

DASHAPUB06766
17/04/2019

DASHA
pp 06766-06822

PUBLIC
HEARING

COPYRIGHT

INDEPENDENT COMMISSION AGAINST CORRUPTION

PATRICIA McDONALD SC
COMMISSIONER

PUBLIC HEARING

OPERATION DASHA

Reference: Operation E15/0078

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY 17 APRIL, 2019

AT 9.30AM

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

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

THE COMMISSIONER: Mr Drewett.

MR DREWETT: Commissioner, good morning. I need to alert the Commission to an issue that's very much on my mind and my instructing solicitor's mind and indeed my client's mind and that is that he has not been getting good sleep over the last four days. He told me this morning that last night he would have been lucky to have gotten one hour's sleep. He says to me by way of instructions that he hasn't slept properly in the last four days since the operation, and of course the court would be very minded that he had heart surgery not that long ago. Factoring that in with the fact that my client is, if I could put it in a polite way as one can, perhaps in his senior years, he is not a youthful man. He certainly is here today to give evidence and keen to give evidence and no doubt will commence his evidence very, very soon, but I wondered if you would consider inviting, as I have made the suggestion to my client, but if you would also consider inviting my client that if at any stage during the course of his evidence, notwithstanding the sitting hours that we have, that he feels that he just needs a break just to go and get some fresh air outside or something of that nature, then he should feel free to do that and to advise you, Commissioner, that he just needs a break.

THE COMMISSIONER: Mr Hawatt, I've had a couple of witnesses who have had bad backs or been unwell, and what they've done is if they need a break they just say something to me and we take five minutes. If you want to pop downstairs and get some fresh air, that's fine, but I am dependent on you speaking up.

MR HAWATT: Thank you, Commissioner,

MR DREWETT: Thank you.

THE COMMISSIONER: Sarah.

THE COMMISSIONER: Mr Buchanan.

MR BUCHANAN: Thank you, Commissioner. Excuse me a moment a moment, please. Could the witness please be shown Exhibit 105. I'm sorry, could I ask for the hard copy to be provided to Mr Hawatt as well. It's a bit of a long document. Mr Hawatt, the Commission has this unexecuted option agreement. It's undated but you can see that whoever drafted it thought that it would be executed in 2016. So you see that?---I can see that, yeah.

And you can see the parties identified are yourself and Alae Osman. Going to page 3, the property concerned is 31 Santley Crescent, Kingswood, recital A, and recital B. "The vendor has agreed to grant the purchaser an option to purchase the property." Turning to page 4, clause 2(A) under the heading Call Option, it reads, "In consideration of a sum of \$300,000 paid by the purchaser to the vendor, the vendor grants to the purchaser as nominee, an option to purchase the property," et cetera, "at the price and on the terms therein contained." That is to say in the contract referred to. Do you see that?---Yep.

And if I could take you, please, to about a third of the way through the hard copy that you've got there, page 9 of the exhibit.---Yep.

Here is, in the copy that the Commission has, attached to it, a copy of a contract for sale of land. The land is identified as 31 Santley Crescent, Kingswood. The vendor is identified as you. There is a signature two-thirds of the way down, three-quarters of the way down on the left-hand side, that we've been told is that of Alae Osman. Can you see that it's not witnessed?---Yep.

There's no signature of the vendor. There is no price stipulated for the sale. Can you see that?---Yep.

I don't know that there are any other particular provisions in the contract to which I need to take you. I'll make sure I haven't missed anything out. On the first page, bearing in mind this is a photocopy, about a third of the way down, a quarter of the way down, against the words Completion Date, someone has written "12/2/16" and after that appears the printed words, "42nd day after the date of this contract." Do you see that?---Yep.

Can I ask you first of all about this contract document? Do you know anything about it?---I don't recall seeing it.

Do you know anything about it?---Well, the, presumably the, my lawyer would have drawn it up for, for the purchasers, which was my son-in-law and his partners.

Do you know why it wouldn't have a price stipulated in it?---Well, I don't know, he, probably because he doesn't seem to know what price it is. He doesn't seem to understand what the, the figures that I spoke to you yesterday about. There definitely is not 500,000 here. And there's no, there's no way in the world I would sign if it was \$500,000 here.

10

Alternatively, of course, it was signed by Alae Osman when the solicitor didn't know what the price was.---Well, it's unusual for him to sign that without a price, I wouldn't sign it if I was him.

You know Alae Osman, do you?---No, I don't know him.

Now, I wanted to ask you about the option agreement. You can see that the fee, on page 4, as I've taken you to, is for \$300,000. You would accept, wouldn't you, that you had a conversation with Tom Zreika, in which you
20 instructed him to prepare an option agreement in respect of a sale of 31 Santley Crescent by you to Alae Osman.---I mean, there, there, there – for him to draw that up, I would probably, he probably would have, he's, as my lawyer at the time, said, "Look, it's an idea to, to draw something up like this corporate option in order to, to move, move on with the sale." Like, that's something could be, could have been his advice on that. I mean, I don't recall seeing that. But we must have spoke about it somewhere along the line.

30

I'm not suggesting you'd seen it before.---Yeah.

Until these proceedings, that is.---Yeah.

Until this enquiry. But I just want to focus on why it was created, and I appreciate you didn't create it. But the evidence that the Commission has is that on Monday, 21 December, 2015, Tom Zreika had a telephone conversation with you.---Mmm.

40

Mr Zreika says that in that conversation, you told him that the purchaser didn't want to proceed by way of a standard contract for sale, but instead wanted it done by option, by option agreement.---Could have been, I just don't recall that. I don't recall my discussions with him in that regard.

And that you told him that the option fee would be, or was to be, \$300,000. ---I don't think he, I think he misunderstood, because it wasn't, it was a condition that if they wanted to, to buy the property at the discounted price – this is my discussion with the, the purchasers – that I needed \$300,000 up-front in order for them to get the discounted price that I believed was 1.3. And how he interpreted it, or misunderstood it, it's, it's not in, in, in my

control. And that's, that's the basis of my discussion with him or anyone else in regards to the sale of my property.

You do understand that there is no evidence to support your claim that the \$300,000 was being paid to you in exchange for a discount on the purchase price of 31 Santley Crescent.---Oh. That is the basis of the whole sale.

10 And that's despite the fact that the Commission has numerous telephone conversations between you and Mr El Badar with whom you were organising this transaction? No indication that the transaction was of that nature at all?---That is, that is the basis of the sale.

The, you agreed with us yesterday that the \$300,000 was properly characterised as a loan?---It became a loan.

THE COMMISSIONER: You said it became – your evidence was it became a loan, I think, from the - - -?---After the - - -

20 Sorry, from 14 December.---Yeah, the date that they changed their mind. Because I, I, because I purchased the unit, and I committed myself to the apartment, to the unit, and there's a contract for, for the sale, and they had to, they have to at least fulfil that obligation (not transcribable) otherwise I'd have been in big trouble.

30 MR BUCHANAN: So I just need to point out to you, if you say that the \$300,000 which had arranged to be paid as a discount – I'm sorry, had been arranged to be paid in exchange for a discount on the purchase price, became a loan around 14 December, 2015. The evidence before the Commission is that this option agreement was brought into existence, or at least its physical creation commenced on 22 December, 2015, consistent with Mr Zreika's evidence that he got instructions from you to change it from a straight sale to an option agreement on Monday 21 December, 2015. You understand that that is inconsistent with the account that you've given, that the transaction became, so far as the \$300,000 was concerned, a loan on 14 December?---What I'm saying is it's correct but I will repeat what I'm saying, the basis of this whole sale was based on getting the discount for the \$300,000.

40 But at what stage?---I don't recall, but the basis, whether it's before or after, but the whole basis of the deal, the transaction, is for this payment to be made in order to get a discount.

But as you have I think conceded, there was no transaction, there was no sale by 21 December, 2015. Instead it was a sale to Marwan Chanine and El Badar had agreed with that.---Correct and he changed, but he changed his mind.

And so there was no need for a price to be paid in exchange for a discount on a sale to El Badar and his colleagues.---There was a change of mind. They didn't want to pursue it, they didn't want to go ahead with it and I said, look, that's fine, but I still needed the \$300,000 that was promised because I already exchanged contract. They said no problems and it became a loan. I said I will pay it back as soon as I got a sale for the place from, from Mr Chanine, Mr Chanine and I got a, when I settle, you'll get your \$300,000. That's, that's the basis of the whole thing. So you can manipulate it as much as you like, the truth is, that's the basis of it and I will
10 continue and I will stick to this until the day I die. That's exactly the basis of it.

Do you accept that this option agreement was prepared because you instructed that it be prepared?---There was a lot of discussions in regard to how we're going to make the, the, the sale. It was with either Mr Chanine, who was the original person who was interested in it and then have it come through.

But if you can answer my question. I'm asking you about Exhibit 105.
20 ---But I've never seen this.

THE COMMISSIONER: Mr Hawatt - - -

MR BUCHANAN: You've got it in front of you. It's not between you and Chanine, it's between you and Alae Osman.---That's right, yes.

And I told you that the evidence before the Commission is that the instructions for creation were received on Monday, 21 December, and that the drafting of it commenced on Tuesday, 22 December, 2015. Now, do
30 you accept that this was brought into existence because you asked for it to be created?---This, the original sale, I'm going to repeat what I'm saying - -
-

THE COMMISSIONER: No. Mr Hawatt, you will answer - - -?---I'm answering.

No. Mr Hawatt, you will answer Mr Buchanan's question, please. Mr Buchanan is focussing on this document. He has reported to you or repeated the evidence before the Commission that instructions were
40 received on 21 December, drafting commenced on 22 December. It's a very simple question. Do you accept that you told or provided instructions for this to be drafted?---For the, for the sale of the, of the property, the original time I spoken to Mr Zreika, was in regards to the first opportunity to sell it to Mr Chanine.

So your answer to this is, no, I didn't give these instructions?---Not the original. The first time, it would have been to Chanine, could have been

that, so could have put, and Mr Zreika could have put in the information later for the second sale.

I'm not interested in could have. What I'm asking - - -?---I, I don't recall this. Sorry, Commissioner. I don't recall this.

So you can't answer yes or no?---Yes, correct. I don't recall seeing this document. That's - - -

10 MR BUCHANAN: No. I'm not suggesting you could have seen it, you understand? I am drawing your attention to the fact that a draft for a legal document was prepared with you as a party. It was prepared by the staff of your solicitor. There is evidence of communication between you and your solicitor on 21 December. There is evidence that this started to be drafted on 22 December, and the evidence from your solicitor is that you instructed him to prepare it in the conversation you had with him on the telephone on Monday, 21 December. That's what I'm asking you to respond to.---I would have instructed him, if there was a sale, to prepare a contract, in that regard, I would have gave him a briefing of what I was doing, as I, I
20 suggested, and he would have came up with this document, but I've never seen it. I've never queried it. I've never looked at it. I've never discussed it with him. I gave him my briefing, my briefing, a verbal briefing in regards to what I wanted, and, and he came up with this. I never seen it.

Did you give your solicitor any instructions as to what to do after the transaction in respect of 31 Santley Crescent became no longer a sale to Alae Osman or the colleagues of your son-in-law, but instead a deal with Marwan Chanine?---When I found out there was, they changed their mind, then the, the, the transaction became with, directly with my son-in-law, in
30 regards to the, the loan became a loan, as I said. And, and, and we never continued with the sale, because he, they changed their mind. So presumably that document may, may, might have been used for the continuation with the, the, the purchase of Marwan Chanine and, and whatever, his friends or whatever he, he introduced.

But you can see that it didn't.---Yeah, but I don't see, haven't seen this document. I don't know why he produced it, because it never, it never, it's, it, it never went through with it. I don't, I've never seen it.

40 Did you tell Mr Zreika that there wasn't going to be a straight contract of sale with Alae Osman or the purchaser found by your son-in-law, but instead it would be an option agreement with that person?---Oh, I, I don't recall the discussion. As I said, I gave him a brief of what I, what my intent was and then he just went on and did, did his own thing from my, the briefing I gave him.

And the intent was to account for the change in identity of the purchaser from the purchaser found for you by your son-in-law to Marwan Chanine, is

that right?---Well, during the period when I was talking to my son-in-law, Marwan came back and he said he's, he's got a party that may be interested in it, for, for 1.5, and I told my son-in-law, and he said, "That's, that's good," because they were in the process of changing their mind.

But that didn't happen until later.---Yeah, that was, it's an overlapping discussions. There was, there's a lot of overlapping discussions. There was discussions.

- 10 Did you tell Mr Zreika that there wasn't to be a standard contract for sale for the sale to the purchaser found for you by your son-in-law, but instead it was to be an option agreement with the fee being \$300,000 in order to provide cover for the transaction between you and your son-in-law whereby he arranged for you to receive \$300,000?---Oh, that's, that's rubbish. Rubbish. "Cover," that's rubbish. I, I take that as an insult.

You needed to have cover for it, didn't you, because - - -?---Oh, that's rubbish, there's no cover.

- 20 THE COMMISSIONER: Let, Mr Buchanan – oh, sorry. Mr Hawatt - - -? ---This is insulting me, Commissioner.

Mr Hawatt, quiet, please. Let Mr Buchanan ask his question, and then answer it. Mr Buchanan.

MR BUCHANAN: You see, this \$300,000 payment that had been arranged for you by your son-in-law was, lawyers might call it "anomalous." That is to say, very unusual, and needed to be accounted for, didn't it?---That's rubbish.

- 30 And the fact that this option agreement was prepared in the circumstances that the Commission understand it was prepared, around the 21st/22nd of December, 2015, and the fact that that is so close to the time of you receiving the total of \$300,000 – the extra 250,000 on top of the 50,000 you'd already received in November – and that that had been something that Talal El Badar had told you he agreed to do, suggests that you thought there was something incriminating about the fact that it was paid to you at all.--- That's all your interpretation. That's incorrect.

- 40 And, of course, what we know is that there is a series of telephone conversations between you and your son-in-law in which you talk about three transactions. One, the approval for the section 96 application in respect of 51 Penshurst Road. Secondly, the approval for the DA for 23 Willeroo Street. And thirdly, the receipt by your solicitor of \$300,000 to be paid to the vendor of the Queensland unit. All three are discussed in a series of conversations between the two of you, aren't they?---Coincidence discussions. Your interpretation is totally wrong and totally incorrect and I disagree with every comment you make.

And you understood, didn't you, that you wouldn't be getting the \$300,000 if it weren't for your son being – I'm sorry, your son-in-law being given the benefit of the outcome of your interventions in his applications before Canterbury Council.---Incorrect.

Excuse me a moment, please. You did tell Tom Zreika that the fee for the option that you were asking to create in respect of the transaction with the purchaser found for you by your son-in-law was to be \$300,000, didn't
10 you?---I gave him my briefing of what was going on and he put it, whatever he came up with, he came up with it.

But you knew what an option agreement was, didn't you?---I gave him my briefing - - -

Please, please, please.---I gave him - - -

Can you answer my question?---Yes.

20 In December 2015, you knew what a contract for sale of land was, didn't you?---Yes, of course.

You knew what an option agreement was for the purchase or sale of land, didn't you?---An option is an option, correct.

Yes. So it would have just been two words that you needed to use, that you understood Tom Zreika would understand for you to say, instead of a contract for sale, it's going to be an option agreement?---I, I, look, from my memory, there was the discussion they were going to do a straight sale.
30 There was no discussions of options, that's why they went to the, to the architect and worked out what they're doing. They were going to do a straight sale and that was the condition I gave them, and what happened after that I wouldn't have a clue. They changed their mind and I had to pay the, pay them the 300,000, which I did over the period of time.

And when you say "they", you mean your son-in-law and his colleagues?
---My son-in-law, well, that's the feedback I got from him, saying he discussed it with them.

40 With his colleagues?---With his colleagues.

Can you give us any explanation as to why Mr Zreika would have caused the sum of \$300,000 to be inserted in the draft option agreement with Alae Osman, other than that you told him that was the option price?---I gave him my briefing. How he put it, it's his way of running his business. I just gave him the briefing what I was doing and he tried to put it together. I don't know how he did it, whether he did it correctly or incorrectly, it's not my

business. I don't run his business. I gave him a briefing of what I was doing.

And did you give them a briefing as to what he was to do?---I just gave him a briefing of what the purchase and what the conditions were. That's it. I don't tell him how to, how, how, how to run his business.

10 But what you gave him a briefing on, we know by 21 December, 2015, could only have been a briefing on a sale to Marwan Chanine, correct?---I gave him a briefing on whatever opportunity of, of purchaser was there and I discussed it with him in regards to, I have this buyer or that buyer or this buyer changed his mind or that buyer didn't change high school mind. I just gave him the briefing of what information I had and he put it together in regards to whatever he thought is the, the legal way to do it. I, I haven't seen some of these documents you're showing me. I just gave him my briefing.

20 So you accept that you gave him a briefing to the effect, at least at one stage, that the sale to your son-in-law's purchaser wasn't going ahead and instead it was to be a sale to Marwan Chanine?---Well, that would have been a briefing, yes.

That increases the likelihood, doesn't it, that if, as Mr Zreika says, you gave him instructions on 21 December to prepare an option agreement between you and Alae Osman with an option fee of \$300,000, that it had nothing to do with, in fact, the sale of 31 Santley Crescent and in fact was cover for something else, some of it.---Oh, that's, that's rubbish. Your interpretation is full of rubbish.

30 Well, can you give any other explanation? Can you assist the Commission, what other explanation can you provide us with, if you accept the evidence that I have told you that there is evidence to show that you spoke to Tom Zreika on Monday 21 December, 2015, there is evidence to show that the option agreement started to be drafted the next day. We can see what the option agreement is about. We can see what the option fee was and yet we know for many days beforehand Osman was out of the picture. He wasn't going to be a purchaser any longer. So the only explanation can be this was cover for something else. The question then being, what else was it a cover for?---My son-in-law and his partners visited Mr Zreika a number of times
40 to discuss this issue with the sale. They visited him, they discussed it with him in regard to the purchase of my property.

How do you know?---I gave him -- because he told me they visited him and, and then saw him and, and my son-in-law told me.

And who told you?---My son-in-law told me they went to his office many times. So what they discussed between each other, it's, I, I don't even know but all I know is I gave him the briefing what's happening. My son-

in-law and his partners, after they came back from the architect, he couldn't achieve what they wanted and they changed their mind and there was, at the same time, an overlap of that opportunity for another purchaser.

But Mr Zreika was your solicitor, wasn't he?---Yeah, but they were using him as well at that time.

10 But in terms of his predominant duty, it was to you, wasn't it?---He was representing, they didn't have a lawyer, from my understanding. They were trying to use him at the same time but that was their point of view or what, their, their, that's what they wanted, they didn't want to use a lawyer, that's up to them.

Can you assist us as to why Mr Zreika would accept instructions from an agent for the purchaser or from the purchaser in this transaction which would be inconsistent with what he understands to be your instructions, the vendor's instructions?---Well, you ask him. He, he met them. You ask, you ask my son-in-law.

20 You can't give us any explanation?---They discussed it. I wasn't there at the meeting where they discussed it with each other. I wasn't there. They discussed it with him and he told me they, they, they met him, had everything signed and, and my son-in-law told me. So from my understanding, everything was going normal until they changed their mind.

You've been reading, haven't you, the transcript of the evidence given to the Commission by Tom Zreika?---I, I don't recall, I read, read some of it but I don't recall it fully.

30 Excuse me a moment. And I just want to point out to you, if I can just show it to you again, the trust account statement in Exhibit 52, volume 8, page 204, records the receipt of the \$250,000 on 21 December, 2015, the same day as your conversation with him in which he says he gave you instructions, as being, "Reason: funds required on purchase of Queensland asset."---Yep.

Nothing to do with deposit.---It's a deposit from my, my son-in-law and his, his partners.

40 Excuse me a moment, please. What I want to suggest is that that entry reflects exactly what the person who made it, Mr Zreika, understood, that they were being paid because they were required for the Queensland unit purchase that you were making.---It's, they changed their mind. They put me in the, in the, in a spot after – when they, when they agreed to the condition, I went and bought a unit. I signed a contract. They put me in this spot and they changed their mind. And I said, "If you want to change your mind, well, you'll have to fulfil this agreement, because I can't go ahead and settle on a, on a unit without having the funds." So they, it became a

loan, and the condition I have to pay them back. I mean, they have honour, these people, they don't sort of pull out halfway when somebody, they leave them hanging in the noose financially. So I don't know what you're talking about.

Could we play, please, the recording of the telephone conversation which is Exhibit 99? This is a telephone conversation recorded on 23 December, 2015.

10

AUDIO RECORDING PLAYED

[10.13am]

MR BUCHANAN: Commissioner and Mr Hawatt if you could listen to this, on page 2 if I could just remind the Commission a section 112 order was made in respect of the name.

THE COMMISSIONER: Down the bottom after "Drop your bag, he woke her up."

20

MR BUCHANAN: Yes.

THE COMMISSIONER: And then a particular name.

MR BUCHANAN: So there can be no publication of the name of that person, you understand? Mr Hawatt, you recognise the voices of yourself and your daughter?---Correct.

30

On the first page of the transcript, if I could take you to the material in the second half of the page, you were thanking Talal, you were conveying to Talal via your daughter, "Thanks for the \$300,000," and saying, "Without him we couldn't have done it"?---Correct, it would have been - - -

40

Would it be fair to say that what that indicates is that if there wasn't, there was no obligation, as far as you understood it, on Talal to do it. He was doing something which was up to him to decide whether or not to do and he had done it and you were grateful for it.---No, that's your incorrect interpretation. It was based on him, I made a commitment, I made an agreement and they fulfilled, they honoured, they honoured the commitment that we've discussed and they got me out of the mess based on the contract that I signed. Yes, of course I'm going to thank him for that.

Your daughter said, "It doesn't matter, that's good, it's good to know people and to help each other." And you said, going over to page 2 of the transcript, "Yeah, I know." You immediately went into talking about the notice or the letter from council about approval for the section 96 application for the Peshurst Road pump-out.---It's with my daughter, it's a general discussions. My daughter had, she's packed up her clothes and her

gear, she after the council approved it and there were delays and she was concerned, I'm just relaying general discussion on this basis. I don't know what the interpretation, I'm just listening to this. I don't know how you're interpreting even a normal general discussion we've had.

Well, it's simply that your daughter put a proposition to you and you agreed with that proposition. The proposition was, "It's good to know people and to help each other."---We all - - -

10 That's that proposition you agreed with.---No, no, no, we're family, we help each other as a family. This is normal for us to, to help each other, back each other, back each other, but to take money from each other, for the sake of someone helping each other, take money. This is not heard of for me to help - - -

Well - - -?---No, no, this is the way our culture is. Do you think I would take one cent from my daughter or son-in-law? My culture would not allow, I'll be a laughing stock in my family to do this.

20 Well, you didn't take \$300,000 from you son-in-law, you took it from your son-in-law and his co-investors, the other members of the consortium.---I would never embarrass myself to my son-in-law or my daughter or anyone. I would never take one cent from anyone - - -

But you did.---You can interpret it the way you like.

But you did.---I did not, that's your own interpretation and you have no proof whatsoever because you are wrong.

30 THE COMMISSIONER: Mr Hawatt.

THE WITNESS: This is disgusting Commissioner - - -

THE COMMISSIONER: Mr Hawatt.

THE WITNESS: He's accusing me of wrong things - - -

THE COMMISSIONER: Mr Hawatt, would you calm down, please.

40 THE WITNESS: This is ridiculous, Commissioner - - -

THE COMMISSIONER: Mr Hawatt - - -

THE WITNESS: - - - his accusations, wrong accusations.

THE COMMISSIONER: Mr Hawatt, calm down, don't get so emotional and hysterical, calm down, deep breath - - -

THE WITNESS: This is ridiculous.

THE COMMISSIONER: - - - and do not raise your voice at Counsel Assisting or any other counsel in this room.

THE WITNESS: Sorry, Commissioner, I apologise.

THE COMMISSIONER: Thank you. Just calm down. Do you want a glass of water?

10

THE WITNESS: Yes, I think I would.

MR DREWETT: I wonder if it might be time for a few minutes - - -

THE WITNESS: This is ridiculous.

MR DREWETT: - - - the Commission will allow us to have a quick chat to my client in those few minutes to see if we can just - - -

20

THE COMMISSIONER: Mr Drewett, as you know, with other witnesses their counsel haven't been speaking to the witness, but I would be grateful if we take a five-minute break and if you could have a word with Mr Hawatt. As you know, it doesn't assist matters, it doesn't assist my impression of Mr Hawatt as a witness and I'm also concerned with him getting very upset about things but propositions have to be put to him to allow him to disagree or put an explanation but I would be grateful if would have a - - -

MR DREWETT: I'll explain that to him, Commissioner, thank you, thank you.

30

THE COMMISSIONER: - - - brief word with him and we'll adjourn for five minutes.

SHORT ADJOURNMENT

[10.20am]

MR DREWETT: Commissioner, thank you for those few minutes. I can confirm I have taken the opportunity to talk to my client about trying to curb some of his emotions when he's giving evidence. I would just reiterate, though, for the record, the issues that I drew your attention to this morning, and that is that Mr Hawatt has barely slept these last four days, for reasons that can't be identified as being what's happening here, but may also have some issues in relation to the operation that he's recently had, and I would just remind the Commission that he believes he's had less than one hour's sleep last night, and hasn't slept properly since Saturday.

40

THE COMMISSIONER: All right. Thanks, Mr Drewett.

MR DREWETT: Thank you.

THE COMMISSIONER: Mr Buchanan.

MR BUCHANAN: Thank you. If we could take the witness, please, to volume 8, page 202. I just want to show you a couple of text messages, Mr Hawatt. Number 15 on page 202 is a text message from you to Mr Chanine on 28 December, 2015. “Hi Marwan, when are we going to finalise Kingswood? Have you spoken with Khal re Godfrey?” Do you see that?
10 ---Yep.

And “Khal” is a reference to Khal Asfour?---Yeah, could be, yeah, must be (not transcribable)

Well, one of the properties that Godfrey Vella had an interest in was in Bankstown, you told us.---Yes.

And Khal Asfour was mayor of Bankstown Council.---Correct.
20

Number 16 is a response on 30 January, 2016, from Marwan Chanine. “Hi mate, sorry about the mix-up. I can meet after 6.30. If you want, we can meet 6.30 and tell Godfrey to come at 6.45 so we can discuss Kingswood.” You see that?---Ah hmm.

So you had a meeting with Mr Chanine at around this time about, amongst other things, 31 Santley Crescent, Kingswood?---Yep.

With a view to him purchasing it from you?---Yep.
30

Do you remember that particular meeting?---Oh, look, I remember meeting him, but I, I, I couldn't, I mean, I do remember meeting him, but not specifically what we discussed. But looking at this message, I, it, it seems like that's the points we discussed. I don't recall it, exactly what we discussed.

But you were having discussions with - - -?---Yes, yes, from - - -

- - - with Marwan Chanine to sort out whether he was still interested in - - -?
40 ---Correct.

- - - purchasing 31 Santley Crescent and if so, how it was to be done.---Yes.

If I can show you a document, please.---Thanks.

It's very short. It is a copy of an email from Marwan Chanine to you on Tuesday, 16 February, 2016. There's no subject heading. It reads, “Michael, has caveat been removed from title?”---Yep.

Yes, I tender that email.

THE COMMISSIONER: Right, the email from Marwan Chanine to Mr Hawatt dated 16 February, 2016 at 9.37am will be Exhibit 288.

10 **#EXH-288 – EMAIL FROM MARWAN CHANINE TO MICHAEL HAWATT REGARDING REMOVAL OF CAVEAT DATED 16 FEBRUARY 2016**

MR BUCHANAN: Excuse me a moment. Mr Zreika's trust account for you shows that on 22 April, 2016, he received – sorry, if I can just pause for a moment, please. If I show you volume 8, page 204, please. If we could just go down to the second half of it. Can you see an entry against the date 22/04/2016?---(No Audible Reply)

20 And it says, "Received from Mr M. Hawatt," and if you go over to the column headed Deposit, there is the figure of \$30,000. Do you see that? ---Yep.

It then gives your home address and it then says, against the word "reason", "option fee". Do you see that?---Yep.

30 Yes. Now, I'm not suggesting that you paid that into Mr Zreika's trust account, but we have some evidence from Mr Zreika that the software that he was using at the time generated your name automatically in respect of transactions involving you. But then can you see the entry, 27 April, 2016, "Paid by cheque to Michael Hawatt. Reason, option fee less legal fee for option," and the figure is \$28,075.---Yes.

Very close to \$30,000. Do you recall receiving that money from Mr Zreika's trust account?---Yes. That's presumably the option thing.

Right, what option thing was that?---I think it when, what's his name, Mr Marwan's introduction or whatever he had, paid the option, to exercise the option.

40 The evidence is that there is an option agreement with a company called Nifitsa, N-i-f-i-t-s-a, Pty Ltd for an option over 31 Santley Crescent. This is volume 8, page 209. I can show it to you if you like, but I just wanted you to be aware that there is, in the evidence before the Commission, an executed option agreement. That is to say, it has your signature on it. The option fee is specified as being \$30,000. The option expires on 27 April, 2018. It specified a purchase price of 1.5 million.---Correct.

Excuse me. Although the contractor next to it specified a purchase price of 1.8 million. It's page 22 on volume 8. I'm not asking you to explain that discrepancy, I just put it on the record. Can we play, please, the recording of a telephone conversation, Exhibit 120, recorded on 28 April, 2016, commencing at 1.40pm and it's an extract of the conversation, Mr Hawatt, that is to say it commences, that's to say the recording that we're going to play you, and the transcript commences after the recording had commenced. We, so far as it's in evidence before us, it contains only the material relevant to this inquiry, not material that wasn't relevant to it that was in the early part of the conversation.

AUDIO RECORDING PLAYED

[10.42am]

MR BUCHANAN: Mr Hawatt, did you recognise the voices of Pierre Azzi, Marwan Chanine and yourself?---Correct.

The evidence is that that call had been made by you to Pierre Azzi and that Pierre Azzi handed the phone over to Marwan Chanine and that after that - - -?---Is that, he called me or I called him. I, sorry - - -

You called him.---I called Pierre, did it? Oh, sorry.

Now, Mr Azzi told you, we can see this on the first page that Marwan wanted to talk to you, he passed the phone over, you then spoke with him. Do you see that?---Yes.

Now when Mr Chanine said to you, the buyer of your property, about the middle of the page, has been calling me, they've been chasing for an exchange since last week. Who did you understand he was talking about? ---The buyer that he introduced to purchase the property.

Can you remember that person's name?---John, I think John, I can't remember.

Yes. His surname?

THE COMMISSIONER: You said John did you?---I think I remember the name John I just can't remember - - -

MR BUCHANAN: Christou, C-h-r-i-s-t-o-u?---Yeah, that rings a bell, that could be, that rings a bell.

I'm sorry, what did you say?---It rings a bell.

When did you first hear of Mr Christou?---When the purchase of the sale came through from Marwan.

Was it Marwan who told you about Mr Christou?---Yes, well, that's how I met him through him.

Did you meet Mr Christou?---I haven't met him, I'm sorry, the name.

You haven't met Mr Christou or you have?---No, I haven't.

10 When was it that Mr Chanine told you about Mr Christou?---Well, when, when he gave us the contract to my lawyer to sign the name of the, I can't remember the name of the company that was there but I'm saying, a friend of his called John, it's just my memory.

What was your understanding as to why, as at this date the 28 April, 2016, what was your understanding as to why Mr Christou was buying the property rather than Marwan Chanine?---He might have changed his mind, I just don't recall because I asked him, he just said I've got, I've got buyers, some people you can talk to. He's in that field of purchasing and he must have a lot of investors with him that work together, I wouldn't have a clue.
20 All I know is that he's the guy he found and he's the guy who purchase, or signed the option to purchase the property.

But you're aware, aren't you, of a number of communications between you and your son-in-law to the effect that you were negotiating with Marwan Chanine for him, Marwan Chanine to buy the property?---Well, Marwan Chanine was the person I was dealing with to buy the property originally but changed his mind like my son-in-law changed their mind, I mean, I don't control how people think.

30 Did, can you just recall, please, the circumstances in which you found out that Marwan Chanine had changed his mind?---He just said, I've got a, there's a company that's interested in buying it and the contract was with the lawyer so that's how, to me it wasn't really an issue. To me, I was more interested in the sale and who purchased it, whether Mr Chanine or somebody he introduced, wasn't really something that I was concerned about, I just wanted to move on with it, that's all.

Well, on page 3 of the transcript Mr Chanine is recorded as saying to you, "Look, once he gets his hands on it, I want and try and turn it over a lot quicker." Then he said something inaudible, and you responded, "Okay then, that will be good." What did you understand Mr Chanine to mean when he said, once he gets his hands on it, "I want to try and turn it over a lot quicker"?---Maybe to influence the buyer to settle quick because I was, I was concerned in the back of my mind that, you know, taking, because I was going to give these guys the \$300,000 back and I was concerned about the length of the 12 months option and I said, look, can they try and settle quickly on it, and he said, look, we'll try and get this, to settle as quick as
40

they can in order to, to, for me to get the monies. Again, the back of my mind was the \$300,000 at that time.

What did you understand was going to be done in respect of the property once he, Mr Christou, had got his hands on it?---Well, he was going to put DA and I think he used his brother as the architect from my understanding -
- -

10 Marwan Chanine's brother?---Yeah. Put the DA in. And as soon as the council approved it, they were going to settle. So that was to my advantage. The quicker they, they moved on with it, especially if his brother was an architect, the quicker I got my money and the quicker the 300,000 was paid up.

And so "turn it over" means getting the approval for development which would be sought?---Could be, could be.

20 Can you assist us, though, as to why, as you understood it, Mr Chanine was saying he wanted to try and turn it over a lot quicker?---I, I don't - - -

He, Mr Chanine.---Correct. Because maybe his, his brother is going to be the architect or, or he have some influence on with the, with the, the, the guy who's buying it, I, I, I don't think, I, I can't think on his behalf at that time. As I said, my, my interest was to sell it.

You understood Mr Christou to be a friend of Marwan Chanine's?---Well, he must have if he introduced him to, to buy it.

30 Could it have been, as you understood it, a transaction where Mr Christou was a person who was holding it in his name, but it was always Mr Chanine's intention that he would conduct the exercise of obtaining development consent and carrying out the development?---I, I don't understand how the, the, the, the, the link in their regard and how they operated and what they did. It's something that's between them, not, not - I can't make that judgement or that call or, or, or comment on something that I wouldn't have a clue about.

40 Excuse me a moment, please. Excuse me. Can I make an application for a variation of a section 112 order given in respect of evidence given by this witness to the Commission on 5 December, 2016, recorded on page 814 of the transcript of the evidence, commencing at line 26, and concluding on line 29? Excuse me a moment. Can I ask you to pause for a moment, Commissioner? Sorry. I'll move on, Commissioner. I withdraw that application. You arranged for a bank cheque for \$100,000 to be drawn in favour of Bella Ikea Strathfield on 7 July, 2016. Exhibit 115. Do you see that bank cheque?---Yes, I can see that, yeah.

Is that right?---That's correct.

7 July, 2016 was after the search warrants had been executed on your residence and office on 22 June, 2016. Is the reason that you arranged for a \$100,000 bank cheque to be drawn in favour of Bella Ikea Strathfield that you were aware that this Commission was investigating your affairs, including your transactions with your son-in-law?---That's, that's incorrect.

10 Why was no attempt made to repay the funds earlier?---Well, that's, that's the opportunity because there was pressure. When, when I first for them, the loan organised, then that was okay, but then the pressure started coming on me from – my daughter kept on reminding me, look, these guys are asking when are you going to pay them the 300 continuously, and I spoke to my son-in-law and he said, look, you know, there's pressures on him too from his partners, they need the money back, and I, and the only thing I had to do was, I borrowed from my brother. At the time I owed him money and, and I used the facilities I had to, to at least quieten them down, shut them up, as the word goes, as a down payment to show that, look, I'm, I'm going to pay and I'll, I'll wait until the, the settlement on the, on, on Santley Crescent. So I gave them that just so appease them to ease the pressure
20 that's being put on me.

Have you paid any more of the \$300,000 that was paid to you?---I paid the balance recently.

When was that?---Maybe about six/seven weeks ago.

30 From what source or sources?---Well, I sold 50 per cent of Santley Crescent and I used that to pay it. I tried to sell the apartment back again, I've had it up for sale for the last, at least 18 months. There was no, no interest in it so I had no choice but to, to try – and, and the option collapsed with, they wanted an extension. I, I didn't give them the extension and it collapsed so I found the, an interested buyer in my property to cover 50 per cent. So I used that to get rid of a debt I had on, on, on my shoulders.

40 Did you pay the \$100,000 to Bella Ikea Strathfield in July 2016 to try to set up evidence that the transaction whereby you received \$300,000 by December 2016 was not so much a loan as a payment to you for the outcomes you had provided to your son-in-law, in particular, but also your daughter, so far it concerned 51 Peshurst Road?---Incorrect.

Can I take you, please, to a different property now, 1499 Canterbury Road Punchbowl, also known as 998 Punchbowl Road.---On the corner, on the corner there.

Yes, the service station.---Yes.

Did you have contact with Charlie Demian in respect of that property?---Oh, he presumably must have, yes, he must have called me.

When you say you presumably must have, what do you mean?---Well, he was putting a, I think a planning proposal and then he was lobbying the councillors.

10 So why does it follow from that you must have had contact with him about that site?---Because I met, as I said, when he put his DA forward for Harrison site and then he saw me as a pro-development councillor at the time and he saw me as a person who, who understood and I had a really big push for Canterbury Road to improve the look of Canterbury Road and to have more developments along that main busy road, and especially that particular spot as a gateway to Canterbury and that was a, it's an ugly, a very ugly spot and needed some improvement. I think any development there will improve the gateway towards Canterbury.

Is your reference to gateway to Canterbury in respect of that site, something that you're using because you have read it in the transcript of evidence given by witnesses who have spoken of that site - - -?---No.

20 - - - to this Commission?---No, it's always anything that's an entry to the city is a gateway, we've always discussed that in council. I think it's something that we're all aware of. I mean that is a, it's always been looked at as the gateway into Canterbury or main corner site, sometimes a gateway.

30 So what needed to be done, in your opinion, thinking back to the period we're talking about 2014/15, what needed to be done to address the fact that it was a gateway?---Just we needed to put some nice, nice development as an entry with a good-looking development, especially on a corner and improve the look that's - - -

It didn't matter to you what the dimensions of the development might be, simply a nice-looking development?---To me, I was interested in a good-looking development, yes.

40 But you weren't interested in its dimensions or the lot yield that might be obtained by the developer?---That's something that the planners and the assessors and the applicant will make those decisions. To me, I was more interested in having something put on that site to improve the look of Canterbury.

Did you get involved with the planners and the applicant and the assessors when it came to determining the planning controls that would determine what yield could be obtained from the site, such as its height and its floor space ratio?---I've always given my input in regards to planning proposals and regards to developments. I've always given an input based on what I believe should be done on this particular site but at the end of the day, it's, it's, no matter what input I can put it, end of the day it's up to the planners and the assessors of council to make the final decision.

But why did you give them input? You've told us that the dimensions of it were a matter for the applicant and the planners and the assessors and you were just interested in marking a gateway with an attractive building?
---Well, my, because this has been going for quite a while so my input would have been based on complaints made, delays occurring, arguments between the applicant and the council, all these issues and, yes, I would give my input based on what I believe is correct and that's my own judgment.

10 So can you recall giving your input on those questions - - -?---I always - - -

- - - the question of its dimensions or its lot yield or its floor space ratio?

---Oh, look, I don't recall specifically but I had no problems with supporting an application to increase the FSR - - -

Why?---?- - - if there was a good development.

Why?---Because it's a gateway and I think it's a good development for Canterbury Road.

20

Why does the fact that it is a gateway mean that you would support applications in respect of the floor space ratio for this structure to mark that gateway?---Well, if, to make it work, if, if I believe that – look, you've got to remember, there's a couple of things goes into a, a, a development. It's, it's got to work. Sometimes you give and take. Sometimes they get back to council in regards to get a, a better planning outcome. It could be based on a laneway or based on whatever, extra fees to council. There's another, a number of factors that come into it, but from my opinion is I felt, and, and I still feel strongly, that Canterbury Road and Punchbowl Road is badly neglected for a long, long time and we needed some improvements and some developments and we had a shortage of, of accommodation because there was a big push from the State Government in order to deliver a certain per cent, a certain number of residential developments in Canterbury. So we had to also take into consideration what the State Government and the short, shortfall, that each council had a shortfall to deliver, and that was part of the thinking which all came together.

30

40 When you use the expression “to make it work”, you're referring, weren't you, to the developer maximising the lot yield?---No, that's not, sometimes it, it – look, if I had a site that's worth so many, so much and it's going cost me so much to develop and it's going to be, it's going to be so much to, to return, if I can't, if it doesn't work then there's no, it's not going to be - - -

Financially.---Financially, if it doesn't work, no one's going to go ahead with it. So sometimes you've got to - - -

And that means financially from the point of view of the developer?---Well, it, if it's, if I believe in a site that should be developed and a person says,

look, I can't continue with this because it just doesn't stack up, but, but, but, you know, I get something back to council, that's all that comes in to consideration and I, I, and I truly believe that Canterbury Road, we should give more higher density in order to have Canterbury Road developed and that's my own belief.

10 Did you have any contact with Mr Demian on the subject of him making a development on that site work for him financially?---Look, he would have called me many times like called any other councillors and I take in to consideration whatever anyone tells me. If they tell me it doesn't work financially for them, it's, it's, it's something that, it's, they need certain things based on certain whatever, it's up to the council staff to make the assessment, end of the day, and I make a judgement based on once, once it comes to council, once the report and recommendations goes to council, then I make a judgement based on what I believe is, is correct or not correct. And this happens on - - -

20 THE COMMISSIONER: But did Mr Demian, when he contacted you, raise with you that financially the development wasn't stacking up? Do you have a recollection of Mr Demian?---I don't have a recollection but generally we discuss this. It happens quite often with other developments.

MR BUCHANAN: It's the sort of thing that you talked with Mr Demian about, about his project that were before council, is that fair to say?---No, no. Others talked to me about it or complained about - - -

30 No, no, no. Mr Demian is who we're talking about.---Well, Mr Demian would be, could, could be like any other developer that rings me. They all have the same, exactly the same concerns and, and that concerns is, it just continues. This is one of, one of their, their concerns that they all have is it doesn't stack up for them and that's normal. That's, like, it's nothing unusual.

40 So is this a fair summary of the evidence you've given to far, that you did have multiple contacts with Mr Demian about 998 Punchbowl Road, Punchbowl and likely they included him expressing concern that unless the FSR could be increased, he wouldn't get a sufficient lot yield to make the project work financially?---Maybe. I'm just guessing, maybe. Most likely but it's, it's something that they all go through, all of them.

But Mr Demian is a person that you had considerable dealings with in relation to the matters he had before council?---Oh, he's, he's a person who makes a lot of complaints, and he has a, a way of pushing people to their limits, and continually doing that. But it's like, and, and sometimes it's something that you take on as you go along and, and you understand the person's character and concerns, and I've organised many meetings based on his complaints and concerns and – but end of the day, it's, it's a, it's, it's

a judgement that's made by the, the planning staff, and we make a judgement based on what we believe is correct or not correct.

But you said that you would make your judgment when the matter came before council.---Correct.

10 Did you intervene with council staff such as Mr Montague or Mr Stavis, or have any contact with either of them, about the concerns that Mr Demian expressed to you, in all likelihood, that unless he could increase the FSR for this site, he wouldn't be able to make it work for him financially?---Well, that's the discussions, I mean, I've attended a number of meetings in council with the staff, and I sit back and, and just listen and observe and the, based on each person's point of view, and, and I make my own judgment based on what, what, what I believe is, is correct and what I believe whoever is, what they're saying is correct. But as I said, the end of the day, end of the day, I do not assess an application. It's the staff who make the assessment, and it's up to them to be satisfied or not satisfied with whatever Mr Demian or any other developer comes up and gives these assessors, so - - -

20 But you organised many meetings.---Yes, of course.

Those obviously were not meetings of council CDC. They were meetings with council staff, including Mr Montague.---Correct.

Is that fair to say?---Fair to say, I do that all the time.

And you did that on behalf of Mr Demian - - -?---I've did it on - - -

30 - - - in respect of his projects before council.---Correct, and, and, and others.

And that was with a view, wasn't it, to at the very least facilitating Mr Demian conveying to council staff his view that a particular approach needed to be taken to his matters before council, at the very least.---Look, my job is to, to receive complaints from, from, from, whether they could be developers, applicants, their architects, whoever, and I send an enquiry to the, to the staff, and it comes back to me based on their opinion in regards to the, the issue. I relay that to whoever it is, in this particular case, Mr Demian. And then he tells me that something, other problems that they haven't looked at. And then I relay it back and forth, and this goes on and
40 on and on, to the extent sometimes you organise a meeting in order to pull back and see what the, what the issues are. And it's, it just, it just something that is an ongoing, that – but as I said, end of the day, I do not make the, the decision on the recommendations of, of what the staff are doing. But it's up to the council on the, on the day to see whether the recommendation is something that they can amend or not amend if they feel there's a, a, a, still an issue with it. But we don't make the recommendations, end of the day. It's, it's something that the staff do it.

But you had your particular relationship with the director of planning in the period 2015-16, didn't you?---Oh, he had, he had a lot of issues, Mr Demian, as well.

You had a very close relationship with Mr Stavis.---Mr Stavis would not do anything that's, he, he didn't believe is correct, and I've never pushed him to do anything incorrect.

10 And - - -?---I've always backed him up, if he felt what Mr Demian wanted, I've always backed him up and say, "Whatever you feel is, is the right thing to do, I'll back you up." That's, that was it.

You understood that Mr Stavis understood that he owed you his job.---No, that's, that's, he would never, I would never put any pressure on anyone. He's never, I've always had respectful meetings with Mr Stavis, but I've never put him in any spot that anything that he didn't want to do, to change his mind on. Never.

20 You also understood, didn't you, that Mr Stavis understood that his predecessor had been hounded out of his position by you and Mr Azzi?
---No, he was, that's incorrect even the former mayor, if you look at some of his transcript comments, we don't have to have, employ somebody like the previous directors, so it means he's also, and the general manager told me he also didn't want him. So it's not a thing that, it's up to Mr Azzi, it's generally that the guy wasn't performing.

30 Was there any discussion which you were present or party to with Mr Stavis about what had happened to the previous director?---I think we could have, there'd been a lot of casual discussions that we made over a period of time, I can't say yes and I can't say no.

Did you ever indicate to Mr Stavis that you wouldn't want him to go the same way as the previous director?---I could have, I don't recall, it's something not unusual for me to complain about, I just can't recall.

40 If you could have done it that indicates, doesn't it, that there was at least one if not multiple occasions where you wanted to ensure that Mr Stavis didn't take an overly legalistic or strict approach to the application of planning controls like Mr Occhiuzzi did?---No, it's, one of the first things that Mr Stavis was working on was the controls itself, the DCP and the controls that weren't working, and he was reviewing DCPs in order to make sure that they do work and it makes life easier for whoever puts an application in to put a DA in order for those controls to work. I mean, that's one of the problems we had.

You were dealing with Mr Stavis regularly, weren't you, in respect of matters that came before council?---What area - - -

Correct or not?---Only for ones that I get direct enquiry for, not just anything.

But we've seen that there are, at least in the period 2014-16, a number of development proponents that you say you got direct enquiries from, so we can assume, therefore, you conveyed them to Mr Stavis?---To any director at the time over the period of time, and this time it happened to be Mr Stavis. Before that it was all the other directors, the previous directors, same thing.

10

But Mr Stavis was more accommodating in terms of finding solutions than Mr Occhiuzzi had been?---No, well, no, one of the - - -

He wasn't? Are you saying to us in all honesty that Mr Stavis was not, as director of planning, more accommodating in terms of providing solutions? ---Accommodating to look at the issues and solve them first. I'll give you an example where we had controls, DCP controls, all DCP controls that were implanted by the staff without the approval of council, changes were made without council approval - - -

20

The DCP was made by council.---DCP, correct.

Thank you. Can I just ask you to pause there, please. You had regular dealings with Mr Stavis on matters that came to council, which meant you had regular dealings with Mr Stavis on the subject matter of his reports to council on planning and development matters that came before council, didn't you?---When he became director, yes.

30

Therefore on the recommendations he made to council in those reports, didn't you?---I'm not sure what the recommendations he made, it's his recommendations.

Well, you were having regular dealings with him in relation to the subject matter of his reports on planning and development matters which therefore means on the subject of his recommendations to council on those subjects, weren't you?---No, that's incorrect. I gave him my own opinion, my own opinion based on the enquiries that I received, and end of the day it was his judgment to do whatever he had to do with this stuff, nothing to do with me. My position is I relay the concerns of whoever calls me and the issues I discuss it with him and then he goes back and makes those judgment, whether they are correct or not correct.

40

I'm just curious, did you ever find that where you had indicated to Mr Stavis your opinion was that the recommendation to council should be for approval of a submission for a planning proposal or an application development that Mr Stavis recommended against that?---It's up to him, sometimes yes - - -

No, no. Did that ever happen?---Many times.

Many times Mr Stavis recommended against a proposal which you had indicated to him you were in favour of?---Well, he had, and he said - - -

Can you just tell us about those, please?---Well, I give him an opinion in regards to somebody who calls me for example - - -

10 Which proposal are you talking about?---Oh, I can give you, for example, Joe Alha's one in, in the, in the, the centre of Campsie where he said, no, it's too high, it's too much he wants, he, this will never go through.

In respect of Mr Demian?---No, are you talking about Mr Demian now?

Yes, I am.---Oh, sorry. Yeah, for the Harrison's. He, he made a lot of changes for Harrison's. He wasn't happy with the additional two levels. He made a lot of changes in regard to the lane, them, the setbacks. For him to achieve what he wanted, he put a lot of conditions on him which Mr Demian was not happy with. So he, he went against that, yes.

20 Did you have contacts with Matt Daniels in relation to Mr Demian's matters before council?---Oh, I had a discussion with Matt Daniels regarding his, his development he had on Canterbury Road.

Does that mean, "No, I never had a discussion with Matt Daniels about a matter which Mr Demian before council"?---I, I can't recall but from my understanding, I don't recall this, but from my understanding is Mr Demian likes to do things himself. That's from my understanding. He didn't want any member of, of his staff or people that worked for him or - - -

30 That's not, please - - -?---This is from my memory.

I am asking you about your contacts. Did you have any contact with Matt Daniels about any matter of Mr Demian's before council?---He's, Mr, I can tell you, Mr Demian's - sorry.

I'm not interested in Mr Daniel's own projects.---Not Mr Demian, sorry, I got the name confused.

40 The question I am asking you is - - -?---Matt Daniels.

Let's think specifically, let's talk about 998 Punchbowl Road. You know there was a planning proposal in respect of that site that Mr Demian had initiated. Did you have any contact with Matt Daniels about that?---I can't recall that one. I don't recall.

And just to cover it off, did Matt Daniels have any contact with you - - -?
---We had contacts regarding his site.

- - - about 998 Punchbowl Road.---I, I don't recall that, that site. I don't recall him talking to me about that site. I don't recall.

Did you have any contact with Mr Montague about 998 Punchbowl Road?
---We might have, we might have, we might have.

10 And what might you have had contact with Mr Montague about in relation to 998 Punchbowl Road?---The, there was a complaint. I don't recall exactly what the, when the, when the DA was in or the planning proposal. I don't recall exactly but the issues in regards to the, the concerns, whatever, that Mr Demian would have had, most likely I would have discussed with Mr Montague.

Why?---Because the pressure was on. There was a lot of pressure on.

Why?---He wasn't achieving what he wanted.

20 Sorry. Can you just explain to us what would have caused you to have contact with Mr Montague because of contact you'd had with Mr Demian about 998 Punchbowl Road?---I'm just guessing on this, but most likely I would have but I just can't recall exactly if I spoke to him or not, but I'm just guessing, it could be in regards to the pressure that's been applied from Mr Demian regarding his sites. That's all I can remember.

THE COMMISSIONER: And you had contact with Mr Montague because Mr Demian was applying pressure to you?---Well, he's applied pressure to a lot of people.

30 But including you?---Including me. Yeah, he, he's a pressure cooker.

MR BUCHANAN: What you are saying there, just for completeness, is that Mr Demian put pressure on you and you responded by, amongst other things, taking the matter up with Mr Montague?---Most, I don't know, I don't recall a hundred per cent.

But that was his practice, that was his practice and your practice?---Yeah, but I can't remember if, specifically for that or not. That's what I'm saying to you.

40 I understand, I understand. That's why I'm taking a step back and asking you a slightly different question. You say you guessed this would have happened because, as I understand your evidence, Mr Demian, as a matter of course, put pressure on you to help him achieve his development goals in respect of his matters before council and you responded, amongst other things, by taking the matter to Mr Montague. That was a standard course of practice that you took?---Could, could be. I'm not - - -

No. No, no, no. Thinking about his matters generally - - -?---Generally, generally, yeah, generally, yes.

That was the way you did it?---Yeah, generally.

And you also took the matters up with Mr Stavis?---Yes.

10 Now, can I show you, please, volume 12 in Exhibit 52, page 170? Sorry, I need to take you to the next page. That's the cover email. Thank you very much. This is the cover of a report by a planning consultant who was retained by council to do some work on the planning proposal that had been resolved upon by council at its meeting on 2 October, 2014 – that's to say the Residential Development Strategy in which you were involved in getting all those amendments made.---Yep.

20 But this report was so far as it concerned only the one property, not all of them, and I'd, just to remind you, the property obviously was 998 Punchbowl Road, but that the resolution was that the planning proposal be prepared for an FSR of 2.2:1.---Ah hmm.

And the higher the figure goes, as against the numeral 1, then the more intense the development is. You understand that?---Yep.

30 In this document, this, and that was October, 2014, you can see this document is dated March/April, 2015, can I take you to page 176? So this is the consultant who has been retained by council to provide the department as a condition of the Gateway Determination with supporting expert opinion about the 2.2:1 FSR, the subject of a planning proposal. You understand? ---Yep.

And can you see that the third dot point says, "An FSR increase from 0.5:1 to 2.2:1 does however represent an overdevelopment of the site."---Yep.

0.5:1 is the existing FSR for that site.---Yep.

40 And read on, "Our investigations suggest a building height of five to seven floors and a maximum FSR of 1.8:1 would be more appropriate and would be more likely to gather a development outcome compliant with the primary development controls for the site." And the next dot point reads, "A proposed FSR of 2.2:1 and height of 15 metres do not appear to be achievable given site constraints and assessment against," and then he identifies particular planning controls. I know that one of them's the DCP, but the other one that he refers to is a State Government planning control. You understand?---Yeah.

Do you remember being made aware that a consultant who'd been retained by council to support the FSR, the subject of its planning proposal for this

site, had come back and poured cold water on it?---Oh, I don't recall this, I don't recall this report, no.

Well, do you know whether Mr Demian found out about it?---I, I don't recall the report, so - - -

Yes, I understand that you mightn't have seen the report. But did you hear from anyone, such as Mr Stavris or Mr Demian, that things were not going well for the attempt to increase the FSR on the site from 0.5 to 2.2 - - -?

10 ---Well - - -

- - - that there was an obstacle?---Well, there was issues with it, between the, from Demian, that's why he was calling all of us, in regards to, he must have had issues with it. So, I didn't know what the issues were exactly at the time, and I don't recall this thing, but he had some concerns that he raised with, with us.

I'll ask you a question at the moment about what he actually raised or his specific concerns, but what do you think would Mr Demian's reaction have been to finding out what the consultant had said, and that that was an obstacle to the planning proposal for 2.2 going forward?---Well, if, if this 1.8:1, if it didn't work for him, he would not be happy with it.

20

Well, if 2.2 didn't work for him, he wouldn't be happy because 2.2 was what he'd obtained from council back in October, 2014.---Even 3:1 if it didn't work for him, he would not be happy.

No. And so do you think it's reasonable for the Commission to conclude that he would have said something to you about it?---Well, if he wasn't happy with it, he probably would have called.

30

Can you now tell us, did he call, did he say anything to you about what you understood to be, from whatever source, that the planning proposal was deemed, was regarded by the expert who'd been retained as over-development and not achievable?---He could have, he could have. If, if he had issues he would have called, yes.

And what then did you do?---Well, we would have gave me his, his opinion and what his point of view should be and what, what he believes is right and, and I would have relayed that back to the director.

40

Why?---Because that's the way I operate. Somebody tells me about something, they complain. I relay it back to the director to find out if, if that's correct or not correct and they discuss it back and forward.

But what's to prevent Mr Demian writing a letter conveying his views or arguments rather than using you?---He, he, probably would have as well. I, I don't recall that. He might have as well. I mean, if he is the type of

person, he would have rang the GM, he would have called me, he would have sent emails, he would have made complaints. He would have tried every avenue he can imagine.

Well, the advantage of Mr Demian using you would have been, if he understood it, that you had a relationship with Mr Stavis whereby you were able, where it was at all feasible to procure solutions to problems, to planning problems.---No, I was, no, look, I was a, I'm a pro-developer and I'll repeat myself. I believe in removal of crappy old sites on Canterbury Road and, and to me if somebody says, look, I'm going to get rid of this particular site, I'm going to put a nice development on there, I would say, well, go ahead because, man, there's nothing worse than looking at an eyesore, especially on a gateway of an old service – if you, if you look at that site, an old petrol station that's completely been neglected for, for a long, long time, many, many years, and somebody says, look, it's replaced with a nice development, I would, personally, I would say great. That's my personal - - -

Did Mr Demian say anything to you to the effect that an FSR of less than 2.2:1 would not work for him financially?---I, I don't, look, I don't recall this. I don't recall it. All I know is if he made a complaint, he would have complained about something, issues that he had. I don't recall specifically what he spoke to me about.

Did you have any contact with Mr Stavis at around this time, this is June, I'm sorry, around the time, yes, of June 2015 – I appreciate the cover sheet said March/April – but around June 2015 when that report apparently was provided to council, about Mr Stavis becoming involved or more involved in how this planning proposal was being handled?---Well, if there was complaints coming through, the more the complaints, the director, it would be his responsibility to get more involved when there's a, a complaint being made to councillors, complaints being made to the GM, complaint made to other councillors. I mean, yes, he would have got involved to find out, try to find a solution, find out what he issues are. That's normal.

So is this fair to say, that although you don't have a specific recollection of it, knowing how you worked with Mr Stavis, knowing your relationship with Mr Demian and how you worked with Mr Demian, appreciating, as you do, that he wouldn't have been happy with the outcome of that expert opinion when he found out about it, you are likely to have raised it with Mr Stavis and you would have expected in that case Mr Stavis to become involved in addressing the problem for Mr Demian?---Good summary. Most likely, yeah.

I note the time, Commissioner.

THE COMMISSIONER: All right. Just to remind everybody that we will resume at about 12 o'clock and then we're sitting through to 1.30 today. All right, we'll adjourn until 12 o'clock.

SHORT ADJOURNMENT

[11.35am]

10 MR BUCHANAN: Mr Hawatt, you told us that you organised many meetings for Mr Demian. You organised meetings for him, did you, with the general manager?---I don't recall director with the GM, I don't recall but with Mr Stavis, yes, I don't recall with the GM.

Did you understand Mr Demian to have a closeness, if not a friendship, with the general manager in the period 2014/16?---All I know, he had a direct line to him so I don't, I can't judge on that, he had a direct line.

20 What do you mean by that?---Well, he could call him and make a complaint straight to him if he wants to.

More so than other people, is that what you're saying?---No, he just had a direct line to him based on the understanding that I had when we had that meeting, the issue with the GM, so he had that direct contact with him.

You mean a, it's a metaphor that you're using, you don't mean that there was a single line between Mr Demian's office and Mr - - -?---No, no, I'm talking about he can call him if he wants.

30 He had that sort of relationship where he was able to.---Yes, yes, that's right.

Nevertheless, you did organise, did you, meetings for Mr Demian with Mr Montague?---I don't recall directly with Mr Montague but I recall with Mr Stavis, I don't recall it, I have to be honest, I can't recall making this - - -

So you recall organising meetings for Mr Demian with Mr Stavis?
---Correct.

40 In organising those meetings, did Mr Azzi attend?---I don't recall, I don't recall. He might have, but I don't recall.

Do you recall speaking with Pierre Azzi about any of Mr Demian's projects that were in council?---I think I would have, I think I would have because he was Mr Demian also complained to him as well.

Can I ask you about a meeting with, sorry, in Mr Montague's office in about, I'm going to suggest, 9 November, 2015 but you don't have to be fixated on that date, around that time, when what occurred was that Mr

Stavis was spoken with about a further increase in the FSR for 998 Punchbowl Road. Do you recall that?---No, I don't, I don't recall that, but it could have, it could have happened because there was an issue with it, yes.

What's the issue, as you recall it?---Well, if Mr Demian would have called me complaining about whether it's the FSR or the height, I just can't recall if there was a problem with it. So the chances are, yes, he would complain to Mr Stavis about the same thing. I don't specifically remember what the complaint was about but it's a general complaint that he would have made.

10

Do you have a recollection about the planning proposal that you and Mr Azzi had moved and seconded and council had resolved upon for 998 Punchbowl Road for an increase, amongst other things, of the FSR, the maximum FSR to 2.2:1 being changed after that had been resolved upon in October 2014?---That's an amendment proposal - - -

Yes, a change to it occurring?---It could have been, I don't recall a hundred per cent, yes, it could have been.

20 Do you know what happened to that planning proposal?---I don't, I don't, I don't remember but whether it was completed or not, I don't recall.

Well, I'm just trying to ask another question from a slightly different angle. You had yourself moved that council resolve that the FSR for 998 Punchbowl Road be 2.2:1, did that figure, that value, ever change?---I don't recall, I don't recall.

30 Did you ever try to get it changed?---I might have moved an amendment if it's on the record but I can't remember it but if it's there, if I did it, I did it, if I didn't I don't recall.

Do you remember a meeting in Mr Montague's office about the planning proposal for 998 Punchbowl Road where Mr Demian was present and Mr Stavis was present and possibly also Mr Azzi was present?---It's vaguely there was something like that, they put it in a meeting, vague.

Right. Do you remember Mr Stavis being informed that Mr Demian wanted a further increase in the FSR this time to 2.8?---I don't recall that.

40 Did you organise a meeting for Mr Demian to try to persuade council to change its own planning proposal so that the FSR was no longer what council had resolved upon, but instead an even more intense degree of development of 2.8?---I, I don't recall the 2.8 ones, I just, I don't recall any memory of 2.8. 2.2, I, it's, around that I recall, but 2.8, I don't recall it.

Well, what I'm just wondering is, if you had been involved as the record shows you were in the increase from 1.8, resolved upon in October, 2013, to 2.2, resolved upon in 2014, then surely you would have a recollection if it

was suggested that what you had brought about was itself inadequate, as, from Mr Demian's point of view, and that he wanted something different from what the planning proposal was.---He's always wanted something different. But I just can't recall moving 2.8, I just don't, that doesn't, it, it just doesn't comprehend and I don't recall having to move 2.8 without any justification for it. I just can't recall.

10 You see, it would be reasonable for the Commission to conclude, wouldn't it, knowing your relationship as you do that you had with Mr Demian, that when in October 2013, you moved that the FSR for that site be increased, by way of planning proposal, from 0.5 to 1.8, that that had been with the agreement of Mr Demian?---I, I don't recall. But from, from my own knowledge and understanding, any planning proposal has to be approved by the Department of Planning, so, it, the, the, the final call is with them, not with the council, so - - -

20 But you're unlikely, are you, to have interfered with the profitability of one of Mr Demian's sites that was before council without him at least agreeing with what you were trying to achieve? That's unlikely, isn't it?---The profitability, I don't, I don't, I never take profitability into, into account. I take whether it, it financially stacks up, in regards to whether it works or not. But whether, how much money he makes, it's none of my business. I never ask him anything about what profit he's going to make out of it. So that wording, it's, it's incorrect.

But you knew that there was a direct relationship between workability and profit, didn't you, profit/loss?---I, I don't take that into consideration, no.

30 Sorry, how, what did you think "workability" meant, if it didn't mean whether the developer could undertake the development and carry it out without loss, without financial loss?---It's, it's something that, it's between himself and his accountants. I, to me, things that stack up is if it works to develop a site. If it doesn't work, they don't develop it. That's, that's my understanding. I don't go into further than that.

40 Well, if you were persuaded that something, to use the expression "worked," or had "workability", that means that you had been persuaded that the development could be carried out without loss to the developer, usually with profit.---I only support something that I believe in, and I believe it's, it has the merit, and it stacks up as far as the, a development on a particular, especially Canterbury Road or a gateway, so I look at things based on outside the square. I look at the, the, the, the location. I look at the, the position, where, if it's on Canterbury Road or anywhere else. I had a, I have a very strong point of view in regards to main roads and around shopping centres. I've always supported an increase around shopping centres and railways.

Yes, we understand that.---That's my, that's my position.

We understand that, Mr Hawatt, thank you.---Yeah.

You would not have moved for the planning proposal, in October, 2014, for the planning proposal for 998 Punchbowl Road to have an FSR increase from 1.8 to 2.2 unless you knew you had Mr Demian's support, would you?
---Oh, it, it's something that I was listening to, to, depending on, on the argument. But you, you mentioned 2.8. I, I don't recall 2.8. If, if two - - -

10 Well, that's because I haven't come up to 2015 yet. I'm just going on your motion in respect of the residential development strategy in October, 2014, moved, you seconded Azzi that in respect of 998 Punchbowl Road, instead of the FSR of 1.8, which you had procured council to agree to in October, 2013, it should be 2.2.---Well, if - - -

That wouldn't have happened unless Mr Demian wanted it to happen, would it?---Well, no, that would have happened, unless there was an understanding between him and the planning, that that's something that they will accept.

20 Planning, what are you talking about?---The planning, the director and, and his staff.

No, no, no, no. This was in October, 2014, it was contrary to what Mr Occhiuzzi wanted.---Oh, this is when Occhiuzzi was present, sorry.

Yes, yes.---But, oh, Occhiuzzi was against everything, so, I would, it doesn't surprise me.

30 So if you could just focus on my question then, you moved for a change from what had been agreed to in October, 2013, of 1.8, in October 2014 to 2.2 because Demian wanted it, didn't you?---No. Because I believe that that's the right thing to do on that - - -

40 Where did you get the idea that that sort of increase was the right thing to do?---Because I, look, I always look at the building envelope. For example, if he's got a site, I always calculate based on what the per cent of the building envelope is on a particular site and I'll give you an example. If you've got a 2,000 square metre site, and I don't, I don't recall or remember what, what size Mr Demian's one is, but then when you give the setbacks and then you take away, say, 40 per cent of that site as the setbacks and then you're left with a building envelope, and then to me, is based on the building envelope and the height and based on what you can do on an average of units of 80 square metres and then I always go backwards and see what the FSR. So my calculation, my own calculation would have been 2.2 would have worked based on council's, not my controls, council's setback controls, taking away and what's left with the building envelope. So 2.2 would have worked.

So why did you change your mind from October 2013 and propose a different figure? If that was the exercise you went through in October 2013, you went through the same exercise, did you, in 2014 and came up with a different figure?---Well that could have been the figure, the 2.2 was, might have been acceptable but 2.2 still could have been under the calculations that I had and not necessarily that – you could have achieved 3:1.

10 You see, the reason you moved in October 2014 for it to increase from council's 1.8 to 2.2 was because that was agreeable, as you understood it, to Mr Demian, wasn't it?---That was agreeable to me because my calculation's based on the building envelope, it works.

Could you answer my question?---Yeah, but that's what I'm saying. It's not necessarily him. I mean, you're asking me if, if it's for his - - -

What was Mr Demian's view about an increase from 1.8 to 2.2?---Well, any, any applicant would be happy with an increase like this.

20 Thank you.---They all would be.

And it's inevitable, isn't it, that he would have communicated that happiness to you before you moved it?---I don't recall it but all I can say to you is my calculations, 2.2 at that time, based on the building envelope, based on council's own controls, that's what would have worked.

And you had no way of working out sums like that.---Yes, I did.

30 Unless you had the advice of a planner or anybody architect or unless you were told that by the developer.---No, no. I had that knowledge. I had that knowledge.

What happened then in November 2015 to persuade you that the FSR that you, in 2014, had procured of 2.2 for the planning proposal, should be increased to 2.8?---I can't recall the 2.8, honest. But unless the, the calculation, the 2.8 and the height would have, would have fit in, in to that building envelope. I have to review the calculations. I just don't recall.

40 Well, Mr Stavis has told us, and you'd be aware of this because you would have read his evidence, that there was a meeting he was called to in Mr Montague's office, where you were present, Mr Azzi was present and Mr Demian was present.

MR ANDRONOS: Objection. This is a selective quoting of the evidence. If my friend is going to put a question along these lines, he should also point out what Mr Montague's account is, what Mr Azzi's account is and what Mr Demian's account is.

THE COMMISSIONER: Well, I think we've just started with establishing that there was a meeting.

MR ANDRONOS: Indeed. I maintain my objection.

MR BUCHANAN: All right.

10 MR ANDRONOS: It is apt to mislead the witness, I'm not accusing my friend of doing it deliberately of course but breaking it down into this, into elements like this is apt to mislead the witness.

MR BUCHANAN: Mislead the witness as to what? I'm conveying to the witness what Mr Stavis, the gist of what Mr Stavis has told The Commission.

20 MR ANDRONOS: Yes, and there's a reason why you can't do that in a proper court because it is inviting this witness to agree with Mr Stavis without knowing what other version of the same events are in evidence before the Commission. I'm not going to tell the witness what those other versions are but my friend should, and he should do it in the same question so as not to lead the witness down the path of agreeing with one version of events on the basis that (not transcribable) another person. It's fundamental, Commissioner.

30 MR BUCHANAN: Commissioner, with respect, I'm not sure that it's even fundamental to proceedings in a court of law but it's certainly not fundamental the conduct of a public enquiry here. Either the witness can respond one way or the other to what he has told another witness has said or he can't, it's a simple as that.

THE WITNESS: I don't recall the specifics of that.

THE COMMISSIONER: I'm going to allow the question Mr Andronos, sorry, can you put - - -

MR ANDRONOS: I would invite my friend now to put the versions of the other witnesses of the same thing.

40 THE COMMISSIONER: Right, thanks, Mr Andronos.

MR ANDRONOS: As a matter of basic fairness.

MR BUCHANAN: I propose not to do so. I don't regard it as being unfair to anyone to draw attention to evidence that is before the Commission and invite the witness's response, which he has not given, saying he doesn't recall it.

THE COMMISSIONER: Fine, let's move on.

MR BUCHANAN: Do you recall, sorry, you have organised numerous meetings for Mr Demian at council, you've told us. Correct?---Yes.

Certainly, you've organised them for Mr Demian with, amongst other people, the general manager and Mr Stavis. Correct?---Well, I don't recall organising it myself but I remember attending a meeting that they were there, I don't know, I couldn't remember who organised it. It could have been, it could have been someone else, I can't recall.

10

And would it have been necessarily been about at least one or more of Mr Demian's matters that were currently then before council?---Well, if a meeting in regarding to his issues then most likely we would be discussing some of his matters.

Do you remember a meeting where Mr Stavis had his attention drawn to a claim by Mr Demian that the FSR the subject of council's planning proposal for 998 Punchbowl Road, Punchbowl, should be increased?---I don't recall.

20

That is to say that the planning proposal should be changed in some way or superseded?---I don't recall the specifics, no I don't.

Excuse me a moment. Now, notwithstanding the fact that council's planning proposal had been for an FSR of 2.2, when the matter came back to council Mr Stavis recommended the adoption of what he described as "an alternative proposal," which is a proposal that had come from Mr Demian that the FSR be, maximum FSR for the site be 2.8:1. Do you know how that came to happen?---I don't recall unless those calculations based on what I suggested worked regarding the building envelope but I just don't recall.

30

There must be some sort of a calculation to make that come up 2.8.

Well, if I tell you that you moved and Mr Azzi seconded that that change be made on 17 March, 2016, why was that?---Well, I already explained that my, if, if my calculations are based on the current FSR and height and the building envelope, then whatever fits in there, it works within the, the FSR and the height, is what the figure works out. If, if, we're talking about 2.8. If you take 2.8 times the, whatever the site is, then you know what, what building, number of units you can put in there. And then you calculate – I always go backwards, and I'd say, look, these are the setbacks. This is what you're left with. This is, again, based on the council's code, not mine. And this is the building envelope, and this is the height. So if you can fit that in, based on the 2.2, you'll, I'll, I will work out exactly if the 2.2 works within that building envelope, or the 2.8 works. So if 2.8 works in the same building envelope that the council gave us the setbacks and controls over, then so be it, it works. This is the building envelope.

40

Did you run past Mr Demian what impact on his profitability of the site there would be if that increase occurred?---I, I don't talk to him about

profitability. It just, my, I look at it in a, in a, in a, in a way that I look at any other application who, who says to me, "Look, this doesn't work," and I do my own calculations, and I work it out backwards, and, and many times I agree with the, with the applicants, because the council controls do not work with regards to the FSR.

10 Even though you had yourself caused the council's planning proposal FSR value of 2.2 to be adopted in the first place?---That's, could have been at the time that was acceptable. Somebody could have said, look, 2.2 could work, doesn't matter if the, within the building envelope, it's just, whatever, it works out. But 2.2 works, so you accept 2.2. But doesn't mean it's, the FSR works with the controls. This is, well, this is the issue that we had in council, and this is the issue we faced when we, when Stavis, we said, look, the first thing you need to fix is the way our controls operate. They do not work. It doesn't work. Just because you come up with a, an FSR, but then you give controls, and with the building envelope, it just doesn't work. It doesn't work.

20 Can we show the witness, please, excuse me, oh, Exhibit 124, please? A transcript of a telephone conversation recorded on 18 March, 2016, commencing at 12.23pm. And it's a, the transcript's got more than one page. We'll come back to what's said in those pages later. But I just wanted to draw your attention to the – oh, I apologise, I'm wrong. So the document on the screen in front of you is an extract from the transcript of the telephone conversation that's recorded as having been initiated by Mr Demian made to you on 18 March, 2016, commencing at 12.23pm. And can you see that Mr Demian said to you, "Listen, thanks for last night," and you said, "No, that's all right." Do you remember that?---I don't recall it, no, but if I said it, I said it.

30 And that is the – what had occurred on the previous night was the meeting of council which adopted the alternative proposal for the planning proposal for a maximum FSR of 2.8:1 and a height, maximum height of 25 metres? ---That could be, could be correct, yeah.

Do you have an understanding as to why Mr Demian would have said to you, "Listen, thanks for last night"?---I get many, many thanks from people that I help.

40 Yes, but what had you done for him that warranted him ringing you on 18 March and thanking you for apparently what you had done the previous night?---It's nothing more than any other person would call me to thank me for helping them.

THE COMMISSIONER: But what had you done?---I've done – we, we, we moved an, an amendment to assist him and that's something that we, we moved, if I moved the 2.8, I believe that 2.8 works on that particular building envelope. That's, and he thanked me for, for, for doing it. Nothing

more, nothing less. Like any other person that thanks me for helping, assisting them.

MR BUCHANAN: If you'll just excuse me for a moment. Now, can you see that Mr Demian, in this second extract from the same telephone call, said to you two things. One was to say thank you and second is, "What, you got something on tonight. I've got some tickets for the Dogs game tonight." And you then found out from him what time it was and where it would be played and you indicated that you couldn't accept the offer. Do you recall that?---I, I don't recall it, no. I, I don't recall.

Do you have an understanding about why it was that Mr Demian offered you those tickets to that game?---I don't recall. I don't need his - - -

I understand that you can't recall, but in this extract you can see that's what happened, and so do you have an understanding as you sit there now, having regard to the fact that he'd thanked you for what you had done the previous night, having regard to the fact that the previous night you had moved and Pierre had seconded that the FSR for the planning proposal should be increased to 2.8:1, why Mr Demian would have offered you tickets to a match the next day?---I, I don't recall and I wouldn't have accepted it but I can't recall talking to him about it.

But my question is why, as you understand it, did Mr Demian do that or would he have done that?---He might have some spare tickets and, or when he was talking to me, he might have suggested it or – I just don't recall.

Do you think it might have been an extension of the first part of the conversation that I showed you in the first extract, whereby he was thanking you for what you had done for him the previous night?---But people can thank me in many ways. It doesn't mean, I, what I do is not based because he wanted. What I do is because what I believed is correct to do. So whether he gives me the tickets or doesn't give me the tickets, it's irrelevant. I don't, if I don't believe in, in that, that 2.8 is, is insufficient or it's, it's sufficient based on my own calculations of the building envelope, then I wouldn't have done it. So it's, I can't recall but it's, to me that discussion is, it's, it's meaningless to me. That's, that's my, because I don't recall it and I didn't accept it and it's, it's, it's meaningless.

Can I turn to another property now. A property with the address of 538-546 Canterbury Road, Campsie. This was the Spoilers Car Wash site immediately to the east of the Harrison's site.---Yeah, I know the Spoilers. I used to go and wash my car there, yeah.

And you know that it was owned by Jimmy Maroun?---Before that, no. It's owned by the guy who was, the washing, but he bought it later. The, the, the owner of the, the, the car wash told me that he, someone bought it from him and he mentioned the name Maroun.

Now, who did you understand Mr Maroun to be?---I knew Mr Maroun from, from before as a, as a developer in, in, in Canterbury. They are small developers from my understanding.

And he, from time to time, had matters before council, did he?---Yes, he had, yeah.

10 He lodged a development application, if I could just give you some background, in June 2014 for the construction of a seven-storey mixed-use development on the site but he then put in, lodged amended plans to reduce the size from seven storeys to six storeys with a height of 20.25 metres. And I could just point out to you that the planning control at that time provided for a height limit of 18 metres. You understand?---Yeah.

20 The IHAP recommended approval for that application, this is in November 2014, and in December 2014 the City Development Committee approved the six-storey development application for that site. In 2015, in May 2015, the City Development Committee resolved that a planning proposal be prepared to increase the maximum permissible building height at that site and also the site on the other side of Harrison's, the carpet shop site. ---That's all one block, yeah. It's all one block.

But the carpet shop site, like Harrison's, was owned by Mr Demian, not Mr Maroun.---Correct. It's all one, one big block.

30 And so the planning proposal that the CDC resolved upon in May 2015 was to increase the maximum permissible building height for 538 and for 570 Canterbury Road from 18 metres to 25 metres.---I can't recall it but if - - -

No, if you can just sort of take that on board. Mr Maroun, in June 2015, made a section 96 application to make changes to the approved development and at the same time, he lodged a development application for construction of two additional residential floors above the approved development. So it would have made it an eight-storey development.---Correct.

40 So that is the background for the questions I'd like to ask you about it. You had contact with Mr Maroun about his applications in respect of this site, is that right?---I don't recall that particular site because he was doing it himself from my memory. I don't recall.

When you say he was doing it himself, what do you mean?---Like, he had, he had his, he had his planner and architect making contacts with council from, from my understanding and he was doing direct contacts with the planners. That's, that's from memory.

And how did you know that?---He must have, he must have said it. I don't know.

So you had contact with Mr Maroun about the site?---Yeah, Mr Maroun used to call me all the time, all the time. So - - -

10 And what did he used to call you about?---Oh, he just, he's just, he's a person who loves, well he had issues firstly but I remember he was developing duplexes in Earlwood at one stage. This is just, I think during the same period from memory, and he had issues with council as well, regarding setbacks and, and he called me many times complaining. I was
10 sort of ignoring him and towards the end I said, "I'll go out and have a look," and I went out and met him on the site. That was probably the beginning where I started realising that council is not doing the right things in regards to the, the controls and what I saw, he was actually right. His complaint was correct in regards to what council staff were asking him to do and they were asking him for all these additional setbacks when it actually met the objectives of the council controls and I picked up the phone and I was, and as soon as I saw it, I didn't need to, to do any further work. I called Marcelo, I recall this very well, and I said, "Marcelo, just a question for you. What comes first the controls or the objectives?" He goes, "The
20 objectives." I said, "That's correct. So why is your staff forcing this guy to have all these setbacks when he's on a corner surrounded by road and he doesn't need all those setbacks except for the neighbour next door at the back?" And even Marcelo agreed, he said, "Oh, I'll fix that up. Let me, let me sort to out." So that, that was the eye-opener for me in regards to realising that council staff, don't necessarily make the correct decisions.

30 But my question to you was, what contacts did you have with Mr Maroun about, if I can make it clear, 538 Canterbury Road, the Spoilers Car Wash site?---Well, just after that, he used to call me all the time just, when I'm in Earlwood just come around and, he's a social person, bubbly social person and if I was in Earlwood I used to drop in and meet up with him.

Drop in where?---At his house, sometimes at the gym, it depends.

What gym?---Well, there's a gym he used to come and have coffee in Earlwood because I used to spend a lot of time there.

40 Can you tell us a bit about this gym please?---Well, there's two gyms, one, he had one in his house and one he had at the, we used to meet at the Olympic Gym next to Ray White next to where Ray White used to be.

You mean - - -?---Across where the - - -

That second gym that you've spoken about, is that the one where - - -?
---Olympic Sydney - - -

- - - where Con Vasiliades works.---Yes, that's the one, yes.

But the first gym that you've spoken about that was at Mr Maroun's house, you say?---He had a gym, he had a gym there so it (not transcribable)

How often did you meet him there?---Just whenever I'm in Earlwood I used to pick up the phone and give him a call and say, look, what are you doing, come around. He just talked general about things not associated with Canterbury or his site, he talks about everything else under the sun and he's just a social person so we became um, friends in that area where, just to socialise after hours - - -

10

When you say friends in that area, do you mean friends in Earlwood or do you mean friends in the development - - -?---No, no, in Earlwood, friends in Earlwood. Whenever I'm in Earlwood he rings me up I just drop in, because he's a, the reason I got to his house more than he comes to the gym that often because he's a drinker, he has heavy drinking so he can't drive, he can't hop on the car, hop in the car and drive up to Earlwood because he probably would have been over the limit. So he's a regular, I would say, regular drinker.

20

Did he come to your place?---He might have been there once, once.

But you were friends with Mr Maroun, that explains the degree of contact that you had with Mr Maroun in 2015/16 does it?---Yes, we had a social, yes social understanding put it that way.

30

Did Mr Maroun raise with you any difficulties that he had with council in relation to the car wash site?---Well, no, he was, it's funny, but he was more interested in another site that he had that he's been sitting waiting there and he was whinging on that one more than the one, the site that we're developing.

Which site was that?---Somewhere on Canterbury Road, it's the old, it's opposite Scahill Street in Campsie so, the road, I can't remember the, I can't recall addresses but I can tell you where their location is. It's on Canterbury Road down from Beamish Street and across the road from Scahill Street in Campsie.

40

Are you saying that the Robbo's Retail site was owned by Mr Maroun?
---Yes, yes.

Mr Maroun owned it?---Yes, from my understanding and he was whinging on that one continuous.

When was it that that application was before council?---I think that came through with the planning proposals from the beginning from memory as part of his, he made a submission with his planners in regard to their planning proposals.

You're talking about the Residential Development Strategy?---Yes, his site was a B6 which was a, it was, I think gateway, not gateway, the zoning B6 and this was that Marcello made it B5, if you have a B6 then you can use the B5 controls or vice versa but he was waiting for the Department of Planning to approve all that, so it's been sitting there and he keeps whinging about the delays from the Department of Planning, the RMS and everything else. So that's just something that you listen to and you ignore because there's nothing that you can do about it, it's something that's beyond anyone's control is up to the Department of Planning to come a back and - -
10 -

Could I show you, please. volume 17 in Exhibit 69, page 114 to 120. Perhaps if the hard copy could be provided please, volume 17. You don't have to read the whole thing.---Okay.

I just want you to understand the nature of it if you can. It goes through to page 120, and it's from one of the planners at council, and it's addressed to Jarek, J-a-r-e-k, sorry, J-a-r-e-k, Holdings Pty Ltd, and you can take it from me that that was one of Mr Maroun's development companies. And you
20 can see that it's in respect of 538-546 Canterbury Road, the car wash site. ---This is the car wash. Not the Robbo, the other one.

Correct. And you can also see that it's in respect of a development application.---Yeah.

Now, this was in respect of the application to add two floors, to add two stories to the already approved development.---Yeah.

And what the planner who wrote the letter told Mr Maroun was that the
30 application that had been made under clause 4.6 of the LEP was deficient, that there were shortfalls in the application itself that had been submitted, including in relation to the height variation – because as you understand the height of the proposed development considerably exceeded the maximum height that applied to that site – and that it was considered that the application couldn't be supported in its present form. In this regard, the planner went on to say the application should be withdrawn and the issues raised in this letter be addressed prior to resubmission, and further the planner sought the provision of further information. Now, do you have a memory of anything like that being drawn to your attention?---No.

40 I'm not suggesting that you would have had the document drawn to your attention, but do you remember Mr Maroun indicating that he had an issue because council was pouring cold water on his application to add two storeys to the existing approved development?---He might have mentioned – oh, look, I don't recall, but he may have mentioned it, but from my understanding he had some, he had good planners and architect who was working on it, and making contacts with council. So I, I don't recall doing, might have made some inquiries on his behalf but I don't recall really going

into it because there was communications going on between the council staff and his planners. That's, that's from memory but I don't recall a hundred per cent.

Did you ever have a conversation with Mr Stavis about this development application?---I may. I don't recall. If Mr, if Mr, Mr Maroun asked me to check something out for him, like any other person, I would have made an inquiry, but I don't recall.

10 Do you think if Mr Maroun had received a letter like this, he might have complained to you about it?---He may have. I can't recall.

It's inevitable he would have complained to you about it, isn't it?---He might. I don't recall.

And if he complained to you about it, and if you understood his complaint to be that council was essentially saying that the application should be withdrawn and redrafted, do you think you might have taken it up with Mr Stavis?---I might have made an inquiry, but I don't recall making too much,
20 too much contacts in this regard. I don't recall it.

What would have been the nature of the contact you would have had if you'd had it with Mr Stavis about such a thing?---Just what's going on. I said have, look, what's, what's the progress of this particular site? And that's it.

But if Mr Maroun had told you what we can see in the letter, there wasn't going to be any progress on the site, the application wasn't going to go anywhere unless serious changes were made to it.---Well, he might have
30 spoke to his planners further. I don't recall this one. So but from, from memory I didn't do much inquiry on, on his behalf on that particular site because of he had competent planners and, and architects who were working for him. That's my understanding. I just can't recall doing too much inquiry on this one.

Were you, was Mr Maroun one of the people for whom you organised meetings with Mr Stavis?---Oh, it's, no, not that, no. I, I, look, I don't recall, but there might have been a few meetings. But again, I don't recall
40 having to, to do too much with, mmm, with Mr Maroun on that particular site. I don't recall that.

If we can show the witness, please, in Exhibit 69, volume 17, page 304, and if I can direct your attention to item number 81 and 82, this is one of the schedules of text messages extracted from your mobile phone, and at item 81 on 25 August, 2015, and if I can just draw your attention to the fact that that is five days after the date on which this letter that council had written to Mr Maroun - - -?---Yep.

- - - about his DA. The date on the letter was 20 August.---Ah hmm.

We're talking here about 25 August.---Yep.

On 25 August, excuse me, item 81, Mr Maroun said to you at 8.12am, "Hello Michael, if possible I need to see you at gym today, thank you." You responded, at item 82, at 8.33am, "I will be at Earlwood just before 2.00pm today if you're free." Mr Maroun responded, "I'm free." Can you assist us as to what you understood Mr Maroun to mean when he sent you the text, which is item 81 at 8.12am, "I, if possible, I need, need to see you at gym today"?---So he wants to meet up.

Yes, but when he said that he needed to see you at the gym today, what did you understand that to mean?---He's, oh, he's, he's, he's probably exercising in his, in his gym, that's where I'll be there, because it's, that's a separate, it's a separate room altogether, we're away from the house. So you, you have to sort of go past the house to get to the gym.

Yes, but - - -?---So it, it's not part of the house.

I'm focusing, I suppose, on the word "need".---Yep.

What, as you understood it, at the time, was Mr Maroun's need to see you? ---He needs to see me, he wants to see me.

Yes, but what was the need? What was the nature of the need?---Well, I'm just looking at, at the follow-up here, on the same, same date (not transcribable)

That you would be in Earlwood at 2.00pm?---Yeah, that's the 25th. And then he talks about the, the Robbo in regards to RMS, which I mentioned. And this is the, this is the thing that he, he was complaining about more than anything else. It's - - -

You're talking about an entry that is number 86, for 16 September, 2015. ---Yeah.

I'm asking you about entries for the 25 August, 2015, five days after council had written to Mr Maroun indicating to him that his development application to add two storeys to the car wash site stood a poor chance of success in getting through council?---Look, I, I don't recall, I don't recall what he spoke to me about.

No, no, I'm not asking you that. I'll ask a different question. As you sit there now, looking at this, what do you think he meant? Knowing as you do that this is five days after he had received that letter from council about the car wash site, what do you think he meant by "Michael, need to see you at gym if possible"?---Look, I, I don't recall, but he could have, he could have

wanted to relay his, his concerns, I don't recall it, I can't, I can't be accurate. He may want, wanted to relay his concerns. But if you know Mr Maroun, as soon as you start talking to him, and it's, his mind is, it wanders a lot. He might talk about something and he talks about something else. I, I don't recall his – it gets a bit confusing with, with him, because when he starts drinking heavily, he's, he doesn't focus on one thing. He's just, he's all over the place. And I, I tend to, to sort of a lot of times ignore what he says to me. I just don't recall.

- 10 Why, in that case, did you have anything to do with him? As soon as you found out that he was of that nature, why didn't you cease being a friend of his and cease having contact with him?---Because he's a, he's a, he's a nice, nice person who, a bit pushy I have to say also, and if I'm Earlwood, drop in and say hi, socialise, he used to make his own, his own alcohol there and it's just, he's just a character that I've known and, and I sit down and have, have coffee with him sometimes.

- Can I just focus on the word need again, I'm sorry to labour the point.
20 Don't you think it is likely, as you sit there now, that when he said he needed to see you five days after council have written to him saying that basically his DA to add two storeys to the approve development at the car wash site wasn't going to go anywhere, that he needed to get you to intervene or at least assist him in relation to his DA?---I don't recall what he spoke to me about.

- Do you think that's likely though?---It's, I can't recall, I don't know what he, because he is a, a person, he's all over the – I don't recall what he said to me on that particular day. I can't recall it. If he did I would say he did, that's not, nothing to hide. I mean, people talk to me about things, their
30 sites all the time. I just, I don't recall it.

Did Mr Maroun ever ask you to do anything for him in relation to the car wash site?---He might have asked me for an, an enquiry. If I make some enquiries, it would have been based on him asking me to do enquiries. If there's any correspondence that I made to Stavis in regards to an enquiry, that means he asked me for it.

And do you think that - - -?---I can't recall it.

- 40 Did you try to assist Mr Maroun in relation to the attitude that council was showing in its letter of 20 August, 2015?---Again, I don't recall. All I know is he had his planners and his architect address these issues. I don't recall doing much instead of a couple of maybe emails or correspondence from, from memory but I don't recall anything, anything further than that. The, the main concern he had was that, that other one, the road. That's the one he, he hounded a lot.

Why do you say that was the major concern he had?---Because he kept on repeating on that one. He was just always complaining and whinging about it, what's happening with it. This is, because I, I think he had an option on it maybe, I can't recall, and I think he was concerned the option would have expired. That's, maybe. And he was more concerned about that one than anything else.

10 But this is still a – the Robbo's Retail site is still a site the subject of an application Mr Maroun had in council, is that right?---He had, yes, correct. He was waiting on the RMS and - - -

And so were you responding – sorry, I withdraw that. Did you respond to Mr Maroun asking you to help him with council in relation both the DA for 538 to add two storeys to the approved development and an application he was making in respect to the Robbo's Retail site?---I, I made a, a number of enquiries on behalf of the Robbo's site. I remember that. I sent him a lot because he kept on hounding me and I said, I said "Look what's happening with RMS."

20 What was the subject matter of your enquiries in relation to that site?---Just what's happening with RMS, any news from State Planning. I just kept on feeding him whatever information I got just to appease him - - -

To whom did you make those enquiries?---Well, to whoever was the director at the time, it's Mr Stavis.

It was Spiro Stavis.---Yeah, correct, yeah, Stavis.

30 And did Spiro assist you in relation to those enquiries?---Well, whatever information he got, he probably passed it on and I, I told Mr Maroun. General enquiries.

If I could ask you to have a look again at page 304 in volume 17, please, and item 84. You might have seen it a moment ago. On 16 September, 2015. At 6.08pm, "Hello, Michael. Need to see you at gym if possible. Thank you." And you said, "I am at the Bardwell Park RSL if you want to come there." This is at 6.09pm. Do you see that?---Yep.

40 And then – excuse me a moment. We can see that there's the email, I do apologise, the text message that you drew attention to, number 87, the next day, 22 December, at 2.25pm, but this time to Spiro Stavis.---Yeah.

"Hi, Spiro. The Jimmy Maroun site, the old Robbo at 445-459 Canterbury Road, Campsie, he needs an urgent letter from council to state that the delay with regards to this site was due to RMS objection along Canterbury Road for all DAs before we can action the new B5 zone that council approved. B5 is for a mixed residential/commercial zone. Mr Maroun needs our assistance. Thanks. Michael Hawatt."---Yeah.

Do you see that?---Yeah.

So did you see Mr Maroun at the Bardwell Park RSL on the evening of 16 September?---He could have come. I don't recall it but he could have come.

10 When you told Spiro Stavis on 22 December "Mr Maroun needs our assistance", you were conveying to the director of planning that council should assist a development proponent in respect of a project that he had before council.---No, not really. What, what, what this says is that the delay, he must have had a, he must have an option on it, presumably, and the delay that he probably wanted just to say that the RMS delay, which, which was the case, and he just wanted it in writing.

But the words I'm focusing on are "Mr Maroun needs our assistance," and you've signed off.---Yeah, in regards, that's right, in regards to having a letter from the council stating that there's been an objection from the RMS.

20 But you wanted council to do something to assist your friend, the development proponent, in respect of a matter he had before council at the time, is that fair to say?---It's fair to say that he wanted a letter from council based on what's happening and the progress, and he wanted it in writing, and I, I made a request on his behalf, yes.

Look, I'm sorry to be picky, but that much you conveyed in the first paragraph of your letter, your text message.---Yeah.

30 It's the additional paragraph that I'm focusing on. The words you use, "Mr Maroun needs our assistance," were an endeavour, were they, to persuade Mr Stavis to ensure that council did provide your friend Mr Maroun with the assistance that you outlined in the earlier part of the text message, is that fair to say?---Well, well, I'm just not clear on this, but the RMS objections for the whole of Canterbury Road, and he wants something specific - - -

You don't want to answer the question, do you?---I just can't recall it. I just, I'm just, I'm just reading what I'm - what I'm reading is what I'm recalling now, that's all.

40 Excuse me a moment. If we could show Mr Hawatt Exhibit 149, please. Can you see that this is a copy of a statement of account where the account holder's name is R-a-f-q-a Holdings Pty Limited?---Yes, I can see that.

Do you recognise that name?---No, I don't.

Mr Maroun had a number of companies through which he operated his business, is that fair to say?---Well, I don't know the names of his companies, I mean, I can't make a comment but yes, he must have if he's got a company here.

What you can see on the screen in front of you is that on 4 September, 2015 the person who operated that account made a withdrawal in the sum of \$4,500. Do you see that?---Yes.

If we could go to the next document please, this is, you can see on the 4 September, 2015 a withdrawal chit, a voucher. Mr Maroun's signature appears there, he's identified that as being his signature. Do you see that?---Yes.

10

It says that the \$4,500 was withdrawn in cash. Can you see that?---Yes.

Then if you could look at the bottom part of the page you can see that the, there is a computerised printout in respect of the withdrawal and it has a, the bottom half of it where the cursor is indicates that the cash disbursed was in 90 \$50 notes. Can you see that?---Yes.

That signature again, is Mr Maroun's signature as having received that. Can you see that?---Yes.

20

Can I take you then to the next document in this exhibit please. Excuse me for a moment. The next document is a page from a statement of account, indeed it's the same statement of account, it's an entry for a withdrawal on 9 September. Can you see that?---Yes.

If we go to the next document, you can see the computer generated record for the transaction indicates that the cash disbursed, sorry, that the withdrawal was made in cash and that the cash was disbursed in seventeen \$100 denomination notes.---Yes.

30

What this means is that certainly by end of the 9 September, Mr Maroun had withdrawn \$6,200 in cash in \$100 and \$50 notes.---Yes.

Now, you had a meeting with Mr Maroun at the Bardwell Park RSL on 16 September, 2015. Is that right?---Yes.

Did he give you any cash at that meeting?---Never.

40 If I can take you, please, to the next page in Exhibit 149. This is a receipt from Flight Centre for funds received from a person called Najat. That was the name of your wife.---Yeah.

The date is 17 September, the next day, the day after your Bardwell Park RSL meeting.---Yeah.

You accept that. And the amount that was paid to the Flight Centre was \$3,369.86.---Correct.

Did any of that money, to your knowledge, include money that Mr Maroun had provided to you?---There's no way in the world. This would have been done whether he withdrew his money or he didn't withdraw his money. If my wife planned to leave, then she would have had to pay that either way, so it doesn't make sense what you're saying.

Where did she get the cash from or where would she have got the cash from?---We have always had cash.

10 How come you've always had cash?---Because I pay out a lot of bills and I get paid back in cash. I've got a lot of cash. I've got cash from, from when I travelled to Morocco. I've sold my, my land and I get money when we come back, we bring it with us, and I've declared anything above the \$10,000. I've had money that I've, I borrowed from my brother. I've got money that I paid, I've got, I get paid back for my daughter, who I make her regular monthly payments on, to, to her house. There's always cash. I've always had cash. For, for the last 10, 20 years I've had cash. It's not the first time.

20 At the outset of your evidence I asked you what your sources of income were, didn't I?---The other one wasn't a source of an income.

You didn't tell us - - -?---It was paybacks.

- - - about getting money from Morocco, did you?---It's not a source of income. It is I sold the land that we had, and it's getting the money back from what I paid for it. It's not a, it's not an income. It's a sale of land that I sold for the money that I, I bought it for. So it's not an income.

30 And how much did you receive on that transaction?---In total he still owes us another \$90,000, and I received a hundred and, in total, over a period of time, it was paid in instalment, about 100 and probably 50, 60,000 over a period of time.

Over what period of time? Between what dates?---Well, at least in the period of the last four to five years.

And what record did you keep of your receipt of that, those funds?---This is from my, my father's, my father-in-law in Morocco.

40

No, I'm asking you what record did you keep - - -?---He kept the records, not us.

- - - of those – do you mean to say the answer is “I kept no record”?---The only record I kept is the record that, that I brought in that was over the, the amount, that's limited, which was, there was a limit of 10,000 that you bring in. There's one time I brought in with me I think it's 20, 25,000 US and that was declared, and also my wife brought in around 20,000 US. She also

declared that at the airport. So that's the only record that we have. Others, it's, it's below the 10,000 mark. There's no need to declare it anywhere.

So how many instalments were there?---Oh, whenever we went to Morocco and back, we got, we got paid for it.

No, I didn't ask you that. I asked you how many instalments were there?
---Oh, I just can't recall it. I have to talk to Najat's father. He, he kept a record.

10

Was there a particular rate at which the money was paid?---No, he just, look, I had a, an issue with, with the land that I purchased. The issue was - - -

No, I'm not asking you - - -?---I'll explain the situation.

No, no, please, if you could answer my question, and if there is relevant material that you need to provide, then you can discuss that later with your counsel. Just at the moment if you could focus on my questions. Was there
20 a particular rate at which the instalments were paid?---No, it was just given as whatever amount he had that he could afford at the time, he gave it to us.

So the amounts varied from instalment to instalment?---Correct. Depending how much he had.

How did you keep track - - -?---The father - - -

- - - of the funds that you were owed?---Her father kept track of it.

30 How did you keep track of the funds that you were owed?---I trusted the father. He was a very, very honourable person that he kept, he was very honest person and I left it to him. He gave us whatever he can. We collected it.

It is very difficult to believe, Mr Hawatt - - -?---No, it's not.

- - - that you didn't keep any record of the funds that you had received, and in particular the funds that were outstanding on this transaction that you've told us about.---The record is kept in Morocco.

40

Why wouldn't you keep a record yourself so that, given that it's part of your financial affairs?---Because his father, her father gave us money. He recorded it and he still records any expense, anything that happens. He records it all. He's, that's the way he is and I trust him and I go by his judgement and he gives us whatever he can, and I do that. And also I get money from my daughter on an, on an average - - -

No, please, please, please. How much are you owed?---It was around 200 and, 230,000 US.

And what you have, as you sit here - - -

THE COMMISSIONER: Sorry, you had land in Morocco.---Yes.

And you sold it to your father-in-law.---I bought it years ago, many years ago.

10

Yes, yes, that's okay.---Yes.

You bought land in Morocco. You then sold it to your father-in-law.---He, he, well, he bought it off us, yes, yeah.

And what are you saying the price was?---The price I, I, I paid for it, 220,000 US.

I thought you said that – I'm sorry, I withdraw that. All right. So the price was, what was it?---Around 220,000 US.

20

US.

MR BUCHANAN: How much are you owed on that?---Still?

Yes.---Another 90,000 US.

How do you know that?---Because of the calculations from how much money has been collected. If I said to you there was 25,000 and it's 45,000 US, and the money he gave us over a period of time.

30

How can you perform those calculations without any record?---Well, we had it in, in the, from, from the time that he gave it to us. We know that, oh, yeah, we collected 10 and we collect another 10. We collected 30. We collected five. We collected the 25 and 20. I mean, that's, it's just, it, it's added on as you go along and that's how it's, it's there. But he's got the, the actual record. He has it.

It is difficult to believe, Mr Hawatt, being a person who pays a good deal of attention to figures and money and how much will be paid and when and how it will be paid that you keep no record of these funds you claim to have been bringing into the country by way of cash. Do you understand?---Her father kept the record and he has the record of every cent that he given me over there.

40

But why wouldn't you keep a record?---What for? Just, when we go to Morocco, we're just going for a, for a break.

Don't you want to find out whether, if you're in financial strife at all, at any stage whether you've got any money due to you from the sale of the land in Morocco?---Because I know in the back of my mind there's another 90,000 owing to me.

If we could go to, please, the next document in this exhibit, Exhibit 149. This is page 7 to 10 of Exhibit 149. Can you see that it's a copy of a statement of account in your name, held at Citigroup, and the account number ends in the numerals 5-3-7-9?---Yeah.

10

If we could go to the next page, please. Can you see that on the transactions page there is a transaction highlighted whereby you made a payment on 21 September, at 2015, of \$4,500?---Correct.

If we go to the next page, please. Page 9, thank you. And can you see that this is a bank trace, which you have signed - - -?---Yeah.

- - - for the transaction?---Correct.

20

And can you see that up in the top left-hand corner the amount is a cash amount, 4,500, a deposit in cash?---Correct.

And where did you get that \$4,500 from?---As I said, I have, I have, I have, from my daughter, I pay her mortgage on a monthly basis. You probably have a record of that, and - - -

Sorry, are you saying to us that you got that money from your daughter?
---My daughter gives me money as well.

30

Sorry, please, are you saying that you got that money, the \$4,500 from your daughter?---She pays me, yes, every, every, nearly - - -

She paid you this amount of money?---Whatever she can afford she gives me, sometimes it's \$2,000, sometimes \$5,000.

Are you saying she paid you this amount of money?---This amount I would have been collected over time, I would have had the amount, I don't like to keep money in my house, I just pay the bills with it. Whatever I get it, I pay the bills with it. What am I going to do, keep it and store it?

40

THE COMMISSIONER: Put it in a bank.

MR BUCHANAN: Did the \$4,500 that you deposited on the 21 September, 2015 come from Mr Maroun?---No way, what's it got to do with him.

Well, it would something - - -?---I mean he's a, if he withdrew - - -

- - - to do with him if you had received a payment that he made to you?---He gambles, all right, go and ask him what he did with it.

It's not so much where he got the cash from but whether the cash that you used and that you, your wife used came from a payment made to you by Mr Maroun?---Nothing - - -

I suggest at the Bardwell Park RSL on the evening of 16 September, 2015?
---Oh yeah, that's a beauty, go to the club, there's cameras everywhere if
10 that's the case. Go and check the dates and find the cameras and see if he gave me the money.

THE COMMISSIONER: Mr Hawatt, is your answer no?---No, that's definitely not.

Thank you.

MR BUCHANAN: Can I take you forward in time now to the 24
September, 2015 there is surveillance evidence that between 7.30 and 9.30
20 you took part in a meeting at council chambers on that date and that from about 10.28pm you got into a car, your car, a car registered in your name, and after the meeting, and later at 8.40pm, that car was seen outside Mr Maroun's house in Earlwood. Do you understand that?---Yes.

Why did you go to Mr Maroun's house on that occasion?---He might have asked me to meet up with him after the, after the council, I said I can't meet him until after the council meeting.

On this occasion, the surveillance evidence is that Mr Azzi left council
30 chambers in his car around the same time as you did and that afterwards he, his car was observed outside the house of Mr Maroun. Did you and Mr Azzi see Mr Maroun together on 24 September, 2015?---Well we must have if we went there.

Why did you both go to Mr Maroun's house after this meeting at council?
---Because he's always asking us to meet up at his house, he socialises, probably had some arak that he made for Pierre which Pierre also liked. It could be just a complete social meeting to sit down and relax, that's all it is.

40 Because the man was your friend, you found his - - -?---Because the man was my friend.

You found his company congenial?---His company was happy, bubbly, easy going and Pierre liked that arak that he made, that was it.

Was there any discussion on that occasion about either of his DAs that we've spoken about so far?---If he would have spent five per cent of the

time talking about his, the 95 per cent would have been on a social discussions and general things.

And you say that, do you, because that was your experience?---That's my experience, yes.

On the occasion that we've spoken to you about, 24 September, 2015, did Mr Maroun, when you and Mr Azzi were seen to have gone to Mr Maroun's house after this meeting at council, did Mr Maroun give you any money?

10 ---No.

Well, without, if you'll allow me to do it, taking you to each document, the evidence before The Commission at Exhibit 149 pages 11 to 13 shows that Mr Maroun made a withdrawal of \$10,000. Excuse me a moment. I withdraw that. the evidence before the Commission shows that, pages 11-13, a withdrawal was made in the sum of \$10,000 in \$100 denomination notes, possibly by Mr Maroun's wife and then on 22 September, Mr Maroun made a withdrawal of \$8,000 with 80 \$100 notes, which would suggest that he had available to him, around the time that you and Mr Azzi went to his house after that meeting at council on 24 September, 2015, some \$18,000 in cash. Did you get any of that?---Absolutely not.

20

If I can take you please to pages 21 to 23 of Exhibit 149. This is a statement of account for an account styled in the name of you and your wife and the account number ends in the numerals 7-2-8-9, can you see that?---Yep.

Highlighted on this page, you can see a transaction, being a credit transaction of cash on 28 September, 2015, in the sum of \$4,900. Can you see that?---Yep.

30

If we could go to the next page, please. And this is a deposit slip. The date, you can see, is 28 September, I'd ask you to accept, 2015, and you can see that the last four numerals of the account number are 7-2-8-9.---Yep.

You can see that he sum us \$4,900?---Correct.

And whose writing is that, are you able to say?---That's my writing.

Thank you. And down on the obverse of the deposit slip, you can see that the denominations which you used for the deposit were \$100 notes?---Yep.

40

Did any of that \$4,900 come from Mr Maroun?---No, absolutely not.

If we could move to the next page, please. If we could move then to page 24 in Exhibit 149. This is another deposit I suggest that you made. This time the account was styled Ozsecure Home Loan Pty Ltd, your company, correct?---Correct.

The last four digits of the account number all right 2-2-1-8. Can you see that?---Yep.

And can you see that he deposit was in cash, again on 28 September, this time in a sum of \$4,500?---Correct.

If we could go to the next page, please. Again, you can see the deposit slip here. That's your handwriting, isn't it?---Correct.

- 10 And it seems to be in respect of this very same deposit, indicating that it's \$4,500 and when we go down to the copy of the obverse of the slip, you can see that the deposit was made using \$100 denomination notes. Can you see that?---Correct.

Was this deposit made using cash that you'd received from Mr Maroun?
---Absolutely not.

Thank you. I note the time, Commissioner.

- 20 THE COMMISSIONER: All right. We'll adjourn for lunch and resume at half past 2.00. Can I just as everybody, because another public inquiry overseas coming in, it's primarily to receive a judgement but there might be some argument. Don't move your folders bit if you can just leave a little bit of free space the other counsel coming in and we'll resume at half past 2.00.

LUNCHEON ADJOURNMENT

[1.30pm]

30