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INDEPENDENT COMMISSION AGAINST CORRUPTION

PATRICIA McDONALD SC
COMMISSIONER

PUBLIC HEARING

OPERATION DASHA

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON MONDAY 17 DECEMBER, 2018

AT 10.00AM

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

THE COMMISSIONER: Mr Buchanan, any administrative matters?

MR BUCHANAN: No, I don't think so, Commissioner.

THE COMMISSIONER: All right. Mr Montague.

MR BUCHANAN: Mr Montague, if I could remind you of some evidence that you gave on Thursday, 13 December. I was asking you questions – page 5307 of the transcription – about the email to Andrea Sutcliffe, volume 27, page 283. If we could just have a look at that on the screen, please. Dated 27 November, 2015, cc'd to you, in which Mr Stavis said, “The GM wants to speak with me urgently on Monday to discuss the above,” and the
10 above was IHAP reports 212-218 and 220-222 Canterbury Road, Canterbury, Bowermans DA and Harrison's DA. Do you see that?---Yes.

I asked you questions on Thursday, 13 December about this email. I asked you, line 10, page 5308, “Nevertheless, Mr Stavis seemed to think that you wanted to talk to him about - - -” and you said, “I can't recall. Yes.” I asked you at line 24, “You wanted to meet with Mr Stavis urgently, he has said, on the Monday after this Friday to discuss those.” Answer, “Yeah, I, I would have, yeah. Probably to get additional information as to why the thing was,
20 particularly in relation to that setback against the bowling club because there were concerns being expressed about that, about that site in general, the bowling club.” Question, “Who was expressing those concerns?” Answer, “Well, the community,” and you went on to say some other things and then I asked you, “Well, you can see, even though you don't have a memory of it, that you were concerned.” Answer, “Well, I've said repeatedly,” this is going over to page 5309 of the transcript. My question was, “About the IHAP reports in those suitcases?” Answer, “No, no. I couldn't, couldn't care less what the IHAP said. That's their prerogative.” And then you went on, I'm sorry, I went on to ask you, “Is there anything else, though, that you can assist us with as to why you would have wanted to have met urgently
30 with Mr Stavis on the next business day about those two?” And you said, “Only, only, as I said, to get advice. Maybe I had received calls from councillor or even the mayor. What's going on with these two, I don't know. I've got no idea now and we're talking about when, when was this, '15? Yeah. Three years ago. I, I, I don't remember.” You recall giving that evidence?---Oh vaguely, yes.

You appreciate, do you, that whilst you told the Commission that you couldn't care less what the IHAP said, that Mr Stavis's email to you started off with the words “I have reports” and then he identified them as being in
40 respect of 212-222 Canterbury Road and Harrison's DA as well as the Bowerman's DA?---Mmm.

That would tend to suggest that perhaps your memory isn't very reliable as to what it was that you had told him, it appears, on the Friday, 27 November that you wanted to urgently meet with him about. You'd accept that? ---Yeah, my memory may not have been as good as it could have been perhaps.

You see, the Commission has received evidence from Mr Stavis, around transcript page 4137, that you called him up to your office and, speaking of the outcome of the IHAP meeting on 24 November, 2015 in relation to 212 Canterbury Road, you said, "What's going on and how are we going to fix this?"---Mmm.

10 Do you want to respond to that evidence?---No, not really. I don't know what I meant by that now. I mean, as I said to you earlier, the only thing that really concerned me and the only meeting that I recall taking part in in relation to that development application was the setbacks as they affected the bowling club site. Now, whether something was happening in between I don't know. I can't recall.

Well, you can see from the evidence that something did indeed happen between and that was the recommendation of the IHAP at its meeting on 24 November, 2015 that the DAs be refused.---Yeah.

You accept that?---Well, you've got it in front of you.

20 That is something else that did happen in between.---Okay. Fine.

And that of course was a substantial obstacle to the prospects for the DAs being approved at the meeting of the CDC on 3 December, 2015, wasn't it? ---Well, it's something the council had to take into account.

Not according to Mr Stavis.---Well, that's his - - -

30 He gives us the impression that you were quite concerned about the IHAP report and wanted to know how we, you and him, were going to fix this. ---Well, I don't know that it was referring only to he and I. I mean, I don't know what the collective we means. It could have been the council.

And Mr Stavis has told the Commission that, the same reference, he had a conversation with you in your office about the requirement for a setback at the rear of three metres.---I remember the three metre setback discussion. That's all I remember.

40 With Mr Stavis?---No, no. I remember the meeting that took place in the meeting room on the first floor I think.

But you've got no reason, have you, on what you tell us, to think that Mr Stavis is wrong in the evidence that he's given on the subject of what you talked to him about in your office.---I don't know. I don't know what we've discussed in the office. I can't recall, as I've said repeatedly. The only issue that concerned me with that application, well, two, was the public reaction to the bowling club and second was the setback. That's the only involvement I had in that application.

You suggested when I asked you on Thursday about the concerns that it appears were exercising your mind when you indicated, one can assume, on Friday, 27 November, 2015 to Mr Stavis that you wanted to see him urgently on Monday to discuss the IHAP reports about 212 and 542 Canterbury Road that maybe councillors had contacted you.---That's possible.

Those councillors would have been Hawatt or Azzi?---Could have been.

10 Or both?---Could have been others. I mean, it could have been the ward councillors for that area.

Well, the, you have no memory of having contacts with Mr Azzi about the business papers containing a report recommending a deferred commencement - - -?---No.

- - - for the 212-222 Canterbury Road DAs?---No.

20 If you could just excuse me a moment. What's on the screen now is a page, page number 46, of some call charge records, and as you can see at the top, the heading is Pierre Azzi to Hawatt, Montague, Stavis, Maroun, Khouri, Demian, Vasil. Do you see that heading?---Yes.

And again these are in chronological order and I'd ask you to approach them on the basis that they are records of metadata as to phone calls or text messages sent to Phone User 2, the column with colours, from Phone User 1, which you can see in all cases is a phone number described as Pierre Azzi (Council). Do you see that?---Yeah, he was busy, wasn't he?

30 Sorry?---He was busy.

Indeed. Now, the page I'm showing you extends from item 2072 on 10 November, 2015 to 2117 on 4 February, 2016. Do you see that?---Yes.

And do you see that the colour green has been assigned to the phone number known as Jim Montague (Office)?---Yes.

40 The item that I'd like to take you to in the first instance is 2087, where the hand is, the cursor is on the screen.---Yes.

And do you see that it is a phone call at 11.21am on 27 November, 2015 to your office and the line was open for 3 minutes and 52 seconds.---Mmm.

Now, this is the same day on which Mr Stavis sent his email to Ms Sutcliffe saying that you urgently wanted to meet him, and from which we can infer that you had said that day that you urgently wanted to meet him on the Monday, 30 November, 2015.---Yes.

And then item 2088 is another call to your office on 27 November, this time at 1.05, and the line was open for 54 seconds. Do you see that?---Yes.

That would suggest that it wasn't just a case of Mr Azzi leaving a message with your staff, but rather talking to you. You'd accept that?---Possibly.

The duration of the calls.---Possibly. That's my out-of-office number. It's not my office number. It's, it might have gone to my PA.

10 Right. But as you understood it, he wasn't in the habit of making social calls to your staff?---Oh, he'd often chat with them on the phone, yeah, of course. They're very pleasant young people and I don't know what he was discussing with them.

And do you think the possibility might have been that he was talking to you?---Yeah. I, I'm sure he did at some stage.

20 And do you think that it might have been a possibility that Mr Azzi was talking to you about the issues that had arisen for the Chanines in respect of their DAs, the recommendation and the officer's report for a deferred commencement consent on the condition that the plans were amended to change the middle setback to a three-metre setback and also, the three days earlier, the IHAP having reported that he DA should be refused?---Well, that's possible, but I've got no idea what the subject matter of the calls were. It could have related to that but I would have expected him to contact Mr Stavis.

30 Well, you can see he did.---Yeah, of course but I don't know what he was talking to me about. I can't recall.

40 Well, we know that you exercised your powers in relation to the matter. You exercised your power of supervision of Mr Stavis by requiring him to attend your office on the Monday to talk to him about the matters, and we know that you exercised your power to furnish councillors at the 3 December meeting with a memorandum from you about the DAs for 212-222 Canterbury Road. So it would seem that you decided to involve yourself in this particular matter. You'd accept that?---No, I wouldn't accept that. I, as I said, I don't know what those conversations were about. It may have touched on that, those applications, but it may not have. I, I spoke to councillors about a lot of different issues.

Why did you want to talk to Mr Stavis about the IHAP report for 212 Canterbury Road?---I don't know. I, I've got no idea. I can't recall now. That's a long time ago.

Well, it's obviously wrong for you to say that you couldn't care less what the IHAP said because you plainly were concerned about it, weren't you? ---Look, I shouldn't have said that. That was, that was an inappropriate

thing to say that I didn't care, of course I care, but I, what I meant by that was that the outcome of the deliberations of the IHAP and the ultimate outcome on this site was of no concern to me in the sense that I wasn't involved in this application. It could have, it could have gone any way. I didn't want to appear to be cavalier about it but, no, look, it, it was just another application.

10 The evidence tends to suggest that you're trying to give misleading evidence to the Commission.---Well, I don't accept that, Mr Buchanan. I'm, I'm trying to the best of my ability to answer the questions to the extent that I can recall what actually happened.

In view of the timing of the calls to your office by Mr Azzi on 27 November, and you can see that he also was calling Mr Stavis, can you tell us whether there was anything other than 212 Canterbury or 542 Canterbury Road that Mr Azzi was talking to you about?---As a matter of fact, Mr Azzi didn't talk to me much about any of these applications. It wasn't, he, he dealt almost exclusively with Spiro. I, I can't recall what he was, he was, what he was on about. I, I, I can't and he, and he didn't make a habit of
20 contacting me about applications. He spoke to Spiro. That's what he should have done.

Well, again, if I could just give you the opportunity of understanding that Mr Stavis's evidence is that Mr Azzi called him and told him that he had to fix the problem of the deferred commencement consent, recommending amendment of the plans, and you called him up to your office, as he had said you did, and according to him you said, "What's going on and how are we going to fix this?"---Well, that's according to him. I mean, I, I, I wouldn't, I wouldn't have encouraged him - - -
30

But why would Mr Stavis be wrong on this?---I don't know. I've got no idea. I'm not a planner. I don't know.

You can't suggest any reason why he should be wrong about it, can you?
---Look, the only thing I can think of is perhaps the Chanines were concerned and they've contacted Azzi, and in Mr Azzi's normal manner, he gets very excitable. Perhaps he, he rang Spiro and, and berated him. I don't know. He didn't, he didn't speak to me in those terms. He - - -

40 But you berated Mr Stavis.---No, I didn't.

That's one view of Mr Stavis's evidence about what happened in the office on 30 November, if not the 27th.---Well, well, it's, well, I don't, I don't believe I did. I wasn't in the habit of berating staff. I didn't berate him at all. I may have asked him what was happening and what, what could be done, but that, that was just to acquaint myself with, with – if I did at all – to acquaint myself with the latest circumstances with it. It was a controversial application because of the bowling club.

And, Mr Montague, we also have evidence from Mr Stavis that the way that you dealt with him when a problem had arisen was such that you didn't go up to Mr Montague's office unless you had a solution for the problem to propose. That's the evidence, the effect of the evidence that he's given to us as to the nature of your relationship with him when an issue had arose, arisen within his domain.---I had a very good working relationship with Mr Stavis, very polite.

- 10 Yes, that can mean all sorts of things, Mr Montague. Does it mean that you had a good relationship with him in that he got done what you wanted him to get done?---No. No. I expected him to do his job as the director of city planning. I didn't, I didn't tell him what to put in his reports or how to report to council. He was his own man.

If I can take you back to page 46 of these call charge records of phone calls made by Mr Azzi. Can you see that item 2090 is a call to your office at about 10.22 on the morning of 30 November?---Yes.

- 20 This is around the time that you'd been speaking with Mr Stavis about 212 Canterbury Road?---Possibly. I've got no idea what time he came up to the office.

The line is, well, he says it's around that time and there's correspondence indicating that.---Yeah, well, he, he might say that but I don't know.

- 30 Did Mr Azzi call you to discuss with you or talk to you at all about anything that had arisen in relation to 212 Canterbury Road?---I don't, I can't recall, Mr Buchanan, and as I said earlier, I got calls from councillors all the time about a whole range of issues, not just planning issues, and I couldn't have helped him much on this anyway.

But you knew that Mr Azzi and Mr Hawatt between them controlled the numbers on council?---Of course. Everyone knew. The dogs were barking about that.

So surely you paid some attention when Mr Azzi contacted you about a matter.---Well, it would depend on the subject matter.

- 40 So do you have a recollection of any dealing with him in relation to 212 Canterbury Road?---No, and that would be uncommon in relation to DAs. He's more likely to ring me about, about other items on the business paper.

What, that Mr Azzi, as you recall it, did not have dealings with you in relation to planning matters? Is that your evidence?---No, I'm not saying that at all. He, he may have contacted me from time to time. He might have wanted clarification on a particular resolution or he might have asked me to ask Spiro to get something put together for him if Spiro wasn't available, for

example, but generally speaking Mr Azzi – and Mr Hawatt, for that matter – spoke to Spiro direct, and we’ve got evidence of that, a lot of phone calls between the two of them.

10 What we’ve also got evidence of, Mr Montague, I just invite you to respond to, is that Mr Azzi and Mr Hawatt took part in meetings that you had with developers.---On occasion, yes, but not, I don't know about this one, this particular application. I've said repeatedly that if an applicant, regardless of who they were, wanted to talk to me about something, I always made myself available. That was my practice right through the time I was GM at Canterbury. It could have been any application or any matter before the council or of concern to the community.

You knew that Mr Azzi and Mr Hawatt took a keen interest in planning matters on council?---Well, depends how you define keen interest. I mean, they were, they were more active in that space than some of their predecessors, yes. Yes, that's true. But I’m not, that doesn’t have to be a sinister thing.

20 No, but it might be sinister if you’re trying to indicate to the Commission that there was hardly any contact between you and Mr Azzi on planning matters when in fact the opposite was the case.---No, that’s not true. There was some contact. It might have been incidental. He might have rung me and asked me about a, or could I put a resolution together or a motion together for him because he couldn’t pen them himself necessarily, and if I could I would, but it was always his words not mine and he’d tell me what he wanted included in the motion.

30 So is it possible that Mr Azzi expressed concern to you about issues that had arisen in relation to 212 Canterbury Road DA?---Anything is possible but I don’t recall it.

Commissioner, just excuse me a moment. Then if I could, before leaving page 46, take you to item 2095 on page 46 of the call charge records for Mr Azzi. Can you see that – this is on 2 December, the day before the CDC meeting – that Mr Azzi rang you up at 5.48pm and the line was open for 10 minutes and 23 seconds?---Yes, I can see that.

40 Do you think there’s a possibility that there was any discussion about the agenda item of 212 or of 548?---It’s possible. That was on my mobile. It was after normal office hours. Again, it could have been anything but, yeah, it may have been mentioned but that’s not, that's not unusual.

You'd accept that the likelihood probably is – given the proximity to the date for the meeting at which those DAs, the 212 and 548 DAs, were to be considered and given the issues that had arisen particularly in relation to the IHAP reports for both sets of DAs and given the length of the phone conversation – that Mr Azzi and you spoke about those DAs?---It’s possible

but there could have been other DAs we were talking about or there could have been, or other matters we could have been talking about. I don't know. I can't recall. And that was routine for me. Didn't bother me at all that a councillor rang me, and if I could assist the councillor I would do my best to do so.

Is it the case that you assisted Mr Azzi by ensuring that the DAs could receive a favourable outcome at the meeting of the CDC on 3 December?
---No. He'd have to argue that in the council meeting or the committee meeting whatever and argue with his colleagues about it.

You knew he didn't have to argue it, that he and Mr Hawatt dominated the council by force of numbers and that if he or Hawatt proposed something invariable that is what happened?---Well, that was the politics of the place at the time. I had no control over that.

Can I ask you, sorry. Now, Commissioner, can I now take you, please, to the 50 page spreadsheet entitled Pierre Azzi to Hawatt, Montague, Stavis, Maroun, Khouri, Demian, Vasil, Call Charge Record Analysis document and tender it.

THE COMMISSIONER: And it commences on 16 January, 2013 and finishes on 30 June, 2016?

MR BUCHANAN: Yes, Commissioner.

THE COMMISSIONER: The call charge records of contact between Pierre Azzi to Hawatt, Montague, Stavis, Maroun, Khouri, Demian and Vasil, commencing on 16 January, 2013 and finishing on 30 June, 2016 will be Exhibit 244.

#EXH-244 – CALL CHARGE RECORDS OF CONTACT BETWEEN PIERRE AZZI TO HAWATT, MONTAGUE, STAVIS, MAROUN, KHOURI, DEMIAN AND VASIL COMMENCING 16 JANUARY 2013 AND FINISHING 30 JUNE 2016

MR BUCHANAN: Can I please take you back to the Sparke Helmore Lawyers letter, the subject of your memo to council on 3 December and I'll just make sure I've got that right, if you'll just excuse me a moment. And if I could ask that we look, please, at your memorandum commencing at page 167 in volume 28, going to page 168, and to it was annexed the Sparke Helmore letter or a copy of it, dated 27 November, 2015, commencing at page 169 and concluding of page 176 of volume 28. Just looking at the Sparke Helmore letter, it was obvious to you that it had been commissioned by Ziad Chanine?---Well, it's obvious now that I can see it in front of me, of course.

It would have been obvious to you at the time?---Look, Mr Buchanan, I was thinking about this overnight. I, I, I'm not sure how, how that letter was, how that letter was treated. All, all of the correspondence doesn't come into my office. It, it would have probably gone straight to Spiro Stavis, that letter. There's a possibility I never saw it until much later.

10 Well, on page 167 of volume 28 is the first page of your memo of 3 December, 2015, to the mayor and all councillors and in the fourth paragraph, you say, second line, "We've received legal opinion (copy attached) from the applicant's solicitor, Sparke Helmore Lawyers." So, you obviously did see it.---Well, I don't know that I actually took it on board or read it in any depth.

20 But you tell us that you had been concerned, because of community concerns of which you were aware, about the prospect of a nil rear setback at the 212-222 Canterbury Road site. It just simply isn't credible, Mr Montague, that you didn't pay any attention to this document that you signed on which that is what you talked about.---Maybe I should have been a little bit more diligent in relation to that. Things came across my desk, I, I, as I said before, I relied on the advice I received from the, from, the directors, the senior staff in their area of expertise, in this case Mr Stavis.

So are you saying that someone slipped this into your papers and you ended up taking a position the opposite of what you had previously been taking in relation to the prospect of a nil rear setback?---No, I'm not saying that at all.

30 And you signed this not knowing what you were signing?---Look, I don't know how busy I was at the time. I don't know when I, when I received it. All I'm, the point I'm making is that it didn't necessarily arrive on my desk as a standalone piece of correspondence because I didn't see - - -

No, it didn't. It obviously accompanied the a copy of the Sparke Helmore letter.---Well, it may have. I don't know, look - - -

Well, it said it did.---Well, okay. You say so, that's fine with me.

40 No, no. Sorry, that's your words. The fourth paragraph, you say, "We've received legal opinion (copy attached)".---Okay. Fine. I've got nothing further to add to it, though. I don't know what the circumstances were at that time.

But, Mr Montague, you do and the Commission does, and that is that you were quite concerned about what the IHAP had recommended. You had told us that you were concerned about the prospect of a nil rear setback. It is simply not credible, I want to give you the opportunity of responding to this, for you to say you didn't know what you were signing.---Mr Buchanan, the IHAP, as I've said repeatedly, was an independent body, I had no control

over it whatsoever, and their recommendations were entirely a matter for them.

You knew, though, that the IHAP recommendation could be taken care of by Hawatt and Azzi, didn't you?---I don't know what you mean by "taken care of".

Well, the council decides that it declines to accept the recommendation made by the IHAP in its report.---Well, that's council's prerogative.

10

Yes. You knew that it could be taken care of by Hawatt and Azzi, didn't you?---I know that the council is not obliged to adopt any recommendation that comes forward from an officer or the IHAP. That's, that's standard procedure. They can make or they can vary a recommendation if they see fit. One assumes it's based on sound legal advice.

You have told us that you knew that the numbers on council were such that Hawatt and Azzi controlled them.---Yes.

20

And what would happen on a matter like this would be as decided by Hawatt and Azzi.---Possibly.

There's no other way in which it would have proceeded, is there?---Well, I don't know. I don't know what the seven councillors in that group would have decided. Some of them may have been opposed to, to the proposal. I don't know. I wasn't in the - - -

You're simply trying to obfuscate, aren't you, Mr Montague?---No, I'm not.

30

You're not trying to assist the Commission at all.---No, no, I, of course I'm trying to assist the Commission, but I'm sure, I'm not sure, Mr Buchanan, you understand how those meetings with the councillors work. I, I'm not party to them. I'm not there. They've got their own minds. They're independent people. They can come up with whatever they like.

I thought you told us that you invariably attended the meetings of council. ---Yeah, council meetings but not caucus meetings.

40

THE COMMISSIONER: They didn't have caucus meetings.---No, well, it's just a word to try and describe what it means. If those seven councillors got together, which they did, in the councillors' room or in the mayor's office, wherever, well, it wouldn't have been the mayor's office, but they get together, they can come up with whatever they, they like.

MR BUCHANAN: Yes. And you knew that Hawatt and Azzi were in favour of these DAs being approved - - -?---No, I didn't know - - -

- - - or getting approval as soon as possible.---I didn't know that at all, Mr Buchanan. I never, I, I, I never discussed it with them at any length. I said to you earlier, I'm really surprised that this one's consuming so much time because my only interest in it was the setback and the impact on the bowling club site, and I made that clear at that one-and-only meeting – I think there was only one – that I attended. After that, I, it's entirely in the hands of the council and director of city planning based on advice he had and knowledge he had.

10 The letter that you wrote or signed, pages 167-168, sorry, memorandum that you signed, on page 168, says in the second sentence of the third paragraph, "Given the above, our rezone site has the potential to absorb the building separation distances should the two DAs be approved with a nil setback." You appreciate what that meant?---Of course I do.

That you were saying that Mr Stavis was saying that council's site could accommodate an 18-metre setback to comply with the building separation requirements.---I'm not sure that's what we're saying at all. I can't see 18 metres. Is 18 metres mentioned?

20 You didn't understand that that would be the consequence?---No, I, I, I didn't. I didn't, no.

What sort of setback did you think would be required if there was to be a nil setback at the rear of 212-222 Canterbury Road?---I was only focused on a three-metre setback. And I, I think what might have happened in this case that I can say, it's possible that Councillor Azzi contacted Mr Stavis, and Mr Stavis put this memo together also with the recommendation. In other words, the committee resolved. That's for the committee to decide when they got the benefit of that information. I had no, I, I didn't, I didn't pen that.

30 What in that case were you and Mr Azzi talking about during your conversations - - -?---Who, who knows. I mean - - -

- - - on this subject?---Who knows.

You see - - -?---He might have been asking me about the progress of the, of the development of the bowling club site.

40 Well, you've seen, haven't you, that Mr Azzi had a conversation with you that lasted in excess of 10 minutes the day before you signed this memo? ---Yes, yes.

So you don't think that Mr Azzi might have had some input into you signing this memo?---No, no.

Why do you say that?---Because it didn't happen. He wouldn't do that. He wouldn't know about the existence of the memo necessarily.

You mightn't have indicated to him, look, the issue of the rear setback is under control?---No, of course not.

It's being handled. We're going to accommodate it.---No, of course not.

Why not?---Why would I?

10

Well, if Mr Azzi expressed concern to Mr Stavis about it then it is – and we can see that he talked to you at this time – it is reasonable to infer that he expressed concern to you about it.---Look, I, I don't like the words inference and presume. They're dangerous words. That's all they are, is a reference or an inference. He, what I'm saying to you is that the councillors would have had the benefit of that memo from Spiro and the advice from Sparke Helmore and they would make a determination either in the caucus or their group when they met or in the committee meeting itself. That's how it works and all, if I, if I was involved in preparing any draft motions for

20 councillors, that's all they are, draft motions, and they can accept them or reject them or change them, do what they like.

It would have been clear to you that the Sparke Helmore letter was being used by the applicants to change the calculus of council's decision making. ---That doesn't surprise me. You're not going to have the applicant agreeing with the council necessarily.

30

So what did you do to ensure that council had advice from the vantage point of its interest in, its economic interest in 5 Close Street, the bowling club site?---The bowling club site was a separate issue. It was on foot but there were different processes under way to deal with the bowling club and you'd expect the councillors, all of them, would have had an interest in that.

But your memo talks about the bowling club site and talks about the impact of a rear setback on the bowling club site.---Yeah, but the bowling, the memo was intended to remind the councillors of the bowling club site was ours and that there was an impact because of the, the fact that the two sites were contiguous.

40

Did you think that increasing the setback from nil to three metres was unreasonable?---No. No, I didn't. In fact it probably should have been more. You've talked about an 18 mil, 18 metre building setback or separation - - -

What did you do to ensure that council's interest was protected in this matter?---Look, it's, the bowling club would have been reported on separately at some point. I don't know when. I don't know what the status of the site is now years later.

What did you do at this time - - -?---Nothing, nothing consciously other than giving this memo.

10 You had a duty, didn't you, to ensure that council had the benefit of advice from its solicitors about what the applicant's solicitors were saying about council's economic interest, did you?---I would have expected Spiro Stavis or the team, the legal team, to investigate that, that wasn't my responsibility, and to provide that information to the council at the appropriate time. This is dealing with the site in Canterbury Road.

Here you are putting forward the applicant's legal opinion - - -?---That wasn't uncommon.

- - - without giving or ensuring that the council had the benefit of its legal advice.---Look, Mr Buchanan, all of this information needs to be distilled by the councillors at the appropriate time and for them to reach a decision. At this point there was no decision about anything.

20 You're just obfuscating again, aren't you, sir?---No. No, I am not. I'm trying to explain to you how the council operates. How information gets to council and what their responsibility is to determine matters.

What that doesn't address is my question, which is you had a duty to ensure that council's interest, the public interest was protected by obtaining a legal advice from council's solicitors on what the applicant's legal advisers had said in their letter.---A separate issue.

30 THE COMMISSIONER: Sorry, I don't understand why it's a separate issue.---Of course it's a separate, I mean, that's their advice - - -

Don't answer it with of course it's a separate issue. Why is it a separate issue?---Because the, they've got the benefit of Sparke Helmore's advice. I can't speak to the accuracy or the validity of that advice.

That's why you obtain an independent advice from council's solicitors. ---For all I know Spiro Stavis may have requested that advice from our solicitors or somebody downstairs did.

40 MR BUCHANAN: You checked, did you?---No, I didn't.

Well, why did you say that to us just now?---Because I don't know. I can't get inside other people's heads and determine what they were thinking.

It's your head we're trying to get inside.---I know that.

You knew, didn't you, that if you obtained an advice which qualified, let alone contradicted, the Sparke Helmore advice, that you'd make Mr Azzi very unhappy.---No.

You knew it'd make the Chanines very unhappy.---No.

Did you know that it would have also made Mr Hawatt very unhappy?---No. I didn't make assessments of what I was doing based on whether they were happy or not.

10

Did you place the Sparke Helmore letter before council and fail to get advice from council's solicitors on the subject matter of the letter in order to advance the interests of the applicants in that case?---Absolutely not, and I expected sometime our own legal advice would be obtained when it came to the bowling club. The bowling club issue was a totally separate issue.

20

Mr Montague, it's obvious, I suggest, to anyone that by then it would be too late because approval would have been given for a nil rear setback in the circumstance that an 18-metre separation was required between buildings of this kind.---Well, that may have happened. I, I can't, I can't speculate about what the council may have done.

That then means council loses 18 metres.---Well, possibly. They have to ask the right questions, though, don't they?

Who has to ask the right questions?---The council. If they're not happy with the advice they've obtained, then they should ask. They should question and ask for additional information.

30

You're making it sound as if you weren't the general manager.---I am the general manager.

As if you didn't have a duty to assist and advice council.---That's exactly what I was trying to do.

But on the evidence before us, you were deliberately avoiding assisting them.---No, I don't, that's not true.

40

Excuse me a moment. Now, can I just ask you – page 168 again, sorry, volume 28 – about the, I just want to take you to two other parts of this memo. Firstly, you said in about the middle of the page there, if we could just enlarge it a bit, please, “Having regard to the above points, on balance it is considered reasonable to allow for the DAs to be approved with a nil setback from the rear boundary.”---Mmm.

Where was the balance?---I didn't write - - -

Where was the indication of what had to be weighed against the applicant's interests?---Mr Buchanan, I didn't write this and I don't know what the author of it meant.

You had the power, didn't you, to read it?---Yes.

And to say to the person presenting it to you, "Well, I'm not going to sign that."---Yes, I could have said that.

10 And you could have said, "I want it changed."---Could have said a lot of things.

And you could have said, "I want this to go into it."---Yes.

But you didn't.---No, obviously not.

20 Could you assist us, when it came to the recommendation itself, you took away from council the power to approve. Do you see that? You know how consent authorities approve - - -?---Of course I do.

And it is only after approval that a general manager can issue a consent. ---There are circumstances, there have been circumstances once or twice where, and I think it's legally competent for the council to delegate to other people, and, and I think that's what happened here.

But the council didn't have the power to issue the consent. It was you that had the power under the Act, wasn't it?---No. No. But council makes, council issues consent. That's the consent authority.

30 Can you assist us, then, as to why you didn't ensure that there was some language in here that indicated that council's power to determine an application would be delegated?---I can't assist you.

Why didn't you ensure that that went in there?---I can't assist you.

Yes, but why can't you?---Because I don't know. I'd be guessing.

40 Excuse me a moment. Can I take you now to the IHAP report for 212, if I can just -- I think we have to go back to volume 27. Just excuse me a moment. Yes. Can I take you to volume 28, page 160, please, and this is part of the business papers for the meeting of the City Development Committee to be held on 3 December, 2015. Can you see that?---Yes.

And it's a reproduction of the IHAP recommendation and then the report appears below that and it goes over to page 163. Do you see that?---Yes.

That's in respect of the first DA for 212 and then the second DA is set out in the business papers, that's to say the IHAP report in respect of it is set out in

the business papers, commencing at page 164 and going through to page 166. Going back to page 160, can you see that the IHAP recommendation was that the DA be refused, first dot point, "The proposed development exceeds the maximum permissible floor space ratio provisions of clause 4.4 of the Canterbury LEP by over 100 per cent"?---Yes. I can see that.

10 And on page 164, in respect of the other DA, comprising this proposed development, that the proposed development exceeded the maximum permissible floor space ratio provisions of the LEP by over 50 per cent. Do you see that?---Yes.

Those are substantial exceedances of the relevant development control, aren't they?---Yeah. Seem to be.

20 You told us that – and this is on 10 December, page 5046 – that you would expect the director of planning to reject or at least recommend refusal of a DA that didn't comply with the codes or there were serious non-compliances. "If they were close, say there was just a minor breach that could be corrected, then I'd urge him to contact the applicant and resolve it to find the right sort of outcome." And at page 5178, you told us, on 11 December, that if an application was non-complying, you would expect the director of planning and the manager of development assessment to report accordingly to council that the application did not comply and is not capable of being approved. You would have been aware of the serious non-compliances in this case, in respect of FSR that exercised the IHAP, in this case at the time you saw the reports, the officer's reports for these DAs? ---Possibly. I, I may not have bothered to even read them. It's going to the IHAP.

30 Can you assist us as to whether you did anything when you became aware of the IHAP recommendations for these DAs?---No, I didn't. I, I wouldn't, I wouldn't interfere in it like that. It's going to IHAP, so IHAP makes - - -

40 But even though you say that you told us that your expectation was that if a DA departed from the codes or there was a serious non-compliance, that they should be rejected or there should be a recommendation for them to be rejected.---Well, I think that the, whoever prepared this report to the IHAP's done their job. They, they've noted the exceedance, they've recommended refusal and that's all they had to do.

The question then, though, is why in your memo of 3 December, knowing that there was a serious non-compliance in this case, knowing what the officer's report was, changed the officer's report recommendation so that it was no longer a deferred commencement and you were recommending approval and you didn't say anything about the IHAP report.---I'm not recommending anything. That's, that's the planning director.

You don't remember the word "recommendation" in your memo of 3 December?---Possibly. You've lost me completely. These are IHAP recommendations. They're going through on the normal course of events. IHAP would make a recommendation to the City Development Committee, and the council and the City Development Committee would make, would either accept that recommendation or vary it, which is entirely their prerogative. I, I wasn't ordering reports going to IHAP. IHAP's independent of my office and of the council.

- 10 Your conduct in putting that memo of 3 December before the council is seriously inconsistent with the evidence that you've given us as to your attitude to what should happen to a DA which was not complying with the codes or where there were serious non-compliances.---But we've traversed this already. I didn't prepare that memo. I, I don't know whether the two, I, I don't know at what point they, they may have been able to be considered together. I don't know. The IHAP's doing its thing. The council's doing its thing. Spiro Stavis is reporting to both.

- 20 Another explanation for your conduct in this matter is that you did in fact believe that there shouldn't be a nil rear – I'm sorry, you did in fact believe that there shouldn't be a nil rear setback for these proposed developments. You did in fact believe that if a DA didn't comply with a code or if there was serious non-compliance that it should be rejected or the recommendation should be that it be rejected, and that you allowed yourself to be pressured into putting a memo forward to the council which said contrary to what you believed to be in the public interest.---No, no, no.

That's an explanation, isn't it?---Well, it is but I don't accept it.

- 30 Did you receive pressure of that sort from Azzi or Hawatt?---I don't recall. I doubt it very much. Because I can't influence what IHAP says, nor can I influence what the council, the City Development Committee does.

But you were trying to influence what the City Development Committee did by putting that memo before the committee and in effect endorsing the applicant's position without providing any qualifying matter or scrutiny of it at all, weren't you?---No, no, not at all.

- 40 And it overrode what was in the officer's report and it overrode what was in the IHAP report.---Oh, look, I'm, I'm totally confused. I don't know what report we're talking about. I don't know the timings involved.

Well, start it again.---No, no, you don't - - -

Start it again.---You don't need to, Mr Buchanan.

THE COMMISSIONER: Mr Montague - - -?---I understand.

Start again, Mr Buchanan.

MR BUCHANAN: Do you remember that you put a memo forward to council - - -?---Of course I do. Yes.

- - - of 3 December?---Yeah.

And do you remember that there was an IHAP report which recommended refusal of both DAs?---This one here, you mean?

10

Yes.---Well, there it is.

Okay. Can we have a look again at – can you see, I think we’ve got page 160 before us.---164.

Sorry, 164. If you could just read the top. Can you see that?---Yes.

20 That the proposed development exceeded the maximum permissible floor space ratio provisions by over 50 per cent, and the recommendation was that the development application be – in bold and in capitals – refused for that reason, amongst others.---Yeah, that’s probably, that’s probably spot-on. That’s what the director, or somebody who drafted this report, must have thought.

And what you then did was put forward a recommendation that the DAs be approved.---No, I, I would have been asked to prepare something, or Spiro was, and, and that’s really their words.

30 You weren't just a cypher, were you?---I was just a, well, he was, he put that together I assume at the request of Councillor Azzi or Councillor Hawatt or both.

Nothing, nothing before us suggests that you were a mere cypher of Stavis. Everything suggests otherwise.---Oh, I don't know.

That you were your own man except to the extent that you came into conflict with Hawatt and Azzi.---I, I didn't, look – I, I don't know what to say, I'm sorry.

40 Excuse me a moment. Now, I want to change the subject if I can to meetings that you had with developers, proponents of development when councillors were present. Are you able to assist us as to what proportion of meetings that you had with developers were attended also by councillors? ---Very small proportion I would say.

And would that very small proportion – I withdraw that. Would the councillors in that very small proportion of cases have been usually Councillors Hawatt and Azzi?---Sometimes the mayor was involved.

But usually was it Hawatt and Azzi?---There were a couple of occasions when Councillor Azzi and Councillor Hawatt turned up and we, and we've already been over these applications. Yes, they just turned up at my office and I wasn't going to turn them away. They had a point of view which they were entitled to express. And I also always had a senior staffer there, a planner, usually Mr Stavis.

10 Is that the case, though, did you always have a staff member present?---I can't remember.

Or did you sometimes have meetings with developers by yourself?---Well, there might have been one or, a couple of occasion when that happened.

Why would that have happened?---I don't know. Maybe the planner wasn't available at the time.

20 You could have rescheduled to ensure that the planner could be present?
---Yes, I could have but I probably didn't.

And in those meetings you took no notes or made no records?---No. No.

Would you have conveyed anything from those meetings that you held by yourself with developers to anyone in the planning division?---Possibly the director.

Would it have been your practice to do so?---Yes, if it was something that's significant I'd let him know.

30 Thinking of the London Street car park.---London Street car park?

Yes.---Okay.

And Jimmy Maroun.---Yes.

Did you have a meeting with Jimmy Maroun in relation to the London Street car park?---I don't recall it but it's possible.

40 Was Mr Maroun interested in developing it?---I've got no idea what he was interested in.

Why did you – I withdraw that. If you had a meeting with Mr Maroun about the London Street car park why would you have held it?---He might, he might have requested a meeting. I told you before that people who approached my office and wanted to meet with me or other people in the organisation to clarify their proposals or to obtain information from us I always made myself available. I thought that was my role, to work with the

community to get the right sort of planning outcomes and other outcomes that aren't related to planning.

And did you meet with Mr Maroun about the London Street car park with a view to discussing his possible development of it with Mr Azzi being present?---No. No, I don't recall that, no.

Are you saying that it didn't happen?---I don't know.

10 Is it possible that it happened?---I suppose it's possible. I've said repeatedly anything is possible.

Well, no, not anything is possible. You know what you did and what your practices were and what you believed should be done or shouldn't be done. You can assist us as to whether something is possible or not, can't you?
---I'm afraid that's - - -

Can't you, Mr Montague?---No. No, I can't.

20 You from time to time expressed anxiety to Mr, I'm sorry, expressed anxiety about progressing DAs. Would that be fair?---I didn't have any anxiety about it. I knew it was something that the council was concerned about way, way, way before the period of this investigation. There were always concerns about delays in application, slow processing times. We were, the Office of Local Government also were concerned about that in their annual reporting. So, yes - - -

You were, sorry, I did interrupt. I shouldn't interrupt.---That's okay. So, yes, I was, I was interested to see that our processing times improved.

30 And did that apply also to 212-222 Canterbury Road and 4 Close Street?
---Any plan, any planning proposal.

We've got evidence that, for example, on 23 September, 2015, Mr Stavis emailed a Wayne Cooper saying, "GM is really keen to progress this as well." That's volume 26, page 148. Could that be right?---I, I don't know. I, I can't be responsible for what Stavis says. Wayne Cooper was our director of city works.

40 Mr Stavis emailed Ziad Chanine and Marwan Chanine and George Gouvatsos on 22 October, 2015 to say, "I've committed to reporting the DA to the November IHAP meeting," and referred to it as a deadline. That's volume 26, page 521. Had he made that commitment to you?---No, I don't know. I don't recall.

Could he have made that commitment to you?---Possible, possible again.

Did you require him to commit to a deadline for reporting it?---No. I didn't, I didn't impose unreasonable deadlines on anyone.

But did you impose deadlines on people?---Occasionally, if I thought it was necessary, if the council needed the information quickly or if there was some other statutory requirement.

10 And in the case of 212-222 Canterbury Road, if Mr Stavis told his staff – volume 26, page 274 – that this DA, along with others, had to be reported to the next IHAP meeting because commitments had been made and told the Commission that it was commitments that were made to the general manager, or instructions that had come from the general manager – that's page 4059 of the transcription – would that be likely to be right?---I, I can't be responsible for what Mr Stavis said. Maybe he was just - - -

No, but I'm asking you to think about whether - - -?---I, I doubt it.

- - - you talked with him about giving him deadlines, or him to commit to deadlines for reporting on DAs?---I don't recall.
20

In particular 212 Canterbury Road.---Certainly not 212 Canterbury Road.

Why certainly not, in respect of that particular DA?---Because I wasn't interested in 212 Canterbury. I knew nothing about the application.

Had you in fact made a commitment to the Chanines?---No.

30 And so if – I withdraw that. The evidence Mr Stavis has given – page 3814 of the transcript – is that, “In respect of the DAs for 212 Canterbury Road, the general manager had expressed on numerous occasions to me that the matter had to go before that CDC meeting.” Numerous occasions is the words Mr Stavis used. Is that right?---I don't know. I can't recall and they're, they're his words and not mine.

Is it likely to be right?---Well, look, if, if there was interest in the application from whatever source, and, and they were keen to get it moving, it's possible, yes, because - - -

40 The evidence before the Commission is that between 6 October, 2015 and 21 March, 2016, so October '15 to March '16, there were 11 entries in the calendar – the electronic calendar that governed scheduling of your meetings or that recorded scheduling for your meetings – that were concerning or with the Chanines. Could that be right?---It's, it's possible again, but that doesn't mean to say those meetings were ever held. I certainly don't recall having that many meetings with the Chanine brothers.

This is Exhibit 85, Commissioner, and I'll just give the dates, 6 October, 6 November, 15 February, 16 February, 19 February, 25 February, 2 March, 4

March. I've got a date that must be wrong. Excuse me a moment. I think I have to revise the number, 10 meetings.---Yeah, I don't recall.

Because it appears that there's two for 2 March. 14 March, 21 March. ---They, they may have been mishits. Maybe the meetings weren't held. I don't recall having that many meetings with the Chanines.

10 And according to those records, whilst they don't say that the meeting happened, you're quite right, and they don't say who actually attended, they usually record who was expected to attend or required to attend. You understand that?---Yes.

And in six of them, in six cases, no one apart from one or both of the Chanines and yourself were scheduled to attend.---Well, I, look, I, I said I don't know whether those meetings ever took place. I don't recall.

Does it come to you as a surprise that there'd be - - -?---Yes.

20 - - - six at which no one else would be recorded as attending?---Yes. I see no reason why I'd want to meet with them alone. But I couldn't help on the technical stuff. I'd need, I'd need technical staff there to assist me. I, I, I doubt the accuracy of that information.

30 It could, of course, be that the meetings were called or scheduled as a result of approaches that had been made to you by the Chanines.---It's possible. But, as I say, I, I don't recall them, and I (not transcribable) and if they did take place – which I don't think they did, I think that information is, is, is flawed – then I wouldn't be meeting them without a director, without at least George Gouvatsos or, or Spiro. I couldn't help them. I couldn't give them any planning advice, and they'd be fools if they relied on the advice I gave them.

Excuse me a moment. Can I take you now to a different subject, and that is the 2015 IHAP review, written by the IHAP. This is page, this is part of Exhibit 223. Excuse me a moment, Commissioner. I'll just find the relevant part. Do you recall a – excuse me a moment. Page 41. Apologies, I don't mean “Do you recall page 41?” I withdraw that. We're just calling up page 41, Exhibit 223.---Yes.

40 Do you see there that there's an agenda, sorry, that there is an extract from the minutes of a meeting of council held on 29 October, 2015? Item 6 was Independent Hearing and Assessment Panel review.---Yes.

And that there was a motion and that there was a resolution that is recorded on the bottom of page 41, going over to page 42.---Yes.

If I could just give you the opportunity of having a look at, also at page 42, if we could go up to the top of that. And so far as concerned the report

itself, that commences on page 43 of this exhibit, that it was part of a report by Mr Sammut to the council, but that what he set out, from pages 43 through to 45E, were words written by the IHAP itself. Does that sound familiar to you, that the IHAP would provide a report to council about its activities?---They may have provided some information to Mr Sammut. I don't know.

Well, here they're providing it to the council. It's a report to council.
---Yeah, well, but I assume it would be incorporated in the, in the review
10 report. That's all I can assume from that.

If I can just take you, please, to page 45E and do you see that there's a recommendation at the bottom of that page by the IHAP in its review report?---Yep, yep.

And the last two items were, "A day be set aside annually for councillors, staff and IHAP members to view completed developments and to discuss planning issues, and community forums be held as deemed necessary to explain to residents changes in planning practices." Do you recall those
20 recommendations?---Vaguely. I knew that, I knew that there were – I think it was Councillor Hawatt in particular wanted to introduce some improvements to the IHAP process, transparent to the IHAP. That was topical at the time.

And what sort of improvements do you recall Councillor Hawatt wanting to introduce to the IHAP process?---I, I can't recall. Look, I said before he was critical of the IHAP towards the end. It was fine at early times but he was critical of it and I think he just wanted to perhaps reclaim the night, get, get it back so the council had more control over the IHAP.
30

And the IHAP would have less independence?---Well, you could say that. I don't know whether that would have happened in practice or not. I don't know that these changes were ever implemented.

If we go to page 41 and 42, you can see that at the bottom of page 41, the motion, Councillor Azzi, seconded Saleh, was as per the recommendations by the IHAP itself, including 3, "A day be set aside annually for councillors, staff and IHAP members to view completed developments and discuss planning issues". That disappeared from the resolution, as moved by
40 Councillor Hawatt, seconded Vasiliades, over the page to page 42, and so far as concerned item 4 in the recommendation, "Community forums should be held as deemed necessary to explain to residents changes in planning practices." That was amended to read, "Community forums be held as deemed necessary by the general manager to explain to residents changes in planning practices." Do you see those changes?---Yes, yes

Do you remember those changes being made?---Oh, vaguely.

And did you have any discussions with Councillor Hawatt or Councillor Azzi about those changes being made or whether they should be made?
---No and as I said, I don't, I don't know that they were ever implemented.

I'm sorry, you don't know?---I don't know they were ever implemented.

That's not what I'm asking you.---I know what you're asking me, and I said Councillor Hawatt had, had a particular view about the performance of the IHAP in the, in the latter stages of the, of the - - -

10

But this is not about the performance of the IHAP. It's measures to ensure that, to some degree anyway, residents and councillors and staff, I'm sorry, councillors, staff and IHAP members could view completed developments and discuss planning issues. That went out completely, and the involvement of the community to understand the issues was confined to as deemed necessary by the general manager.---Yeah, and I think to the extent that it does, I think that, that decision reduced the, reduced the importance of the resolution and its, and its, and its intention but I don't know why they did that.

20

They didn't discuss with you whether you would see that as an appropriate thing for you to do or inappropriate thing for you to do?---I, I don't, I don't believe so.

Did you ever deem it necessary for a community forum to be held?---No. No.

Was there any reason why not?---I don't think there was. There just weren't any, this is October, 2015. Don't know. I don't know. I can't recall.

30

You don't sound as if you care very much?---Well, at that stage of the game certainly my interest was waning because of the impending amalgamations and, and these, these things that just came up out of left field often from Councillor Hawatt and Azzi sometimes were not, not capable of being implemented.

The effect of the changes would have been to reduce transparency in the planning, assessment and determination process?---Well, you could argue that.

40

And would have been, would have contributed to keeping planning decisions to a small club comprising essentially Hawatt, Azzi, Stavis and yourself?---No, I don't accept that.

And when you say you wouldn't have been interested, there is a record in the calendar meetings Exhibit 85, page 16, of a meeting that was scheduled between Mr Azzi, Mr Hawatt, Mr Stavis and yourself and the subject

heading is Urban Design Review. That's on 21 October, 2015, which as you can see is eight days before the council meeting.---Yeah.

What happened at that meeting?---I've got no idea. I can't recall. I don't know whether it ever took place.

Well, you seem to say that about calendar meeting entry that is drawn to your attention.---Well, I don't.

- 10 The point of making entries in an electronic calendar or otherwise is to record the intention of having a meeting.---It doesn't mean the meeting is held, though.

And to try to remind people to attend.---Yes.

And usually when meetings, when appointments are made for meetings, meetings are held. That's a common experience, isn't it?---Well, yeah, I suppose you could say that.

- 20 So the question is, though, why was it that there was a plan for you and Stavris and Hawatt and Azzi to hold a meeting about urban design review? ---I've got no idea and I wouldn't have been much benefit to the, to the group anyway. I wouldn't even know what, what, what to contribute to a meeting like that. I'm not a planner.

The organiser is identified, this is page 16 of Exhibit 85, as Andrea Sutcliffe.---Mmm.

- 30 She wouldn't have done that unless you told her to, would she?---No, not necessarily. Somebody, the councillors might have rung her and said do you think we can get a meeting up to the GM on this. Fine. She'd just put it in the diary.

And she would do that without consulting you?---Yes.

And so you could find yourself attending meetings that you weren't interested in, didn't want to attend and indeed were inappropriate for you on that sort of system. It doesn't make any sense, Mr Montague.---Well, it, it worked very well I'm afraid, very well I indeed.

- 40 The likelihood is that you would have attended, isn't it?---If it was held, yes.

And the likelihood is that you directed that that entry be made, that that be organised?---It's possible.

I note the time, Commissioner.

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

SHORT ADJOURNMENT

[11.29am]

MR BUCHANAN: Mr Azzi, would it be right that - - -

10 THE COMMISSIONER: I think it might be Mr Montague.

MR BUCHANAN: It might be, Commissioner. Thank you for that.
---We're nothing, we're nothing along actually. - - -

I apologise, Mr Montague. No, no, no. You're absolutely right. Mr Montague, would it be right that in 2014-16 you had more meetings and other contacts with Councillors Hawatt and Azzi than other Canterbury councillors?---Sorry, can you just repeat that, the dates?

20 Sure. Thinking of the body of Canterbury councillors, you had more meetings with Hawatt and Azzi than with any of the others?---Except for the mayor, of course, yes, I think that's probably fair to say,

And by and large, those meetings and other contacts were with a view to making decisions about Canterbury Council affairs?---Oh, sometimes it was just chitchat. If I can just elaborate a little, when they'd come in on meeting nights, because my office was directly opposite the council chambers they'd often just call in, just chew the fat and then go out for, for, for, for dinner. So they weren't scheduled meetings but they would pop in and say hello on their way through, yeah.

30

And chances are that they'd be talking about the agenda for the meeting that is about to occur?---Possibly, yes.

Would it be fair to say that by and large, and with the exception of course of the weeks in December 2014 to February 2015, you acquiesced in Councillors Azzi and Hawatt running the council with and through you?
---Well, I wouldn't say acquiesced. I mean, I recognised that the council had changed its complexion and I was obliged to work with them to achieve, or to ensure the ongoing operation of the – politically anyway, at least, if not otherwise – the operation of the organisation. It wasn't my doing that, that they assumed control.

40

Now, if I can just go back to the dynamic which you've referred to in relation to councillors Azzi and Hawatt and how they came to control the numbers on council. In March 2013 I think the government's model code of conduct came in. Do you recall that?---Vaguely. - - -

And it was adopted by the council, as was intended by the government?---It would have been, yes.

Now, I wonder if I could show you, please, volume 2, page 50. What I'm going to do is show you a page from the Canterbury code of conduct, and can you see, if we look at the bottom of the page, there's a heading on Harassment and Discrimination, a heading on Development Decisions, a heading on Council Support, and then clause 3.14, Binding Caucus Votes. "You must not participate in binding caucus votes in relation to matters to be considered at a council or committee meeting", and over the page, clause 3.15, there a description of what a binding caucus vote is. Clause 3.16 indicates that 3.15 doesn't prohibit councillors from discussing a matter before council or committing prior to considering the matter in question. I want to suggest to you that that rule was introduced for the first time with the model code of conduct that was promulgated by the government in March 2013. Does that accord with your recollection?---Yes, generally.

And of course, if there's any party that traditionally caucused in the traditional sense of the word, it was the ALP?---Oh, I think the other side had their own caucus.

Of course.---They didn't call it a caucus, but yep.

But the ALP did call it a caucus, is that right?---Yes.

Yes. As a result of that clause, it was your understanding, I take it, that so far as ALP policy, that ALP councillors vote in accordance with binding caucus decisions, that ALP rule went out the window?---They couldn't caucus on planning issues, though, that was expressly prohibited, but as far as I'm aware, my take on it was that they could still get together and, and discuss items of a business paper.

Oh, yes.---Yeah.

And the rule made it clear that all councillors or any councillors could do that.---Yes.

But the ALP practice of having a binding caucus vote could no longer apply except in the cases exempted, like clause 3.17, about a decision to elect the mayor or deputy mayor, et cetera?---Well, if you look at the seven councillors who are on that group, and I could be wrong on this because I can't remember the details now, but the majority of them still were Labor councillors, and so to that extent if they made decisions other than planning decisions I imagine that they considered those decisions would be binding on the seven people who attended those, those meetings, call them a caucus meeting or whatever you like. I assume they, they felt that those decisions had to be complied with. I've got no reason not to. I don't know.

And did you observe that in 2013, around then, after this rule change in the code of conduct, that Councillor Adler no longer accepted caucus decisions and considered that he was a free agent?---Look, I think it's fair to say that Councillor Adler went his own way a bit. He didn't have a very good relationship with the mayor. But I wasn't, I wasn't aware of any particular matters that he diverged from what you might consider to be the consensus view. I've heard since that, since I left the council that that's what was happening, that Mark had just decided to do his own thing more or less, yeah.

10

And what I want to suggest is that that happened perhaps around early to mid-2013, and then in late 2014, September/October 2014, Adler started joining Hawatt and Azzi in votes on the floor of council?---I think that's fair to say.

And that from then on Councillors Kebbe and Saleh occasionally did so as well?---Yes. More so in Councillor Kebbe's case I think.

20 And when that occurred then all discipline in the ALP grouping of councillors disintegrated. Is that fair to say?---Well, I don't know about that. Certainly it wasn't the same as it used to be prior to the 2012 or 2012 election, yeah.

Because of course Nam and Vasiliades were elected as Liberals. Is that right?---Yes.

Hawatt was the senior and most active Liberal councillor?---Yes.

30 So you had those three in the first instance, and Nam and Vasiliades followed Hawatt in terms of voting, certainly on planning decisions? ---Pretty much. From my observation, yeah.

And as a result you had Azzi, Adler, Nam, Vasiliades and Hawatt and there you had five councillors straight away, which is a majority on council. That's without considering anyone else.---Five is not a majority because there were 10 councillors.

I see.---So you needed more than five.

40 Right. And, sorry, go on.---But in that group as I understand it there were seven and that included, you've forgotten Councillor Kebbe.

Sorry, you're quite right, and Saleh.---Yeah.

And so that made seven?---That's right.

Right. Thank you for that. Just going back to the control exercised by Hawatt and Azzi. Can I take you to a period before the war in December

'14 – I'm using your word – December '14, January/February '15, to September 2014, and can I show you, please a report of SMSs extracted from Councillor Hawatt's telephone on 20 September, 2014. And if we could go to the second page of these documents, of this document. Can you see there that there are 17 items listed on that page and that it's a series of SMSs to and from Mr Hawatt?---Yes.

10 The first one is at 10.10am and it's to you from Councillor Hawatt. "Hi, Jim. The games have restarted again. Where are the LEP amendments? Where are all the reports? Where is the RMS letter? If developments along busy roads are subject to RMS, which we have addressed, so why can't we finish the Gateway Determinations and let them approve each individual DA? Our lane access changes address their concerns. If main roads are not being used, so what is the problem? We need to urgently meet to discuss further." Do you recall what that was about?---No. It's, but I can say that I think, I don't know what he means by "games have started again". I remember at the time thinking, "Who's he referring to?" I think he's referring to the people in the city planning division.

20 And from the tone of the, sorry, from the content of the letter – I'll start again. From the content of the text message, could it be about the Residential Development Strategy planning proposal that was, so far as the Canterbury Road Corridor was concerned, delayed by RMS objections? ---It's possible, yes. Probably likely.

Taking you to item 3. This is a text message by Mr Hawatt to Mr Khouri at 10.13. That's three minutes later. "We need to urgently meet," signed "Michael". And then the same text message is sent at the same time to Pierre Azzi and to yourself.---Yes.

30 Do you see that?---Yes.

That's going down to item 5. Then item 6 is from Mr Khouri to Mr Azzi at 10.14am, "Where are you?" Item 7, text message to Mr Khouri from Mr Hawatt at 10.14, "Earlwood." Item 8, from Mr Khouri still at the same time, 10.14am, to Mr Hawatt, "30 minutes." Item 9, to Mr Khouri from Mr Hawatt at 10.26, "Okay." Item 10, from Pierre Azzi to Mr Hawatt at 10.30am, "Come. I'm home." Item 11, from Mr Khouri at 11.07, "Mate, where are you?" Item 12, to Mr Khouri at 11.10am, "Here. Earlwood." 40 Item 13, to you from Mr Hawatt at 11.49am, "Are you coming? Pierre and et cetera waiting in Earlwood for you." Do you recall this event?---No. No, I don't.

Item 14, from you at 12.03pm to Mr Hawatt, "Later. I'm at the opening of Rotary Park in Riverwood. I'll call." Do you see that?---Yes.

Do you remember attending an opening at that park?---Of course, yeah. Yeah.

Item 15, Mr Hawatt to you at 12.04, "We are waiting." And then item 16 at 12.37, "On my way." That's from you to Mr Hawatt. Item 17, to you at 12.39pm from Mr Hawatt, "Come to Salvatores café in Homer Street opposite Minnamorra Avenue just past service station." You see that?
---Yes.

10 So those text messages were organising, you'd agree, a meeting at Salvatores Café at Homer Street, Earlwood, with Khouri, Hawatt, Azzi and yourself?---Seems, to be, yes.

And it's in relation to either a planning proposal or multiple planning proposals and RMS likely objections, and that Mr Hawatt wants to finish the planning proposals or conclude them?---I, look, I, I can't recall exactly what the meeting was about. I, I don't recall the meeting itself.

You do not recall it?---No, no.

20 How often did you meet about council business with those gentlemen at Salvatores Café in Earlwood?---I don't know whether I did, that I did, but I could have on this occasion, but very infrequently, if, if at all.

And even though it is very infrequently, that doesn't permit you, because it was unusual, to have a recollection of it now?---No. I, I don't recall. I, I'm not sure where Salvatores is actually, in, in Homer Street.

30 Well, according to the messages, you were given directions that it was opposite Minnamorra Avenue, just past a service station.---Yeah. I, I know where Minnamorra is and I'm pretty familiar with Earlwood shopping centre.

Why did you respond to Mr Hawatt as you did, which could be construed as with alacrity, notwithstanding your council duties?---I don't like to keep councillors waiting. If they've got an issue and they wanted to discuss it with me, I make myself available.

40 This was also with Bechara Khouri.---Well, Bechara injected himself into a lot of things. I don't know why he was there, whether he told, pardon me, told Hawatt he was going to be there. I, I don't know. I can't be responsible for Bechara's actions.

But you can see that Mr Hawatt wanted him to be there?---Well, it seems that way, yes. I don't know why he - - -

And Bechara agreed to it.---Well, of course he would.

And why do you say of course he would?---Well, because he, he's a pleaser. He likes to, you know, get out there and be party to things. He likes to get involved.

10 And what role did he have to play in bringing the planning proposals for the Canterbury Road Corridor to a conclusion?---Well, he wouldn't have any role, really. He may, he may have thought in his mind he did but, you know, that's not untypical. He couldn't influence those things at all. Well, not overtly, unless he's having conversations with the two councillors or other councillors, and I wouldn't know about that. I wasn't at those meetings if they were held. He had to wait for something to come up officially through the council, to the, to the either the committee meeting or the council meeting.

20 Did you find out that Me Khouri had a pecuniary interest in the 212-222 Canterbury Street, 4 Close Street DAs?---I, I'm just trying to think back. No. I, I, yeah, look, I, I can't recall. I don't, I seem to remember somebody telling me in the office that he had an interest in that site. To what extent or what the nature of the interest was, I've got no idea.

And you understood him to be an advocate for Mr Demian in relation to his Canterbury Road properties the subject of DAs?---Well, yeah, as far as I knew, he was on Mr Demian's payroll, he was on a retainer or some, some such arrangement.

30 And it was satisfactory, as far as you were concerned, for Mr Khouri to be involved in discussions like what was being arranged here, where he had potentially a pecuniary interest, on the evidence before the Commission, and a direct financial interest in representing Mr Demian?---Well, that was never, well, I don't know. That was never confirmed, I'm only assuming or, or, well, you know, I don't know what the financial arrangement with Mr Demian was. I don't know how long it lasted. I knew he did earlier. Probably between 2013, before I should say 2013, but I, I don't know what the, the details of that arrangement were.

Mr Khouri obviously never told you that he had a pecuniary interest in the DAs for 212-222 Canterbury Road.---I, I don't, I don't believe so, no.

40 And why - - -?---I don't recall.

I'm sorry?---I don't recall if he did. I don't know.

Well, that would have caused you to do something, wouldn't it?---Well, I, you know, we're speaking hypothetically but had he, had he told me that I would have in all probability said to him that he should keep his distance, he shouldn't get involved.

And even if he is retained by a significant developer on Canterbury Road, that wouldn't stop him participating in this meeting with you and councillors about the fate of proposals to loosen planning controls in the Canterbury Road Corridor?---Well, that's up to him. He, he shouldn't have been present if he had a pecuniary interest. That's not my responsibility.

10 But you knew him to be an advocate for Demian.---He, he worked or he, he, he was on, I believe, a retainer with Mr Demian. I don't know what that involved. Mr Demian had property interests all over Sydney, not just in Canterbury.

Obviously you didn't respond to Mr Hawatt by saying, "Will the other councillors be there?"---No. Well, because it's - - -

20 You were happy to go to a meeting called extramurally, that is to say outside of the processes for council meeting as a collegiate body, and indeed not even in council chambers, with a couple of councillors and a developer's advocate?---I didn't see any harm in it. It was going to resolve something or get information.

Another view that could be taken is that you were at the beck and call of Hawatt and Azzi and that this is an illustration of how you responded when you were beckoned and called - - -?---No.

- - - on a planning issue.---I wasn't at their beck and call or anybody else's. I, I reported to the mayor, and we've already said the political arrangements there were very unusual at this time.

30 But, Mr Montague, obviously here you're reporting to Mr Hawatt.---No, I'm not reporting anything to him. I'm, I'm attending a meeting at which he's present. I don't know what transpired at that meeting or if there was any outcome at all, and how that may have affected, you know, future decisions, I've got no idea. He was very, very critical of the planning division.

Excuse me a moment. Can I ask you about a calendar entry in Exhibit 85, page 14. Oh, I'm sorry. Thank you. I'm reminded I should tender the two-page extraction report that I've been examining the witness on for the date of 20 September, 2014.

40 THE COMMISSIONER: The two-page extraction report from the mobile phone of Mr Hawatt, including 17 SMS messages from 20 September, 2014 will be Exhibit 245.

#EXH-245 – EXTRACTION REPORT FROM MOBILE PHONE OF MR HAWATT INCLUDING 17 SMS MESSAGES FROM 20 SEPTEMBER 2014

MR BUCHANAN: Commissioner. Sorry, Mr Montague. If I could take you now to a calendar entry for 6 October, 2015, and you can see that the subject matter is a property that I haven't asked you questions about so far, 418-426 Canterbury Road, Campsie, and that it's for a meeting to be held on 6 October, 2015, organised by Ms Sutcliffe. Required attendees, yourself, Spiro Stavis. External attendees, Ziad Chanine, Greg Gav, G-a-v, Councillors Azzi and Hawatt. Now, I'd ask you to assume that 418-426 Canterbury Road was another proposed development in which the Chanines had an interest.---I'm not familiar with that one.

This again is indicative, is it fair to say, of the relationships that you had with on the one hand the developer, in this case Ziad Chanine, and on the other hand – although strictly speaking architect I understand – and on the other hand Councillors Azzi and Hawatt. Would that be fair to say?---Yeah.

Changing the subject again, but again I'm asking about interactions, can I take you to Friday, 18 December, 2015. It's the Friday before Christmas 2015 and late in that afternoon Mr Hawatt asked you, I want to suggest, whether you wanted to come to a get-together which was planned for a nightclub called Ivy's in town and you indicated interest in that. Do you recall that exchange between you and Mr Hawatt?---I don't recall. No, I don't.

I'm not suggesting you did go to Ivy's. Instead I want to suggest you ended up going to Councillor Azzi's house that night for a social function attended by various people.---Was that a Friday?

Yes, exactly.---Yeah, well, that, that, that sounds right.

And the various people who attended included Morris Iemma, Charlie Demian, Bechara Khouri. Do you recall this Friday before Christmas 2015?---No, I don't recall exactly. Almost three years ago to the day.

But this is the Friday before Christmas.---Yeah, I understand that.

Do you recall staying that night until about 12.30am?---No.

And departing with Mr Khouri?---No, I don't. I thought there were others there though that night.

Oh, yes. I'm not suggesting there weren't but the person you departed with was Mr Khouri I want to suggest.---I might have walked out the front door with him but he had his own car.

Yes, correct.---He had his own car.

May well have. But if I can turn now to another subject. Volume 12 – I’m sorry, no. Excuse me a moment. I’ll take you to a subsequent document. Volume 29. I do apologise. Can we have a look, please, at Exhibit 224. This is an email conversation that took place over 23 to 25 March, 2016. So looking at the bottom of the page you can see there an email from Mr Stavis to you, “Here is the draft resolution as requested. That as a matter of urgency an investigation be undertaken to identify opportunities to increase the height control for sites in the B2 and B5 zones along Canterbury Road to 25 metres. That the findings of this investigation be reported to the next available council meeting with suitable site specific recommendations for consideration to increase the height controls and prepare a planning proposal to effect these changes.” Do you see that?---Mmm.

Do you recall an attempt to take a more holistic approach to height limits in the Canterbury Road Corridor?---Not specifically, no. There’d been a Canterbury Road study. I don’t know what it contained.

Do you see that in the middle of the page you responded to Mr – I’ll start that question again. You forwarded that email to Mr Hawatt at 10.05am that same day, 23 March, and said, “Michael, this is a sensible approach that will improve consistency in development outcomes along Canterbury Road. I refer this draft motion to you for your consideration. Happy to discuss when convenient.” Do you see that?---Mmm.

There’s no indication that you copied this to any other councillor. Can you assist as to why you sent it to Michael Hawatt rather than all the councillors?---My thinking is that he asked for it, the draft, to be prepared, probably asked Spiro. I, I didn’t prepare that. And, no, it was, it was between Michael and, and Spiro, and I just went along with it.

Well, just before you go further with that, if you go to the next email in the conversation, you can see that on 24 March, 2016, at 3.42pm, Michael Hawatt responded to you, saying, “We need to maintain control to ensure that any development along Canterbury Road that need to increase height and FSR must provide laneway access and provide a better planning outcome which benefits council and the public. If we lose this control, council and the public loses. We need to be careful on this one. Don’t forget that council has gained the asset base for affordable housing assistance to help the needy, otherwise this could disappear.” Do you see that?---Yeah.

It suggests that Michael Hawatt was not the inspiration for the draft resolution.---Well, he certainly was. I didn’t prepare it. He would have asked Spiro for that for sure.

THE COMMISSIONER: Do you remember that or is that what you - - -?
---No. No, no, I don’t remember anything about it.

MR BUCHANAN: I would suggest any sensible reading of Mr Hawatt's email is that he was not in favour.---In favour of what?

Of what Mr Stavis was proposing.---Maybe not. Michael had some very strong views about planning issues.

10 And then you responded to Mr Hawatt on 25 March, 2016, "Michael, what I am proposing would not jeopardise council's control. In addition, any claim that council was behaving inconsistently, or worse in biased way, could be confidently rejected. We should discuss this further with Spiro. Jim."
---Yeah. Nothing wrong - - -

You were the inspiration - - -?---No, I wasn't.

- - - for the draft resolution, weren't you?---No, no. I'd say, as I said earlier, it probably came from Michael. This, this laneway thing was, was Michael's project, if you like.

20 Mr Montague, I just want to take you to the first five words, "Michael, what I am proposing."---Just a poor choice of words again. Look, I didn't write that.

I'm not suggesting you wrote the draft resolution. I'm suggesting you wrote your email in which you said, "What I am proposing." You're trying to argue him around to your view that what Stavis had recommended or had passed up to you should be favourably considered.---I also said if, we should discuss further with Spiro.

30 And if I could just take you to Mr Stavis's email at the bottom of the page, "Here is the draft resolution as requested."---Yeah, as requested of him.

Yes, by you I'd suggest.---No.

On the whole of these emails, plainly by you.---Well, unless I got a call from Hawatt to say, "I need a draft motion." I've said before in this place that that wasn't uncommon for councillors to request a draft motion.

40 What would be wrong with you making this suggestion?---Look, I, I, I can't even remember the subject matter now. It's, it's just a blur.

You plainly were saying to Mr Hawatt, look, this is a sensible idea, and I want to suggest to you that on the face of it, it was a sensible idea.---I thought the laneway idea was a good idea, yes, all along I did.

But that's not what Mr Stavis is talking about.---I don't know what he's talking about. I certainly wasn't advocating increasing height controls.

So you can't assist us, though, as to why you didn't send this to other councillors?---I, I wasn't in the habit of doing that because it was between a particular councillor who requested information and the staff. It happened all the time. If it had gone any further, though, if it had gone to council, then there would have been information in the report to indicate that there had been certain information provided.

10 You wrote your emails to Michael Hawatt, didn't you, because as far as you were controlled [sic], he controlled council, he was the person you were reporting to?---I, I have to say, he was behaving like he was mayor, yes. Rightly or wrongly, that's how he was behaving.

And you dealt with him accordingly.---Well, we had to keep the business of the council functioning and, you know, if I had done as I would have normally done in prior to the 2012 council, you need to talk to the mayor about this. I know it wouldn't have gone nowhere, because he wouldn't talk to the mayor about anything.

20 I'll ask you questions now about amalgamation, before it happened. You worked with Michael Hawatt, Pierre Azzi and others to find out what was happening in relation to the government's proposals for amalgamation so far as they affected your council?---I did all I could to find out any information about the amalgamation process, which was a dog's breakfast.

And to strategise in relation to proposals for the amalgamation?---Yes.

You attended meetings about amalgamation proposals outside of council chambers?---Yes.

30 Including with Mr Khouri, as well as Mr Azzi and Mr Hawatt?---And, and others from the Bankstown side.

So, we're thinking now, are we, of the meeting at Mr Khouri's house on 30 March, 2016 at 6.00pm?---I, I can't recall a date.

Well, you do recall the meeting at Mr Khouri's house with Mr Asfour, Mr Stewart, Hawatt and Azzi?---Yes.

40 And there was discussion there by Hawatt and Azzi with Stewart about keeping you on at council after amalgamation, in the capacity of a consultant?---Oh, to provide services for the transition, that's what I was interested in.

Weren't you interested in looking after yourself?---What do you mean?

Weren't you interested in looking after yourself?---Well, I was interested in staying on long enough to allow for an orderly transition from one council

to two and to protect my staff, to ensure that they were looked after to the extent that you could.

Did you want to stay on until you had completed 50 years of service in local government in New South Wales?---Oh, that was one, that was one target date, but the other one was the expiration of my contract in April, '17.

In April?---April, '17.

10 I wonder if I could ask you to listen to a recording of a telephone conversation, please. LII 06563, recorded commencing at 5.47pm on 31 March, 2016. So, this is the day after that meeting with Mr Stewart, Mr Asfour, Mr Hawatt and Mr Azzi.

AUDIO RECORDING PLAYED

[12.34pm]

20 MR BUCHANAN: Commissioner, I tender the audio file and transcript for that recording.

THE COMMISSIONER: The audio file and transcript of recording LII 06563 recorded on 31 March, 2016 at about 5.47pm will be Exhibit 246.

#EXH-246 – TRANSCRIPT SESSION 6563

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

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

40 Just one technical detail on the fourth page of the transcript. If we could go to that. Do you see towards the top of the page where Mr Hawatt said, "Okay. So when you put your, have you received that letter yet for yourself?" And you responded, "Yes, I got it, I got it this afternoon." Do you recall a process whereby you were required by the government to put in a submission if you wanted to stay on or be appointed as interim general manager or as general manager?---Yes, yes, I do.

And was that the letter that was being discussed?---Yes, I assume so. I was part of a future process.

Future reforms. Is that right?---Yes.

Thank you. And why did you – I withdraw that. You agreed with that proposal that Mr Hawatt made to you in that conversation enthusiastically,

didn't you?---To be polite because I had no, I knew I had no chance whatsoever of being appointed administrator.

Why not say that to the man who is telling you that he is negotiating or entering into negotiations?---Michael had delusions of grandeur. He couldn't influence the outcome of that fit for process, Fit for Future process any more than I could.

10 Did you know what contacts he had in the government?---No.

Or with MPs?---Well, he was a member of the Liberal Party. He was a reasonably senior Liberal member and he had discussions, I assume, with other Liberals.

You see, you'd gone along the previous day, the previous evening, with I assume some prearrangement between you and Azzi and Hawatt, that you and they would try to sell you to Mr Stewart were he to be appointed interim general manager of the merged council?---I wasn't for sale.

20 But you were allowing them to promote you to Mr Stewart at the meeting? ---I, I don't know what they were proposing. Well, I, what I was interested in was remaining involved in some way or other to help with the transition. I didn't want the top job, I didn't want to be general, general manager of the new council, and I told Mr Stewart that.

Mr Hawatt said, looking at the second page, a bit over halfway down, "I think that will be much better. That way you stay in complete control." And you said, "Yeah."---Yeah, they're, they're his words. I don't know what he meant by that.

30 On this next page, in the middle of the page, "You're still in control." You said, "Yeah." You didn't, in any way, quarrel with him or suggest - - -?---It was pointless with Michael, to be honest.

You know, Mr Hawatt, you know, you're dreaming.---It's like when you bash your head up against a brick wall. It sounds really good when you stop. I, I, had no - - -

40 What do you mean by that in this context?---Well, I, I wasn't going to argue or debate it with him. He's, he's, he had no influence whatsoever and events - - -

But that's contrary to what you've just told us, that as far as you knew he had contacts, it was a Liberal Government - - -?---Yeah, he had contacts but I don't know how effective those contacts would be and who he was contacting. That was up to him.

In any event can I suggest that, certainly in the context of the meeting that you'd taken part in the day before, this does suggest that you were getting together with Mr Hawatt and he was getting together with you, also with Mr Azzi, having regard to the fact that he was present the day before, with a view to trying to ensure that you were in a position after amalgamation of power at council.---No. My issue was to ensure that the transition from one council, sorry, from two councils to one went as smoothly as possible and that my staff at the Canterbury end were looked after in the sense of being given an opportunity to compete for the jobs that would be available.

10

What was your understanding at the time as to what Mr Hawatt saw in these proposals that he made the day before, and on this occasion to you, for him? ---I had no idea.

Retaining a degree of control himself over, for example, planning decisions at the amalgamated council?---Well, I don't think that makes sense because he had no idea, he, he wouldn't have had any clue as to how the planning division, or the council for that matter, was going to be constituted, who would be councillors, who wouldn't be. It, it - - -

20

But he had, had he not tried to sell Mr Stavis the day before to Mr Stewart as being the only director to be retained - - -?---And I, yes, I do recall that at Azzi's house and I, and I also, I, at Khouri's house, and I also remember Mr Stewarts saying he wouldn't have him and that's of course entirely up to him.

My questions are directed to what, as you understood it, did Hawatt see in it for him to retain Stavis as planning director, but no other director, and you in decision-making positions in the amalgamated council?---Look, maybe he thought he could wield some influence, but he was, he was absolutely mistaken. He wouldn't have had any influence at all, because no one knew what the composition of the council would be, who would be in the senior staff positions. It was all up in the air.

30

And we've seen, haven't we – going back, for example, to that extraction report from Mr Hawatt's phone – that back in September 2014 Mr Hawatt was able to, or certainly tried to, influence planning decisions through you, using you?---Well, he may have tried but he, I don't think he was very successful.

40

Mr Hawatt and Mr Azzi were continually, except during the wars, using you to achieve planning outcomes in the Canterbury local government area. ---No, those planning - - -

That was obvious to you at the time, I suggest.---They were certainly injecting themselves into the planning process more so than their predecessors or the other councillors at the time, yes.

Did it occur to you from what had happened the night before that Mr Hawatt and Mr Azzi wanted to use Mr Stavis to achieve planning outcomes in the amalgamated council?---Well, I think you could, I think you could conclude that, yes, which disappointed me because I, you know, we know what happened, though.

10 And that was consistent, wasn't it, with, as you understood it, Mr Hawatt and Mr Azzi using Mr Stavis to achieve planning outcomes before amalgamation in 2014-15-16.---I don't know to what extent or what pressure they exerted on Mr Stavis to get outcomes.

It was apparent to you, I suggest, that they were using Mr Stavis to achieve planning outcomes in that period '14-16.---I don't, yeah, they may have been trying to, but I don't think they were very successful.

20 How could that possibly have been a true answer, Mr Montague? It was clear that they were very successful.---Well, not to me. They, they had regular dialogue with him, as they did with his predecessor and with every other planning director there.

But as against Mr Occhiuzzi, Mr Stavis basically did as he was told.---Well, he may have.

That wasn't apparent to you at the time?---Well, there were occasions he said to me that he was certainly being leaned on a bit, but I, I took the view that he was resisting that. Maybe he wasn't privately.

30 And there were other times, surely many, when it would have occurred to you that he was simply doing exactly what Azzi and Hawatt wanted him to do, whether he was pressured or not.---You, you could, you could conclude that. Maybe he thought he owed them.

And that, I take it, was a reference to the role that Mr Azzi and Hawatt played in the appointment of Mr Stavis and him starting work.---Yes.

Can I take you, please, to the statement of Mr Stewart, dated 28 March, 2017, paragraphs 55 to 58. This is in Exhibit 53. Do you see there there's a heading Meeting with Mr Montague on 18 April, 2016?---Yes.

40 And Mr Stewart said, "Mr Montague attend my office alone on Monday, 18 April, 2016 at 2.30pm to discuss the Fit for Future (amalgamation) process, specifically how our respective staff might work together to prepare for the possibility of a forced merger. Mr Montague commenced the meeting by saying, "I'm sorry, "by stating, 'I put in my expression of interest.'"---Yes. Yeah.

"I said, 'I thought you were going to retire.' Mr Montague looked out the window and said, 'I had to put it in because Michael and Pierre made me do

it. I had to.” Pausing there, is that what you said?---Oh, look, it would have been tongue-in-cheek stuff. He, Michael knew, sorry, Mr Stewart knew the relationship I had with Michael and Pierre and how they were full of their own importance.

Yes. And he also might have understood that they controlled with you. ---No, I don’t think so. I think Mr Stewart’s smarter than that. He knew my background. He knew my history. He knew my, the length of my service at Canterbury. He knew things had changed politically there.

10

Mr Stewart continued, “Mr Montague presented as uncomfortable before asking me, ‘What are you going to do when I get the job?’”---Well, I don’t accept that. I’ve thought about this one. I saw that. I may have said if I get the job but I said earlier I didn’t want the job and I told Mr Stewart that. I didn’t want the top job in the amalgamated council.

Did Mr Stewart ask you as he says in paragraph 56, “What will you do if I get the job?”---If not, when.

20

Yes, yes. Did Mr Stewart say to you, or words to the effect of, “What will you do if I, Mr Stewart, get the job?”---Mmm.

And - - -?---I didn’t know how to answer that because I mean, it’s just a speculative question. I knew, I knew enough about the Fit for, although it hadn’t conclude but I wasn’t optimistic about being placed because what are they going to do with two GMs? I wouldn’t have liked that if I’d been in Mr Stewart’s position.

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And in that case – I withdraw that. That’s consistent, of course, with Mr Stewart saying that you indicated that you’ve put in your expression of interest to be interim general manager because Michael and Pierre had made you do it.---No, no. As I said, that was just a tongue-in-cheek comment. I didn’t, it didn’t have any bearing on them at all. I was required under the Fit for Future thing to put in a request. If I hadn’t that would have indicted to the government I wasn’t in the slightest bit interested in having the role and that wasn’t my position. I just went along with it. It was just filling in, filling in the boxes. It was a ridiculous process.

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THE COMMISSIONER: What happened to the administrator role that you were discussing I think on 31 March?---Yeah, Mr Colley got that.

And that just, after that telephone discussion did it just die away?---Yeah, never, never went anywhere and it wouldn’t have. I couldn’t have in the circumstances. I mean, not after the Il Buco publicity. I was, you know, I was discredited to some extent by then, I knew that, and I didn’t want it anyway.

MR BUCHANAN: But if Michael Hawatt could engineer your appointment as administrator that was all right by you, wasn't it?---I knew he couldn't though. It was nonsense, absolute nonsense. Again an indication of his bravado. He couldn't do it.

Can I take you to transcript where you spoke about visiting Mr Azzi's house from time to time in 2014/16. This is page 4866 of the transcript. And in particular I just want to ask you a question about the meaning or the sense in which you intended the reference to amalgamation at page 4874, line 12.

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THE COMMISSIONER: While we're finding that, you mentioned the Il Buco.---Il Buco.

Buco. During the war there was a proposal or a draft resolution put forward of some independent review. Did that ever occur?---No. Oh, no. Things changed after the Il Buco disaster and I was required, which I thoroughly agreed with, I was required to put up regular reports on all executive expenditure including that of the mayor.

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But there was no kind of retrospective review of - - -?---No, not, not, not that I took part in. I mean, again events overtook us and it just fell off the, fell off the table. There were better checks and balances over the auditing of the use of credit cards, that sort of thing, which I thought was a good idea.

MR BUCHANAN: But all those resolutions, for example, that were proposed at the EGM 13 February, 2015 that have been called by Councillor Kebbe and Azzi and another, they all went by the board by then?---I wouldn't say, I wouldn't say that but they, they weren't as important at that point.

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They were just weapons that were being used in the war?---I think so, although some of them were implemented, particularly in relation to executive expenditure.

Now, if I can just take you, please, to transcript page 4874 and just ask if you can help us here. You can see that I asked you, as recorded in line 9, "You spent time with Mr Khouri at Mr Azzi's house." Answer, "Yes, once or on several times." Question, "And indeed there was a regular Friday night event at Mr Azzi's house, was there not?" Answer, "No, that only happened after the amalgamations, after the amalgamations, and I suppose it was a case of everyone was concerned about where we go from here, would it be a forced amalgamation, or it was in the end of course, and what could we do to get the new council, the amalgamated council, to work properly." I'm just trying to work out which time period you're talking about here, because on the one hand you talk about after amalgamation, but on the other hand you talk prospectively, would it be a forced amalgamation, and in the end it was.---Well, it wasn't supposed to be. I mean, no one really in the sector really knew what the government had in mind, but were hopeful,

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since we volunteered to amalgamate – Canterbury and Bankstown, that is – that we’d be masters of our own destiny, that we could, we could determine how the council, how the council would look.

When was the government told that the two councils volunteered to amalgamate?---Mr Stewart and I had a meeting with Steve Orr, who was one of the senior people involved, and we – this is earlier – and Mr Stewart and I said to him, “Look, we’re happy to amalgamate.”

10 When was it?---Oh, gee.

As best as you can recall?---Fit for Future, probably in early 2015 or around about that time, or maybe even earlier than that, maybe in 2014, before the war, because I had a view, and I still do, that amalgamations were necessary and I think the government didn't go far enough.

Possibly a year and a half before amalgamations occurred, the two councils volunteered?---It’s possible, well, so, Mr Stewart and I were talking. I don’t, I don't know whether that ever translated into formal resolutions of
20 the respective councils. We were just chatting, as the two CEOs, to, to, to, to talk about it.

But to the head of the department.---Oh, no, he wasn’t the head of the department. He was just one of the, you know, just one of the minions in there. We had a view and they, they, they appreciated that because earlier in the piece - - -

No, please. If I could just ask you to pause. All I'm trying to find out is, when did the government learn that the two councils were prepared to
30 amalgamate?---I don't know but I can only assume that Mr Orr took that information back to the minister or to somebody else.

Was there any other time or correspondence by which the willingness of Canterbury to merge with Bankstown was provided to the government or signalled?---There could have been correspondence. I can't recall because there were meetings at both councils. I can’t remember when or what the substance of them was, but it was pretty obvious all around town that the two councils were prepared to consider an amalgamation.

40 Were you at the same time, however, trying to fight amalgamation as a concept?---No. No. Because, unlike a lot of councillors who did, went to the courts and were successful, which disappointed me, no, we – I'm not saying all of the councillors were on board, councillors at either council, I don't know what Bankstown was but at Canterbury there was a number of councillors who felt we should have fought, we should have gone down the court path, the same as the others did.

THE COMMISSIONER: But the approach, which may have been in early 2015, I'm sorry, the chatting between you, Mr Stewart and Mr Orr, did that have any endorsement or support from the councillors or was it something that you and Mr Stewart - - -?---No, it was just something that Mr Stewart and I initiated. We were preparing ourselves for amalgamation. It was inevitable it was going to happen. I knew that much from sources within the sector, people better connected than me said it will happen and we needed to prepare ourselves for it. That was as, that was innocent as that, really.

10 And as the government became more definite about amalgamations through 2015, was it the case that Canterbury Council's position on it would be determined by the councillors?---Oh, yes, of course. Had to be. Had to be.

MR BUCHANAN: In any event, can I go then back to the question of when you were having meetings about amalgamation at Mr Azzi's house. You indicated to us early in your evidence in this hearing that there were a number of meetings after amalgamation occurred that were held at Mr Azzi's house in which you participated, is that right?---Yes. After, even after the, well, after the proclamation on 12 May. Yeah, there were.

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So there were meetings before and after amalgamation occurred on 12 May, about amalgamation.---Not, not only about amalgamation. Friday night was a pretty regular thing by that stage, the social - - -

And these all occurred at Mr Azzi's house?---Yes.

THE COMMISSIONER: You said Friday night was something like a usual occurrence by then?---Well, it became that. I mean - - -

30 Are we talking late 2015?---Yeah, more, more then. '15 and '16 was when it started to become more frequent and it was, while we didn't meet specifically to discuss amalgamations, obviously it was a topic, topic on everybody's mind, and I think that's why Mr Stewart and Mr Asfour were involved at one stage because obviously they were, you know, they were pivotal too.

MR BUCHANAN: Yes, I note the time, Commissioner.

40 THE COMMISSIONER: Yes. We'll resume at 2 o'clock.

LUNCHEON ADJOURNMENT

[1.01pm]