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INDEPENDENT COMMISSION AGAINST CORRUPTION

PATRICIA McDONALD SC
COMMISSIONER

PUBLIC HEARING

OPERATION DASHA

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON FRIDAY 14 DECEMBER, 2018

AT 10.00AM

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THE COMMISSIONER: Mr Buchanan.

MR BUCHANAN: One administrative matter. Sittings times today.

THE COMMISSIONER: Yes.

MR BUCHANAN: You have a commitment around the middle of the day, as I understand it.

10 THE COMMISSIONER: I have an ICAC commitment at 1.30, a meeting that I've got to attend. So what were you proposing Mr Buchanan?

MR BUCHANAN: That we shift morning tea to 11.45 and adjourn for lunch at say 1.25 and resume at 2.35, still concluding at 4.00.

THE COMMISSIONER: All right. That's what I propose to do today, though, Mr Andronos, of course it's subject again to again to Mr Montague that if at any – and, sorry, Mr Montague, this is addressed to you – if at any time you need a break to stretch your back or whatever, please raise it.

20

MR MONTAGUE: Thank you, Commissioner.

THE COMMISSIONER: That's it. All right, Mr Montague.

THE COMMISSIONER: Mr Buchanan.

MR BUCHANAN: Commissioner. Mr Montague, earlier in your evidence in this inquiry you indicated that you thought that the council overturning recommendations by the IHAP in relation to DAs was a bad look and you attribute it to a period of time in October 2013, which I've suggested to you is when the Residential Development Strategy was revised by council. But
10 leaving aside the specifics of it, you have attributed to an event or a series of events where the council didn't agree with the IHAP or didn't adopt the IHAP's resolutions as being where this whole issue with development controls out there fell off the rails, and I just want to take you to the transcript so that you can see this. This is the transcript for 10 December, 2018, page 5067. At about line 28, "I remember vividly one night, the IHAP made certain recommendations in relation to these DAs and they were all overturned by the council and that was a bad look. I said to the mayor at the time we've got to do something about this. We did." And you talked
20 about a meeting and you went on to say, "Despite the mayor's protestations, and mine, and resolved to approve these applications, notwithstanding the IHAP and the officers didn't approve them and that's where this whole issue with the development controls out there fell off the rails." Do you see that in the transcript?---Yes, I do.

So you didn't, you thought it was a bad look. You thought it was bad for governance, did you, that IHAP recommendations were not implemented?
---Yes.

30 But nevertheless that is something that you engineered in the case of the DA for the additional two storeys to 548 Canterbury Road?---No, I didn't engineer that at all.

I'm sorry?---I didn't engineer anything.

You nevertheless directed that, despite what the IHAP had recommended, the matter go forward to council?---I did that.

40 And that was contrary to the IHAP recommendations?---Yes.

And so on your view a bad look?---Well, the circumstances were very different.

In what way were the circumstances different, meaning that it wasn't in your opinion a bad look?---Well, the October 2013 meeting, we're talking about a, a group of applications, I can't remember how many, all of which were, the recommendations were overturned without, in my opinion, sound reasons. That was my concern.

And were there sound reasons for your direction to Mr Stavis to produce an outcome whereby the DA, despite IHAP recommending that it not go to council, in fact go to council in the case of 548 Canterbury Road?---I repeat, totally different circumstances. Wouldn't have made, it didn't mean it was going to be approved. It was entirely up to the council.

10 As you know, it was approved.---Well, it may have been but it may have been three weeks later or a month later of six weeks later. We don't know.

Oh, well, just for the record, we do know. We've got the material in evidence before us and I took you to the transcript yesterday.---Yeah, fine. I'm not - - -

To the evidence yesterday.---I'm not arguing the point with you.

20 Mr Montague, did you have any understanding that the device of approval in principle and authorising the general manager to issue a consent subject to conditions might not be lawful?---It crossed my mind the first time it happened, and that's not in relation to these particular matters, but it did happen once before.

Yes.---And it crossed my mind then and I'll put it straight out there, I didn't want that authority. I didn't seek it, I didn't want it, but I think in the, sorry, the occasion I'm referring to I think again it was a question of urgency of time. It may have been around Christmas again and it wasn't uncommon for those sorts of delegations to be granted over the Christmas break when the council is in recess. But I didn't, I didn't use it and I didn't want it.

30 What was the nature of that matter or what was the site or project or - - -?
---Oh, I, I, I can't recall.

- - - who was the developer?---I can't recall now. It's a long, long time ago.

You see, the approval for 212 was granted, 212 Canterbury Road was granted at around this time in November/December of 2015 as well as 548 Canterbury Road.---Yes.

40 Was it that that you're thinking of?---Which sorry, 548?

Yes.---No, no.

Or 212 Canterbury Road?---No. No, this happened many years ago.

Before 2015?---Oh, yes, yes. It was a mechanism the council had that was seldom used.

Thank you. Whether you wanted it or not, did you have any understanding that the device was unlawful?---No, I, no, I didn't.

And you weren't aware of any decision of the Supreme Court that had been delivered as long ago as 2007 to the effect that it was unlawful?---No.

But you didn't consult lawyers? You didn't give an opportunity for lawyers to provide advice on the legality of it?---Not on that occasion, no.

10 Or any occasion?---I don't know. I can't recall.

You can't recall any occasion where you did take legal advice - - -?---No.

- - - to see whether the device was lawful? Is that a fair way of putting it?
---That's, that's right.

Did you have any understanding that there might also be a question about the legality of such consents issued by the general manager in the absence of a resolution by council or the CDC approving the DA?---No.

20

Can I take you now to 570-580 Canterbury Road, which is the site to the west of the Harrison's site at 548 Canterbury Road.---Yes.

Again owned by Mr Demian.---Yes.

Where a similar exercise of obtaining consent for a six-storey development which was close to the building height limit of 18 metres was obtained, was granted by council, and then Mr Demian lodged an application to add two storeys to the approved development. Do you understand?---Yes.

30

It's relevantly an identical exercise to the exercise in which he engaged with 548 Canterbury Road.---It sounds, sounds all right, yeah.

So I just want to remind you of some evidence that you gave on 17 October, 2018, page 4881, "Well, the one on the western side was also Mr Demian's, 570?" That's my question. Your answer, "Yes, yes. That was happening towards the end of the council's life and I didn't get involved in it, particularly because I knew we were going out, we were on the way out. The main one was the Harrison's site itself." Question, "You didn't get involved in the 570 Canterbury Road?" Answer, "I did, but only in a very peripheral sense." What was the peripheral sense in which you got involved? What's your memory of the involvement you did have?---Maybe talking to Mr Demian on one occasion or a couple of occasions about it.

40

And doing anything yourself?---No, no.

Exercising any of your authority at all?---No, no.

Can I provide you with a bit of background information, please?---Sure, sure.

In late April/early May 2015, you reported to the meeting of the CDC on 14 May in relation to a submission for a planning proposal in relation to 570 Canterbury Road, the one on the western side of 548 Canterbury Road, the Harrison's site, and 538 Canterbury Road, which was the site on the eastern side of the Harrison's site. 570 was owned by Mr Demian. 538 was owned by Mr Maroun.---Yes.

10

You knew Mr Maroun, Jimmy Maroun.---I knew, I, I, I had met him, yes.

You knew he was a proponent for that development, the one on the eastern side of the Harrison's site?---I learnt that, yes.

Now, the report that you made to the CDC meeting of 14 May was – I'm sorry, can I just check that I've got that right? It doesn't seem right that you would make the report.---I didn't make the report.

20

So it would have been the director of city planning.---Yes. Yes.

I apologise for that. The report indicated that there had been a submission received by the Residential Development Strategy to amend the building height control from 18 metres to 25 metres. The report to the CDC indicated that it would enable development to a height of eight storeys. That's the submission if implemented.---Yeah.

30

And it recommended a planning proposal to increase the building height control for both sites, 538 and 570 Canterbury Road, from 18 metres to 25 metres. Now, on 14 May at 2015, the CDC so resolved. That's volume 15, page 13 in Exhibit 52. However, can I just provide you with this information. Although a planning proposal was meant to be prepared, it wasn't in fact submitted for Gateway Determination until 6 November, 2015. That's volume 15, page 14 in Exhibit 52. On the same day as that planning proposal was the subject of the resolution of the CDC, 14 May, Mr Demian lodged DA 591/2015 to construct a six-storey mixed-use development on the carpet sales site next to the Harrison's site, 538, I'm sorry, 570 Canterbury Road. There was an IHAP meeting to be held on 3 August, 2015. Mr Stavis prepared the officer's report for that meeting, and of course that report was to go also to the CDC meeting to be held shortly afterwards, on 13 August, 2015. Mr Stavis recommended to the IHAP and to the CDC a deferred commencement approval. That's volume 21, pages 14 and 42-43 in Exhibit 52. The IHAP met on 3 August, 2015, volume 21, pages 5 to 8, sorry, 5-8, and deferred the DA, Mr Demian's DA, to allow the applicant to provide additional information on three subjects. And if I can just very briefly outline what those three subjects were where the IHAP identified a deficiency in the information provided to allow for assessment. Firstly, isolation of neighbouring premises, and the address of which was 2

40

Chelmsford Avenue. Secondly, design changes and details and, thirdly, site contamination, garbage storage and recycle area and disposal. And the IHAP deferred it to allow council staff to assess any such additional information as was provided on those subjects, and provide a report to the panel. This is at volume 21, pages 5 to 8. Now, we went yesterday to the IHAP operational rules, clause 19.2. You recall that we went to that yesterday? It provided, "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 CDC or council." Do you recall that?---Yep.

Now, after the IHAP had deferred Mr Demian's DA for the six-storey development at 570 Canterbury Road at its meeting on 3 August, 2015, bearing in mind that there was a CDC meeting due to be held on 13 August, did you have any contact with anyone about this?---No. Not that I recall.

Do you recall having any contact with Michael Hawatt about it?---No.

20 With Spiro Stavis about it?---No.

With Mr Demian about it?---No.

30 If I could take you, please, to Exhibit 123 and to page 6. This is call charge records that you've seen before for calls between various people's phones, including yours, and at page 6, item 254, is a contact comprising a telephone call made by you to Charlie Demian on 6 August, 2015, the line being open for 2 minutes and 57 seconds, almost 3 minutes. That's three days after the IHAP had deferred Mr Demian's development application seeking further information, and if the report had been implemented, the matter would not have gone to the or been considered by the CDC at its meeting scheduled for 13 August. Did you talk to Mr Demian about that?---Not that I recall. I may have, he, he may have rung just to seek clarification. I can't recall.

Well, there isn't a record that Mr Demian, there isn't a record in this exhibit that Mr Demian called you beforehand. Is it possible that you had, in your mind, an understanding that Mr Demian wanted the matter to be determined by the CDC at its meeting of 13 August and you knew that Mr Demian would not be happy if that didn't happen?---No.

40 And that you needed to talk to him as a result of that?---No.

Is there anything else that you can assist us with as to what that almost three-minute telephone conversation would appear to have been on 6 August at 6.59pm between you and Mr Demian?---I've got no recollection of the call, and the answer is, no, I can't, I'm sorry.

You can't assist us as to what the likelihood would be - - -?---No, no.

- - - that you were talking to them about?---No.

You accept that Mr Demian is unlikely to have been happy if he knew, as he is likely to have by that stage, that the IHAP recommended that the matter not go to the meeting of council, of the CDC, scheduled for 13 August?---I have no idea what his state of mind was. Probably wasn't happy.

Well, you knew Mr Demian well enough - - -?---No.

10 - - - to know that he was wanting things to be approved tomorrow or yesterday if at all possible, didn't you?---Well, it doesn't mean it was, though. I don't know what I discussed with him, that conversation. Could have been something totally unrelated to the DA.

Do you think it's possible that you spoke to Mr Demian about the state of play in relation to his DA for 570 Canterbury Road at that stage?---I don't, I don't know. It's possible but I don't know. I, I can't recollect the conversation.

20 You don't think it's likely?---No, I don't. Well, it, it could be.

Why isn't it likely?---Well, here we go, the answer is I don't know. I don't know whether it's likely or not. I can't recall the conversation.

Did Mr Hawatt talk to you about the IHAP report and its recommendations before you spoke to Mr Demian?---No idea. Can't recall. Possibly, but I don't know.

30 You see, there's evidence before the Commission that certainly, if we look at page 6 of these call charge records, Exhibit 123, before your call on 4 August Mr Hawatt was in contact with Mr Demian. Do you see that?---Yes.

And that Mr Demian was in contact with Mr Hawatt. I'm looking at items 251 and following. You see that?---Mmm. Mmm.

And indeed, so far as this record is concerned, those are the contacts between the relevant people before you contacted Mr Demian.---Yeah, that's, that's how it looks.

40 You don't think it's likely that Mr Hawatt, being as you knew him to be an advocate for Mr Demian, raised with you Mr Demian's concerns about this IHAP report?---I don't know. I can't recall.

You don't think it's likely?---I, I don't think it is, actually.

Why not?---Oh, dear me.

But why do you take that approach, given that you're giving evidence that you believe to be true?---I don't know what conversations Mr Demian had with Councillor, then-councillor Hawatt. I had no, no, have no idea. They could have been talking about something totally unrelated for all I know.

Yes, but, Mr Montague, you are here to give us whatever assistance you can give, including drawing upon your knowledge of the people in the periphery of what we're dealing with here – like Mr Hawatt and Mr Azzi and Mr Demian, Mr Stavis – as you can.---Of course. And I - - -

10

And you knew how these people operated.---And I'll do that to the best of my ability. I've said that repeatedly. I've got nothing to hide.

So do you think that there's any possibility?---Yeah, there's a possibility. Of course there is. Anything's possible.

20

Now, can I take you please to volume 20, page 263. This is an email conversation which chronologically commences halfway down page 263, and it's an email from Brad McPherson to Spiro Stavis on 10 August, 2015, so we're going forward a few days but we're still three days short of the scheduled CDC meeting, you understand?---Yes. Yes.

30

This is at 1.15pm, and Mr McPherson went into some detail with Mr Stavis about what the IHAP rules provided and what the IHAP had said in regard to this particular DA, and I am taking you to it because – as you can see from the top of page 263 – Mr Stavis said to Mr McPherson, “This is a governance issue which may need to be taken up directly with the GM.” He sent that to Mr McPherson at 2.11pm on 10 August and copied you in on it. ---Yes.

So you would have read what Mr McPherson had to say on this subject, wouldn't you?---Possibly, yeah.

And can you see that Mr McPherson straight away identified that it's in relation to the IHAP report on 570-580 Canterbury Road?---Yes.

40

And he says, he refers to a conversation with Spiro about the possibility of the report being put as a later report to the City Development Committee meeting on Thursday night. Do you see that?---Yes.

Just pausing there. Mr Stavis didn't have the power to do that. Only you had the power to add something to the agenda as a late item, didn't you? ---Yes.

And so either Mr Stavis was thinking about raising it with you to seek your concurrence on that or else you had already spoken to him on the subject. Is that fair to say, one or the other?---Well, it could be one or the other. It's possible again. I, I don't recall the circumstances. Brad's very thorough.

I'm sorry?---Brad is very thorough.

Thank you. And is that a compliment?---Yes.

Thank you. Mr McPherson went on to say, "As you know, I have deferred the matter to allow the applicant to provide additional information as detailed in the IHAP report and council to assess any additional information and provide an updated report to the panel." Then he extracted the material
10 concern, the concerns of the IHAP which went over onto page 264, and
down at the bottom of page 264 he finished the extract from the IHAP
report and continued, "I refer to section 19(2) of the IHAP operational rules
endorsed by council. Copy attached." And then he quoted from the IHAP
rules, "When additional information is sought by the panel, upon
submission of that information the application will be referred back to the
panel for final consideration prior to determination by the City Development
Committee or council." Mr McPherson then drew attention to the fact that
the IHAP rules form part of council's endorsed IHAP policy and that the
rule required the information to be resubmitted to the council prior to its
20 consideration by the City Development Committee. Council will be in
breach of the policy if the report is submitted to Thursday's meeting, being
a reference of course to the CDC, the scheduled CDC meeting.---Yes.

You see that?---Yes.

What did you think when you read that?---I don't recall. I would have, I
think Brad's right. Looking at it now I think Brad's right. I had no reason
to question his, his comments because, as I said, he's very thorough and he
was in our legal team. He understands, and he was in charge of the
30 operation of the IHAP so I'd defer to him.

However, Mr Stavis essentially flicked the matter to you by telling
McPherson it was a matter for him to raise with the general manager and he,
Stavis then copied you in on the conversation.---Yeah.

So the question I have for you is, what did you do about this?---I don't
recall. I don't, I don't know whether it ever went to the council, the
committee meeting.

40 Do you have a memory of being alarmed at the thought of breaching the
rule that had been drawn to your attention?---If I read that, if I read that and
really absorbed it, yes, of course I would, but I don't recall.

Are you saying that there's a possibility that you read it and didn't really
absorb it?---Yeah, there's a possibility of that. I could have been under, I
could have been very busy at that time. I don't know when it happened or
how it happened. I've just got no recollection of it.

Well, we do know it was on 10 August, 2015. The meeting of the CDC was scheduled for the 13th.---Okay. Well, that would be the, the Monday, wouldn't it, I think? Yep, okay. Well, I can't add anymore. I don't recall it, I don't recall the, the specifics. But of course if somebody, if somebody like Brad was concerned about a breach of the IHAP rules, that would be of concern to me, naturally.

Now, to breach a council policy was to breach the code of conduct, wasn't it?---I don't know.

10

Well, if I can take you to volume 2, page 62. And do you see at the top of page 62 in volume 2, if we can just enlarge that a little bit. Clause 6.4 of the code of conduct read, relevantly, "Members of staff of council must", and then D, "give effect to the lawful decisions, policies and procedures of the council, whether or not the staff member agrees with or approves of them." Do you see that?---Yes.

20 You'd accept that what that meant was that if council policy was breached, then it having been a resolution of council in the case of the code of conduct, I'm sorry, in the case of the IHAP procedural rules, it was to breach the code of conduct?---Well, prima facie, yes, but I mean it, perhaps it, if it went any further, it may have to be tested. I, I don't know.

What do you mean by that?---A legal advice.

Yes. So, did you obtain a legal advice?---No.

30 Why didn't you obtain a legal advice?---I didn't think, well, I don't know. I can't recall. Probably because I didn't think it was necessary and I'm mindful of the costs involved to the, to the community to obtain advice, any time you obtain legal advice.

But you say that in that case, prima facie, it was a breach of the code of conduct to breach the operational rules?---Yes. They seem to be, yes.

So if you decided not to obtain legal advice then that prima facie position was your position, wasn't it? You were going to breach the code of conduct?---No, no I don't agree.

40 THE COMMISSIONER: But you had a legal advice. You had Mr McPherson, who was a lawyer in charge of IHAP.---But Mr McPherson is not a lawyer.

I thought you said he was a lawyer.---No, I didn't. He's not a lawyer.

MR BUCHANAN: I'm sorry, but you did.---No, I didn't.

In any event - - -

THE COMMISSIONER: Sorry, it was my note, Mr Andronos, that he said Mr McPherson was a lawyer.

MR ANDRONOS: He did.

THE WITNESS: I said he's in the legal team.

10 MR ANDRONOS: "He's in the legal team." We know he's not a lawyer because I asked him twice, inadvertently the second time, I remember the episode. No, he's not a lawyer. He told the Commission himself earlier this year.

THE WITNESS: I'm sorry, Commissioner. If I said that, I was wrong. He is not a lawyer.

THE COMMISSIONER: All right.

20 MR BUCHANAN: But he was in the legal team?---Yes.

And you could see, prima facie, that it was a breach of the code of conduct to breach council policy?---Of course.

And therefore you would be breaching code of conduct if you didn't give effect to the decision of council to adopt and implement the IHAP procedural rules?---Well, if those rules form part of council policy, yes.

30 Now, you don't have a memory of being concerned that a breach of the code of conduct was being contemplated in this case?---No, no.

Does that mean that you didn't really care whether it was or not?---Not at all.

MR ANDRONOS: Objection. I object to this. What we've done is gone from a breach of a policy, the proposition has been put that a breach of the policy is a breach of the code. The witness did not accept that he understood it was a breach of the code.

40 MR BUCHANAN: He said it was prima facie a breach of the code of conduct.

MR ANDRONOS: That he knew it at the time, and then the question becomes, in effect, well, you knew you were breaching the code at the time and you didn't care. You simply cannot ask a series of questions like that.

MR BUCHANAN: I press the question.

THE COMMISSIONER: His evidence - - -

MR ANDRONOS: Well, Commissioner, you ought reject that question.

THE COMMISSIONER: Well, his evidence was prima facie, yes, then has no memory of being concerned in the breach of the code of conduct. And, Mr Buchanan, you then put – sorry, my note was that you didn't care about -
- -

10 MR BUCHANAN: Yes, that's my question. My question is – I'm trying to explore the witness's evidence as to his state of mind. His state of mind is now that he has no memory, and what I'm exploring is what that means for the significance he attached at the time to what was contemplated here, it being in his words, prima facie, a breach of the code of conduct to not comply with rule 19, sub-rule 2 of the IHAP operational rules. And if it was something that alarmed him and gave him great concern, it's more likely that he would today have a memory of it, and so if he says he doesn't have a memory of it, that's consistent with him not caring at the time.

20 MR ANDRONOS: Or not knowing at the time that it was a breach of the code. That's what you have to establish first before you can ask this question. Perhaps you should put it squarely to the witness. "Did you appreciate it was a breach at the time?" Not sitting in the witness box now, some three and a half years later. "Did you appreciate at the time that it was a breach of the code?" Then you can ask the next question. You can't just slide from one to the other and extract some kind of admission about the witness's state of mind then on the basis of what he knows now. I should have thought that was obvious.

30 MR BUCHANAN: I take my friend's point. I'll ask that question. Mr Montague, you knew that the code of conduct required members of staff of council to give effect to the decisions and policies of the council?---Yes.

You knew that was required by the code of conduct?---Yes.

You knew that the IHAP operational rules were a policy of council?---Yes.

40 Your attention was being drawn to the fact that it would be a breach of that particular policy of council to proceed with the matter going to council. You knew that at the time. That's what you were being asked to do, to consider.---Go on.

You understood that at the time?---I don't know what I understood at the time. We're talking three and a half years ago.

Well, can you see the document in front of you at page 263 of volume 20?
---No, it's not - - -

You had put in front of you - - -?---It's not on the screen.

THE COMMISSIONER: Hold on. I think we need to get it up.

MR BUCHANAN: I'm sorry. I apologise. You had put in front of you what Mr Stavis described as "a governance issue to be taken up directly with you". You see that?---Well, the note - - -

10 What are you trying to get away from here?---I'm not trying to get away from anything. The note says "this is a governance issue which may need". I don't know that it ever was taken up with me.

But it was because Mr Stavis copied you in. He's saying, "It's not for me. It's for the GM."---Yeah, but doesn't mean to say I acted on it. He's just patching me in.

Well, we'll come to that in a moment. But then you read, didn't you, at the bottom of page 264 of volume 20, that Mr McPherson, for whom you had a lot of respect - - -?---Yes.

20 - - - said, "The IHAP rules form part of the council-endorsed IHAP policy. Council staff will be in breach of the policy if the report is submitted to Thursday's meeting." What could be clearer?---Well, I don't disagree with that, but that's Mr, that's, that is Mr McPherson's opinion.

And did you think otherwise?---I don't know what I thought.

But how could you have thought otherwise?---Oh - - -

30 Why wouldn't you have accepted his advice?---I, I, in all probability, I did. I can't recall the documentation. I can't recall what I did at the time.

And you can't tell us that you didn't accept his advice.---No, I wouldn't, I wouldn't ignore advice like that. I was very careful to ensure the council policies were upheld to the extent possible.

Mr McPherson has given evidence to the Commission. Were you present when he gave his evidence?---No.

40 He gave evidence at pages 2600-2601 and he also filed a statement, he provided a statement to the Commission. This is in Exhibit 53, volume 4, tab 31, paragraphs 15-16, where he says that he raised this issue with you verbally in an executive meeting.---Possibly.

Have you not read Mr McPherson's statement on the subject?---No.

He says that at that meeting he told you he was - - -

THE COMMISSIONER: Can I just, maybe we should get it up.

MR BUCHANAN: Certainly, Commissioner. Perhaps his testimony at 2600 to 2601 if that can be found. Maybe the statement of the witness. Thank you. We've now got on the screen a statement by Mr McPherson that he made to the Commission dated 20 February, 2018, which is in Exhibit 70. If you can have a look at the bottom of page 3 and just so that you can see the picture, at paragraph 13, "In my experience I found this position that Stavis took to be unusual as he did not want to follow the IHAP recommendation. In my experience if IHAP made recommendations for deferral of an item for further information the planning staff would abide by it." Paragraph 14, "Stavis didn't have authority to refer the development to council for consideration. Only the general manager could do that in accordance with the council's procedures followed at the time. The general manager at the time was Mr Jim Montague." Paragraph 15, "Shortly after this conversation with Stavis I attended a meeting with Montague and various directors and raised my concerns as a breach of council policy would occur if the matter was not resubmitted to IHAP." Paragraph 16, "Montague said it was a council policy and council would consider the DA and, if not, refer it back to IHAP."---"And council could consider the DA", not "would".

I'm sorry, "council could". Did I say "would"?---Yes.

I apologise for that. "Council could consider the DA and, if not, refer it back to IHAP. I do not believe there was any investigation by council into the site isolation issue raised by IHAP and this was a poor decision. I am aware that Montague referred the matter to the Canterbury City Development Committee for determination. The development was approved at the CDC without being referred back to the IHAP." So if I could take you to page 2601 of the transcript of the evidence given on 17 July, 2018, and this is part of the evidence given by Mr McPherson. And at line 17, Mr McPherson was asked, "And do you recall discussing this issue with the general manager, Mr Montague, at or around this time?" Answer, "Yes, I do. I attended an executive meeting, which was a meeting of the general manager and all the directors, and I advised the executive in terms of my email to Mr Stavis. I can't recall much about the conversation but I do recall that the general manager said, well, in his view, he's got the authority to report the matter to the City Development Committee and he was going to make that decision and the City Development Committee then could make a determination as to whether it wanted to consider the issue or whether it would refer it back to the IHAP." Now, is the evidence that Mr McPherson has given to the Commission on the subject of his conversation with you at the executive meeting correct?
---I don't, I – that's his opinion, that's his, that's his, there, that's his evidence, not mine.

THE COMMISSIONER: Mr Montague - - -

MR BUCHANAN: So, what is your evidence on the subject?

THE COMMISSIONER: Yes.

THE WITNESS: I don't recall. I don't recall what happened at that executive meeting but - - -

MR BUCHANAN: Have you any reason to believe that Mr McPherson's evidence is not correct?---No. That doesn't mean to say it is, though.

10

Why do you say that?---Because it, it, it's his, they're his words.

Yes, what is there to put in your mind a doubt as to what Mr McPherson said as to whether it's correct or not?---I don't know what was motivating Mr McPherson.

Are you suggesting that he might have been motivated by some sort of ill will towards you?---He and I had our differences, yes.

20

Keep going.---No, I'm not going any further than that. I found Mr McPherson very difficult to deal with, even though I had respect for his intellect and his knowledge. He was a very thorny individual.

Yes, but that isn't what you said earlier about Mr McPherson.---No, I said I had respect for his intellect and his ability. He was a good staffer but unfortunately at times he, you know, he forgot where he was in the pecking order.

30

Bit of a lawyer, was that the problem with him?---No, I wouldn't say that. I, I said he was very thorough, he was very pedantic.

So you knew that you were acting in breach of council's IHAP policy by failing to resubmit the matter to the IHAP after the information had been obtained from the applicant and reassessed by council and provided to the IHAP, didn't you?---I don't know that I knew that at all. I don't, look - - -

Because you'd been told that.---By whom?

40

In writing and by Mr McPherson orally.---I've already covered what I, what I thought about Mr McPherson's comments.

Well, hang on a sec, we've got it in writing.---Okay.

And it was said to you.---Yeah. Doesn't mean to say I took it on board or I even read it. I don't know what the dynamic of that meeting was. There, there may have been some tension there. Who knows?

But, Mr Montague, the one thing we do know is it was considered by the CDC, and it couldn't have been considered by the CDC unless you made the decision, having regard to what had been put to you, to put it on the agenda as a late item. That must have happened, mustn't it?---Well, it, it did get to the CDC meeting, yes.

How do you think it got there unless you directed that it be put on the agenda in the circumstances?---Well, there, there was probably a discussion about that at the executive meeting anyway.

10

There might have been, but you must have exercised your power to put it on the agenda of the meeting of the CDC to be held on 13 August, mustn't you?---Possibly.

Well, there's no other explanation, is there?---Well, I don't know.

You're not trying to be frank with the Commission in giving your answers to these questions, are you?---I'm trying to be as truthful as I can.

20

And it's not truthful to say you don't know as to how the agenda item in relation to this DA got on to the agenda of the meeting of the CDC on 13 August, is it?---We know that I directed it to go to the CDC.

Thank you.---There's, there's no doubt about that.

30

Thank you. And you did that, taking into account the advice that you'd been given orally and in writing by Mr McPherson about the fact that it would be a breach of council policy for you to do that?---Now, now you're confusing me because I'm not sure of the timeline here. We, we covered this yesterday. I don't know when, where that particular advice from McPherson fitted into, to the chronology of this whole thing. I thought we established that I had already directed that it go on the CDC paper and we, and we traversed the reasons for that.

We haven't.---Oh, okay.

40

But let's assume that was the case. If you'd found that something had happened that shouldn't have happened, it was in your power to revoke it, wasn't it?---I guess so. If the circumstances warranted that action, yes.

You deliberately circumvented established council policy which applied to the circumstances where the IHAP hadn't received or been given a chance to consider the information it considered was required before a recommendation could be made, didn't you?---No, I, I don't accept that. The policy may not have been in my mind at the time.

Did you have any contact with Mr Demian or Mr Azzi or Mr Hawatt or Mr Stavis about this?---I can't recall.

Do you think it's possible that you did?---It's possible. Councillors are there and they're entitled to ask me, contact the staff about all sorts of things.

And indeed you wouldn't have put the matter on the agenda of the meeting of the CDC of 13 August without having a reason for doing so, would you?
---I expressed that reason yesterday, I'm sure, that time was running out. It was almost on Christmas. The DA, this particular one and others, had been
10 on foot for a long, long time and we wanted to clear them up.

So you do have a recollection of this?---I know that there were DAs that were, were delayed.

You appreciate this is in August 2015 in relation not to 548 Canterbury Road but 570 Canterbury Road?---No, look, Mr Buchanan, I'm totally confused what property you're talking about.

Well, the one we've been talking about today is 570 Canterbury Road.
20 ---That's the carpet place?

Yes.---Yes.

And you appreciate that the meeting of the CDC concerned was on 13 August, 2015?---If you say so, yes.

Which is some time prior to Christmas.---Yes.

And the dates of the email in which you were advised about the fact that this
30 would be a breach of council policy is 10 August, 2015.---Fair enough.

So are you saying that you thought it was urgent that a decision be made on the DA?---No, I'm not saying that at all. I don't know what was going through my mind at that time. I mean, I've said repeatedly the DAs and the processes surrounding applications were handled in the city, city planning division by the director of city planning. I had a lot of other things that required my personal attention to run the council, so I didn't devote myself to development application matters.

40 It's inevitable, isn't it, that you would only have made the decision and given the direction that the agenda item was to be listed before the CDC of 13 August, 2015 as a result of someone either complaining to you about the effect of complying with council policy in relation to the IHAP report or someone asking you to put it on the agenda or saying it must be dealt with by the CDC of 13 August. It must have been some contact like that.---I don't think you can say it must have been.

Don't you think?---We don't know. You, you - - -

No, no. Just thinking about when you exercised your powers, you didn't do it as some sort of brain snap. You did it as a result of information that you received which caused you to make a decision to exercise your power.
---There was concern expressed in various quarters about delays in relation to a lot of matters in the planning division. I've said that repeatedly. These major DAs, like this one on Harrison's site, of course it was front and centre because of its, its, its sheer size and the value of the application, so naturally I was concerned to ensure that these applications, as I said earlier, didn't just languish on somebody's desk interminably.

You don't think that there's a chance that you were asked – I'm sorry, you don't think that there's a chance that you had contact, before you made your decision to put it on the agenda of the CDC, with someone like an advocate for Mr Demian or Mr Demian himself?---It's possible.

Or by Mr Stavis?---It's possible, yes.

And being persuaded that it was something that you should do.---Well, whether, whether I was influenced by another person or not, I had a view, a strong view, as I always had, that developments needed to occur and that there wasn't much value in having them just lying on somebody's desk. So there were delays, yes, that were, I thought that were unacceptable.

And did you think that the delay that would follow if council's IHAP policy were applied in the circumstances of this IHAP report would have been unacceptable?---Yes. The IHAP policy wasn't front of mind. Had I, maybe I, I was a bit cursory in my treatment of the IHAP policy. I don't even know that I had it in front of me at the time. But I wouldn't deliberately breach a council policy regardless of who might be on the warpath.

Well, I just have to give you the opportunity of responding to this suggestion, that it is inconceivable you didn't know you were breaching council policy because you had been told by Mr McPherson that that is what you would be doing.---Yeah, but, look, maybe I didn't even take that on board. Maybe I didn't take much notice of it. Maybe I didn't even read it at all at the appropriate time.

Or listen to him?---Or listen to him. Exactly. As I said, I had my issues with Mr McPherson.

That wasn't the right thing to do if that's what happened.---Well, that's your opinion. I mean, you - - -

No, no, no. Seriously.---Seriously. I'm being serious.

If that's what happened, you didn't bother reading it or give it any weight or listen to Mr McPherson when he was telling you things, that wasn't the right

thing to do, was it?---Look, you have to understand the relationships in these, between myself and - - -

Are you saying it was the right thing to do?---No, I'm not saying that.

Or it wasn't the right thing?---No. Look, I'm not saying that at all.

Which of those two, that it was the right thing to do or it wasn't the right thing?---I've got, I've got no view.

10

I'm sorry?---I've got no view on that.

Excuse me a moment. It was your duty to exercise your power to put a matter on the agenda of the CDC as a late item acting in the public interest. ---Yes.

And only in the public interest, wasn't it?---Yes.

20 But by doing that in this case you were preferring the interests of Mr Demian, weren't you?---No. I deny that.

Private interest?---No, no.

And the public interest included the interest of neighbouring properties affected by the DA?---Of course.

Your attention here was drawn to a specific neighbouring property that would be affected in the opinion of the IHAP as reported to you by Mr McPherson. You understand that?---Yes.

30

And yet you decided to prefer Mr Demian's interest - - -?---No.

- - - over the public interest so far as it refers to the neighbouring property of 2 Chelmsford Avenue in this case?---No, not at all.

The effect of your conduct in relation to this DA was of course to accelerate the process of determination of the DA?---Well, I've explained that earlier.

40 But you accept that that's what the effect was, to accelerate the process by which it was determined?---Well, it would assist the passage of the DA through the council, yes, whether it's rejected or approved.

Did you consider whether by taking that decision that you did to put it on the agenda of the 13 August, 2015 meeting of the CDC you were potentially exposing the council to liability, to legal proceedings instituted by the owner of the neighbouring property?---I suppose that's always a possibility.

Did you consider it?---No.

Why didn't you consider it?---It didn't occur to me.

Now, we looked yesterday at a situation where you took a similar step in relation to the DA for two additional storeys on 548 Canterbury Road of not following the IHAP report and instead putting the matter before the CDC to give them an opportunity to determine it, and the same has happened here in the case of 570 Canterbury Road. You accept that we've got two instances now where you have engaged in this sort of behaviour?---It seems like it on the evidence you've got or the information you've got.

Did you do this, in the period 2014/16 did you do this on more than those two occasions, any other occasions is what I'm asking?---Not that I, not that I know of, no.

So it was two occasions to the benefit of Mr Demian?---No. It, it - - -

Well, it was.---Mr Demian is also a stakeholder, he is, and he is a member of the community and he has rights too.

And it's another illustration of you interfering with the exercise by council of its planning powers, isn't it?---No, I rejected that yesterday and I reject it again. I'm not a town planner and I wouldn't, I wouldn't presume to tell a planner how to do his job.

Now, the meeting of the CDC occurred on 13 August, 2015. This is volume 21, page 80. And DA 591/2014, the DA for the construction of six-storey mixed-use development on 570 Canterbury Road, was approved subject to conditions, and it was moved Azzi, seconded Hawatt.---Yeah.

Page 81-97 of volume 21. Can I ask you, if we could go back, please, about contacts before and after that 13 August meeting. If we could have a look, please, at page, I'm sorry, Exhibit 123 and page 6. And if we could, if I could take you to item 255 through to about 269. Can you see that there's a series of contacts between Michael Hawatt and Pierre Azzi - - -?---Yes.

- - - and Charbel Demian on 7 August, after your conversation with Mr Demian on the 6th, going through to the 8th and then the 10th and the 11th and indeed 13 August at 9.46am. Item 270 is a call by Mr Demian to Michael Hawatt that lasted for 7 minutes and 33 seconds, and that's the day of the meeting.---Yes.

And then if we could go over the page to page 7, please, going down to item 274, there's contacts there between Hawatt and Demian and Azzi and Demian, the same actually with 275. 275 is a call from Mr Demian to Mr Hawatt on 13 August at 5.50pm. Do you know what the time of the meeting would have been?---7.30.

And then on that day, at item 276, there's a contact for over a minute by Mr Azzi to Mr Demian at 6.32. You see that?---Yes.

And then when – I'm sorry, 8.30. Thank you. So that is likely to have been after the meeting was over, that contact between Mr Azzi and Mr Demian. ---At 8.30?

10 Yes.---Well, I'd hardly, well, they may have been talking on the phone during the meeting or he may have stepped out of the chamber. I don't know.

Are you saying that the meeting would still have been going?---Could. Possible.

Sir, can you tell us about the contact between you and Mr Demian at item 277, at 9.29.---Well, it only lasted 28 seconds, didn't it?

20 The question is, what happened in that 28 seconds?---I've got no idea. I don't recall the conversation, the meeting.

But what's it likely to have been about?---I don't know. It could have been anything.

That's not an honest answer, is it?---It is an honest answer.

It is practically inevitable, it's so likely it is practically inevitable, that you were talking to Mr Demian about what had just happened at the CDC meeting.---It's possible.

30 Because what had happened was he had got a decision in his favour.---I don't know. 28 seconds isn't very long.

Why would you have had reason to contact him at all at that time?---I could have said to him, you know, I don't know. I'm not going to even try and speculate about that. I don't know.

40 THE COMMISSIONER: Is it the type of thing that you'd ring and say you got up or your proposal or your DA got up?---Well, if, if, yeah, that is possible too, Commissioner, yes. But I, there's no harm in that. I mean that's, that was the fact.

MR BUCHANAN: But why bother telling him?---Why not?

He'd find out in the ordinary course, as any other applicant would, from council. Why do you ring him to tell him that?---Look, I don't know that I did, but that's what we were talking about.

A reminder that the CDC meeting is recorded as concluding at 8.10pm, that's volume 21, page 97.---Okay. It must have been, must have been, must have been an early one.

10 So what we have here, if I can just take you to it, is that having regard to item 254 on page 6 of Exhibit 233, where there's a record of you calling Mr Demian on 6 August, 2015, lines open for 2 minutes and 57 seconds, and then item 277 on page 7, where you call Mr Demian shortly after the CDC meeting and the line was open for 28 seconds, is that you called him shortly after the IHAP meeting which deferred the DA and then you called him shortly after the CDC approved the DA. You understand that?---Yes.

It is again so likely as to be inevitable, isn't it, that those were calls about the DA?---That's possible.

And you can't tell us anything else that you were talking to him about at the time?---No. It might have been to set up a coffee meeting. I don't know, I don't know.

20 It shows, doesn't it, that you understood Mr Demian placed some store in the approval of the development application?---Well, I, I'm sure he did.

And would it be fair to say that you wanted to help him in relation to it, certainly so far as it encountered an obstacle in the form of the IHAP report?---No. Not with that, not with that reference to the obstacle, no. I was interested to ensure that all applications that came into that council were dealt with as expeditiously as possible.

30 How many applicants did you ring after council meetings or CDC meetings to talk to them about the fact that their applications had been approved?---It, it probably happened before. I can't put a precise number on it.

But there was a unique relationship and association between you and Mr Demian, wasn't there?---I don't know what you mean by unique.

Well, you didn't take anyone else along to the meeting with Mr Hawatt that took place in early 2015 during the wars that you were having with Hawatt and Azzi, did you?---No.

40 You took Mr Demian instead.---No. He, he, he arrived. He was invited. He came at, at the request of Mr Hawatt, I believe.

But we have seen that Mr Demian and you were tick-tacking frequently on the telephone before and after that meeting, but particularly before.---But, see, these are two different issues. Now we're talking about the war again.

No, no, no, no, no. We're talking about the relationship you have with Mr Demian.---And he, he was a friend, a business friend who tried to help me during a very, very difficult period in my career.

Which would explain why you - - -?---Which I, which I grateful for.

- - - would exercise your powers in a way which preferred his interest over the public interest.---No. I, I, I - - -

10 In respect of this DA.---I didn't, I didn't feel indebted to him at all. I was grateful for his help but I didn't feel indebted to him.

Now, after the development application was approved, Mr Demian lodged a DA to build on that success by adding two storeys to the approved development.---Are we still talking about 570 now?

Certainly. We certainly are, sir.---Okay, well - - -

20 On 27 October, 2015, volume 23, page 7, Mr Demian's planning company, Statewide, lodge DA 510/2015 to add two storeys to the approved six-storey development at 570-580 Canterbury Road. You recall this?---No. If you say he did, then he must have. I didn't get involved on a day-to-day basis with DAs.

But you plainly did. We're seeing now on a regular basis insofar as concerns Mr Demian that you did get involved - - -?---No, I didn't - - -

30 - - - to intervene on his behalf in his favour.---I didn't even know the application had been lodged. I wouldn't know that. It goes over the counter, the development assessment staff.

I'm not suggesting that you knew that it had been lodged, but that is the predecessor to it being assessed.---Yes, of course.

And to the processes being put in play for it to be determined.---Yes, that's normal procedure.

40 So taking into account the information, if you would, that it was filed on 27 October, 2015, did you put any pressure on Stavis to produce the assessment report for that DA urgently?---I don't recall. I don't think so and I don't recall. I may, I may have inquired how it was going, like I did with a number of other DAs.

And why would you have known that it was there to be assessed unless you had been told about that?---By that stage I may have been aware that it had come in.

How would you have found out?---I used to get lists of DAs, major DAs, routinely from the division.

And were the people behind the planning companies which lodged them identified in that list?---I don't know.

They weren't, were they?---Well, I don't know.

Mr Demian - - -?---The applicant's - - -

10

- - - and you must have had conversations.---No, not necessarily. The applicant's named in the list, and if Statewide, that's what would have been included in the list. I got that information on a regular basis from the planning staff so I could keep the mayor and the councillors briefed on major DAs that may come to their notice.

20

And so from what you say, are you saying that the mere fact that Statewide was listed as the proponent would have been a reason why you would have taken up with Mr Stavis the need for it to be urgently assessed?---No, not necessarily.

Or urgently reported on?---No, no. I wouldn't have said, I didn't red-flag them. I just left it to the process through the planning division.

30

So what I'm just exploring is, assuming that you did ask Mr Demian to provide his assessment report urgently, and in fact gave him a deadline of a CDC or a council meeting by which the report had to be in the business papers, which I'd suggest was only five days before the deadline, sorry, you approached him five days before giving him the deadline, why would you have done that if not because you had been approached by Mr Demian? ---Look, I don't know that I did do that. You've got that information. I don't, I can't recall any of that and I can't answer. I don't, you know - - -

40

Excuse me. Did you take up with Stavis the need for him to provide an assessment report for that DA, the additional two storeys on 570 Canterbury Road, that it had to be in very shortly – I'm sorry. Did you approach him very shortly before giving him a five-day deadline?---I don't recall that. Doesn't sound like something I'd do. Five days is, it would probably not be achievable.

Was there a meeting that you had with Demian and Stavis at which you discussed when and how this DA would be processed?---I don't recall again, but it's possible. It's possible that he requested a meeting to discuss the DA.

And is it possible that amongst the things discussed was a date of a CDC meeting at which it would be considered?---Yeah, that's not uncommon either. He was probably trying to timeline it.

Which is then a deadline so far as the person who's got to prepare the report is concerned.---Well, no, not necessarily. It may have just been indicative.

Now, do you, thinking again, 570 is the property on the eastern side of the Harrison's property.---Yes.

Sorry, my mistake. The western side of the Harrison's property?---Western side. That's right.

10

Do you have a recollection of there being a problem that arose in relation to it because Mr Stavis took the view that it could not be approved unless Mr Demian modified the plans for the approved development at 570?---I have a vague memory of some issue about the design, yes.

And did you have a conversation with Mr Khouri in which you talked to him about that?---That's possible too but I don't recall it.

20

Did you tell Mr Khouri that there might be a problem?---I could have.

And why would you have talked to Mr Khouri about it?---Well, he was representing Mr Demian.

Did you consider at the time that there was the potential for a conflict of interest having conversations like that with your friend Bechara Khouri?---I don't believe – we've canvassed this before. I don't believe there is a conflict of interest.

30

All right.---If, if you took that to its logical extension, anyone that I spoke to in relation to matters before the council could give rise to a conflict of interest which is just a nonsense position. No, I didn't consider there was a conflict of interest.

You don't think that there's the potential for a conflict of interest where you're a person with power to exercise in relation to an application that has been lodged by the person who retains your friend?---I told you before Mr Demian was a business acquaintance. He was not a friend in the strict term, in the strict meaning of the term.

40

But Mr Khouri was your friend?---Yes. I've always said that. I don't deny it.

Can I ask you to have a look, please, at an email. Volume 23, page 104. Page 107 I'm told. Sorry, page 107. Thank you. Can you see that it's an email from you to Mr Hawatt of 23 March, it's a Wednesday, 23 March, 2016 at 11.33am?---Yes.

Which reads, "Michael, we need to meet with Spiro to discuss this application. Please let me know when you're available." The application you identified in the subject heading 570-580 Canterbury Road, Campsie (Charlie Demian).---Yes.

Does that bring back a memory?---No, not at all.

10 Except that you do have a faint memory of there being an issue?---Yes, about the, about the design of the building particularly as it addressed the rear property.

No, no, no. I think you might be confusing it with 212 Canterbury Road. ---No, no, no. No, I'm not. There was an issue with the property in Chelmsford Avenue.

In the case of 570 Canterbury Road?---Yes. You alluded to it earlier yourself.

20 Thank you. Thank you. I understand. Now, if we could show you, please, a transcript of a telephone call. Exhibit 213. This is a transcript of a call initiated by Mr Stavis to Mr Hawatt on 23 March, 2016. Your email was on the same day.---Yes.

Your email was at 11.33am. This call is at 8.06pm. The transcript – can you see that at the bottom of the page, towards the bottom of the page four lines from the bottom, Mr Stavis said, "Okay. Jim sent you an email today about Charlie Demian's DA," and Hawatt said, "I haven't seen it yet." Stavis said, "I know you haven't. That's why I thought I'd prompt you." Now, over the page, page 2, a bit before halfway down, Stavis said, "I think 30 he wants to run, to let me explain to let me explain to you that I've got serious concerns about this DA." Mr Stavis then identifies it to Mr Hawatt as the carpet place on the corner next to Harrison's.---Yes.

40 And a bit lower down, Mr Stavis says, "Because basically the understanding was that before he lodged, we all agreed that he had to do something to the approval, like Jimmy Maroun did," and Stavis said, "To give something back and to argue the extra two floors on the basis that it's a better planning outcome under clause 4.6, okay?" Hawatt's saying yes all the way through this. And then Stavis said, "So we just, I think we just want to run that by you and, and I think he wants to see what you think, okay, because he's a bit, he's a bit sort of wary of it." Hawatt asks, "What, so Montague's wary of it?" Stavis, "Well, yeah. He wants to, I told him I can't support it." Hawatt, "Oh, he's not sure he will." Stavis, "I told him I can't support it and he wants to back me but he is, he's afraid that, you know, he might cause offence." It's those passages at this stage that I'd like to invite you to assist us on. Does it bring back to mind to read that Mr Stavis was indicating that he'd been talking to you about the DA for two additional storeys and on Mr Demian's property at 570 Canterbury Road, and that

there would be a necessity for a clause 4.6 submission to be made, of course, because of the 18 metre, 25 metre building height discrepancy? ---4.6 isn't mentioned, though.

Well, I think it might have been. It's just at the top of page 3.---Oh, sorry. I beg your pardon, you're right. Yes, under clause 4.6, yep. Gotcha.

10 Yes. And Mr Maroun, you'll recall, who had been referred to as setting a precedent of some sort, he was the proponent for the development on the eastern side at 538 Canterbury Road.---Yes.

Now, do you know what Mr Stavis was talking to Mr Hawatt about when he said that – and I'm looking at page 2 of the transcript – “Before he lodged, we all agreed that he had to do something to the approval, like Jimmy Maroun did”? Bearing in mind that turns out to be a reference to clause 4.6.---Yeah, of course. I don't know what he means by “we all agreed”. I don't recall agreeing to anything and, but I do know, as I said earlier, there was an issue with the setback at the rear in the property in Chelmsford.

20 Did Mr Demian have a pre-DA meeting for the additional two storey DA? ---He could have, but I don't think I, yeah, he could have.

Additional two storey DA for 570, I mean.---He, he could have. I don't, I don't know.

30 Do you see that the impression that Mr Stavis was conveying is that he got the impression from you that you were wary of entering into some sort of dispute with Demian about the DA for the additional two storeys on the basis of Stavis saying that something needed to be done about it, that he had serious concerns?---I, no, look, I don't think that's a reasonable interpretation of that. I, I had no difficulty with having a, a stoush with Charlie Demian or anybody else.

Would you have been apprehensive about having a stoush with Hawatt on the subject?---I'd be more, I'd choose my words more carefully when it came to a councillor, of course I would.

40 And you knew Hawatt was an advocate for Demian's developments.---I, I actually didn't know that. I didn't know that for sure and certain. I told you before that Michael Hawatt was interested in seeing development occur along Canterbury Road and elsewhere in the City of Canterbury.

Then can you assist – well, no, I withdraw that question. If I can just invite you to comment on this, transcript page 3899. Mr Stavis told the Commission in answer to the question, “Montague was scared of Mr Demian?” Answer, “I don't know if scared is the right word but certainly he was concerned about his reaction, that's for sure.” That's what Mr Stavis told the Commission.---Well, I, I, I don't, I don't agree with that. That's his

opinion. I don't accept it. I wasn't afraid of Charlie Demian or anybody else.

Mr Demian had a very forceful personality, didn't he?---He could, like a lot of people.

And he had put you in a situation where you owed him a favour.---No, not at all. Didn't owe him anything. Didn't owe him a thing.

10 Excuse me a moment. Now, can I ask you to assist us with this as well. I can show you a transcript of another telephone conversation. Exhibit 125. So this is a transcript of a telephone conversation initiated by Mr Khouri to Mr Hawatt on 29 March, six days later.---Yes.

And in the middle, a bit after halfway down the page, Khouri said to Hawatt, "Well, there is a meeting with Spiro, Jim was telling me." Hawatt, "What time?" "I don't know." "I know I have to talk to - - -" Khouri, "I'm here with Charlie, discuss a few things. Listen." Hawatt, "Unless, unless just Pierre's going. I'm not sure. I'll ring Pierre." Khouri, "But Charlie
20 should be there. There's a couple of issues you need to clarify. You know what I mean?" Hawatt, "Okay, look." Khouri, "Because he is messing up a bit, Spiro, between you and I. Really, he is messing up. Like, here, speak to him, speak to him." And then Demian came on the line and spoke to Hawatt. So it would seem that Mr Khouri had the idea in his head, from what appears on the first page of that transcript, that you had told him about a meeting that was to occur with Spiro Stavis. Why would you have told him about that?---Probably just mentioned it in passing. He might have asked me. I would, I would, if I knew the answer was yes, I'd answer yes. I wouldn't say no if I knew there was a meeting to be arranged. Why would I
30 do that?

Well, this is one of Mr Demian's developments - - -?---Yes.

- - - you knew that?---Yes.

You knew Mr Khouri was an advocate for Mr Demian. Mr Khouri was your friend. You're telling him about council business in relation to the assessment of the DA, namely about a meeting that was to occur with the director of city planning.---Yes.
40

You don't think that there might have been a conflict of interest in what you did there?---Absolutely not.

It tends to show, though, that you certainly were aligned with the interests of Mr Demian, weren't you?---No, I deny that. I deny that. A meeting was being held. I don't know what they were discussing, what Demian and Khouri or Khouri and Hawatt were discussing about the application.

Well, we'll provide you with that information, if you could turn over the page please. Mr Demian says, a bit after halfway down, sorry, a bit before halfway down, "Good, good, mate. Just so you know, right, the last four meetings I've had with Spiro since December to date, I've had them in the presence of Jim so there's no, no confusion about what was said and, and all that. Now, this application for those 21 units was submitted in October 2015. When we met in February this year, on 12 February, we agreed that this will be going to the April meeting." Just pausing there. Were you present - - -?---I don't know.

10

- - - at a meeting in February, on 12 February as Mr Demian claimed there, in which it was agreed that the DA for the two additional stories on 570 Canterbury Road would go to the April meeting of the CDC?---I've got no idea. I don't have my diary in front of me. I can't answer that. I don't know.

Is that the sort of thing, though, which you would imagine, having regard to what you know was the nature of your relationship with Mr Demian and Mr Stavis, that you would have done?---Not necessarily.

20

But is it the sort of thing that you - - -?---If I was requested to attend a meeting which was held on the council premises in the conference room and Spiro was there and I was asked to attend, the answer is, yes, I'd go.

And you would have in that meeting agreed that the DA would go to the April meeting of the CDC?---I don't even know the meeting took place or that I was present and, no, I - - -

30 What I'm giving you the opportunity to comment on is Mr Demian's claim. ---Well, it's his claim. I can't, I can't verify it. I can't, I don't know.

What about Mr Demian's claim that he had, sorry, that the last four meetings that he had with Spiro from December to the date of the conversation, he'd had them in your presence so that there was no confusion about what was said?---I don't know what he means by that.

Well, we'll come to that, but let's just explore the fact that he's claiming that they were in your presence.---Well, he's claiming that, and it's possible it would have been on council premises.

40

And they would have had them because he asked for them?---Possibly, yes.

And the meeting in February - - -?---2016.

- - - if you were there, again Mr Demian would have asked you for the meeting?---Possibly, yeah.

Excuse me a moment. If I can take you then to page 4 of this transcript, and although in the middle of the page it records a paragraph against the name Khouri, those of us who've listened to the tape believe that that is an incorrect attribution and it should be Mr Demian, understand?---Fair enough, yes.

And so if you could assume that, Demian said, "He wanted me to support that 21 units at the top of," I'm sorry, I should make it clear who he's talking about when he said "he". This is about Mr Spiro Stavis.---Yes.

10

"He wanted me to support the 21 units at the top. He wanted me to change the design for the six levels that we already an approval for." And then he went into disputation that he's recounted with Spiro as to why he should be changing anything, the plans for the approved development, when what's under consideration is the additional two storeys on top of the approved development.---I understand, yes.

20

Is this coming back to you now as the area of dispute?---No, not really but that, that accords with my memory. I told you earlier and I knew there was a problem with the height in relation to the properties at the rear and that resulted in a concern about the design of the building.

Now, can I take you to page 8 of the transcript, please. I should just show you page 7. There's a long passage initiated by Mr Demian on page 7 there commencing, "Then or no, no one, no, no, was". You can see it there? If I can take you to part of that on page 8, please.---Yeah.

30

And can you see the, I wonder if we could just enlarge it a little bit. Thank you. Can you see about nine lines from the top a sentence commencing, "Now there was nothing 30 October"?---Ah hmm.

The cursor is next to it now.---Yes, I've got that.

Thank you.---Yeah.

40

"There was nothing 30 October and up to the meeting in February where we met, and he told us in the presence of Jim which projects going to which council meeting, and this one he said it'll be going to the April meeting. Now nothing has happened since October up until Wednesday of last week when he called, when Jim called, not him, Jim called and said, 'Look, I think we might have a bit of a problem with, with this 21 units.'" Then he recounts his conversation with you. Do you remember having a conversation with Mr Demian on the subject?---Not, not, not specifically with him but as I said, I do recall there was an issue about the height of the building and there were meetings about that and Mr Demian, Mr Demian was there and so was Spiro.

And did you indicate to Mr Demian that Mr Stavis was concerned about the DA for the two additional units?---No. Mr Stavis - - -

Or had concerns?---Mr Stavis expressed those concerns himself.

I'm talking about your conversation with Demian.---No, no. I can't recall whether he told me that he was concerned about that or not but I know there was an issue with the height of the building. That's all I remember.

10 And then if I could just take you to page 9, bottom of page 8, sorry. "And I, I said to you the last four meetings I've had with them each and every one was in Jim's office in Jim's presence for the simple reason like, since our last meeting when you were present", he's speaking to Hawatt, "I haven't had a single meeting with Spiro on his own at all. It was always in the presence of Jim so that way Jim is chairing the meeting not him, not me. You know what I mean." And then if you could just go down to the third item on that page, please. It's Mr Demian saying to Mr Hawatt, "Well, Bechara spoke to Jim and Jim's saying that there's a meeting. You've organised a meeting for today." Do you see that?---Yes.

20

Commissioner, I note the time.

THE COMMISSIONER: We'll adjourn for morning tea and resume at about 10 past 12.00.

SHORT ADJOURNMENT

[11.48am]

30 MR BUCHANAN: Now we were looking at the transcript of a telephone conversation that, introduced by Mr Khouri, Mr Demian had with Mr Hawatt on 29 March, 2016. You recall that?---Yes.

And Mr Demian had been saying more than once that the last four meetings he'd had with Spiro since December to date he'd had in your presence so there's no confusion about what was said. What would you have understood Mr Demian to mean by that?---Whether he, I don't know, but whether he thought that my presence would add to the meeting or that I would corroborate what Mr Stavis said, I really don't know, but I think they were overestimating my ability to influence.

40

Well, you had the ability not just to influence but to direct in the case of senior staff, didn't you?---Mmm.

Obviously Mr Demian was getting you to take part in these meetings with Mr Stavis.---I only agreed to take the meetings because I thought they were necessary.

And what would have been the reason that you thought that they were necessary?---Because of the delays that I referred to before.

And that would have been the only reason?---Well, yes.

What I want to ask you is whether you'd agree with the suggestion, if I make it to you, that Mr Demian wanted you to be present in order to intimidate Stavis into doing what Demian wanted?---I can't, I don't know.

10 To enforce agreements made between Demian and Stavis made at the meetings.---I don't know that, and my experience with Spiro Stavis, he wasn't easily intimidated.

Well, it wasn't often he disagreed with you, was it? He usually did what you told him to do.---No, he did what he thought was the professional thing to do.

20 He, you'll recall from the outset, protested loyalty to you and his intention to be loyal to you.---Yes, which I think is a great virtue.

And because he said you had at that meeting, which we can see was on 26 November, 2014, you had asked for his loyalty?---Yes, nothing wrong with that.

That does indicate that the dynamic you expected to operate between you and Mr Stavis if he got the job was one wherein he would do what you wanted him to do.---Not at all.

30 Now, just returning if I can, please, to the subject of these communications in March 2016. This is, you'll understand that you were – I withdraw that. You had emailed Mr Hawatt on 23 March to say, "Michael, we need to meet with Spiro to discuss this application," being the DA to add two stories to 570 Canterbury Road.---Yes.

This conversation with Mr Demian, which Mr Demian had with Mr Hawatt, was commenced at 12.17pm on Tuesday 29 March, then at 12.26pm I want to suggest Mr Hawatt called you about what Mr Demian had been talking to him about.---Possibly.

40 If you could listen please to this recording that will be played and I'll ask you some questions about it. A transcript will appear on the screen in front of you so that you can follow the sound recording on the transcript as well, an extract of the transcript of the phone call.

AUDIO RECORDING PLAYED

[12.27pm]

MR BUCHANAN: Commissioner, I tender the audio file and the transcript of that extract of the recording of the telephone conversation on 29 March, 2016 commencing at 12.26pm being LII 06332.

THE COMMISSIONER: The audio file and transcript of the extract of the recording from LII 60332 recorded on 29 March, 2016 at 12.26 will be Exhibit 241.

10 **#EXH-241 – TRANSCRIPT SESSION 6332**

MR BUCHANAN: Mr Montague, did you hear that recording being played or that extract of the recording being played?---Yes.

Did you recognise your voice?---Yes.

Did you recognise Mr Hawatt's voice?---Yes.

20 Can I ask you now whether you can recall the issue about which you and Mr Hawatt first talked, and that is the question of a meeting involving Spiro Stavis and this development application for two extra storeys on 570 Canterbury Road?---Well, it's clear there was to be a meeting held to discuss that.

Yes. Do you have a recollection?---Oh, vaguely.

Does this bring back - - -?---Well, it does, yeah. Helps me to try and recollect that. I know that application was fairly contentious.

30 And then you and Mr Hawatt discussed the prospective amalgamation?
---Yes.

Can I ask you, I just want to see if I can identify a particular passage that I'd like to ask you a question about. Do you recall that – and I've got page 4 of the transcript in front of you – that at one point in that recording, in that telephone conversation, you said, "Pierre doesn't want to." You'd indicated you wanted to meet on Thursday but Pierre didn't want to, and you thought that there was value in getting together and talking about it even just
40 informally. That suggests that you had been speaking to Pierre Azzi about it, about - - -?---Possibly. Possibly.

- - - the value of having a meeting on the subject?---To talk about the amalgamation.

Yes.---Yes.

With a view to strategising about it?---Well, thinking about what would, you know, try to make sense of what the minister had announced.

And working out how to respond to it?---Well, possibly, yeah. That and other things.

Well, in large measure, that part of that conversation was about how councillors should respond and how, as the GM, you should respond to the government's requests for responses.---Yeah, well I guess the council was
10 looking to me to offer some advice or direction.

But had you spoken with any other councillor apart from Mr Azzi and, on this occasion at least, Mr Hawatt?---Well, the mayor of course.

And was it your proposal for the mayor to be involved in this meeting that you were trying to cobble together?---No.

So the meeting would have just been of you and Mr Azzi and Mr Hawatt?
---And Hawatt, that's right.
20

And why was it only to be of Mr Azzi, Mr Hawatt and yourself and not any other councillor?---Well, because most of – there wasn't a general invitation as I recall. I don't really remember it, but there, there was no time, everything was just happening rapid pace, and having Brian there, with respect to him, wouldn't have helped because, because of the animosity between Brian and the two councillors.

And why not have a meeting of as many councillors as could attend?
---Well, I, yeah, with the advantage of hindsight that may be, may have been
30 a better tactic, but in the end it would have been necessary to report it to council some way or other to get their endorsement of some course of action, which was my responsibility to try and put that together and with no time to do it.

Well, it's open to conclude, I want to suggest to you and invite your response, that this is a case where you were strategising with Hawatt and Azzi about a matter that affected them but also the rest of council and excluding anyone else.---No. Look, that wasn't my intention, but as we know from these proceedings, like it or not, Hawatt and Azzi were calling
40 the shots, they had the numbers.

And so that's why you were meeting with those two and no one else?
---Well, yes, because the others wouldn't attend anyway during the day, they often didn't show up, they had other commitments. I would have preferred to have the mayor there, of course, and, and it was unfortunate that the relationship with he and the other two had got to a point where it just wasn't possible.

And was this illustrative of the way in which you came up with tactics and strategy on political questions that affected council, that you would essentially caucus with Hawatt and Azzi?---No. No. In years gone by it was necessary because the council was, the Labor side of the council was united and a lot more was resolved in, in caucus meetings involving all of the Labor councillors, and I didn't have to get involved in that. It was only since 2012, when as I said before the wheels fell off, that it became necessary for me, I suppose, to involve myself, and in particular this amalgamation issue was extremely important.

10

And so is your answer to my question yes?---Well, can you repeat the question?

Is this illustrative of your approach to working out tactics and strategy on political questions that affected council, that you would caucus with Azzi and Hawatt?---No, not, not, not without a qualification and I've already said what that was. It's a qualified no.

20

Well, the qualification is there was a reason why the mayor wasn't there. ---Yes.

So, subject to that qualification, you accept the proposition that I've put to you?---I don't know that I do. I mean, they were available and they had time, the other councillors wouldn't have been there, I knew that, but whatever was discussed at those informal meetings ultimately would have resulted in some report to council or a response from the council, which would have had to have been endorsed by the mayor at the very least.

30

And so what was to be proposed to council was to be worked out in advance by you, Hawatt and Azzi?---Well, you've got to work things out in advance. You can't wait until the eleventh hour and then try to cobble something together.

So your answer is yes.---No, it isn't yes.

40

Excuse me a moment. My other question about this recording is, do you see -- sorry, if we could go back to the transcript again, please. Do you see in the paragraph at the top of page 4 you talked about the prospect of a merger of Canterbury and Bankstown.---Yes.

And you said, "If we've got no friendly councillors on the new council or not enough to get it, then you're going to find that, and again Bankstown's got more or, who knows, there's going to be a big push to put the Bankstown people in the top jobs, obviously, and the minister might actually make that decision." Sorry, a big push on the part of whom?---I don't know. It's just a figure of speech.

Yes, but it suggests that there would be a threat, a real threat, that the merged council would be controlled by Bankstown people.---That was always a possibility, of course.

And why did you think that that might be an outcome?---Because it had to be a possible outcome. I mean, look, unless we go back in time and talk about discussions I'd had with certain people at Bankstown well before this, and I don't want to go into a lengthy explanation, you don't, you can't context, you can't contextualise this.

10

Well, can't you contextualise it? You had, to your knowledge, a dysfunctional council on your hands.---Politically, yes.

But Bankstown wasn't dysfunctional.---Well, I don't know about Bankstown. I wasn't, I wasn't involved with - - -

Well, it wasn't dysfunctional at the time, was it?---Well, you say, you say so, but like most councils Bankstown had its difficulties too.

20

And so were you apprehensive that Canterbury might be a bit on the nose, and for that reason Bankstown would be more likely to come out on top if there was a fight about who was to control the amalgamated council?---No. Look, you know, and I don't want to go into any depth, the reasons I've outlined before, but in early discussions I had with people at Bankstown we were hoping that the merger, that the amalgamation of the two councils would be more of a voluntary nature than it turned out to be. It was forced, and I would submit it wasn't a merger, it was a takeover.

30

Excuse me a moment. Could I ask you to listen to another recording of a telephone conversation. If we could play, please, LII 06358, being a recording of a telephone conversation commencing at 1.48pm the same day, 29 March, 2016.

AUDIO RECORDING PLAYED

[12.43pm]

40

MR BUCHANAN: Commissioner, I tender the audio file and the transcript of that recording, LII 06358, commencing at 1.48pm on 29 March, 2016.

THE COMMISSIONER: The audio file and transcript of a recording, LII 06358, recorded on 29 March, 2016, at 1.48pm will be Exhibit 242.

#EXH-242 – TRANSCRIPT SESSION 6358

MR BUCHANAN: If we could keep the transcript on the screen, please. Mr Montague, you heard that recording being played?---Yes.

You recognised your voice and Mr Hawatt's voice?---Yes.

Is it fair to say that you in that conversation were organising to have a meeting with Mr Hawatt and possibly Mr Azzi, it's not clear, but definitely not Mr Demian - - -?---Definitely not.

10 - - - even though it was about one of his applications?---Well, is that what it is about? We're not talking about the amalgamations now with this track?

Well, what do you think?---Well, it could have been, it could - - -

Had you been canvassing the amalgamation with Mr Demian?---No. Why would I?

20 Well, in that case that's the answer to your question, isn't it?---Well, I'm a bit confused. We were talking about the amalgamations before in the previous transcript and that was the same meeting time so, look, no. But to answer the question, I wasn't expecting anyone to be there other than the councillors.

But you made it clear that you weren't going to invite Charlie Demian? ---Well, I think that's obvious from the transcript.

30 Now, is it fair to say that you were having the meeting about one of Mr Demian's applications – namely the DA to add two storeys to the approved development of 570 Canterbury Road – in his absence because you wanted to work out with at least Mr Hawatt how to deal with something that Mr Demian wouldn't be happy about?---No, and - - -

What's the explanation otherwise?---Look, there's no indication on this transcript what this meeting was about.

But you heard the - - -?---Yeah, but the property wasn't mentioned.

- - - call that was made at 12.26pm involving you and Mr Hawatt.---Yes.

40 Exhibit 241.---Yes.

Where it was plainly about concerns that Spiro had about the impacts of a development on the people behind, and it's a Demian development and it's March 2016 when DA 510/2015 was before council and there was already an approval for the other two developments, so what else could it possibly be?---Well, I think that's a long bow. You can't - - -

What else could it possibly be?---Well, it could have been the amalgamations again.

Well, why would you be saying that you didn't want Mr Demian to be present at a meeting between you and Mr Hawatt about the amalgamations given that minutes earlier you had been talking to him about certainly the amalgamations but you had started out by saying let's talk about, have a meeting to deal with this concern about, that Mr Stavis is expressing about a development application of Mr Demian's?---Well, maybe, if that's the case, if it was, if the subject matter of that meeting was in fact the, the property on Canterbury Road I didn't, I wouldn't have seen and I still don't need to see why there'd be any need to have Mr Demian there. I was talking to the councillors and the director of city planning.

Well, I think it – I withdraw that. You've seen the material, I've taken you to it, that Mr Stavis told Mr Hawatt that you were concerned that if Mr Stavis's concerns were given weight then Mr Demian might be given offence.---He might. I wouldn't, it wouldn't have concerned me.

Well, can I suggest that's what you were trying to do, you were trying to work out with Mr Hawatt how to handle this matter given that it might cause Mr Demian offence?---No, I don't accept that.

And can you make, can you give us any other explanation?---No.

Well, when Mr Hawatt said to you, page 2 of the transcript, "Correct", after you had said that you're not going to tell Charlie, you're going to tell Charlie that he's not required tomorrow, Hawatt said, "Correct because I don't need to put in, you know", and then you said, "No, no." And Hawatt said, "Put Spiro in that position or anybody in a position. We need to sort it out ourselves." You said, "We just need to talk about it informally so you're across it. You know exactly what the issues are, mate."---Yeah.

You knew that Demian would take up with Hawatt any concerns he had about how council was handling this DA, didn't you?---No. I didn't know anything of the sort.

You didn't have a suspicion that that might be the case?---Not necessarily, no.

No, no, no. Not necessarily really means yes.---No, it doesn't. You're asking me to cast my memory back over two years and the answer is I can't recall.

But you can see the transcript and you've heard the recording played of the conversations you were having.---Sure. I've got no dispute with the transcript.

What did you know was going on?---I don't know. I can't recall.

Why were you using the words that you were using at the time?---What words?

The words you used in that conversation and the preceding conversation.
---Well, I had to talk. I mean, words, it couldn't be just telepathic.

10 Yes, and what was the message you were trying to convey to Mr Hawatt?
---I don't know. I mean if, if there was an issue with that, and now I'm
hypothesising, if there was an issue with that development, and we've
already established that there was in relation to the setback at the rear of the
property, maybe - - -

And we've already established that you knew that Spiro Stavis thought there
was.---I knew too because I, I knew there was an issue, I told you that.

20 So it's not a hypothesis.---Well, okay. Remove that word. I knew and he
knew that there was an issue with the density on that site and, and
particularly the impact on the isolated property at the rear. We all knew
that. Maybe we were just trying to brief Councillor Hawatt on it. I don't
know what Councillor Hawatt was - - -

Well, why did Councillor Hawatt need to be briefed, if you didn't think that
he was going to be instrumental in any decision to be made and might have
to liaise with the proponent about the decision that would be made?---I don't
know. I don't know why he would have been talking to the proponent about
it.

30 You're not attempting to give frank evidence to the Commission, are you?
---Of course, of course I am.

Excuse me a moment. Can I take you then to Exhibit 85, please, page 50.
And do you see that that is a calendar entry made by Ms Sutcliffe for a
meeting in a conference room at Council Chambers in relation to 570-580
Canterbury Road, Canterbury, and that the required attendees were yourself,
Stavis and Hawatt?---Yep. There's no doubt about it this time. It's been
identified as the subject, which the other things didn't.

40 So you accept that the previous conversations were about trying to organise
such a meeting?---I don't know because there was no subject identified and
we were talking about amalgamations at one stage and - - -

You accept now - - -?---Oh, I accept that this particular email relates to 570-
580 Canterbury Road, or this diary entry, yes.

That meeting was scheduled for 4.00pm. Can I take you please to call
charge records, Exhibit 123, and to page 8 and at 5.09pm, I'm looking at

item 356. If you look at 355, you can see there's what is probably an attempted call to Mr Demian by you at 5.09, and then item 356 is a successful call by you to Mr Demian at 5.09. This is the same day as the meeting that was scheduled to occur with Hawatt and Stavis. Why were you ringing Mr Demian so shortly after that meeting had taken place?---I've got no idea. It may have been, I don't know whether there was some communication with Michael. The ultimate, the upshot was, of course, though, that he wasn't at the meeting, he wasn't invited.

10 Yes, but it looks a bit, doesn't it, as if a meeting was held to work out what to say to Demian, and agreement was reached at the meeting as to what would be said, and then when the meeting concluded you said it to Demian. ---Well, possibly I told him, yeah, it could have, it's possible, but I don't know what I would have said to him.

You might have explained to him the concerns that Mr Stavis had about the proposed development.---Possibly.

20 Can I take you now to a recording that was made of a telephone call commencing at 10.39am on 8 April, 2016, so we've moved ahead. Previously we were looking at 30 March. Now we're looking at 8 April. ---April.

And, Commissioner, could we play, please, LII 07141, and this is an extract of a recording.

AUDIO RECORDING PLAYED

[12.56pm]

30

MR BUCHANAN: Commissioner, I tender the audio file and transcript of that extract from the recorded telephone conversation, LII 07141, commencing at 10.39am on 8 April, 2016.

THE COMMISSIONER: The audio file and transcript of the extract of the recording LII 07141, recorded at 10.39am on 8 April, 2016, will be Exhibit 243.

40 **#EXH-243 – TRANSCRIPT SESSION 7141**

MR BUCHANAN: Mr Montague, you heard that recording being played. ---Yes.

Did you recognise your voice and Mr Hawatt's voice?---Yes.

Could you have a look, please, towards the bottom of page 1 of the transcript, where you said to Mr Hawatt, "We've gone, we've gone far enough for Charlie, I think, Michael." Do you see that?---Yes.

What did you mean by that?---Well, it's pretty obvious that he wanted more, he wanted extra height. I didn't support that, nor did Spiro.

10 The ordinary implication, I suggest, that anyone would draw from that, inference that they'd draw from that is that you and Mr Hawatt thought that you had done a lot for Charlie, that you had made exemptions for him, you had provided him with beneficial treatment for his DAs, but that there was a limit to the beneficial treatment that he could be provided.---No, nonsense.

Why is that a nonsense?---Look, we're talking about the carpet place, right? I told you already that I knew there was issues with the property at the rear, and Charlie, like most property developers do, always want more. You couldn't get any more on that site, and I'm talking specifically in relation to 570.

20 What I want you to focus on if you wouldn't mind, though, is the implication in what you said there that previous to this you had provided beneficial treatment to Mr Demian.---No, I reject that.

That's the plain inference from saying we've gone far enough for Charlie, isn't it?---In relation to 570.

Well, you don't confine it to 570, do you?---Oh, come on. That's what it meant. That's what the conversation was about.

30 How do you know?---Well, it's obvious.

Yes, certainly it's about the additional two storeys for 570 but that wasn't the beginning of your dealings, of council's dealings on behalf, in relation to Mr Demian's applications, was it?---No, but you have to take each application on its own and analyse it.

There had been a history of dealing with Mr Demian's applications up to that point.---Well, no, there was only two properties, the Harrison's site and the one on the western side of it.

40 And the Harrison's site had involved separate applications for the first six storeys and then a seventh and eighth storey.---Yeah. Well, you say so and
- - -

And then there was the approved, the DA for the first six storeys on 570 and we've seen already the lengths to which you were prepared to go to ensure that Mr Demian's applications were put before council in circumstances

where they shouldn't have been.---That's your opinion. I've explained why I did that way back and I can't see the point in going over it again.

But you've used language which suggests you've gone out of your way.
---No, no.

10 And when you say we, that you and Mr Hawatt had gone out of your way to provide him with beneficial treatment.---I reject the term beneficial treatment. As I've said repeatedly, I was there to try and assist applicants regardless of who they might be to get their applications considered in a timely manner given the council's poor record in terms of our turnaround times.

Can I take you to the next page, please.---This is a joke, honestly.

THE COMMISSIONER: Mr Montague, just listen to the questions and answer them, please.

20 MR BUCHANAN: On the next page there's a passage a bit after halfway down the page where Mr Hawatt said, "We got to, we got to show we can't push Spiro too much, you know." Do you see that?---Yes.

What did you understand Mr Hawatt to mean by that?---I don't know. They're his words not mine.

What do you now believe - - -?---I think - - -

30 - - - in all the circumstances Mr Hawatt meant by saying "we can't push Spiro too much"?---Well, I don't know but obviously he, he was, and again I think it's in relation specifically to 570, I think it, it demonstrates or corroborates that we had, that Charlie had got all he was going to get site. No, I think it's a good thing.

What Mr Hawatt was saying, wasn't he, was that we have pushed Spiro in the past but there's got to be a limit to the extent to which we do?---Well, you could interpret it that way and I - - -

You agreed with what Mr Hawatt said, didn't you?---No, not necessarily.

40 Yes, you did. You said, "I agree, I agree, I agree."---Yeah, in relation to 570.

That you couldn't push Spiro too much.---I agree with that too.

Indicating that he had been pushed up to that point?---Oh, look, I don't know that you can draw that conclusion.

Commissioner, would this be an appropriate time?

THE COMMISSIONER: I thought we were going on a wee bit longer.

MR BUCHANAN: Oh, I'm sorry. Thank you. Thank you for reminding me.

MR ANDRONOS: Can we vote on it, Commissioner?

MR BUCHANAN: No, no. Thank you.

10

MR ANDRONOS: All those in favour?

MR BUCHANAN: Now, at the end of that conversation you said, "I think Charlie's coming in later today so we're going to just explain all that to him. We'll sort it out today."---Wasn't that the previous, the meeting we agreed took place?

No, the meeting we agreed took place was between you and Stavis and Hawatt - - -?---I can't offer any - - -

20

- - - in order to work out how to handle Demian given that he was going to be given bad news.---That's, that's your interpretation.

Well, what other interpretation could you sensibly put on all of this material?---I wouldn't care to try.

THE COMMISSIONER: But, Mr Montague, I've got to say to you, what Mr Buchanan is doing is allowing you in the face of all this evidence to put an explanation and at the moment you're not assisting.---Well, I'm sorry. I'm trying to assist as fully as I can but I cannot offer an explanation.

30

MR BUCHANAN: And that part of the transcript reads as if you were saying, "Okay, we've worked out an agreed position," I emphasise the word agreed, "as between you and me, Michael Hawatt. We've worked out an agreed position on the position we're going to take in relation to Stavis's concerns about this DA and how we're going to handle Demian."---Again, your interpretation. I can't agree with that.

Can you provide any other - - -?---No.

40

Now, can I take you back to something that I asked you about a while ago, and that is encounters, meetings that took place at Mr Azzi's house or social occasions that occurred there. You saw Mr Demian there from time to time?---Yeah, occasionally.

And when you saw Mr Demian at Mr Azzi's house, you would have discussed with him projects of Mr Demian's?---No, I don't believe we did. It was much more a social interaction.

Because you were a friend of his?---Because Mr Azzi invited me.

Yes. So what would you have had to talk about with Mr Demian if it wasn't his projects and how they were being progressed at council?---He, he mightn't have opened his mouth. We just sat there and talked about a lot of rubbish, really, most of the time.

10 Mr Demian's told us that the only things he talked about at Mr Azzi's house were of a business nature.---Well, I don't know what he means by business nature.

Is it possible that you discussed 548 Canterbury Road DAs with Mr Demian at Mr Azzi's house?---I don't recall that and I don't think it, it would have happened.

20 Is it possible that you discussed 998 Punchbowl road with Mr Demian at Mr Azzi's house?---No, because I made my position, my involvement in 998 very clear. I had really very little understanding of the nature of that proposal except for the setbacks, and that's what I said early in the piece.

998 Punchbowl Road was not 212.---No. I know, I know. The service station site.

30 Yes. Thank you. Now, thinking of occasions – I withdraw that. It would have been understandable if Mr Demian had been under the impression that you understood more about these projects of his and how they were being progressed through council than you're telling us.---I think he was mistaken. I said before, I had very limited control over what happened once applications were lodged. No, none at all actually.

And on that basis, that he did approach you at these meetings or that you and he had conversations at these meetings at Pierre Azzi's house, and that he broached the subject of these applications with you.---I'm saying he didn't necessarily.

And you not understanding fully about them, you might have rung Spiro Stavis to get a briefing.

40 I rang Spiro once. We've been over that as well. I told you that the other day. I remember that. I rang Spiro because I thought now is the time to clear it up.

Did Mr Azzi ever ask you whether his relationship with Demian was a conflict of interest for him as a councillor?---No, no.

Did you ever tell him that his relationship with Demian was not a conflict of interest for Mr Azzi as a councillor?---No.

THE COMMISSIONER: If you perceived a conflict of interest by a councillor, did you see it as part of your role to raise it with the councillor?
---Depends on the circumstances. These, these were social gatherings on my time, it was outside of council. If there was conflict of interest in relation to a matter that was before the council, declaring a conflict of interest is a matter for the councillor.

10 I'm not disputing that, but did you see it as part of your role as general manager to raise a possible conflict of interest by a councillor if you perceived that it may exist?---I did once or twice. I, I don't know how well received it was. But as I said, it's very clear that a declaration of a conflict of interest is up to the councillor. They can ask my advice as to what constitutes a conflict of interest, perhaps, but beyond that it's not my responsibility.

MR BUCHANAN: You didn't administer the code of conduct?---No, not - -
-

20 You weren't responsible for the administration of the code of conduct?
---Well, in, in an overall sense, yes.

Why, in that case, wouldn't you be interested in ensuring that the requirements of the code of conduct were complied with - - -?---I never said I wasn't - - -

- - - including by councillors?---I never said I wasn't interested.

30 Well, what did you do to enforce or indeed even check whether councillors were complying with the requirements in relation to potentials for conflict of interest?---I relied on people in the legal team to, to give me advice in that respect. But as I said, and I repeat it, it wasn't my responsibility. That's the responsibility of the individual councillor.

And so if you saw a plain conflict of interest in front of your face, you would just walk away from it?---Not necessarily. It depends on the circumstances.

40 What would the circumstances have to be before you'd do anything about it?---I, I can't answer that. That's just sheer speculation.

You're not able to say that in the circumstances you would have done something about it? You would have raised it with the councillor, if it be a councillor, concerned?---Possibly. But as I said, it's their responsibility to, to declare a conflict of interest, whether it be a financial one or otherwise.

You didn't find that councillors from time to time appeared to not understand their obligations in that regard?---Well, the councillors should understand their obligations.

No, no. You didn't ever find that it appeared that councillors from time to time didn't fully understand their obligations in that regard?---Yes, I, I, I, I sensed that some of them didn't, but that's why exactly we had an induction process after the election, to, to advise them on all of these issues that come as part and parcel of their role.

10

And so do you say that after the election, after the induction process after the election, you paid no attention thereafter to a question of whether councillors were aware of their obligations to declare a conflict of interest? ---No, I'm not saying that at all, but I repeat it's their responsibility and that's what we would have briefed them on at the induction process and given them additional backup material, supplied by the Office of Local Government, so they knew exactly what their responsibilities were.

20

Weren't business papers that were sent to councillors for meetings at which they were to attend, CDC meetings or council meetings, endorsed with a warning that if a councillor had a pecuniary interest, they should declare it? ---Yes.

And that was done for every single meeting, wasn't it?---Yes.

Why was that done?---Just to remind them.

30

So it wasn't just a matter of it being their responsibility. It was something that you thought it was necessary to do something to ensure that they were reminded of their responsibilities?---I didn't incorporate that. I didn't put that on the, on the, on the cover sheet.

It shouldn't have been there?---No, not at all. I think it was a good idea.

Why do you think it was a good idea?---Well, it came from the legal people and I thought, why not? Why not remind them?

40

But it's not a matter of why not. Why do you think it was a good idea? ---Because it kept it front of mind.

So you thought you had a role to play in ensuring that conflicts of interest, so far as was possible on the part of councillors, were reduced to a minimum? Is that fair to say?---My - - -

MR ANDRONOS: Commissioner, I thought the witness's evidence was that he didn't put it on the papers, that somebody else had put it on the papers.

THE COMMISSIONER: He thought it was a good idea.

MR ANDRONOS: He thought it was a good idea. Well, that's different to it being his job to do it, and I think it's a good idea we break it - - -

THE COMMISSIONER: I didn't think Mr Buchanan's question incorporated that. But, Mr Buchanan, can - - -

10 MR BUCHANAN: Yes, the question is why did the witness think it was a good idea?---Because I did. It wouldn't have hurt.

Yes, but people usually think something's a good idea for a reason, Mr Montague. Why did you think it was a good idea? What was the reason why you thought it was a good idea - - -?---I've just told you.

- - - to have that reminder given to councillors - - -?---I've just told you.

- - - before every meeting?---I've just told you.

20 Tell me again, please.---Well, to remind them of their responsibilities. It's as simple as that. It's just to, to flag - - -

But why do you think they needed to be reminded?---Because they, they, between meetings, time goes by, they become a bit hazy. We used to have follow-up induction sessions with them. We briefed them on different things as law and, and practice changed. That would be normal procedure to keep the councillors in the loop. That's, that's all I was trying to achieve. I didn't put it on there but I endorsed it being put on there.

30 And you did nothing yourself to check up to make sure councillors understood they should avoid potentials for conflict of interest?---No. What, what, what more, what, what more could I do? I'm not, I can't spoon-feed them to that extent.

Well, if you saw one in front of your face, as I asked you earlier, you could take it up with them.---Yes, and I probably have in the past. I can't remember exact examples.

40 Can I ask you about this – on the evidence that's before the Commission, you took part in a number of meetings with Mr Demian, in one instance with Matt Daniel in the absence of Mr Demian, but we know that Matt Daniel was acting for Mr Demian. I'm just going to give you the dates on which these meetings appear. This is Exhibit 85. 15 May, 2013, you, Demian, Occhiuzzi, in relation to 548 Canterbury Road. 12 August, 2014, you, Demian, Occhiuzzi, in relation to 548 Canterbury Road. 25 November, 2014, you Demian and Gouvatsos in relation to 570 Canterbury Road. 26/2/15, calendar entry for meeting, you, Daniel, not Demian, Dawson, Gouvatsos and Robson in relation to Harrison's Timber site and another

site. 11 March, 2015, you, Demian and Stavis in relation to 548 Canterbury Road. 12 August, '15, you, Demian and Stavis in relation to 548 Canterbury Road. 29 October, 2015, you, Demian and Stavis in relation to 998 Punchbowl Road. 9 November, 2015, you, Demian and Stavis in relation to 998 Punchbowl Road. 2 March, 2016, you, Demian and Stavis and two assessment and planning staff, the calendar entry doesn't make clear what the identity was of the project concerned. 29 March, '16, as we've seen, you had a conversation with Mr Hawatt in which you confirmed a meeting at 4.00pm on 30 March, 2016, and then there's an entry for that meeting, you, Stavis and Hawatt in relation to 570 Canterbury Road. 11 April, 2016, you, Demian and Stavis in relation to 570 Canterbury Road. 27 April, '16, you, Demian and Stavis and Hawatt and Azzi, the identity of the project is not identified. And then 13 May, 2016, you Demian and Stavis in relation to Canterbury Road, but in that case it must have been 570 because the only live DA was the one to add two storeys to 570 Canterbury Road. Now, of course that latter meeting didn't take place.---No, because the amalgamation occurred on the 12th.

Correct but it had been scheduled.---Yeah.

The evidence before the Commission would suggest that you had numerous meetings with and about Mr Demian's projects. Why did you involve yourself to that degree in Mr Demian's projects?---That's not, oh, look, that's not - - -

Or allow yourself to be involved.---That's not inconsistent with what I said at the very beginning - - -

I'm not asking you whether it's inconsistent or consistent. I'm asking, why did you involve yourself or allow yourself to be involved to that extent in Mr Demian's projects?---I got myself, I got myself involved in any major proposals that came along where I was requested to offer some sort of assistance in my role as GM, and I always incorporated or included planning staff in those meetings.

You would have taken part in those meetings because when Mr Demian requested them, I'm sorry, when Mr Demian attended them he would have requested them, isn't that correct?---In some cases, possibly. It may have been that Mr Stavis requested a meeting. I don't know.

You were providing Mr Demian with a service that, I want to suggest to you, you were not providing to the mums and dads of Canterbury.---Well, that's just not true because I know differently.

Who else did you have meetings with about their projects to that degree in the period 2014 to 2016, 2013 to 2016?---I can't, I remember, I can't recall now but I remember one on Canterbury Road. I can't - - -

Meetings to that extent?---Yes. Not uncommon. Not unusual.

Which one was that?---There was one on Canterbury Road where there was an old property that was heritage listed. The family, I can't think of their name for the life of me now, and they actually, there was an accident down there so part of the building collapsed. We had meeting after meeting after meeting to try and resolve it.

10 That sounds like a real problem.---It was for the people involved in the collapse.

But here it was simply advancing, progressing Mr Demian's DAs, wasn't it?---No, it wasn't. No, it wasn't.

It was meetings which did in fact progress his DAs or deal with potential issues. Is that right?---I don't see any harm in that. I don't know that it was but I don't see any harm in it, to try and get the best possible outcome.

20 It's corroborative of a conclusion that you were preferring the interest of Mr Demian where you were involved to the public interest.---No, absolutely not. I deny that. That's not right.

Commissioner, I note the time.

THE COMMISSIONER: Can I just ask you a question completely out of left field. Within the council premises the mayor had his own office?---Yes.

30 Did the other councillors have individual offices?---No. They had what we called a councillors' room.

Which I think was referred to in one of those - - -?---Yeah. It was at the other end of the building.

And did they all, they all had access to it?---Yes.

And they could all be in there at the same time?---Yes, and they often were. They, they all had a key so they could in, let themselves in and use the equipment that was provided to do their work, yes.

40 And if a councillor wanted a meeting say with a constituent, they could avail themselves of conference rooms or other rooms within the - - -?---Yes.

Right. We'll adjourn until 2.35.

LUNCHEON ADJOURNMENT

[1.22pm]