated 31 July, 2013; business paper for the meeting of the council to be held on 22 August, 2013;

and the minutes of the meeting of council held on 22 August, 2013, will be Exhibit 281.

10 **#EXH-281 – BUNDLE OF DOCUMENTS CONSISTING OF
MINUTES OF THE MEETING OF CANTERBURY CITY COUNCIL
HELD ON 25 JULY 2013, MEMORANDUM FROM THE GENERAL
MANAGER TO MAYOR AND COUNCILLORS DATED 31 JULY
2013, BUSINESS PAPER FOR A MEETING OF THE COUNCIL TO
BE HELD ON 22 AUGUST 2013 AND THE MINUTES FOR
MEETING OF CANTERBURY CITY COUNCIL HELD ON 22
AUGUST 2013**

MR BUCHANAN: Mr Azzi, can I show you please part of the business papers for the meeting of council held on 22 August, 2013. Page 49. And you can see that the agenda item is, “Code of conduct review.” It attached a draft code of conduct and it was a report by Mr Sammut, director of corporate services. Do you recall that in 2013 the government released – or
20 late 2012, the government released a new model code of conduct for local councils?---Yes.

In this paper that Mr Sammut provided to councillors, under the heading Background on page 49, at the bottom paragraph, Mr Sammut said, “The new model code was adopted by council on 28 February, 2013. At the time council further resolved that the adopted code be reviewed and amended to reflect our requirements and be the subject of a further report.” On the next page, Mr Sammut went on to say that, “The model code of conduct adopted
30 by council has been reviewed, taking into account council’s strong commitment to the highest standards of ethical behaviour and decision-making and well established practices and procedures to good governance. The draft amended code of conduct is included in the attachments.” And then he set out a table in which he recommended that a number of provisions that were in the Canterbury Council Code of Conduct before the revised model code of conduct was published by the government in late 2012 be reinstated in the new Code of Conduct for Canterbury Council, and that table started on page 50 and went over for a number of pages. I’ll come back to that in a moment. Can I take you now to the minutes of the meeting
40 of council held on 25 July. So this is a meeting of council held before that paper was presented by Mr Sammut, I’m taking you to now. This is still part of Exhibit 281. Page 3, item 2 of the officer’s reports, “Code of conduct review resolved that he matter be deferred to the council meeting on 22 August, 2013 to allow for a councillor workshop,” and can you see that that was moved by Councillor Hawatt, seconded by you?---Yeah.

Why did you want the matter to be deferred to the council meeting to allow for a councillor workshop? I withdraw the question. Why did you want a councillor workshop?---Because, always when you ask for a councillor

workshop, that's mean councillors, like, director and officers so and explain more about what's going on. Like, if any councillor had a question to ask, just for more information,

It's also an opportunity to propose changes to what the officers propose?
---If any councillor, it's all for discussion, open for discussion. Of any changes has to be done, like, more understanding about the situation, that a workshop has to be. Always.

10 Did you attend a councillor workshop that was held pursuant to that resolution?---No, I can't remember I was there but most, I attend most of the workshop.

Do you remember a councillor workshop specifically on changes proposed to the code of conduct?---I can't remember, sir, but most of the workshop, if, I'll attend.

So you can't remember what happened at a workshop that was held about the code of conduct in 2013?---No, I can't remember.

20

Were you ever at a councillor workshop in 2013 where there was discussion about amendments that were proposed to the code of conduct to restrict meetings between councillors and development proponents?---Could be, sir. I, I'm not - - -

Do you have a memory of that?---No, I don't have any memory. I said I can't remember if I attend this meeting. It's possible.

30 Can I take you now to the memorandum from the general manager, dated 31 July, 2013, part of Exhibit 281. Can you see that – I'm sorry. On the first page, in the second paragraph, Mr Montague said that a workshop had been scheduled for Wednesday, 14 August, 2013, and he gave the details of that. Do you see that in the second paragraph?---Yeah.

40 He then said that "Proposed new amendments are detailed below, together with an explanation for each." And I just want to take you to the first one that he spoke of. Part 3, General Conditions, Development Decision. So that's a heading in the code of conduct. And here you can see that Mr Montague said, "Councillors participating in meetings regarding applications for development with staff, developers and other parties, prior to the completion of the assessing officer's report thereon, is a practice that has potential for raising concerns of perceived partiality on the councillor's part. Without controls in place to ensure transparency and confidence in the integrity of the practice, there is a risk that council's overall public standing may suffer adversely. In order to dispel any suggestion that parties at the meeting may have received partial treatment or were otherwise unduly favourably or unfavourably dealt with, an amendment is proposed to the code of conduct that councillors not attend such meetings unless both the

developer (applicant) and affected parties (objectors) are present. As councillors are required to have an open mind when determining development applications at council or City Development Committee meetings, councillors should not be seen to be favouring any one party over the other at pre-determination meetings.” Now, skip a paragraph. Mr Montague continued, “It is also proposed that minutes of the pre-determination meetings be taken and placed on file, where they will be accessible to all councillors and other interested parties in accordance with the Government Information Public Access Act. Councillors are reminded that the code of conduct prevents councillors approaching staff below manager level. This includes officers who assess development applications,” et cetera. Do you remember getting or seeing this memorandum?---It’s possible, sir.

What did you think when you read it?---I can’t understand what it’s saying.

Did you think there was a problem with what he was saying?---No.

Did you have any contact with Mr Hawatt, with Councillor Hawatt, about this memorandum?---No, I, that time it wasn’t any, like, August 2013, no, it was like me and Mr Hawatt, we don’t, like, we discuss it at the workshop but I don’t, I don’t know if I did, had a chat with him in the council or somewhere else, but normally at this time we used to have, in August 2013, always we have a discussion with, with, with the mayor and our colleagues in the Labor.

Did you have a discussion with the mayor or the general manager about this particular proposed change to the code of conduct?---No, no, I don’t remember at this, at that time I get involved and I didn’t, I don’t remember if I did.

Now that you have seen this memorandum, do you have a memory of being present at a workshop in August or around August 2013, when the question was discussed about what the code of conduct should say about meetings between councillors and staff about development applications?---I don’t remember, sir, if I attend this one. Could be yes, could be no. I don’t remember.

Do you remember being involved in any discussion about a change to the code of conduct?---No, I don’t remember.

On this subject?---No, I don’t.

If I can take you to the, back to the business papers for the council meeting, page 50, you can see there that, in the second paragraph – I’m sorry. Yes, page 50 of the business papers. In the second paragraph on that page, Mr Sammut said, “The following amendments listed in the table below form part of our code of conduct that existed prior to council adopting the

Division of Local Government's new model code of conduct for New South Wales councils on 28 February, 2013. It is recommended that these provisions be reinstated into the current code with a change to item 3.21 to reflect the agreed position arising from discussions at the councillor workshop on 13 August, 2013." Can you see that?---Yeah.

Excuse me a moment. So, from what Mr Sammut says there, it would appear that the councillor workshop did happen, did take place.---Yeah.

10 And it also seems that councillors came to a position on at least one of the proposed changes to the Canterbury Council Code of Conduct.---Yes.

That arose from the workshop itself.---Yes.

If I can take you to page 57, please. Towards the bottom of that page, there is a subheading Proposed New Provisions, and Mr Sammut said, "The following new provisions are recommended for inclusion in our code of conduct, as it is considered that they will further enhance good governance practices at Canterbury. These amendments include clarification of the requirements related to development meetings as agreed at the councillor workshop of August 13, 2013." Do you see that?---Yes.

20 And so it would seem that the councillor workshop did discuss what requirements should go into the Canterbury Council Code of Conduct relating to meetings about development matters that councillors took part in with staff.---Yes.

Does that bring back a memory to you of that being discussed?---No, sir. I can't remember anything of it.

30 Now, below that paragraph, in the table, the part of a table on the bottom of page 57, is a change by way of insertion of a new clause 3.12. You can see that clause there. "Councillors must not attend pre-determination development assessment meetings on council premises involving staff below manager/director level, unless both the applicant and other interested parties are present. Minutes must also be taken at these meetings by council staff present. This does not prevent councillors from meeting with applicants and objectors by mutual consent if they see fit." Then there was, over the page on page 58, an explanation for all of the changes –

40 commencing in page 58, an explanation for all the changes that are in that table. Let's start on page 57 and going over to page 58, and the material that's on page 58 – the paragraphs under the heading Part 3, General Conditions, Development Decisions – is simply copied and pasted from Mr Montague's memo of 31 July, 2013. There's no change from what Mr Montague said in his memo there despite the fact that it appears that a change was made, according to Mr Sammut, page 57, there was clarification of the requirements related to development meetings as agreed at the councillor workshop. What I want to take you to is that it appears that there

were two changes made to what was proposed in Mr Montague's memo in relation to development meetings that emerged from the workshop in the proposed new clause, 3.12, as set out on the bottom of page 57 of Mr Sammut's report to the meeting of council on 22 August. The first was to confine the requirement for applicants and interested parties to be present to those meetings which, "Involving staff below manager/director level." So that was an insertion from what had been proposed. And the second change was to confine the requirement to meetings held, "On council premises."
---Yeah, so?

10

So you understand that what emerged from the workshop of councillors held on 13 August was a prohibition that was much more narrow than the prohibition that had been proposed by Mr Montague on councillor meetings with staff. It was worded so that it would not apply to meetings between councillors and staff who were senior staff and it would not apply to meeting which occurred off council premises. Can you assist us to how those changes came to be made?---I have no idea, sir, but I didn't get involved because I don't get involved with something I don't understand, like, I was too early as a councillor, like, second or third meeting, and I, I had no previous knowledge about this. I don't, I have no idea how this would happen.

20

Well, the minutes of the meeting of council held on 22 August, 2013, also part of Exhibit 281, recorded on page 3, agenda item 6, a resolution that the amended code of conduct that is included in the attachments be adopted and that training be provided for councillor and staff on the new code. Moved Eisler, seconded Saleh. So that meant that what ended up in the code of conduct was the more confined prohibition on councillors being involved with staff, in development meetings with staff so that it didn't apply to councillors meeting with, say, the director of city planning or the general manager and didn't apply at all in respect of meetings that weren't held on council premises. That's what ended up as clause 3.12 in the code of conduct from August 2013 onwards.---Can, can you reframe the question, please? Can you go back?

30

All I wanted to do - - -?---What's the changes? I - - -

- - - was to show you - - -?---Yes.

40

- - - the effect. I'm sorry, what I'm doing is trying to explain to you the effect of the resolution that the amended code of conduct that is included in the attachments, which is what you can see at the bottom of the page that's on the screen at the moment, agenda item 6.1, what that meant was that the clause that ended up in the code of conduct from August 2013 onwards was the clause that is set out at the bottom of page 57 of the business papers, 3.12, which prohibited meetings, pre-determination development assessment meetings, involving councillors unless they were on council premises and involved staff below manager or director level.---Yeah, I can read this.

Was there any discussion in that meeting of council of 22 August, 2013, on that motion?---I, I can't remember anything that was happened that, because I have no idea what was the previous one. I have no idea. I can't remember.

10 Did Mr Hawatt ever say anything to you about wanting to make sure that it would still be possible for councillors to advocate or lobby the director of city planning, or indeed managers underneath the director of city planning, or indeed the general manager, about development applications?---I can't recall one of this. Wasn't any discussion between.

20 You would accept, wouldn't you, that the reasons Mr Montague gave in his memo for the original proposal – which wasn't confined to meetings involving staff below manager/director level or on council premises – would still apply to meetings involving the director of city planning or the general manager about development applications before they were determined? That is to say there would be the potential for raising concerns of perceived partiality on the councillor's part, wouldn't there?---I have no idea, sir, at the earlier stage what Mr Montague was doing.

30 But do you understand what Mr Montague's arguments were in his memo in July? That there was a risk, and the risk was a risk of partiality, of undue influence by councillors in the way officers' reports, for example, might be drafted in respect of development applications if there were to be allowed meetings with, say, the director of city planning – or the managers under him – and councillors, unless all affected parties were also present and minutes were taken.---Mr Buchanan, at that stage I was a junior councillor and I wasn't aware of all these things. I was just junior, just at the beginning of my career. I didn't get involved with any discussion with the general, I can't remember I have any discussion with the GM, and what, what's the code mean and what been before and what been after. I can't remember.

But did you think it was important at that time that councillors keep an open mind when determining development applications?---Excuse me?

40 Did you think it was important in, say, July or August 2013 that before the matter comes before council, councillors keep an open mind about the development applications and not try to influence the way development application reports were presented to council?---I don't understand the question, Mr Buchanan.

Did you think it was okay at any time to try to make sure that an officer's report in respect of a development application recommended approval of it or took any particular position on it? Did you think that was a good idea? ---Well, I, I didn't understand the question properly, please.

Well, if you were to go to a director of city planning and say, “Look, we want an approval of this matter by the time of a particular date, by the end of the year,” you know, “make sure that that happens,” would that be a good thing or a bad thing?---No, you shouldn’t go and tell the director, “I need this one to be approved or disapproved.” No, you have to ask - - -

Would it be proper, though, to influence, to try to influence the director as to what should happen by making it fairly clear what your views are about a particular application?---No, you can’t influence.

10

That would be improper, wouldn’t it?---I, but my understanding, sir, you shouldn’t go and tell the director to do his job. You can question the director about any matter you like to raise but you can’t give him direction.

Thank you. If I could change to another topic now. If we could have a look, please, at Exhibit 224. Mr Azzi, this is an email conversation that took place involving Mr Stavis and Mr Hawatt and Mr Montague between 23 March, 2016 and 25 March, 2016. So we read it by starting at the bottom and at the bottom is an email from Mr Stavis to Mr Montague of 23 March, 2016, which says, “Jim, here is the draft resolution as requested.” And then what he provides is a resolution for, as a matter of urgency, an investigation to be undertaken to investigate, I’m sorry, to identify opportunities to increase the height control for sites in the B2 and B5 zones along Canterbury Road to 25 metres, that the findings of those investigation be reported to the next available council meeting with suitable site specific recommendations for consideration to increase the height controls and prepare a planning proposal to effect these changes. Do you see that? ---Yes.

20

30 Mr Montague forwarded that email to Mr Hawatt and said, “Michael, this is a sensible proposal.” I’m sorry, “This is a sensible approach that will improve consistency in development outcomes along Canterbury Road. I refer this draft motion to you for your consideration. Happy to discuss when convenient.” Do you see that?---Yes.

40

The Mr Hawatt responded, “Hi Jim, we need to maintain control to ensure that any development along Canterbury Road that need to increase height and FSR must provide laneway access and provide a better planning outcome which benefits council and the public. If were lose this control, council and the public loses. We need to be careful on this one. Don’t forget that council had gained its asset base for affordable housing assistance to help the needy, otherwise this could disappear.” Do you see that?---Yeah.

Do you remember Mr Stavis’s proposal being raised with you or you becoming aware of it?---About this email I was aware, but it was my, I was, like, supporting the review and the laneway access from the, my early days in the council. I wasn’t happy with the design and everything. But I was, I

wasn't aware of this email. I haven't seen it before. I didn't recall it. But it's, it's idea I'm in favour with, to review the design and the traffic management and everything in Canterbury Road.

10 Yes. This was a proposal to approach the question of the planning controls to apply on B2 and B5 zones along Canterbury Road on a strategic basis rather than a site-by-site basis.---What I can't understand, Mr Buchanan, after all the complaint came in the early days from, about development on Canterbury Road and resident, the traffic and everything, and I believe
10 everything should be changed to redesign and take consideration all these traffic matters, resident, yeah, but it been a lot of talk about, been a lot of decision being made from early days in the council just to make changes.

So just bearing in mind Mr Stavis's email to Mr Montague and Mr Montague's email to Michael Hawatt – this is of 23 March, 2016, which you can see in front of you, volume 29, I'm sorry, Exhibit 224. Can we play, please, a recording of a telephone conversation that was recorded on 26 March, 2016, which is LII 06301, commencing at 5.16pm.

20

AUDIO RECORDING PLAYED

[12.13pm]

MR BUCHANAN: I should have indicated that that is an extract of the recording of that conversation. It concluded when the topic changed. I tender the audio file and recording of that extract of that conversation, of that recording.

30 THE COMMISSIONER: The audio file and transcript of the extract of the recording LII 06301, recorded on 26 March, 2016, at 5.16pm, will be Exhibit 282.

#EXH-282 – TRANSCRIPT SESSION 06301

40 MR BUCHANAN: Excuse me a moment, Commissioner. Mr Azzi, you heard that recording being played, that extract of the recording being played?---Yes.

You recognise the voices of yourself and Mr Hawatt?---Yes.

On the first page of the transcript, there's a discussion that you and Mr Hawatt had about someone described by Mr Hawatt as "our friend". Do you see that in the transcript?---Yes.

And you clearly understood who Mr Hawatt was referring to.---At the time, yeah, could, yeah.

And you told Mr Hawatt that everything was good, and Mr Hawatt said, "That was good." And you said, "Yeah, I've seen him. Everything good." Who were you and Mr Hawatt talking about?---I can't remember at the time who, because we referred to every person that we know our, as, as a friend if we know. Like, most of the people we know we call them like your mates, you know, like, and call them just a friend, it's common name. But the time being which was that one I don't remember who was that person.

- 10 Well, if I can just point out this, the date of this conversation was 26 March, 2016. On 10 March, 2016, Mr Maroun's DA for the car wash site, 438 Canterbury Road, was approved by council. Could it have been Mr Maroun?---No, I don't think so. I don't remember, sir. Mmm, the subject was not about him.

On 18 March, a date a lot closer to 26 March, Mr Demian's planning proposal for 998 Punchbowl Road, Punchbowl was approved. Could this have been a reference to Mr Demian?---No, I, I don't think so, sir.

- 20 Why not?---Because the subject that we're talking about, I can't see anything to refer to any of them. We're not, too many things - - -

Except that the friend would have had reason to be pleased with something, and what we know from the evidence before us is that Mr Maroun would have had reason to be pleased, and Mr Demian would have had reason to be pleased.---Mmm, no, sir. We were talking a different matter.

- 30 Then Mr Hawatt changed the subject to "that email", and you knew immediately what he was talking about.---Yeah.

- 40 And because we can see what Mr Hawatt said to Mr Montague in Exhibit 224, in his email on 24 March, we know that Mr Hawatt was referring to the email from Mr Montague to him forwarding him what Mr Stavis had proposed about some sort of strategic investigation for increasing the, or loosening the planning controls, in particular, zones in Canterbury Road. You were obviously unhappy about that idea, from your, the words you used.---I was unhappy about the, well, I can't remember, sir. I need, I need, what I can remember, what I, I can still believe, we should get everything under control, and design and strategic and, like, that's, I need everything under control.

Under control of whom?---Like, the council (not transcribable) plan and change everything to, to give idea and control, design.

That would mean, of course, that you and Mr Hawatt had control, because the two of you controlled council.---Excuse me, sir. Said control about DCP and the planning. Not controlling the council.

No, but if council controls something, that meant you and Mr Hawatt controlled it, didn't it?---Well - - -

Because you two controlled the numbers.---Sir, I'm talking about the design control and the density control. I'm not talking about control like council. We need specified plan. When we ask about urban design, I'm not controlling, I'm not a planner.

10 You, I suggest, were unhappy with Mr Stavis's proposal because if it was accepted and if as a result controls were loosened up and down Canterbury Road in those two zones, it would mean that there wouldn't be individual proposals to loosen planning controls because they wouldn't be needed anymore and there wouldn't be development applications which would require variation of planning controls because they would meet the planning controls. And so what that would do would mean that you and Mr Hawatt would, in respect of those sites, not have any need to influence anyone on council, like Mr Stavis, and you wouldn't need to have a relationship with developers whereby you were providing a service to them of obtaining approval of what otherwise would be applications which didn't meet the
20 planning controls.---No, it's not correct, sir.

It certainly was Mr Hawatt's view that we need to maintain control, wasn't it? That's what he said in his email, that was Mr Hawatt's view.---What I can believe, sir, what I do understand, be in control about the, the planning design, not losing it. Not controlling the council. That's what I believe.

And what Mr Hawatt said to you in that phone conversation was that the proposal was unacceptable because, and to use his words, "This way it gives us an opportunity to get back things for the community," which is a
30 reference to clause 4.6, isn't it?---Yeah, the 4.6 had been designed by the Planning Department, sir, not by us.

Yes, but it necessarily had to be addressed if a DA didn't meet planning controls, if it sought a variation of a planning control, say in respect of building height.---Well, it's in the planning, if it's in the planning and under the code, sir, you have to follow it.

But of course you wouldn't have to follow it if the planning controls had been varied in respect of whole zones along Canterbury Road so that
40 developers no longer had difficulties in meeting the requirements of the LEP.---I have no idea, sir, if we can change this.

Can I change the subject now to amalgamation. Before amalgamation occurred, you were involved in meetings and discussions with Mr Montague, Mr Hawatt, George Vasil and people outside of Canterbury, outside the Canterbury LGA, about amalgamation?---We had discussion with, we discuss it with a lot of community members and with, with

Bankstown Council and I have a discussion, I did discuss it with my superior in the Labor Party and with everybody.

And it was known, wasn't it, by some time in December 2015, that if and when amalgamation occurred, Canterbury would amalgamate with Bankstown?---It's one of the proposal but we are, I don't remember if we have one or two, three option I think. One of the Bankstown, Hurstville. I don't remember what the other one.

10 You had meetings at your place about amalgamation?---Yes, sir.

I wonder if we can play please a recording of a telephone conversation on 2 February, 2016, commencing at 4.36pm.

AUDIO RECORDING PLAYED

[12.25pm]

20 MR BUCHANAN: I tender the audio file and transcript of that recording.

THE COMMISSIONER: The audio file and transcript of the recording LII 02542, recorded on 3 February, 2016, at 4.36pm, will be Exhibit 283.

#EXH-283 – TRANSCRIPT SESSION 02542

30 MR BUCHANAN: Mr Azzi, did you recognise the voices of yourself and Mr Hawatt in that recording being played?---Yes.

Turning to the second page of the transcript in Exhibit 283, you said that "Jim is a bit of a worry," and Mr Hawatt asked you, "Worried about what?" and you said, "The situation, the one from yesterday" and Mr Hawatt said, "Oh, yeah, yeah, yeah, okay, well, I'll talk about it," sorry, "I'll meet you, I'll see you at 5 o'clock." The day before was 2 February, 2016, Tuesday, 2 February, 2016. What was it that you were talking about to Mr Hawatt there when you said that "Jim is a bit of a worry" and Mr Hawatt said, "Worried about what?" and you said, "The situation, the one from yesterday"?

40 MR ANDRONOS: I object to the question, Commissioner. Nothing might turn on it, but the evidence is not that "Jim was a bit of a worry" but that "Jim is a bit worried."

MR BUCHANAN: Did I say "of"? I'm sorry.

THE COMMISSIONER: "Jim is a bit of a worry."

MR BUCHANAN: If I said “of”, I apologise. I mean to say, it will be “Jim is a bit worried.” And Hawatt said, “Worried about what?” and you, Mr Azzi, said, “The situation, the one from yesterday.” What was the situation from yesterday that you were talking about there?---I don’t remember what it was yesterday, sir, but we had, I don’t remember what we had previous day.

10 Do you remember what it was that you and Mr Hawatt were talking about in that conversation there?---No, I can’t, I can’t remember what was the subject of our – too many things was going on. I don’t know which subject.

Can I ask that we play another recording, please. This recording was made on 10 February, 2016, commencing at 9.15pm. It’s LII 03105. And it starts at the beginning but the tender will be confined to an extract which finishes before the end.

AUDIO RECORDING PLAYED

[12.29pm]

20

MR BUCHANAN: I tender the audio file and transcript of that extract of that recording.

THE COMMISSIONER: The audio file and transcript of the extract of the recording LII 03105, recorded on 10 February, 2016, at 9.15pm, will be Exhibit 284.

#EXH-284 – TRANSCRIPT SESSION 03105

30

MR BUCHANAN: Excuse me a moment. Can I just ask for your indulgence for a moment, Commissioner, just while we check. I think we just want to check that the recording as played was where we intended the extract to conclude. Mr Azzi, you recognised the voices of yourself and Mr Hawatt in that recording being played?---Yes.

The London Street car park was in Campsie, wasn’t it?---Yes.

40

If we could have a look, please, at page 3 of the transcript. Do you see that in about the middle of the page of there, or rather at the top of the page, Mr Hawatt was asking you, “Who’s, who’s doing that one?” and he repeated himself and then he spelt out what he meant, “Who’s doing the interest? Who’s interested in it?” and you said, “I didn’t ask him. I didn’t say anything in front of him. I didn’t say anything in front of him, Jim, like, who wants and who.” What did you understand Mr Hawatt to be asking you when he was asking you who was doing that one, “Who’s doing the interest, who’s interested in it?”---Like, he’s talking about the car park.

Yes.---Yeah.

And what did he mean, as you understood it, what did you take him to mean by asking you who was interested in it?---He's asking me who's interested in it. I don't know who was (not transcribable)

10 Well, the two of you have established that Mr Maroun was interested in it, so it's not Mr Maroun because he's been spoken about. You've spoken about this meeting that occurred between Mr Montague and Mr Maroun at which you were apparently present.---I don't remember anything about it, what, it's a long time ago. I can't remember. Yeah.

But wasn't - - -?---There might be a discussion. Yeah.

20 But wasn't Mr Hawatt trying to find out whether you had any knowledge as to whether there were any people other than Mr Maroun who were interested in that site?---I don't know if they have any, how many people are interested because there could be too many people are interested in it.

But what was your understanding as to why Mr Hawatt wanted to know who else was interested in that site?---I don't know, sir.

Well, you seemed to understand at the time because you said, "I didn't ask him."---Yeah, I, I didn't know. I didn't ask.

30 Why would Mr Hawatt want to know who apart from Mr Maroun was interested in that site as far as you can understand now, thinking back on it? ---I have no idea, sir.

Well, one suggestion might be that Mr Hawatt was trying to identify potential clients for you and him.---Sir, if I want to identify I would ask the question. Don't, I, I don't, I didn't, I didn't take any notice.

40 Now, once the decision to amalgamate the two councils was known, but before amalgamation actually occurred, you believed that there was a risk that all Canterbury councillors would be sacked, is that right?---Like, we'd been, I believe we'd been informed, it's been a lot of, you know, at that time because that government had no idea what it was doing. Every day they sent a message, if council doesn't comply with amalgamation, council doesn't comply with the reform and amalgamation they're going to be sacked. Sometimes they change their mind. Oh, everybody was confused (not transcribable)

But your concern, wasn't it, that amalgamation could result in you losing your position as a councillor and Mr Hawatt losing his position as a councillor?---I believe, as, excuse me, can you repeat that question, please?

Yes. Your concern at the time – this is February 2016 – was that if amalgamation occurred, you and Mr Hawatt would lose your positions of influence in respect of the approval of development applications.---No, sir.

10 Can I ask if we could have a look, please, at Exhibit 121? And what I'm going to show you is a copy of a text message extracted from Mr Hawatt's phone. If we could – excuse me a moment. If you could have a look at the series of messages on the screen. The first one is to you, on 11 May, 2016, and we know that amalgamation was proclaimed to occur on 12 May, 2016.---Yeah.

And Mr Hawatt said, “Hi all, the feedback is councils which are targeted for amalgamation will be sacked and proclamation announced on Friday. Administrators have been appointed, and we may stay on as advisors only with continued payment of fees. All power will be left to the administrators. That's what I have, not good news so far. Michael Hawatt.” What was your view when you read that text message?---Was my view?

20 Yes.---Like everybody else, I wasn't happy to be sacked.

And why weren't you happy?---Nobody will be happy being sacked, sir. I've been elected by the public. I don't like to be sacked by a person.

But according to what Mr Hawatt said, you would stay on with continued payment of fees.---That's - - -

You wouldn't be losing remuneration.---I'm not in the council for the money, sir.

30 You were there for the influence you were able to wield over the determination of development applications and proposals for rezoning? ---No, sir. I'm there for the community.

40 What was it then that you understood Mr Hawatt to mean when he said, “Not good news so far,” after informing you of what he understood was going to happen?---Well (not transcribable) understand that day, because we've been promised (not transcribable) I believe the council who comply and agree for reform, we had, I think connection, I don't remember, Bankstown or general manager of council received the information from local office, the government or the minister's office. Like, the council who is agreed to reform will be safe and we agreed and we let, we help the government as well, we been agreed to reform and do everything and when you receive the, the news at end of the day, when you did everything right and what you been asked by the government to do, did everything right and to, to receive a message at the end of the day, you've been sacked and nobody can agree with it.

Commissioner, that is my examination of Mr Azzi.

THE COMMISSIONER: Thank you. Mr Moses.

MR MOSES: Yes, thank you, Commissioner. Mr Azzi, you've told Counsel Assisting that you understood that your role as a councillor was to represent the community?---Yes, sir.

And that's because you were an elected official?---Yes, sir.

10

And was it your role to represent the interests of developers?---It's my role to represent the interest of every matter related to the, to the council, not developer only. The community as well.

Well, were you there to advance the interests of developers?---Pardon me?

As a councillor, were you to advance the interests of developers?---No, sir.

20

Have you read the transcript of Mr Occhiuzzi's evidence in this matter, Marcelo Occhiuzzi?---Not all of it.

Not all of it. Well, you're aware, aren't you, that he's given evidence that you, together with Mr Hawatt, had a meeting with him about a development at 23 Oatley Street, Kingsgrove?---Yes, sir.

30

Yes. And do you recall his evidence that you made it clear to him that it was his job to find a solution to the developers problems? Are you aware that he gave that evidence?---I did ask Mr Occhiuzzi because when we went, I did explain myself when we were onsite inspection and occupant and he wants, he wants to comply with all the councils, but as we do understand, we are a public servant and he is as well. When somebody approach you from, as a resident, to, to help him and find a solution because he is a, he is a director and we all public servant. We have to come up, when he accept to comply, the resident accept to comply with all of the consequences if they can find a solution, it's my duty to ask the, the director to find a solution for the person because we have to find a solution for him.

40

Is that what you thought the director of city planning's role was, to find a solution for develops?---I believe the director of city planning, he had to serve the community and the people he, he represents.

Where did you get that understanding from, sir?---As a councillor, I believe to act on behalf of the residents and I ask the director to find out what we can do to help this person, a resident of the, the, city.

Did you also look at the evidence of Mr Occhiuzzi about a telephone call that he had with you on 28 October, 2013, where you said that you were

unhappy with the planning staff bit that he was under your protection? Do you recall him giving that evidence, do you recall reading that evidence?

---No, sir.

You don't. Well, do you recall saying that to Mr Occhiuzzi in a telephone call, that you were unhappy with the planning staff but that he was under your protection because other councils were trying to get rid of him? Did you say that to him?---No, sir.

10 You didn't?---I said, he, Mr Occhiuzzi asked me a question, I said, "Mate, I have no problem with you, you have my support all the time."

So are you telling the Commissioner on oath that you never said to Mr Occhiuzzi that you were unhappy with the planning staff but that he was under your protection?---I don't understand the question, Mr Moses.

You don't understand the question?---Yeah.

20 Okay. Did you say to Mr Occhiuzzi that you were unhappy with planning staff but he was under your protection? Did you say that to him?---I can't remember.

You can't remember?---No.

Well, you did say that to him, didn't you?---I can't remember.

Do you accept that you were trying to bully Mr Occhiuzzi to do what you wanted him to do with planning developments?---No, never.

30 No, never?---I never bullied Mr Occhiuzzi.

Never bullied him. Okay. Well, can we just go back to your role as a councillor. You were elected in the West Ward of Canterbury Council? ---Yes.

And you represented the ratepayers and residents of that ward?---Yes.

And Mr Hawatt was from the West Ward too?---Yes.

40 And what were the suburbs within the West Ward, do you know?---It's boundaries, Kingsgrove, Roselands, Lakemba. Lakemba?

No, Lakemba wasn't part of it, sir. No.---No, no, no, wasn't part. It's Narwee, Riverwood, Punchbowl.

And Wiley Park?---And Wiley Park as well.

And Mr Maroun, he lived in Earlwood, is that right?---Yes.

He wasn't part of your ward?---No.

No. And the development site at Canterbury Road, Campsie, wasn't in your ward, correct?---Yes. No.

It was not in your ward, was it?---No, no.

10 No. And you told Mr Buchanan I think on 1 February in your evidence that you first met Mr Maroun 25 years ago, correct?---No, I never met him. I knew him.

25 years.---Yeah, I knew.

He was a director of Legion Cabs.---I heard he was a director.

You've known him for 25 years, correct?---No, I didn't know him. I said I knew - - -

20 You didn't know him? You knew of him?---I never met him. I heard about him. I never met with him. I never spoke to him.

When is the first time you met him?---After become a councillor.

Who introduced you to him?---I don't remember if he made a call, he made a call and he - - -

He called you?---Somebody or himself.

30 Did Mr Khouri introduce him to you?---No, no.

No. Did Mr Hawatt introduce you to him?---No.

And did he tell you when he spoke to you that he was looking to develop the site on Canterbury Road, Campsie?---When develop Campsie?

40 Look, Mr Azzi, listen carefully to the question. When you first spoke to Mr Maroun, do you recall him telling you that he had a site on Canterbury Road, Campsie that he was wanting to develop?---He said to me when I met him, he said he had a proposal been lodged in for years to change the zoning of one site.

What site was that?---I, the (not transcribable)

THE COMMISSIONER: Sorry, what?---I call it the (not transcribable) site. I don't know the number of it.

MR MOSES: You're talking about the Canterbury Road, Campsie site, correct?---Yes. It's the one - - -

And he told you that he wanted to put an additional two storeys on it, is that what he told you?---Sir, it was a planning proposal.

What did he tell you?---He said he, he want to change the zoning from - - -

10 To do what?---The planning proposal change the zoning from industry to residential.

That's what he told you?---Yeah.

For what site?---The (not transcribable) site.

20 And when did you first go to his home, to Mr Maroun's home?---I think when, yeah, when, I can't remember the date but I said when he called once and asked me about the, to discuss it. I had no idea what was going on and I remember that day when I called the mayor (not transcribable) and said somebody requesting to do this, this and that. I have no idea what we have to do. And we went together, me and the mayor, to see him.

You and the mayor went to see him?---Yeah.

Mayor Robson?---Yes.

Where did you go and see him?---Where?

30 Yes.---In his place.

At Earlwood?---Yes.

And where was the meeting? In the gym? Where did you go and see him? What part of the house? Where was the meeting held?---Meeting was staying outside on the verandah, around the pool.

On the verandah. And that was the first time you went to Mr Maroun's - - - ?---I believe so, yeah.

40 - - - house in the presence of the mayor?---Yeah. I believe so, sir.

Was Mr Hawatt with you?---No. I had no connection to him.

And do you recall what Mr Maroun said to you and the mayor?---I don't remember. He was, he, he, I wasn't aware about what he was talking about. I was a, like, junior councillor, first months or two months as a councillor. And most of the discussion between him and the mayor, what he has to do and how it's going to go and happen, that's the discussion.

Do you know what year that meeting was?---Like, the early beginning, when I was a councillor, I can't remember the date.

Why did you go to his house?---Why?

Yes.---Because he asked and I discuss it with the, with the experienced councillor, the mayor, and he said, "All right, yeah, we'll go and see him, see what he wants."

10

Why do you go to his house? Why didn't you come to the council offices for a meeting?---I have no idea, sir.

You have no idea?---No.

Was that the only time you went to Mr Maroun's house with the mayor?
---Yeah, once with the mayor, yeah.

20 And then after that, as we've learnt from your evidence that Mr Buchanan has led from you, you went to Mr Maroun's house on quite a few occasions after that, didn't you?---Yeah. Yes.

After that first meeting with Mr Maroun at his home, did you then go another occasion with Mr Hawatt?---Oh, it's, no, with Mr Hawatt it was like, way later.

Way later. Did you ever go to Mr Maroun's house on your own?---Mmm, maybe once or twice.

30 Maybe.---Maybe.

And Mr Maroun - - -?---Yeah, I did once.

And Mr Maroun's been to your house?---I can't remember, no, I don't remember.

You can't remember?---Yeah, I don't think so.

40 You don't think so?---No. Never there.

In late 2015, you were having quite a lot of discussions with Mr Maroun about the development proposal before council. Do you agree with that?
---I quite?

You were having meetings with Mr Maroun to discuss his development proposal for the Canterbury Road property. Correct?---Yeah, we had, I think we, once or twice.

Once or twice?---I think so, we met with him.

Who's "we"?---I met with him and Michael (not transcribable)

Why?---(No Audible Reply)

Why did you meet with him before his development application was being dealt with by the council?---That's what he said, to discuss, he wants to enquiry, enquiry about his DAs, what's happening, delays.

10

About delays?---Yeah.

Did he ask you to put pressure on Mr Stavis to recommend approval of the development of that property?---I never put pressure on Mr Stavis, no.

No, did he ask you to put pressure on Mr Stavis - - -?---No.

- - - to recommend approval for that property?---No.

20 What did he want you to do?---He, he complain, he was complaining about why it's taken so long.

What did he want you to do?---To enquiry - - -

This is your best chance now to tell the Commissioner what he wanted you to do. So - - -?---That - - -

30 You're here to tell the truth. What did he want you to do?---Yeah, he want us to do make sure the council were processing the application, and not delaying. That's what he want to do.

To make sure the council processed the application in his favour, correct? ---Everybody accept he wants (not transcribable) in his favour, but he wants to be processed and he doesn't want any more delays.

I'm asking you the question again. Did he tell you that he wanted the council to approve the application in his favour?---No, not asking for approval. He said he want the process to go ahead.

40 That's all he asked of you?---Yeah, all. I don't remember he said I want you to approve it for me. No, I, he didn't ask me that question.

Never asked you that?---No, not, never told me to, to approve it for him. But I believe (not transcribable) expect approval.

I note the time, Commissioner.

THE COMMISSIONER: We'll adjourn for lunch and resume at 2.00pm.

LUNCHEON ADJOURNMENT

[1.00pm]