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INDEPENDENT COMMISSION AGAINST CORRUPTION

PATRICIA McDONALD SC
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PUBLIC HEARING

OPERATION DASHA

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY 13 DECEMBER, 2018

AT 2.00PM

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

MR BUCHANAN: Mr Montague, you recall before lunch saying that a matter that you were concerned with is that, and might have been concerned with in this case, please correct me if I'm putting the wrong emphasis on it, was that if the panel's position was implemented then the DA could just go off for six months and sit in never-never land and nothing would happen. Do you recall that concern of yours? Would you like to put it in a better way than I did?---Maybe I need to clarify that. It's possible that it may have gone off the boil, so to speak, and it could be on somebody's desk, I don't know, and there wouldn't be any way to determine or predict how long it would take for it to come back. Not necessarily but that's a possibility.

And are you saying that that was something that you were considering at the time of giving a direction to Mr Stavis on the morning of 30 November, 2015?---Of course I was concerned about undue delays in the processing of applications, period, regardless of their nature.

20 Can I ask you to have a look, please, at volume 2, page 299. It's the IHAP policy again and you'll recall we looked at clause 19.2 before, which said, "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." Can I ask you to have look also at 19.3. "The panel will only defer an application for further information if such information is fundamental to the panel's determination of the proposal." And then the next paragraph reads, "Applications that are deferred by the panel for further information must be resubmitted to the next meeting. If the additional information has not been provided to council prior to the closing time for reports to the IHAP meeting, IHAP will make a recommendation to council based on the information it has before it." Wasn't that mechanism to ensure that this DA didn't just sit on someone's desk as a result of the IHAP's position as it stated in its report being implemented?---That's clearly the intention of that clause but it doesn't necessarily mean it would happen.

40 But isn't it up to you to ensure its policy is enforced?---No. Not, not to the nth degree on things like this. I mean, there's a group of people who manage the IHAP. It is independent of council and therefore independent, to some extent, of me in terms of the day to day processing. So, the people down in the corporate services division, Mr McPherson in particular, who managed the IHAP, would understand that and would, I guess, do their best to ensure that that's complied with, but there may be reasons that come along that prevent compliance. I, I, I mean, I can't say any more than that.

So you did have systems in place, as far as you were concerned, to ensure that policies like this were administered?---Yes. All, all of our policies,

they're not just there as some sort of token. The idea is that they will be implemented as fully as possible.

And it doesn't come to you as any surprise perhaps that there was at the time a policy to make sure that a DA didn't just sit on some assessor's desk in a circumstance like this?---Yes. It's a long time since I've read this and -
--

10 But you would have been aware of this at the time, wouldn't you, that there was a system to make sure that didn't happen?---Not necessarily. Not specifically but I, I still repeat that that was the intention of that clause and this was uplifted from other councils, it wasn't our work. But be that as it may, it doesn't mean to say that it wouldn't still languish on somebody's desk because of absence or, look, I can't - - -

20 But plainly that wasn't a consideration, was it, of yours in giving your direction to Mr Stavis on the morning of 30 November?---No, I told you what my motivation was, to get the applications processed as quickly as humanly possible before the Christmas recess.

Irrespective of the law?---No, I'm not going that far. I, as I said, I wasn't familiar with that policy and as I said, it's a long time since I read that IHAP charter if you like. But clearly, yes, I admit that seeing it now it would have been better if somebody had alerted the IHAP administrator to that clause and that appropriate action had been taken.

The IHAP administrator?---Yeah, Brad McPherson.

30 And you said before lunch as well I think that no one drew your attention to it?---No.

Can I ask you to have a look, please, at volume 22, page 125. This is the email that I drew your attention to earlier in which Mr Stavis reported to Andy Sammut as to what your direction was.---Yes.

40 And then can you see that going over from the bottom of page 124 to page 125 it's a very brief email from Mr Sammut at 10.56am on 30 November to Brad McPherson saying, "Please note instruction from GM re this item."
---Yeah, I can see that, yes.

Can I take you back to page 124 and can you see that Brad McPherson responded in that conversation at 12.48pm, "Hello, Andy. The lawyer from our IHAP, Anthony Hudson, said it would be illegal for council to determine this application. An extract from the IHAP minutes is shown below." And those paragraphs that I drew your attention to are reproduced. "Regards, Brad." Can you see that the next email in the conversation was at 1.19pm from Mr Sammut to you and it reads, "As per your instruction the report will be going to the 3 December CDC, but just so you are aware

Anthony Hudson is of the opinion that it can't be determined without referral to RMS because as outlined more fully below", and then he extracts the sentence, "The DA/section 96 is for new premises under clause 104(1)(A) or they propose an enlargement extension of existing premises under clause 104(1)(B). Let me know if we can obtain any further information on this for you." So you see he was drawing your attention to the actual provisions of the State Environmental Planning Policy which you're obliged to comply with and it was one inch away from Mr McPherson drawing attention to the statements in the IHAP report about the legal situation.---Yeah.

So it was drawn to your attention, wasn't it?---If I read these emails. I don't remember them to be honest with you.

So can we just explore that. Do you mean that you had a habit or a practice of not reading your emails?---No, I didn't have a practice or a habit of not reading emails, but I don't know what the circumstances were when these emails surfaced and I just can't recall.

20 It would seem, however, that the matter was drawn to your attention?---You could, you could say that, yes.

Yes.---It's reasonable to assume that but I can't be certain of it.

Well, you can be certain. You can see it before you in black and white, can't you?---Yeah, but that assumes that I actually did read them.

30 No. That's a separate matter. What we're dealing with is your evidence that you gave before lunch, confirmed after lunch, that no one drew this to your attention. You can see that it was drawn to your attention by the responsible officers, can't you?---Well, it, it looks that way given that email.

What excuse would you have for not paying attention to it?---Too busy. Overtook me. Forgot. I don't know.

And that is a matter of equanimity to you? It doesn't seem to concern you at all.---What do you mean, doesn't concern?

40 In the evidence, the way you just gave that evidence, it doesn't seem to concern you that this matter of potential illegality of what you were directing be done, having been drawn to your attention, was not something that you paid any attention to.---I don't recall.

MR ANDRONOS: Objection. Objection. He didn't direct it to be done.

MR BUCHANAN: I'm sorry?

MR ANDRONOS: You said a matter of illegality you were directing be done. This witness did not on any view direct council - - -

MR BUCHANAN: I take my friend's point. I withdraw the question.

THE WITNESS: I don't recall any of this, any of this material, Mr Buchanan, I don't. And, and I know it's there and he sent the email through, but did I get it? I don't know.

10 MR BUCHANAN: What I'm trying to explore now is whether it was of concern to you that something like this was drawn to your attention and you proceeded notwithstanding. From your evidence you've just given it looks as if, even as you sit there today, it's not a matter of concern to you.---Well, it's not a matter of concern to me now and I've been out of the council over three years. I - - -

20 You aren't concerned about your own conduct in the past?---Of course I am. But I, I don't think this was done with any intention to deceive anybody or the council or not to give the council all of the information they are entitled to have, or the IHAP for that matter. I, I don't know. I, I can't recall it. I simply can't help you any more.

How often did you intervene in a planning decision of council's in a manner as you did in this case?---Very rarely.

So why can't you remember it?---Because it's, because it's three years ago and I can't remember it.

30 It must have been, surely, a matter of great moment to you to take that step. ---No. No, it, it, it's not, no. Not, not three years later. I can't remember exactly what happened then.

It's not a trivial matter, is it - - -?---No, of course it's not.

- - - to take a step which you're told is illegal.---Well, that, on their, their advice it's illegal but we didn't get confirmatory legal advice on that either. I mean, that's one, that's Hudson's opinion, and he's on the IHAP, and there was, as I said, there was a bit of argy-bargy between IHAP and the council.

40 We haven't got your email responding to Andy Sammut's email of 1.19pm saying, "Please ensure that we obtain a second opinion."---No, because it probably never - - -

Why not?---There was probably no email. I may have called Andy - - -

Why, in that case, are you even talking about it?---Because I, I may have contacted him on the phone or called him up to my office.

May have done what to whom?---To say to Andy you'd better, you'd better follow this one through.

Are you saying that that is something you believe you did?---No. But it - - -

Why are you even giving that answer, then, Mr Montague?---Well, because I could have said it.

10 You're really trifling with the Commission, aren't you?---No, I'm not trifling.

You're not doing your best to give - - -?---I am - - -

- - - frank, truthful evidence to the Commission, are you?---Mr Buchanan, I am doing my very best to answer the questions as truthfully as I can. I've got no reason not to.

20 Then there was an email to you that concludes the conversation, the email conversation so far as it is reproduced here, at 1.25pm by Mr Stavis to you. Do you see the top of the page?---Yes.

30 And he said, "Jim, FYI, 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 or similar, '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.'" Did you respond to Mr Stavis to the effect of it would be wrong to interfere in the planning decisions made by council?---I don't know that I responded to him at all. It was probably, again, on the phone.

Why didn't you tell him, "No, don't be silly. I don't interfere in the planning decisions of council"?---I don't know. I don't know.

Well, you were giving evidence to us quite a lot in these proceedings that that was your position. It seems as if perhaps it wasn't your position. ---Look, I don't, I never intentionally intervened in, in the process of the DAs.

40 But that's exactly what you were doing in this case.---No, no. The, the circumstance, and I assume we're still talking about the, the Doorsmart site.

No.---Aren't we?

It says here at the top of the email "548 Canterbury Road DA".---Oh, we're back to that, are we? Well, look, I'm that confused now which DA we're dealing with. I - - -

Does it make a difference?---Yes, it does.

In what way?---Well, dear me. I've said repeatedly from the outset of these proceedings, that I was interested to ensure that applications, regardless of who they were submitted by, were processed as expeditiously as possible. I, I, that was my view because I thought that the council, not only this council but the one before and the one before that, certainly the one before, were interested to ensure that development occurred in the City of Canterbury so that we could meet the housing targets dictated by the State Government and, and, and get some investment in the area.

Did you have any conversation with Mr Stavis before he sent you that email about the device of a motion being moved off the floor or as a memo from you to the effect of the motion that he proposed?---Not that I recall but that wasn't uncommon either. Often the, the directors would act as scribes for the councillors, they'd ring up and say, "Look, I need a motion on this, can you prepare it?" and they'd say yes, but of course the comments were attributed to the councillor, not, not the staffer who prepared it.

Was that the case here?---It could have been,

That Mr Stavis had been acting as a scribe for a councillor or councillors? ---Possibly, yes.

Well, tell us what you know about that.---I don't know anything about it, and, and the obvious - - -

Well, why are you telling us that?---Well, I'm just saying that's an explanation for, for this, the way this was prepared and why.

A more logical explanation is that he sent it to you pursuant to a conversation you had with him on the subject, isn't it?---I don't agree, I don't know.

What's illogical about that?---I'm not saying it is illogical, I'm just saying I can't confirm or deny it.

Did this proposal come out of the blue to you? That is to say, were you surprised by it?---Same answer. I don't know how it came to be in existence and I cannot remember now, three years or so later.

Isn't the likelihood, from all that you've read so far on this, that you expressed serious concern to Mr Stavis about a delay in the determination of this DA if the IHAP report was followed or implemented?---No, no. Couldn't care less how long it took for the DA to be approved. Couldn't, had no, no interest to me at all. If this is the, is this the, this is still Canterbury Road, 548.

I just want to know why you've said that when you have been telling us about 10 minutes ago, if that, that it was a matter of great concern to you as to how long it took for a DA to be determined.---Generally, yes. In a general sense, one of the, the responsibilities of the council is to determine DAs and proposals within the statutory time limits, but in individual cases I had no particular vested interest in it and if there were delays, reasonable delays or justifiable delays, so be it.

10 Well, I need to suggest to you that on the material that's before the Commission that we've seen at the moment, it looks as if you absolutely had a vested interest in the determination of this DA by the meeting of the CDC on, I think it was scheduled to be 3 December, 2015.---I deny that emphatically.

I'm sorry, I didn't - - -?---I said I deny that emphatically. There's no vested interest and, and I know I'm not allowed to ask questions but I wonder what the nature of what that vested interest would be.

20 Can we go then to - - -

THE COMMISSIONER: You're not supposed to ask questions, Mr Montague.---No, I know, I know but I don't understand what the vested interest is.

30 MR BUCHANAN: What did you do when you got Mr Stavis's email?---I can't recall. The whole thing now is, it may have happened, it could have happened 20 years ago for all I know. That's, that's how little I remember about the actual actions that were taken. I just simply can't remember. Not that I don't want to remember, and if I had a clear recollection I would tell you, but I don't. I'm not trying to be evasive.

Do you think it's likely that after you received the email you had a conversation with Mr Stavis about it?---Could have. Could have.

Well, no, no, no. Don't you think it is likely having regard to, firstly, what is being proposed, secondly, that it's a communication with you and, thirdly, it's a proposal therefore it's looking for a response from you?---Well, look
- - -

40 Don't you think therefore it's likely you had a conversation with Mr Stavis after you got it?---I will say it's possible but I don't, I wouldn't agree to likely because I don't know what my movements were then, what his were. You know, people come and go in and out of the office all the time. He might not have been available. I don't know.

If I could ask you to go to page 126, please, of volume 22. Do you see this is an email from Mr Stavis to you at 4.48pm the same day?---Yes.

And the topic is “548-568 Canterbury Road, Belmore, Harrison’s DA, Notice of Motion. Hi, Jim. Here is the commentary and motion for the Harrison’s applications as discussed.”---Yeah.

So would you accept that you did talk to Mr Stavis about what he had proposed in his 1.25pm email, notwithstanding you say you have no memory?---Yes, and that, and there it is. I mean, it does say “as discussed”. I don't know with whom or who was present. It implies it was a discussion with me.

10

Who else would it have been with?---I don't know. I don't know.

You’re not being frank with the Commission or even attempting to be, are you?---I, I, I - - -

To suggest that you don’t know who the discussion would be is an obvious lie.---It is not a lie and I, and I object to that. I’m, I’m, I wish I could give you an answer that satisfied you, Mr Buchanan. I can’t.

20

Mr Stavis went on, “I refer to modification application”, and he identified it, “and the DA for development of the subject site which were considered by IHAP, who resolved to defer the determination of the applications until we receive the concurrence of the RMS. The applications were not referred to the RMS as the original DA had been referred to the RMS and their concurrence was received. The current applications are for developments that are below the RMS referral thresholds but exceed the threshold when considered cumulatively as a whole development. To avoid any doubt we have now referred the applications to the RMS and await their concurrence. In order to avoid any delay the committee could approve the applications in principle and once the concurrence is received from the RMS the general manager be given delegated authority to issue the consents based upon suitable conditions as recommended in the director of city planning’s report and any other conditions that arise as a result of the RMS concurrence. The motion would be as follows, that modification application”, blah, “and DA 592/2014 be approved in principle, and once 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 of city planning’s report and any other conditions that arise as a result of the RMS concurrence.”---Yeah.

30

40

Now, it’s reasonable to infer from this in the context of the other documents that we’ve seen that Mr Stavis produced this because you asked him to, isn’t it?---Not necessarily. He could have produced that on the say-so of Councillor Hawatt, for example. They would have been discussing these things.

On what we have read here?---Yeah. Look, and I don't know what became of this, whether it went to council or not. That was just a, it might have been a brain dump by him.

Why do you tell the Commission that Mr Hawatt would have been discussing this with Mr Stavis?---I didn't say he would have.

Yes, you did.---I said he could have.

10 No, you said would have. Why did you say that, what's - - -?---Well, then
- - -

Are you basing that upon knowledge of what actually occurred in this case or - - -?---No. If I said would have, I meant to say could have, right. That he could - - -

Well, why even refer to Councillor Hawatt?---Because there must have been something else happening. I mean, it wasn't just between Spiro and I. There were other people that had an interest in these developments as well.
20

And they were?---Well, the applicant, clearly, and no doubt the, the councillors if, if the applicant – assuming the applicant had – contacted the councillors about delays or whatever it might have been.

And what was your experience in relation to Mr Demian's projects? That Mr Demian was often, it would appear, in communication with Mr Hawatt and Mr Azzi as to the progress of those projects through council?---Well, it seemed that way, yes.

30 And so it wouldn't come to you as any surprise, is this your evidence, if Mr Stavis had been in contact with Mr Hawatt at least - - -?---Wouldn't surprise me - - -

- - - at this time in relation to this matter with a view to conjuring up a solution to Mr Demian's problem?---I, look, it wouldn't surprise me in the slightest because there were people calling other people all the time.

Is that the way decisions should have been made and development applications progressed through assessment and the determination process?
40 ---I don't think that, I don't think there was anything wrong with the system. It served us very well for a lot of years and the council was satisfied with the outcomes. I don't know why all of a sudden you can't have councillors talking to staff, senior staff, which had my full imprimatur. I said that earlier.

But in this case it would have been about a very sensitive matter, namely the question of the legality of what is being done or proposed. That's a very sensitive matter, wouldn't you agree?---Yes, it is.

And so wouldn't you be very interested in the contact that had occurred between Stavlis and Hawatt if, as you tell us, it would have been no surprise to you if Hawatt had been in contact with Stavlis to overcome the obstacle, it would appear, of the IHAP report?---I, I can't help you any more, Mr Buchanan, on that. I don't know what, what, who, who or what was talked about or who Stavlis was talking to about anything at that stage. I just, I'm sorry, but I can't help you any more than that.

10 I want to suggest, just make a suggestion to you as to how this email should be read. Just one small thing but I think it does need to be attended to. Do you see the paragraph commencing, it's the third paragraph of the email, commencing "The applications were not"?---Yes.

"The applications were not referred to the RMS as the original DA had been referred to the RMS."---Yeah.

I want to suggest to you that given this was a DA to add two storeys to an approved development, the way the words "the original DA" should
20 reasonably be read is, in that context, the DA for the initial six storeys. You'd accept that? Is there any other reading that you would suggest?
---Well, it says the current applications, plural.

That's right.---So you're including the, the carpet place, are you?

No, I'm talking about the words "the original DA".---Oh, I beg your pardon.

In just that sentence there.---Oh, "The original DA had been referred to the RMS and the concurrence was received." Well, that's - - -
30

"The current applications are for developments that are below the RMS referral," et cetera, et cetera. "The original DA" would be a reference to the approved development, the DA for the approved development, you'd accept that?---Well, I think so, yes.

Now, did you have any contact with Mr Demian about this device to overcome the obstacle of the IHAP report?---I doubt it very much.

40 And why do you doubt it?---Because it's not my role. I mean, he, he was in regular contact with Spiro about it, and the councillors, no doubt. I, I couldn't have helped him anyway.

Why do you say it was not your - - -?---And I worry about the use of the word "device". I mean, look, it's, you're dealing, I don't know. I, I can't express myself, I'm sorry.

You say it was not your role, but that was the role that you were playing on 30 November and indeed the Friday before when you urgently wanted Mr

Stavis to meet you about it.---Because I, I may have received – I stress the word may – I may have received a call from a councillor about it, you know, what's going on, there, there is some pressure there, so I reacted to that but that's all.

So, it was your role to intervene in the planning process when it appeared there was an obstacle to at least Mr Demian's DA - - -?---No, no. Nonsense.

10 - - - getting before the CDC meeting at the required time?---No, no. Sorry, Mr Buchanan, that's nonsense. That's not right.

Well, what was the role that you were playing, if it wasn't your role to do that?---I'm sorry, we seem to be going around in ever-diminishing circles. I've tried to explain that my role in town planning was very, very limited. I responded to councillor requests, request from the mayor and requests from the community if they had an issue with the way the council was performing, not just in relation to DAs, but the actual nitty-gritty stuff of assessing these DAs and putting reports to the City Development
20 Committee and the council or the IHAP was in other people's hands, not mine, and I, and I, I didn't enjoy having those sort of complaints being brought to my notice because all I would do is pass them on to somebody else. Yes, I asked Spiro to, to, to move ahead on some because they'd been delayed too long, but that would have been a reaction or a result of, of - - -

Proponents putting pressure on you?---Possibly. Not, not directly or, or maybe directly. A proponent could call my office, I would take the call every time.

30 Or their advocate, Hawatt or Azzi?---Well, possibly. I mean, they're councillors and I have some responsibility to councillors to assist them to the extent that I can.

So why did you intervene in this case?---I just said why.

But, no, you've told us you didn't intervene. So I'm asking why did you intervene in this case?---I said I did get involved if I had representations from people, stakeholders if you want to use that term, and in this case it could have been the councillors, it could have been Demian himself, it, it, I
40 don't know. It could have been somebody else on behalf of him.

So what your evidence is, is I intervened, the only reason I would have intervened would have been because of contact I had received. The only people I can suggest that contact would have been from is Demian, Hawatt or Azzi.---Or perhaps - - -

Is that a fair summary of your evidence?---Yeah. And perhaps in other circumstances, the mayor, if he got, if he got calls from stakeholders.

Is there the slightest reason to think that Mayor Robson had any involvement or interest in relation to this matter at this stage?---I, I don't know. I don't know what private conversations he had in his office. I don't know whether, I know with previous mayors there was often communications between applicants and the mayor's office.

You know that Demian had two advocates on council, don't you, and they were Hawatt and Azzi?---I knew that - - -

10

You knew that, didn't you?---No. I knew Demian had, had an ability to talk to both those councillors, yes.

And that they advocated on his behalf in relation to his projects before council.---I don't know that for certain. I don't know how they would advocate because all they can do is make decisions when the items come up to the council, and those decisions are made by a majority of the councillors, not just Azzi and Hawatt.

20

And you've told us that they controlled the numbers on council.---Yes. And that's a fact. I can't change that either.

And Mr Demian was a person who certainly contacted you to advance his own interest.---He, he contacted me from time to time.

There's nothing to suggest that Mayor Robson had a particular interest in this let alone one of contradicting the IHAP position that it would be illegal for the matter to go forward?---I'm not suggesting he did. The point I was trying to make was that if you ignore these applications - - -

30

We're not asking you to do that. I'm asking you about what your evidence is, in fairness to you - - -?---Fairness to me.

The only reason you would have intervened is because you had been contacted by either Hawatt, Azzi or Demian?---Yes. But it is possible, it is possible that somebody else contacted, contacted the mayor. I'm not saying in this case. It is possible.

40

THE COMMISSIONER: You seemed to move away, in the answers you've just been giving, from agreeing that Mr Hawatt and Mr Azzi were advocates for Mr Demian. You previously, before lunch, described them on behalf of Mr Demian as his friends at court.---Yes.

And I took that to mean, and I didn't ask you about it, but I took that to mean that you were saying to me that they were advocates for him.---I, I suppose, Commissioner, I find myself in a bind because I'm trying to answer the questions truthfully but I don't want to unfairly implicate other people in something that down the track might be, might be determined as being

something that was of a corrupt nature. I, look, these councillors were constantly ringing staff about particular issues, not just planning issues. Some councillors were more active in that space than others, and certainly Councillor Hawatt and Azzi were very active when it came to planning matters. I'm not retreating from that for a moment. But I see nothing that suggests to me that their interests weren't to try and achieve what they set out to achieve when they first became councillors. I'm not defending them. I don't know what they were involved in privately. But they wanted to develop the City of Canterbury. They wanted to do something about
10 Canterbury Road and other precincts that had been neglected for years, and to that extent I, I would, I would certainly do what I could to assist for the benefit of the council and the community at large, providing additional housing that we were required to do, for example.

MR BUCHANAN: And as the call charge records that you've seen show, Mr Hawatt and Mr Azzi were in frequent communication with you.---Yes.

And their particular interest was planning matters.---Yes.

20 And so it's reasonable to assume that a very large number of those calls that we can see were made to you and that you made to them were about planning matters before council.---I don't know that it's reasonable to assume that at all. That's a term you often use. I, it could, it could have been other matters. I mean, the council is not defined by its role in planning issues. There are a lot of other matters that the council is dealing with and that by definition the councillors have an interest in.

Now, how did you respond to Mr Stavis's email of 30 November, at 4.48pm?---I don't know. I don't know. There's no record there. I, I can't
30 see – I'm sure you'd have a copy of an email I sent back to him if I did. Perhaps I did.

Do you have a memory of telling him, "No, no, we can't do that"?---No, I don't have a memory of that at all.

The likelihood is that you indicated to him your agreement with what he had proposed, isn't it?---No, I don't accept that either.

Why not?---Well, because - - -
40

Given that this is after you had given him a direction that the matter was to go to the 3 December CDC meeting as a late item.---Because it might never have, because it might never have happened. I wasn't going to harangue him about it. I mean, I made my position clear. I said to you earlier that the reason I was unhappy about it was because it had been delayed and there were people in the planning division who were just saying, just pushing back, and I - - -

There was no reason to harangue him, was there?---No.

You gave him a direction. He complied with it.---Well, yeah, but it doesn't always happen like that. Things go into the ether. It's a big organisation.

10 You accept, don't you, of course, that the formation of this – and I've called it a device, that is to say a tool that can be used to circumvent the IHAP report, the obstacle that it posed, and to bring the matter before the CDC on 3 December to allow it to be in some way, shape or form progressed – advantaged Mr Demian?---No, I don't accept that at all.

20 Well, plainly, to put it in a position where it can be progressed as against ensuring that, or rather allowing the IHAP recommendation to be implemented and for the matter not to progress was to the advantage of Mr Demian.---No, not necessarily. I don't know what the council would have done in the end. All I was trying to do was get it up to the committee to consider. Now, I think maybe, with the advantage of retrospect now, looking back, and seeing that material you put on the, on the screen, that that was a, that was a bad call. But the council still had the whip hand, and I, and I wasn't trying to second-guess the council. They could have made any decision they liked about that application. And the other thing I want to emphasise is that when the report went up I would have expected from professional staff that they would have included all the advice and information they had at their disposal, including, including the IHAP's position, which I agree was critical to the consideration of this application.

Why was it a bad call?---I think I made a bad call.

30 Yes. Why?---I wasn't in possession of all of the information. I didn't make a, make a - - -

What information - - -?---Well, I didn't know - - -

- - - that you're aware of now did you not have?---I didn't have that letter.

You had been given an extract of the critical paragraphs from the letter. ---Yeah, yeah, yeah.

40 And the very same ones that I took you to.---Yeah.

What more was there that's in the letter? You've obviously had an opportunity of reading it for the purpose for appearing to give evidence. What more was it that was in the letter that you feel would have caused you to refrain from intervening?---I felt that if the report went up to council that was sufficiently inclusive of all of the information available - - -

You're not answering the question.---Well, I'm doing my best I'm sorry.

And what I want to suggest to you is that the public interest in this matter at this stage lay in the observance of council's policy as to how IHAP reports were dealt with and also in the observance by council of the requirement of the SEPP that matters not be determined where a response hasn't been received as a result of a referral by the council to the relevant concurrence authority.---Mmm.

And you shrug your shoulders but - - -?---Because I don't know what (not transcribable)

10

- - - what I am putting to you do you understand by a combination of the questions I've just put to you is you preferred the interest of Mr Demian over the public interest.---Absolutely not.

Certainly the effect of what you did was to prefer the interest of Mr Demian over the public interest, wasn't it?---I deny, I deny that.

Is there anything else that you can say on that subject?---No.

20

Excuse me a moment. Now, can I take you to the next day, Tuesday, 1 December, 2015. At page 127 we have your memo of 1 December, 2015. It's addressed to the mayor and councillors. "Late items for City Development Committee meeting 3 December, 2015. Please find attached the following reports for the City Development Committee meeting to be held on 3 December, 2015." And then they're identified. Items 17 and 18. ---Yes.

30

You go on to say, "Please note that the recommendation by the director of city planning differs from that proposed by the Independent Hearing and Assessment Panel."---Yes.

If you could go to page 212. You know what the recommendation of the panel was. You've seen that.---Oh, vaguely, yes.

Now, can we have a look at the recommendation by the director of city planning to which you were referring. Page 212 is part of the business papers for the City Development Committee meeting of 3 December, 2015 and can you see the recommendation there?---Yes.

40

And I'll ask you to assume this is part of Mr Stavis's report.---Yes.

Commencing at page 167 in volume 22 and you can see the bolded words that the DA 592/2014 be approved subject to conditions.---Yes.

So you were consciously putting before the committee a recommendation that the DA be approved.---The recommendation from the director of city planning not my recommendation.

You didn't say that in your memo - - -?---But that's what it is.

- - - at page 127.---I don't make recommendations to council on planning issues. That's the director's job.

You're quite sure you have never made a recommendation to the council or the City Development Committee in relation to a planning issue?---I might have back in 1982 or '94.

10 What about 2015?---No.

You're quite sure about that?---Look, if I did that it would be to give the council the advantage of the latest information available and it would be done in conjunction with Mr Stavis or the director of city planning from time to time.

But obviously I just want to take you back to my question. And that is, having regard to you drawing the attention of the committee to the recommendation by the director of city planning, you knew that you were
20 putting before the committee a recommendation that the DA be approved?
---Of course, but they're, that's his recommendation, not mine.

But it was up to you as to whether or not it went onto the agenda.---No, not at all, not at all.

You directed that it go forward as a late item, so it was your decision that this happened.---Yes, yes, yes, yes, yes but it's his recommendation and that is common practice for directors in, in large councils to make their own
30 recommendations. The council has to make the call in the end. I didn't
have my hand up his if that's what you're implying.

There's no need to imply that, Mr Montague. What I am just asking you to give a frank and honest answer to - - -?---And I'm doing to the best of my ability.

- - - is that you were drawing their attention to the fact of the recommendation being a recommendation for approval. You knew you were consciously putting forward a recommendation that the DA be approved, weren't you, in your memo of 1 December, 2015?---And it also
40 pointed out that it differed from that of the IHAP.

Would you answer my question?---Well, I'm just pointing out - - -

You were consciously putting forward that recommendation to the CDC?
---Because that's what came up to my office. That's what was - - -

So you accept that that's what you were consciously doing?---I, see, it's, it's the use of the word consciously. This is how - - -

You knew what the recommendation was?---Yes.

This memo shows that you did.---Mr Buchanan, this is not uncommon. I don't know how much you know about local government, but it's not uncommon for council staff, senior staff, to make recommendations to council and they do it in their own name, based on their own professional judgement. I am not a town planner and I had no reason to pull it back. The council would make the final decision.

10

You weren't pulling it back, you were putting it forward in circumstances - - -?---No, pull it back when I saw the recommendation.

- - - where it would not have been before the CDC but for your actions.

---Yeah, but they're two different issues. They're two - yeah, I, I admit it, I asked for it to go up to 3 December and I explained why, but what he actually recommended is up to him, not me.

20

Now, can I ask, did you read Mr Stavis's reports in relation to this DA and the section 96 application, apart from the recommendation?---Oh, look, I didn't read all of the planning director's reports, or any reports for that matter, in any great depth. I relied, I had a system that I relied on the ability and the professionalism of my senior team and they never let me down.

30

Well, I'm just going to ask you to revisit that opinion, that they never let you down, after I take you to some passages in Mr Stavis's report to the CDC. Can I just ask you to have a look at page 193 of the report on 548-568 Canterbury Road DA, and can you see that there the heading, the dot point heading that goes over to page 194 is State Environmental Planning Policy (Infrastructure) SEPP 2007?---Yeah.

Going over the page then, can you see that at the top of page 194, in about the fifth line, Mr Stavis said, "Accordingly, the proposal does not require a referral under this clause to the RMS." Were you aware that was in his report?---No, no.

40

Does it come to you as a surprise that it was in his report?---No, not, not necessarily because, as I said, I relied on his professional judgement and his staff and the ability he had to gather information from all sorts of sources to satisfy himself that the report was reliable and accurate.

Can I ask you then to go to page 206 in the same document. Sorry, it's in the same business paper, Mr Stavis's report, it's in volume 22, page 206. ---Okay.

At the top of page 206, under the heading Referrals and the subheading Roads and Maritime Services, Mr Stavis said, "As stated previously in the

report, as per the provisions of SEPP 2007, the application was referred to the Roads and Maritime Services”.---Yep.

“The RMS has advised that it raises no objection to the proposed development subject to conditions being imposed on (not transcribable) development consent issue.”---Yeah.

10 You were aware that was in the report?---I don't know whether I even read this report.

Okay.---I said that earlier.

On the question of whether you were ever let down, does it alarm you to see that passage in the report?---Not necessarily.

In the circumstances?---I mean, that's how he saw it at the time, that's how Stavits saw it, and he, he had, he was entitled to report to council as he saw fit. He didn't seek my, he didn't have to get my permission.

20 It doesn't concern you that there would seem to be, have been no need at all for the concern on the part of the IHAP, no need at all for your direction? Because according to what he said in here, it had been referred to the RMS. ---Yes - - -

And what's more, the RMS had responded that they had no objection.---I can see that.

30 That's not a matter of concern to you?---I don't know what you're driving at. I mean, if the RMS said, great, go ahead, I think that would have been a good outcome.

But don't you understand that this report was written to go to the IHAP? ---Was it?

And that then went to the council.---Okay. Fair enough. I, I - - -

40 You didn't, why did you want it to go forward to the, to the CDC? ---Because, as I said, it was a major application, it had been in abeyance for some time, and I just wanted to give the council the benefit of the latest information. I said, I said also - - -

I'm sorry, what did you understand the IHAP problem to be?---Well, the IHAP problem was, wasn't it, that - - -

It hadn't been referred to the RMS.---No, wasn't there something else?

There was.---No, that it was legally - - -

They didn't accept the clause 46.---It was legally incapable.

Correct. Because it hadn't been referred to the RMS.---RMS, yeah. I, I - - -

So what this passage said pulled the rug out completely from that position if it was correct.---Well, if, it's a big if. 'If's a big word. But, look - - -

10 Well, doesn't that mean that there were reasons to be careful about Mr Stavis's advice?---Not, not if you, not if you come from the position of saying that you trust your senior officers to give you the best advice, most reliable advice and honest advice all the time, and that's what I did. That's, that's the way it worked at Canterbury. I had a team. It's no good having a dog and barking yourself. I mean, let's face it, if he, if he put up a recommendation like that I would say, yes, he's researched it. He's a decent man, he's honourable, he's going to do the right thing by the council.

20 THE COMMISSIONER: But it's contrary, isn't it contrary to the emails and the discussions you're having with him around 30 and 29 November?
---No, I don't, I don't see any inconsistency there, Commissioner, I'm sorry.
I mean - - -

MR BUCHANAN: Can I just take you to page 92, if we could, at volume 22. The same paragraph appeared in the business papers of the IHAP meeting of 23 November. It's not as if it was different in some way from the information the IHAP was given.---No.

But the IHAP obviously didn't agree.---No, we know that and I'm not disputing that fact.

30 But nevertheless, you allowed this statement at page 206 in volume 22 to go forward to the CDC.---I wasn't the – let's get this very clear. I wasn't the editor-in-chief. I did not vet officers' reports. I did not seek to amend them. The officers were responsible to report to the council as they saw fit based on their professional judgement, and I had no reason to believe that they weren't doing just that. That's why I said they'd never let me down.

But now that you see this - - -?---Well, of course.

40 - - - that would give you reason to doubt - - -?---But 20/20 vision is - - -
- - - Mr Stavis's judgement, wouldn't it?---20/20 vision is a great thing.

Can I just ask you - - -?---I'm sorry.

- - - to accept, now that you see this statement that was in both his report to the IHAP and his report to the CDC, there was reason to doubt his judgement, wasn't there?---Look, looking at it now, if I had my time over

I'd do things differently, I, I believe, if, if – and it's a big if – all of the information was in my possession.

Well, this went through your hands.---Well, it didn't, well, it - - -

Business papers went through your hands, didn't they?---No, no. No, they don't always. They go straight down to corporate services.

10 Sorry, did you not take part in a meeting or two meetings that considered the business papers for the CDC meeting of 3 December?---Yes. Yes. But no one else raised an issue.

And doesn't that mean that this report was in your hands?---It was in my hands and a number of other people's hands.

Now, can I just take you, please – excuse me a moment, please.

20 THE WITNESS: Excuse me, Commissioner. Can we have a break in a few minutes?

MR BUCHANAN: Yes, of course.

THE WITNESS: I'm not coping well.

MR BUCHANAN: I'm sorry.

THE COMMISSIONER: Is that a convenient - - -

30 MR BUCHANAN: Yes, that's my application.

THE WITNESS: Thank you. Thank you.

THE COMMISSIONER: All right, we'll adjourn for five minutes.

THE WITNESS: Thank you.

SHORT ADJOURNMENT

[3.00pm]

40

MR BUCHANAN: I think we're okay, Commissioner.

THE COMMISSIONER: We're fine. Okay. Good.

MR ANDRONOS: Commissioner, I just raised with my friend a moment ago, just a few moments ago when Mr Montague came back into the court he mentioned to me here in the presence of the other parties that he is feeling some physical distress at the moment and he said his eyes have gone

blurry. He thinks it's a blood pressure issue. I'm not making an application at this stage that we rise early in order to accommodate the physical symptoms that he's now feeling. I did raise it with my friend, Counsel Assisting, and the approach which we have agreed amongst ourselves at the bar table that we should take is to continue this afternoon. I understand we have to rise early to accommodate something else which is going to take place in this sitting room.

10 MR BUCHANAN: Sorry, I should have flagged that earlier, Commissioner. I do apologise. I've been asked to ask could we rise at 10 to 4.00 today because there is another matter apparently that is to occur shortly after we would otherwise rise.

THE COMMISSIONER: Yes.

MR BUCHANAN: And there wouldn't be enough time for us to vacate and the next matter to commence otherwise. So 10 to 4.00 would be my application.

20 THE COMMISSIONER: Yes.

MR ANDRONOS: Yes. Yes, thanks. I'm indebted to my friend. What we have agreed as a tentative approach to take this afternoon is simply to keep an eye on, a closer eye perhaps than normal on Mr Montague's condition, and if it occurs either to myself or to my friend or indeed to you, Commissioner, that he might not be coping, that I might make an application to rise even earlier than the 10 to 4.00. But let's just see how we go and see whether such an application becomes necessary.

30 THE COMMISSIONER: All right.

MR BUCHANAN: And if Mr Montague feels that he can't do justice to himself because of anything inherent, then if he could indicate that to the Commission.

40 THE COMMISSIONER: Thank you to both of you. Mr Montague, if you need a break, if you need to stand up or you just want to pull up stumps for the today, please say so. I know you're eager for your appearance before the Commission to be over but I don't want you to be distressed, and it is very important that you concentrate on the questions and you answer them, and as somebody who has had a bad back in the past as well I know if you're under pain it's very difficult. So I would really prefer you to indicate and we will accommodate you to the best we can.---Thank you very much. I appreciate that.

Mr Buchanan.

MR BUCHANAN: Thank you, Commissioner. Mr Montague, can I ask that we have a look, please, at the minutes of the meeting of the CDC on 3 December, 2015. Volume 22 they commence and on page 226. Excuse me a moment. And if we could – excuse me – have a look at page 228. At the bottom of that page is agenda item 17, 548-568 Canterbury Road. That’s the modification to the approved development, so it’s the section 96 application. And can you see the resolution moved Azzi, seconded Saleh, “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 DCP’s report and any other conditions that arise as a result of the RMS concurrence.”---Yes.

And secondly, “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.” And then if I could ask you, staying on that page, go to agenda item 18 in respect of the DA for the additional two levels on the approved development. Moved Azzi, seconded Nam. The resolution was that the general manager “be authorised to issue the consent for that DA once suitable concurrence is received from the RMS, subject to conditions as recommended in the DCP’s report and any other conditions that arise as a result of the RMS concurrence”. You might not have appreciated it as we sit here, but the motion that was recommended by Mr Stavis to you on 30 November was that the section 96 application and the DA for the additional two storeys be approved in principle, and once suitable concurrence is received from the RMS, the general manager be authorised to issue the consents, et cetera. This is worded differently. Can you see that?---Yes.

What did you do with the wording that Mr Stavis proposed to you in his email at about 4.40 on 30 November?---Nothing. I didn’t change it if that’s what you mean.

Well, I’m just asking, in that case Mr Stavis seemed to think that he should provide you with wording for a resolution that could overcome the difficulty of the IHAP report.---Yeah.

Do you know whether that was because Mr Stavis, you had asked Mr Stavis to provide you with such a motion?---No, I wouldn’t have done that. I doubt it very, very much. I think what happened here is that the wording changed because, because the council decided to change it at the meeting.

In that case how, what happened between the motion, or the wording for a motion, proposed by Mr Stavis on the afternoon of 30 November and the motion moved by Mr Azzi in respect of these DAs? Was Mr Azzi provided with anything?---He could have been but he obviously, he could have been but he obviously chose to ignore it and, and removed the words “in principle”, which is the major difference, isn’t it? The words “in principle” aren’t there.

Yes, that's correct. Well, indeed, I'm sorry, "approval in principle".
---That's right, yeah, well, those words are gone, aren't they?

Yes. Do you know why they went?---I can only assume that the councillors wanted, didn't want the "approval in principle" in there. That's the only, that's the only explanation I can offer.

10 But on the one hand we have your direction to Mr Stavis on the morning of 30 November, and in the afternoon Mr Stavis providing a form of words. So that's, as it were, if I can include you in this concept, the officers' position and a similar tool or device emerges at the other end. So the question is, how did Mr Azzi get it into his mind that this would be the way to approach the question?---Well, if previous behaviour was any indication, they probably got their heads together, either before the meeting, somewhere in the building, the councillor's room or somewhere, and decide they didn't like that and that they would remove those rules.

20 But how did they find out about it?---What do you mean?

How did they find out about the motion proposed by Stavis to you?---No, but, oh, dear me - - -

THE COMMISSIONER: Sorry, page 126 is Mr Stavis's email to you which contains his suggestion, where he says the motion would be as follows, and sets it out. Then you send the memo to the mayor and/or councillors, and then on 3 December we've got the different wording.

30 MR BUCHANAN: And if I can add to the Commissioner's putting the evidence together, there's nothing in your memo that suggests this device as I've called it, and so we've got a major issue and a minor issue, as it were. The major issue is, how did the idea of that device get conveyed, as it would seem to have been, from you and Stavis on the one hand to Azzi on the other hand? That's the major issue. The minor issue is, how come the wording changed in that process?---Well, I think the two are linked clearly and I can only assume, I don't know but I can only assume that there must have been some contact between Azzi and, and Stavis or Stavis and Hawatt and then on to Azzi prior to the meeting, which doesn't surprise me in the slightest.

40 But wasn't it your intention that the idea that Stavis proposed to you of this sort of motion, with actual wording by the afternoon of 30 November, was adopted by Stavis, sorry, was adopted by Azzi or conveyed to Azzi? How did that that occur?---Well, he might have, he might have implied that to me but he may have changed his mind. I mean - - -

I'm sorry, I expressed my question badly and I withdraw the question. I apologise.---Okay.

What was the purpose of Mr Stavis coming up with that idea if it wasn't that it be implemented by like-minded councillors?---Well, that's a very good question, and I can only assume that somewhere along the line somebody had, had, had a bit of a, an epiphany and decided, no, we're not doing that after all, we, we want this approved and, and that, that's the sort of behaviour that we'd seen before in relation – as far back as 2013, as I told you, with these councillors.

- 10 I'll put it another way. Wasn't the purpose of what you and Mr Stavis were doing on 30 November that the solution to the problem of the IHAP obstacle to the DAs being considered by the CDC at its meeting on 3 December be implemented?---No. Look, my, my only intention, my only purpose was to get the application before the CDC. Now, I admit now that given the material that's been supplied today in relation to what IHAP said – which I didn't see I don't believe – and given the fact that we needed additional legal advice and I didn't proceed with that, I should have. I made a mistake, an error in judgement, but all I wanted to do was to get the report up to
- 20 council with all of the information that Spiro had at his disposal, including the IHAP recommendation, and that's why I pointed out in that memo there is a difference, that the, "Please note the difference between the IHAP and the officer's recommendation."

- Except this didn't adopt the officer's recommendation or the IHAP report and so the question is, where did this third way come from when it was adopted by council if it wasn't your intention that it be adopted as result of what you and Mr Stavis put together on 30 November?---Mr Buchanan, it would have, I, I don't know. It could have come from anywhere. Mr Hawatt may have consulted his, his gurus, other people in other councils in
- 30 the Liberal Party he was in connection with.

But none of that is likely, is it?---Of course it is with him.

- No, no, no, no, no, no, no. We know that you and Mr Stavis worked out a solution to this IHAP problem in this particular case. We know that that device with a few words changed was implemented by Azzi. The question is, did you come up with that device because you were asked to by councillors or Mr Demian? Or were they simply, did they derive inspiration from what you had done or did they direct you to do it? Where's the, I'm
- 40 trying to work out the connection between these two events on 30 November and 3 December.---I'd like to be able to do that too. I'm not that inspirational, I might add, but I believe, if you're asking me what I think happened, and I've got no, no evidence of this, I believe there would have been contact between Azzi and Hawatt definitely, and possibly with Spiro with either of those councillors or both of them, and they, they came up with the idea to eliminate or to remove those words "approval in principle" and that may have been at the urging of Charlie Demian, I don't know, but people have communications and contacts and phone calls all the time.

But we're just, we're going on what you know were the relationships that existed at the time and the dynamics of planning decisions, be they made at officer level in terms of what will be in a report or be they're made at the CDC, and you knew about the relationship between Hawatt and Azzi on the one hand and Demian on the other. You know now and you knew at the time I take it of the relationship between Hawatt and Azzi and Stavis.---Yes.

10 And on the basis of all of that, the likelihood is that the idea of this solution was conveyed to Mr Azzi by Mr Stavis.---Look, likelihood, I don't know you could say that - - -

Is that fair? Or by you?---No, that, I don't think it is fair to, to me or to Stavis. I don't know what transpired between the two councillors and Demian after that, as you put it, device was hatched – and it wasn't a device. I mean, that's an unfortunate word. We were trying to get the application out of the way somehow or other, and I admit, and I repeat, that I made a mistake in relation to the advice from IHAP. I didn't read it or I didn't see it, I don't know which, so I was acting a little bit blindly. But my intention
20 was to get it up to the meeting. Now, I would have – and I know you don't like me to bang on – but I, I would have expected that Stavis would have given the council all of the information available including the IHAP report and draw their attention to the, the discrepancies there if you like.

So what we then have is a situation where there is no record of Stavis having done that so far as concerned what came out the other end?---No, I don't believe so. It would have been probably a phone call or he may have even called around to see Michael, I don't know, but if, if these two
30 councillors were taking such an interest in a particular application for whatever reason, then they wouldn't have, they wouldn't have abandoned that enthusiasm. They'd have kept at it and they knew it was going up to the, to the CDC and they, and they decided they wanted to approve it not in principle and that's - - -

Can I ask you about, going back to your memo of 1 December, 2015, page 127. You knew because you've done it the day before that there was to be recommended a motion to get around the IHAP report. However, the only recommendations that you refer to are not that motion which was the
40 outcome of your direction to Mr Stavis but instead old news, namely a recommendation which isn't going to be implemented from the director of city planning and a recommendation from the IHAP which is also not going to be implemented.---Well - - -

And so I'm just wondering why did you send a document like this - - -?
---Well, it's a memo.

Yes. When it fails to identify what was really going on - - -?---No, but it
- - -

- - - namely, the putting together of a device to get around the IHAP report and allow the matter to be progressed notwithstanding?---Well, firstly, Mr Buchanan, we have to identify what the purpose of this memo was, and the purpose of this memo first and foremost was to alert the council to the fact – all the council, not just Hawatt or Azzi – that there were two or three items that were going to be referred to the committee in addition to what was on the city planning paper, that's all, and that was a routine thing we did if there were late items. Nothing more or less. It didn't seek - - -

10

But there was something more.---What was it?

“Please note that the recommendation by the director of city planning differs from that proposed by the Independent Hearing and Assessment Panel.”
---Yeah, because I was trying to draw their, draw their attention.

You drew attention - - -?---Yes.

- - - to the recommendations.---Yes.

20

Why did you not refer to what you knew was happening, namely the communication to councillors who could be expected to act upon it of a form of words, a device, which would get around the IHAP report? Why didn't you refer to that in here?---You, you have an amazing capacity to put a very poor connotation on something that was completely innocent. I sent them the details of the two items that were being added to the business paper for the consideration of the council, and I pointed out to them that there was a difference between the recommendations because I thought I needed to do that. I didn't go into any more detail with them. I didn't try to lead them in any way. It's up to them once they got the reports. And I would have imagined that once that happened – and I'm only guessing, I don't know – that Hawatt or Azzi or both of them had some contact with somebody, perhaps Mr Stavis, to say, “Look, we don't like this idea of approving it in principle. We want that out.” And then they got up and moved that motion, which is their right to do.

30

I need to give you the opportunity of responding to this. I suggest to you that the inference from the fact that you failed to refer to this recommendation that you knew had been put together, indeed because it was at your direction that it be put together as to how the matter should be dealt with, your failure to put it in here is consistent with you being party to less-than-transparent machinations to overcome Mr Demian's problem.
---Absolute nonsense.

40

But that's the effect of it, isn't it?---Well, I don't care what the effect is. That's not what was - - -

And why didn't you refer to it in that case?---Look - - -

Given that you knew what was, you knew what was going on but you sort of, you pretend that there's something else happening so far as the documents, so far as the record is concerned.---No, look, maybe I should have tried a bit harder in that memo, but I thought there was enough information there to alert them to the differences in the two recommendations, and that they should as councillors – if they're serious about their, their role – they should actually read the reports, and if they've got any doubts they should contact the director of city planning or myself if that's how they felt. I, I, I'm not my brother's keeper. Why have the council?

But you were being your brother's keeper - - -?---I, no - - -

- - - because you were intervening to prepare a motion for, as you would have understood it, Azzi or Hawatt to ensure was moved that would overcome the problem posed by the IHAP report and by the existing director of city planning's recommendation in light of the IHAP report.---I, I, I reject that, absolutely reject it. It is, there is absolutely no basis of fact in that or truth. And you're, and you're guessing. You're, you often use this term "it's reasonable to assume". Well, what does assume actually mean? Where are the facts?

What is the inference - - -?---Or inference is - - -

- - - that would be reasonable to make is the question I'm asking.---Well, no, I, I think what you should be relying on is the information I'm giving you. I, to the best of my knowledge I would have been helping the council to understand that there were two new reports that, yes, which I ordered to be on the paper. I've never denied that, and maybe that was a poor move too, but there was nothing sinister about it, and there was a difference between what the IHAP was recommending and it's, it's pretty obvious that people don't understand how local government works. What is the role of a councillor? A councillor should read the reports, satisfy themselves that they're happy with the recommendations and vote accordingly. Now, they, they were at liberty to ring me or to ring George Gouvatsos or ring somebody else in the planning division or Spiro and say, "Look, I don't understand this. What are you asking us to do?" But I think what happened was that Stavis spoke to Azzi or Hawatt or both, I don't know who initiated the conversation, and they decided to remove the words "in principle". That's what I think happened and that's not uncommon with previous experience with this particular group.

You know that is avoiding the issue the subject of my questions, don't you? ---No, I don't know that at all. I'm trying to answer the questions as, as best I can but you don't want, you don't want to hear my explanation.

THE COMMISSIONER: Mr Montague, if something's not on the agenda, it's a late item, we've had some terminology, it can be drawn up from the floor.---Yes. The, the councillor can do that.

But sorry, it's just a series of questions.---Yeah, sorry, sorry.

So the councillors can do that?---Well, they, they can but they, they seldom did.

10 Do you have any role, if there's a late item, in somehow either drawing it up from the floor or getting it before the council, like an alternative way or - - - ?---No, no. I would normally – it, it did happen from time to time for a variety of reasons. Maybe the information was delayed, they didn't have the information in time to complete the report. I, I'd talk to the mayor about it and I'd say, "Look, there's a couple of late items here, Brian. They, I'm going to put them on the business paper, send them out to the councillors," through the (not transcribable) or electronically, and that's what happened in this case.

20 No, no hold on. So, an alternative way, if there was a late item, you could have seen Mr Robson and said, "Something's come up late. It should be in the business papers. I'm going to send it out now by email," or something like that?---Yeah, that's right.

But that's something you had to discuss with the mayor?---Well, I normally would, yes. I wouldn't just assume that he'd accept that.

Can we just go back to, I'm sorry, I'm getting my pages confused. Page 126 and this is Mr Stavis's email. It starts off with, "Hi Jim, here is the commentary and the motion for the Harrison's applications as discussed."
30 ---Yes, yes.

Now, we know the motion is down the bottom but I want to ask you about the use of the words "the commentary" and then the way the subsequent paragraphs have been structured, because a reading of it, it reads a little bit like a briefing note that you might have requested so that you could go and talk to the mayor or somebody else to say this is the problem we've had with RMS, but down the bottom, this is the solution we've come up with. Now, am I reading too much into the use of the word commentary and my
40 construction of the email?---I think so, with respect, Commissioner. I, I don't know what that, what he meant by commentary. There's not much commentary there. What there is, is a very brief background and a, and a, and a recommendation. That, that, in, in our circumstances at Canterbury, that is not uncommon. The question is, who asked for that to be prepared, and it wasn't me. Now, maybe it was we had a discussion about the problem with that application, yes. I see Mr Buchanan is, is not impressed with that comment.

MR BUCHANAN: It wasn't you?---No, no. Look - - -

It wasn't you who directed that the matter go onto the record?---Yes.

And then Mr Stavis produced the first version as discussed?---Yes, yes but it doesn't - - -

10 THE COMMISSIONER: Again, it gets back to the wording. You've obviously had a discussion because Mr Stavis says, on page 125, "GM wants this to go 3 December, notwithstanding IHAP's deferral request," and then we've got the email where Stavis, again on 30 November – I'm sorry, Mr Stavis, I apologise for that – also sends you an email saying look, I've got the solution and puts it in general terms. So, it's obvious you're having discussions with him about it. Hold on. Then when we go to page 126, if it was a matter of finessing the wording of the motion, and my expectation would be, "Hi Jim, look, as discussed, this is the issue with the Harrison application. Here's the wording for the motion." But as I said, it's the use of the word commentary and how it's set out, which looks as if it's either something to be provided to you so you can talk to somebody or maybe
20 being prepared for councillor if they had to address somebody like the rest of the council on it.---That's the most likely scenario I'd think, but I, I can't be responsible for Mr Stavis's choice of words. He sent that email through to me. All I'm really interested in at this point in time is the recommendation.

MR BUCHANAN: But if it is prepared for councillors to use - - -?---Yes.

- - - it's plainly an intervention in the planning processes of council, isn't it, that you initiated?---But, but, no, look, in the end the council has to make a
30 decision. They need facts.

That's not an answer to my question. It's plainly an intervention by you - - - ?---No, I won't accept that.

- - - in the planning processes, the determination of planning matters by council, isn't it?---No. I won't accept that.

40 And then it's made opaque, your intervention is made opaque by what you do say in your memo of 1 December, which is not to refer to what was really going on at all. And we know what was really going on because not only have we seen the meat go into the sausage at the front end, we've seen what came out at the other end in Mr Azzi's motion that he moved as to how the matter should be dealt with.---I don't know what, I don't know how I can respond to that. I really don't. I mean, I'm, you're crediting me with much more intelligence than I've got, and I never thought that way. I don't think that way. I'm not that Machiavellian. I was trying to assist the council to understand there were two new reports and there was a, and that

somehow or other this, this draft motion – which Mr Stavris crafted, I didn't – that would have been distributed. Now - - -

And where is it in your memo?---Well, why should I include it? It's a memo to tell him there's two more - - -

Because this is what you know is really going on - - -?---Yes, but, Mr Buchanan - - -

10 - - - that there is to be this device that is to be put before the council for them to consider adopting.---I don't like the word "device". Mr Buchanan - - -

And you initiated it.---You're trying to tell me how I should have done my job.

No, no, no. I'm not trying to tell you that at all.---Yes, you are. Of course you are. Of course you are. Do I, would I seek to do that to you?

20 Can I take you to transcript page 5067 for the transcript of 10 December, 2018.

MR ANDRONOS: Commissioner, I might now make that application that I foreshadowed at 10 past 3.00. I've just noticed the witness heaving and sighing in a way which I've not seen before this afternoon. So given that it's only a few minutes to go when we'd be rising anyway, I'd ask we just have a slightly earlier adjournment than we otherwise would have.

30 THE COMMISSIONER: Mr Montague, do you want to pull up stumps now or - - -?---Well, I, I, look, I don't think if I had another 10 hours I'd convince Mr Buchanan of what I'm trying to say. And, and I'm sorry I can't communicate adequately with him, but I, I just find his approach on this issue strange.

All right. That's not what I was asking you, but, Mr Buchanan - - -?---So the answer to the question is yes. I'm sorry.

All right.

40 MR BUCHANAN: I'm sorry. I wasn't paying attention. I defer to Mr Andronos's submission as to what his observations were.

THE COMMISSIONER: All right, then. We'll adjourn for today and we will resume tomorrow morning at – I was about to say 9.00am – 10.00am.

THE WITNESS: Thank you.

THE WITNESS STOOD DOWN

[3.44pm]

AT 3.44PM THE MATTER WAS ADJOURNED ACCORDINGLY

[3.44pm]