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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 TUESDAY 23 APRIL, 2019

AT 9.30AM

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

THE COMMISSIONER: Any administration, Mr Buchanan?

MR BUCHANAN: Not of which I've been made aware.

THE COMMISSIONER: All right. Natasha?

<MICHAEL HAWATT, sworn

[9.32am]

THE COMMISSIONER: All right, thanks, Mr Buchanan.

MR BUCHANAN: Thank you, Commissioner. Mr Hawatt, we will play to you a recording of a telephone conversation which is Exhibit 92. It was recorded on 3 March, 2016, commencing at 7.22pm, and the recording that we're playing you, the exhibit is an extract. It commences after the
10 conversation had commenced. So there was some other conversation beforehand that's not relevant to the enquiry.

AUDIO RECORDING PLAYED

[9.33am]

MR BUCHANAN: Mr Hawatt, do you recognise the voices of yourself and Mr Azzi in that recording?---Yeah.

20 Can I ask you, please, if we go back to the first page of the transcript, you and Mr Azzi in that conversation talked about an issue or issues between George Vasil and Charlie Demian. What were those issues?---I think, from memory, just, just from memory was that Charlie Demian cannot sell anything direct because he's got partners in his business, and he's got to follow the, the right process in order to – because George must have been asking through those guys who were pushing him to try and, and, and get a sale through, through, for these guys. And Charlie just, really just, could not just say, "Look, yeah, there it is, I'll give it to you." It has to follow the, the right process, because he has other investors or other partners in his
30 business, from my understanding, because he really didn't, didn't want to have too much directly to do with it.

What was the subject matter of the sale?---No, well, I think George had been pushed by these two guys, named John and, and, and Laki, to try to, trying to get George to sell it on behalf of, of these guys, because they had a buyer.

But what was "it"?

40 THE COMMISSIONER: Sell what?---So what – "it"?

Yes.---So what do you mean by "it", sorry?

Property. We take it it's property?

MR BUCHANAN: Was it a property?---Could, could be the Harrison's site. I'm just guessing. I'm just guessing.

Well, are you guessing or did you know?---Well, most, it could be, most likely, because that's the place the, they've been pushing for, they, John and, and Laki, the Harrison's site.

John and Laki had been pushing for - - -?---Pushing George, George to try and get Charlie Demian to sell it to them through their contacts, or something like that.

10 I see. And what was George Vasil's interest in it?---George just, he, he knew these two guys, and George wanted to deal with, with Charlie, and Charlie can't deal with him, because he's got, he's got to follow the process. He said, "Look, I can't," he's got, he, their own agents they deal with. They, they got their own investors he deals with. He can't just make decisions without having to consult the investors he has.

20 And what was it that George Vasil, as you understood it, wanted?---I think, I think they just wanted to try to, if they can get a, a, what do you call it, sale, trying to, to see if Charlie could sell it to, via these guys. But from my understanding, Charlie's, would not do it unless he went through the, his, his agents.

THE COMMISSIONER: Sorry, sell via these guys? The guys are John - - - ?---Yeah, the guys, they said they could buy it.

No, hold on. The guys are John and Laki?---And Laki, yeah, yeah.

And it's not selling to them but - - -?---They just said they had someone.

30 So through them being agents for somebody else?---Yeah, maybe, yeah, yeah.

That was your understanding?---Yeah, yes, yeah. Yep.

40 MR BUCHANAN: And where did you get that understanding from as at the time of this phone call?---I think Charlie was getting annoyed with, one stage, with being pushed to try to sell it directly to them and Charlie, he said, "Look, I, I can't, I can't sell anything unless we go through all the, the process, the normal process and it's got to go through there on the open market." He said, "I cannot do it."

And how did you find that out? What's the source of knowledge?---I mean Charlie, Charlie mentioned it. Charlie mentioned it to me.

To you?---Yes. Because he was getting annoyed with George and Laki and, and, and John.

And why was Charlie talking about it to you?---Because George, probably because he knows I know George and I know these guys were pushing me as well, prior - - -

They were pushing you?---As well, yeah. For I, you know, make it happen and, and to me, I sort of also, I, basically towards the end I said to Charlie, I said, “Look, Charlie, these guys, I don’t trust them. It’s up to you. I really, I think they’re full of rubbish so it’s up to you I want to meet up with them but, you know, just don’t, don’t, don’t trust them.”

10

And when you say these guys, John and Laki were pushing you?---Correct.

What was it that they were doing that amounted to pushing you?---To, to, to introduce, introduce them to, to Charlie.

Were they talking to you?---They asked me to, to also, yes, I have, I, I, met him with, at the coffee shop in Earlwood a few times.

They asked you to do what?---To, to introduce them to Charlie.

20

I see. And as you understood it, why did they want you to introduce them to Charlie?---Because they, somehow they, they know that I know Charlie.

But in what way, as you understood it, did that help them?---Well, it didn’t help because it, it didn’t make any difference whether I knew Charlie or not. Charlie actually followed through the process that he, he, needs to do in regards to his properties. He can’t just get two people out of nowhere, out of the air and give, give them something to sell on his behalf.

30 But as you understood it, why were they talking to you rather than to somebody else or to Mr Demian himself?---Because they knew I, I, I, I knew Charlie and I, I can introduce them to him.

And you have a couple of meetings with them, did you say?---Yes, I had, yeah.

Where did you have meetings with them?---In Earlwood. There was a few meetings in Earlwood over coffee.

40 And where was that?---Oh, Frappe. I think maybe Frappe, yeah.

Frappe coffee shop?---Coffee shop, yeah. Could be there.

And was that when you were a councillor?---When, when was it we finished as councillors?

12 May, 2016.---This is just before I think. Just before, so we were councillors.

And when was it you first had a contact with them or with either of them, John or Laki, about the Harrison's property or a property owned by Mr Demian?---I don't, I don't remember the dates. All I remember is these guys wanted to meet me and I met them for coffee and they just asked do I know Charlie, I said yeah. "Can you introduce us to Charlie?" I said, you know, "No problems." And they kept on saying, oh, they've got these people, they're interested in the Harrison's site. I said, "Look, there's nothing that I can do but I can introduce you and it's up to you."

10

But how were you – I withdraw that. Were you introduced to them by anyone or were they introduced to you by anyone?---No, no. I met, I met them through George.

You met them both through George?---Yeah. Because I didn't know - - -

Was George at the meeting or one of these meetings too?---Presumably, yeah. He must have been.

20 And was Mr Demian at either of these meetings?---Look, I'm not sure if he, there was once, the original meeting's done but later on, I'm not sure whether he turned up to any, any meetings with them, I don't, I don't recall. Or they went to see him, to his office but I don't recall Charlie coming to any meetings with these guys.

When did you first meet John or Laki?---I, I can't recall the dates.

30 What were the circumstances on which you first met John or Laki?---I, I met them through this project we were working on, this hospital project in, in Revesby, and that was a while back and I met them through that and then they started jumping from one thing to another and - - -

When you say jumping from one thing to another, what do you mean?
---Like instead of focussing on this project, this hospital project, they started talking about, oh, they've got other investors they want to come and, you know, interested in buying sites and they know if, I don't know how they, they know of this Harrison's and they asked me if I can introduce them to, to Charlie. That's basically it.

40 And when did that first happen?---During that period of that hospital project that I was working on, would have been, oh, I don't recall the exact date, that's, it's been a while.

Now, on the other hand, this telephone conversation that you had with Pierre Azzi was one in which Pierre Azzi was explaining to you what had happened as he understood it between, or concerning George Vasil and Charlie Demian. How was it as you understood it that Pierre Azzi was involved or was able to tell you a story about what was going on between

George Vasil and Charlie Demian about this sales agreement or potential sales agreement or non-sales agreement for the Harrison's site?---Well, they must have spoken to him. They must have spoken to Pierre Azzi.

But why did they speak to Pierre Azzi as you understand it?---These guys will talk to the devil himself if they have the opportunity.

When you say these guys?---Sorry, Laki and John.

10 Well, yes, except that there's no mention of Laki or John, instead, according to the conversation, Pierre Azzi was aware of what had been said between George and Demian or what had been said by Demian, according to what George had told him.---Well, look, I can't speak on behalf of George, I can't speak on behalf of Pierre, I can speak on behalf of myself. What I'm saying is, presumably, most likely they would have spoken to Pierre as well, but you'll have to ask Pierre exactly who's spoken to him and what happened with that. That's all I can, I can comment on my observation but I can't speak on their behalf.

20 But it didn't come to you as any surprise, according to what we've heard in this recording, that Pierre Azzi was telling you what had been going on between Vasil and Demian.---Well, it's not a surprise because he knows, George knows Pierre as well so he might have spoken to him as well. I mean I don't know, I can't guess.

Well, you did seem to know at the time.---I know what I, what I'm thinking of, yes, but I don't know what Pierre's thinking of or who's spoken to him. I mean you're asking me to, to make assumptions based on what other person's thinking. I can't do that.

30 But you don't say to Pierre Azzi, why were you talking to George Vasil about this or - - -?---Doesn't worry me. Why should I, why should I be concerned?

Well, it suggests that you understood that Pierre Azzi had a pre-existing relationship with George Vasil in relation to the sale of this property or potential sale of this property by Charlie Demian.---No, just, look, it's all, it's all, what do you call it, assumptions, talks, and just people just talk. There's nothing, there is nothing serious from these guys that I would say and to me, I wouldn't worry about it.

40 Yes, but the question is, why do you have these assumptions? Why do you have these assumptions that there's nothing abnormal or strange or anything that you didn't previously know about in Pierre Azzi's involvement with George Vasil in trying to get involved in the sale of the Harrison's property by Charlie Demian.---Well, if he wants to talk to me about it, that's my reaction to it, I, as far as I'm concerned it's nothing surprises because like everybody knows what, what Laki and, and John were, were doing with

George and that was, that was it, so, and George knows everybody, so I can't comment on their behalf.

Well, except that you seem to have an opinion about it, you were using words of approbation like, "Oh, good," when Azzi was telling you what George Vasil had told him.---To me I always use passing comments are good, great, fantastic, it doesn't mean anything, to me it's like just words that I use quite often, it doesn't, it doesn't have any real substance behind those words or having any real meaning behind them. These are general
10 words that I use and I make those quite often, those comments. It doesn't mean anything as far as I'm concerned because I use them quite often.

Well, can I just point out, if we have a look at page 7, page 4, got ahead of myself there, the top of page 4, the words attributed to you there are, "Yeah, that's good, it solves the issues between those two."---Which is, which is Laki and John.

Well, no. I just point out to you, no one has referred in this conversation to anyone except Charlie Demian and George Vasil.---That doesn't mean we
20 haven't spoke about them. I might have spoken to Pierre one-on-one, I don't know, or George might have asked when both were there. I mean just because we didn't mention those two, to me that would be Laki and John.

Except that no one has talked about Laki and John. Instead Pierre Azzi has told you about conversation with George Vasil in which he said that there had been some explanation to him by Charlie Demian about the state of play in terms of an agency for the sale of the Harrison's site. And so when you say, "Oh, good, that solves the issue between those two," you plainly
30 understood that there had been an issue between Vasil and Demian before and you thought it was a good thing that in relation to the subject, namely the potential sale of the Harrison's site, there had been a solution between Vasil and Demian.---No. I think - - -

And the question is, why did you think that?---I think with what I said with the two, I think it's Laki and John.

Why, why do you think that?---Because they're the ones who are pushing everybody, those two.

40 Is there anything in the conversation that you can point to that explains that, where there's a reference to that?---It doesn't have to be on the, on the, on the phone conversation, it could be a discussion one-on, face-to-face, could have been at coffee sometimes we may have discussed it, it's not necessarily had to be specifically mentioned in, in this transcript. I mean when I mentioned with those two, and that points to what I'm saying, the two is Laki and John, they're the two that have been hassling everybody.

But it's not issues between those two.---To resolve it because they're hounding everybody, they're hounding me, they're hounding George, they're hounding Pierre, Pierre.

MR DREWETT: It's been put to the witness that the transcript says, "It solves the issues between those two." In fact the transcript says, "It solves the issues with those two."

10 MR BUCHANAN: That's absolutely correct. I take my friend's point and I stand corrected. Thank you very much for that. So can you explain to us what you understood the issue to be with those two that arose directly out of what Azzi had been telling you about what he had been told by Vasil about his relationship with Demian?---They wanted to meet up with Demian, these guys, they're consisting [sic] they want to meet up with Demian and pushing, you know, sort it out with him, want to meet up with him, they've got serious buyers and, and that's what they're talking about and I think Charlie had enough of them as well.

20 THE COMMISSIONER: But the conversation refers to Charlie and George Vasil. As Mr Buchanan has put to you, there is no reference to John or Laki at all, and my reading of it is that the issue, "solves the issue with those two," is clearly a reference to George Vasil and Charlie Demian.---Look, I, from memory, and this is from memory, those two to me, the annoying ones are Laki and, and, and, and John.

We're not talking about the annoying ones.---I know, but that's in my mind.

30 No, Mr Hawatt, what we're talking about is this conversation where you finished with the words, "Yeah, that's good, it solves the issues with those two," where the "those two" that have been referred to in the previous two pages of transcript are only George Vasil and Charlie Demian. ---Commissioner, could, you could be right, I, I just can't recall, but from, from what I know, the, the, the, the two is always been Laki and, and, and John. But you could be right, I don't know. I just, that's from my, my memory.

40 MR BUCHANAN: Can I ask if we could have a look at page 2 of, page 1 of the transcript. Can you see where Mr Azzi at the bottom of the page says, "No, I was saying that the situation between him and this one, it's been solved"?---Oh, I, I just - - -

And he then goes on to tell you about the conversation that he'd had with George Vasil about the issue between Vasil and Demian.---Maybe just solved to meet each other, I don't know, I'm just, I'm just guessing. I, I can't remember even this, this conversation, but I'm just saying, reading, reading from that, is maybe, "We're going to get together and sort it out." That's, that's my understanding. But I don't even remember much of this conversation that we had.

Now can I take you please to the next part of the conversation, page 4, please? Can you see at about, oh, a bit over halfway – no, sorry, I apologise. A bit above halfway down, a fourth entry attributed to you, “There is that one, what’s its name, for the business paper for what’s his name, Maroun”?---Yep.

10 This seems to be a reference to the application that at that time was before council to consider a development application by Mr Maroun to add two storeys to the approved development of the car wash site.---Yeah.

Now you see that there’s a reference to the business papers?---Yep.

And then if we can go over the page, please, you see that the second last entry for you on that page, the third last entry on the page – this is page 5 – is, says, “Yeah, yeah, I’m going to meet him.” That was a reference to you having a plan to meet with Demian – oh, I apologise – with Maroun? ---Correct, because he must have called me, that’s, oh, what I’m saying. He called me and asked me about what’s going on. Progress.

20

Well, you don’t say that.---Well (not transcribable) he said he’d called me, and I’m following up, how had you, how, how, how did he go, because it sounds like I’ve been away or something.

30 Can I ask you this, why was it necessary for you to meet him? Why couldn’t Mr Maroun convey to you his concerns or queries over the phone and you take them on board over the phone?---Oh, Mr Maroun always come, come over, just to have a – as I said, oh, you go over, become social with him. It’s not, come over and, for, not to talk about his, you know, his, his project or – ninety-nine per cent of the time, it’s everything else but the project. So, it’s, it’s just became a habit, yeah, I’ll come around, I’ll see you, I’ll drop in and say, say hello. That’s, that’s the way it is with Maroun.

So, are you saying that instead of taking his queries or contacts with you over the phone, you went to meet him basically because he was your friend?---Yes.

And you weren’t going to go and collect money off him?---No.

40 Could we have a look at the next page, please? So you understand that you’ve, in that conversation on 3 March, 2016, talked to Mr Azzi, saying that you had told Mr Maroun that the business paper will come?---He must have asked me, sorry, he must have called me (not transcribable)

So, my question really is, you didn’t have the business papers at that time. You were waiting for the IHAP report. The IHAP had met, you said, last Monday – that’s 29 February, 2016. There was nothing to tell him or talk to him about until you got the business papers and found out about the

outcome of the IHAP meeting. Why did you need to go and meet with him?
---Well, well, well, that's why I said to Pierre, I said, have you got any news
so I can tell him when I see him.

Well, except that you knew that there was no news and you knew that there
would be no news until you got the business papers. You've just discussed
that with each other.---Yeah, but also said there – yeah, but also said there
was, also the papers were coming so I might have, might, might, might be
there before I went and saw him as well.

10

It reads as if - - -?---I mean, that's, that's (not transcribable)

- - - you were having a meeting for a purpose that is not related to providing
information to Mr Maroun, or indeed listening to what enquiry he might
have, but instead is for another purpose.---I always see Mr Maroun. It's just
so we have a record of visiting him and seeing him. It's not, nothing to do
with, not necessarily to do with anything to do with his projects. It's
become, you come to the gym, just walk on the tread machine, let's talk.
It's the socialise, it's, that's, that's the way it is.

20

And why were you interested in the outcome of the IHAP meeting?---He
must have asked me, from that discussion there, he must have said, "What's
happening?" I said, "I don't know," and I rang Pierre to find out or
whatever, the other way around. I just asked him if he knew anything.

Why couldn't Mr Maroun find out for himself from the business papers
when they were published on the website?---Oh, not, not everybody goes on
the website and checks it all out. It's, it became, with Maroun, it became a
social thing, come around, say hi, had a coffee and have a general
discussion. That's basically it with Maroun. That's the way it, that's the
way it's always been.

30

Were you interested in the outcome of the IHAP meeting because you
wanted to make sure that he DA was approved?---No. Because he asked
me. He asked. Anyone who asks me, I just follow up on it.

If the IHAP recommended approval, that would have been good news for
Mr Maroun, wouldn't it?---He asked me.

40

Would it not have been good news for Mr Maroun?---Of course it would
have been good news for Mr Maroun.

And it would have been good news for you and Mr Azzi?---Why, why is it
good news for me? What difference does it make to me?

Well, that's the question.---As a friend, as a friend, as a friend he, he got, he
got what he wanted, he's done everything correct.

That's what you wanted for him, isn't it?---No, no. Look, you can turn it around any way you like. As far as I'm concerned, he's a friend, we've never taken anything from him and, and that's the way he is.

So are you saying that, as far as you're concerned, you didn't care less what the outcome of his DA for two additional storeys on the car wash site?---No, it's not that I didn't care less or cared less. The point is, we had to tell him to follow the process and do the right thing.

10 Please, please.---We gave him the advice and that's how he was following it.

Did you care, as at 3 March, 2016, when you were waiting for the IHAP meeting report, did you care what the outcome was of the IHAP meeting? ---I, I care about everyone who calls me for assistance. Yeah, I care about everyone that asks me for help. Yes, I care about everybody, not just Maroun.

20 Why did you care about the outcome of the IHAP meeting so far as Mr Maroun's DA was concerned?---Because he asked me. He asked me like anyone else and I care when they ask me.

You would have been unhappy, wouldn't you, if the IHAP had recommended refusal or deferral?---I would have been unhappy for anyone who had an issue with, that, that didn't get what they want that I was representing. It's the way it is. We represent the people. We don't represent the council. We represent the people and we try to represent them to make them happy and that's the way it is. We support those people. When they're happy, we're happy. When they're not happy, we're not happy. That's the way it is as councillors. We represent the people.

30 Now, the evidence before the Commission shows that Mr Stavis's report to the IHAP and to the City Development Committee for its meeting on 10 March, 2016 recommended that the DA for two additional storeys on 538 Canterbury Road, the car wash site, be approved.---Yep.

40 Mr Stavis's report also said, "Although the proposed development exceeded the allowable building height, this was in keeping with the council's desired future character for the property based on recently approved heights adjacent to the subject site and council's planning proposal for the additional heights at the site." That's volume 17 in Exhibit 69, page 251. Could we play please, a recording that was made the next day, 4 March, 2016, to the one that we listened to a moment ago. This is Exhibit 279. The recording commences at 12.31pm and, again, it commences after – sorry, the exhibit commences after the commencement of the conversation, it leaves out material that wasn't relevant to the inquiry.

MR BUCHANAN: You heard that recording being played and recognised the voices of yourself and Pierre Azzi?---Yeah.

If we can go to page 1, please. When Mr Azzi said to you, “I have recommended it for refusal,” you understood exactly what he was talking about, didn’t you?---Presumably, yeah.

10

You understood that it was a reference to the DA for two additional storeys on the car wash site?---Most likely, yeah.

How come you knew exactly what Mr Azzi was talking about, even though he didn’t use words identifying the site?---Because we were, because I was inquiring about it the day before.

But you’ve told us that you - - -?---I asked him - - -

20

- - - had an interest in all the matters that were before council. We know from the conversation that there were more than one property that was the subject of this IHAP meeting, how was it that you understood Mr Azzi to be talking about the car wash site, rather than one of the other sites in which you say you had an equal interest?---You just mentioned this is a recording after yesterday, which is the one that we were talking about, specifically about the site, what’s happening with the IHAP, so it’s a follow-up.

30

You had a particular interest, didn’t you, in the car wash site?---I have an interest with anything, anyone that does an inquiry with me and that was an inquiry that Mr Maroun was, was asking me for.

If we could – I withdraw that. And had you seen Mr Maroun in between the two conversations on 3 March and 4 March?---I don’t recall, I’m just guessing, I might have, but I don’t recall.

40

If we could turn to page 2, please. Now, Mr Azzi told you, “They went against Spiro. Spiro said to me they went against him for a few things, a few DAs.” Excuse me. And you then said, “Well, we’ll, we’ll do as the officers’ recommendation. Bigger them.” Do you see that?---Yep.

There are a couple of questions I have there. Firstly, when you said we, you were referring to whom? Council as a whole or you and Mr Azzi or what? ---No, the council.

And how did you feel that you were in a position before the meeting had occurred, and before indeed you’d had any conversation with anyone about this agenda item other than with Mr Azzi, that the council would make a decision to go with the officers’ recommendation rather than the IHAP

recommendation?---Oh, this one, it happens all the time. Sometimes we support the, the council officers' recommendation, sometimes we support the IHAP. It depends, it depends on the issue.

10 What enabled you to be in a position to predict that that would be what would happen as at 12.31 on 4 March, 2016, when, as I suggest to you, the business papers hadn't even been distributed yet?---I probably was told. I mean, I wouldn't have a clue. I mean, you're, you're asking me to, to remember something and I don't recall but the, the, the issue is that we had a lot of problems at one stage with the way IHAP were making recommendations and we went against a number of their recommendations and we went and supported the staff's recommendations. You've got to remember IHAP only makes recommendations based on the staff and then they only add or remove things. On, on rare occasions they actually go against the recommendations. I mean, the staff are the ones who do, do all the hard work, not, not IHAP. They do the, the hard yards and they do the hard work and they do the assessment and they give it to IHAP. So IHAP, if we recommended officers' recommendation, what's, what's wrong with that? That's normally, we, most of the time we support the officers' 20 recommendation. That's normal.

What it suggests is that you did indeed, you and Mr Azzi, control the numbers on council and if you made a decision, you and Mr Azzi together, that instead of following an IHAP recommendation you would follow a contrary recommendation by the officers, then the council would fall in line. The majority of council would fall in line.---No. It's all debated, it's up to the council to support the, the, the, argument that's put forward and during that period of time, I think IHAP were on the nose because they were making such stupid changes to other applicants and it wasn't that difficult 30 to, to have a solid argument to support the officers' recommendation, which most of the time it's the officers who assess it anyway. So, not the council.

So are you – I'm sorry?---It's up to the council to, to make the final decision.

Well, you don't make it sound as if it's up to the council. You make it sound as if you, with Mr Azzi's concurrence, had decided what council's position would be and you were announcing it to Mr Azzi on 4 March, 2016.---Look, I said, I understand the issues, I understand the, the IHAP 40 decisions they make sometimes and if I come up and put up an argument to support the council officers and that's supported on the floor of the council, so be it. It's, it's up to the individual of each councillor. They could have said, no, we don't want to support it. It's up them.

So you make it sound, you're making it sound as if the decision to prefer a contrary recommendation by the officers to whatever it was the IHAP recommended was a decision arrived at after considering the matter on its merits.---Look, I, I - - -

Are you saying that's the case?---On the merits, correct, it is on the merit.

Well, the problem with that in this case was, you had no idea what the basis was for the IHAP recommendation. You had simply been told it was a recommendation for refusal.---If I was told that I was told that. So for them to refuse it without having the justification for it, I, I haven't seen the justification, but if the council officers made a recommendation to support it and I trust the council staff that they did, they do their assessment and their homework and they make a decision. But from memory, I don't recall,
10 again from memory, I don't recall that the recommendation was from the officers, I recall the recommendation was IHAP with, with an amendment to remove the stupid, redesigning the whole building with the lift shaft, that's my memory, I just can't recall that, I just, from memory it's IHAP have been recommended we, we support it and with that amendment to remove the, the design they wanted to include to go back to the drawing board, basically, that's the thing, and I've done that on a number of applications that came through.

20 And so simply on the basis that Pierre Azzi had told you that the IHAP had recommended the DA for refusal, you said to Azzi, and Azzi agreed, "Yeah," you said to Azzi that you would instead go with the officers' recommendation, "Bugger them."---Probably because I had, I had, I'm quite annoyed with what IHAP were doing at one stage personally and if they didn't support the officers' recommendation, which I believe that they would have done the proper assessment, they're the ones who give the reports to IHAP and that's my decision at that time, that's my decision, and I, and it ends up to me to convince the, the council to support my decision.

30 What this plainly shows is that you intended to ensure that the DA was approved, irrespective of the merits of the decision by the IHAP to recommend refusal. That's what this conversation plainly shows, doesn't it?---No, it's not, no, no. No, it's not.

It shows, doesn't it, that you had some interest in the DA being approved, other than its merits. That's what it shows, doesn't it?---No, that's incorrect.

40 And the question is, what was that other interest?---Look, there's no other interest. I supported Mr Maroun because he made the request, I knew him.

Because he was your friend.---I knew him for many years, we socialised, and I treated him like any other person that I would treat and that's the way it is.

You supported this DA because he was your friend?---No, I supported the DA because it's on its merits that I believe in.

But why in that case weren't you interested in what the merits were of the IHAP decision?---I would have looked at the, I would have looked at the business papers. To me, if I would have made a comment over the phone, but at the end of the day I would have checked to see the reason behind it, I would have read the, the reports and I would have read everything else, just because I made a comment it doesn't mean I'm going to, this is a comment at the, at, at the heat of the moment but it doesn't mean I'm going to support it unless I have a look at the report, and if the report stacks up as far as I'm concerned, then I would support whatever stacks up. So I don't understand
10 just because I made a comment doesn't mean I'm going to continue with it, specially if I look and read the report and I see some discrepancies or some problems with it, then yeah, I have a mind to change, I can change my mind. Just because I mention it doesn't mean I'm going to support it, but if it stacked up I would support it. If it didn't stack up, I won't support it. So I have a free mind to be able to change if I have to.

And after Mr Azzi went on to explain that, to use his words, the excuse, I think we can read that as the reason, for the IHAP decision to recommend
20 refusal was that the clause 54 justification for exceeding the building height requirement wasn't adequate. You then said, "All right. I'm going to, we'll go, support him," referring to Spiro, "The officers, bugger them." Meaning IHAP.---I would have had to review the, the reports and then make the final decision during, I don't know how I voted. I'm serious.

That's obviously a nonsense.---No, it's not, because from memory - - -

You're just simply ignoring the evidence, Mr Hawatt.---No, it's not. From
30 memory, from memory the IHAP recommendation was, was made, from memory, and the amendment was made to remove the, the, the light and the, and the, and the lift shaft, that's from memory, I just can't recall, that's why I'm saying it doesn't make sense.

THE COMMISSIONER: Was it your position that if IHAP went against an, the officers of the council's recommendation, you would support the officers' recommendation?---No, most of the time we support the IHAP.

No, no, no, no, but if there is a difference between them - - -?---If there is, yes, yes.

40 - - - you would go with the officers - - -?---Yes, that's correct.

- - - regardless of the merits of the IHAP decision?---Oh, look - - -

Surely they might be able to raise a good issue on occasion?---They do. We, we don't always go against them. We still, we don't. Oh, if you just look at my track record, no, most of the time, we support IHAP, IHAP, IHAP, always. But occasional times, when – especially with those decisions that were start in the last, were making silly decisions regarding

this, basically redesigning it and somebody spending 12 months of putting an application in and then asking them to go back to the drawing board, that's ridiculous. That's something I would never support. And even the staff were saying, this is ridiculous what IHAP is doing. So there are some times we do not support IHAP. There are times when we support the council officers. It depends on the, the merit and the argument that it's put forward. Oh, it just - - -

10 But to do that, you would actually need to have a look at the IHAP decision, wouldn't you? You would need to read it?--Correct, yes, yes, absolutely. And that's when we – when I make a decision, I can talk verbally on the phone, but end of the day, it's what we vote on, on that day, on that night, is what's important, not what I said on the phone. It's the way I voted. If he said to me, I voted this way, I'd say, yes, I voted that way. But if I said something, but I've changed my, my mind many times when it came to the actual final decision at, at the council. So, saying one thing, doing another, it's, it's my, my rights to, to change my mind if I have to. Yes, I do change my mind every now and again.

20 MR BUCHANAN: If we could go to the second last page, please. You discussed then with Mr Azzi meeting Mr Maroun that day at Earlwood. Why was that?--I don't recall, we always meet Mr Maroun, I just, I don't, I don't recall.

Why was it necessary, as you understood it, to meet Mr Maroun on that occasion?--I, I don't recall. I always meet Mr Maroun. It's like saying, asking, why did I meet George Vasil? I always meet George Vasil. I just don't recall.

30 Yes, but when people meet with each other, there's usually a reason or an agenda.---No, there's a, we had a lot of social. This guy loves to talk. He loves to socialise. He just loves company. It's the way he, he likes to have assurance. He wants to hear assurance to give him something positive. He's the type who sits there, "Yeah, yeah, everything is good, everything is fine," just wants to hear those words.

40 So on this occasion, would it be fair to say that you needed to see Mr Maroun to reassure him that even though he would eventually see in the business papers an IHAP recommendation that his DA be refused, the council would decide otherwise, and so he didn't have to worry about it? ---Look, I don't recall the discussions I had with him. I don't recall even this, this, this thing here. But I'm just reading and trying to bring back memory on this. I don't recall meeting him after that. I just don't remember.

And why was it necessary – I withdraw that. As you understood on that occasion, you were arranging for Mr Azzi to attend at Mr Maroun's house

as well? Why was that?---Oh, I don't, I don't recall saying that. Where was that?

Well, if I can just point out that you said, "Because I need to have a chat," then you said, "Need to have a chat." Azzi said, "Yeah, I'll give you, look, give me a call before you arrive anyway." You said, "I've got a couple of meetings in Earlwood then I'll finish, I'll give you a call, right," and Azzi said, "Then check that you're going to go and see him in Earlwood," and you said, okay, and check that he was at home.---Yeah, just going to – because Pierre asked me to drop in and see him. And I said I had, well (not transcribable) had other meetings in Earlwood, so I must have, must have had other meeting in Earlwood there. So that's, I just don't recall who I met on that particular day, and who it was, and what the discussions were.

Why was it, as you understood it, Mr Azzi wanted you to give him a call before you arrived at Mr Maroun's house?---Nah, he, before I arrived at his house, Pierre's house, not Maroun's house.

Well, no, you'd been talking about going to meet with Mr Maroun.---Yeah, correct, but when I, when I came back, before I get to Pierre's house, not Maroun's house. That's what's, who I'm meeting, it's not, not - - -

No, well, I want to suggest to you that that's not correct.---Well show me, show me where because I, that's - - -

Azzi said, "Look, I'll give you, look, give me a call before you arrive," and that's after talking about meeting with Maroun because you needed to have a chat.---No but he said come over, he said to, for me to come over.

Azzi asked you, "You're going to see him in Earlwood?"---Correct but then Pierre said, "Come over. I've someone, Marwan coming. Come over," he said, "and then call me before you come." It's always been the case, "Call me before you come." Before you come to his house.

Well, Mr Azzi introduced the subject of Marwan after that and said, "He is coming over to my place, 3 o'clock. He want to talk me about something. If you want to come at this time, it's all right." That was after that discussion.---Look, from my understanding, if I had meetings in Earlwood, look, I don't recall this meeting. If I had meetings in Earlwood, Pierre says come over to his house, call him before or call me before. I don't even remember this discussions and I'm just trying to, why he said it, I, I don't recall. Just, there's, just, I, I don't recall it.

Mr Azzi said, "Yeah, Marwan is coming over to my place 3 o'clock. He want to talk to me about something. If you want to come at this time, it's all right." What did you understand was the purpose of that meeting between Marwan Chanine and Pierre Azzi?---I wouldn't have a clue. Just, he just always just come around my house on the way, or Earlwood.

But why, as you understood it, were you told that you were invited to come if you felt like coming?---But it's always like this. It's like - - -

But what is all right, sorry, what is always like that?---Pierre always says, "Come over." He's always hospitable. "Come over to my house." I've got Mr, whoever's there. You just come over. It's like - - -

10 But what was the nature of the relationship, is the question I'm asking, as you understood it this time, between Azzi and Chanine?---They knew each other.

Lots of people know each other without having them come over to their place, let alone inviting another friend over to join them if they felt like it. ---Pierre is a social person like Mr Maroun. They love socialising. He loves, his wife is always making food, coffee, it just, it's a socialising thing. He likes to go and relax.

20 Socialising is something, Mr Hawatt, you do with your friends.---He socialises with everybody.

He socialises with his friends, not his enemies, I would suggest to you. ---Who, who's his enemies?

Well, isn't that logical that you socialise with your friends rather than your enemies?---Yeah, but who are, who are the enemies you're talking about?

30 I'm asking you, isn't it the case that here, this conversation indicates that you understood Azzi and Marwan Chanine to be meeting up because they were friends?---They were friends.

And you were invited because you were a friend of the pair of them?---We all knew each other, we were friends. Pierre always invites me to his house.

You were friends, thank you.---He, he always invites me to his house.

But he's inviting you to his house on this occasion because Marwan Chanine will be there too?---But it's, sometimes other people are there, not necessarily he invites me - - -

40 He doesn't say that, does he, in the conversation? He simply says - - -? ---No, generally.

He simply says, "Marwan is coming over to my place, 3 o'clock. He want to talk to me about something."---On that specific time, yes, but other times, many, many other times - - -

No, I'm not asking you about that, Mr Hawatt.---We socialise - - -

If you could listen to me, please, and focus. What he is saying to you is Marwan Chanine is coming over to his place to talk about something, a particular thing, and you are invited to come as well if you feel like it, basically. Now, what I'm trying to explore is, what does that mean is the nature of the relationship between Chanine and Pierre Azzi on the one hand and between yourself and Marwan Chanine and Pierre Azzi as well?---I'm not, I'm not a, a friend as a friend of going out and visiting together as going socialising outside but - - -

10 With whom?---With anyone, anyone, all of them. I am all - - -

THE COMMISSIONER: Sorry, you've said constantly throughout your evidence that you were a friend of Mr Azzi.---Friend but I don't, there's, there's a number of kind of friends, where you've got the family friend where you can, you know, go out at a function and you dance and restaurants and all that and there's a friend that you meet over coffee and, and, and you have a bite to eat together. There's, there's different type of relationship and friends. To me it's like, there, there's a family friend where people come and visit you with the family, you visit them, you go out to
20 restaurants or you go to weddings together. With Pierre, with Marwan, Mr Maroun, they're all friends, friends that you, every now and again you sit down and you have a coffee with them, you know, you have something to eat with them and, and that's the way it is, that's how I look at it, but if you said to me Marwan is a person that I go out with to events and functions and, no, I don't.

MR BUCHANAN: Why was it, as you understood it though, that you should be invited to Mr Azzi's house on an occasion when you'd been told that Marwan Chanine was coming over to Azzi's house because he wanted
30 to talk to Azzi about something?---You have to ask Pierre. Me, I don't even recall this discussion. Ask him, don't ask me about it.

Well, except that you said, "Oh, I'll give you a call when I finish. All right."---That's right, I would have said that, if somebody invited me, yeah, I'll call you when I finish, it's like a normal thing that you would say.

It sounds as if there is some sort of business that Chanine wanted to transact with Azzi and Azzi was inviting you to attend the meeting.---You'd have to ask Mr Azzi. I'm not going to comment on his behalf.
40

And you seemed to regard it as something that was quite all right, that you would attend if you could and you'd give him a call when you'd finished your other meetings.---I always say that. If I can make it I'll pop in.

Now, that telephone call was at 12.31pm on 4 March. Excuse me a moment. Excuse me, Commissioner.

THE COMMISSIONER: That's fine.

MR BUCHANAN: You had arranged, you told Mr Azzi, or you intended to meet Mr Maroun. The evidence before the Commission, Exhibit 149 indicates, this is pages 119 to 122, that somewhat before that conversation but not very much before, Mr Maroun had obtained \$14,500 in cash in \$50 notes. If I could take you, please, to Exhibit 149, page 126. This is a copy of a statement of your Ozsecure Home Loan Pty Limited account with the account number ending in the numerals 2-2-1-8. Do you see that?---Yeah.

10 And do you see the transaction on that page for 9 March, 2016, of a cash deposit of \$3,000?---Yep.

And if we go over the page, page 127, we can see the deposit slip and the deposit slip is in your handwriting?---Yeah.

And can I ask you about the deposit, did it involve any cash that you'd obtained from Mr Maroun?---Absolutely not.

20 Can you tell us where the cash came from on that occasion?---Look, I get cash from, as I said before, I get it from overseas, I get it, I pay my daughter's mortgage loans, I get it back, paid back, via her ex on a, between three and \$5,000 a month, so I get cash from there, I get, I got loans for my brother, I mean it's, I get them all the time, it's, why don't you ask Mr Maroun what, what he done with his money, why are you asking me?

THE COMMISSIONER: Mr Hawatt, don't - - -?---Yeah, that's - - -

30 No, no, no, no, no. You're wasting time by making gratuitous comments like that.---Well, no, no - - -

No. Mr Hawatt, just listen to the questions and answer them, thank you. ---I just answered it.

40 MR BUCHANAN: If I can take you to page 129, please. This is a copy of a statement of account held in your name with the last four numerals of the account number being 9-9-9-5. If we can go over to page 130, please. Can you see that on the same day, 9 March, you made a cash deposit into this account of \$2,500, and if we go over to page 131 we can see the deposit slip, it's in your handwriting.---Yeah.

Why did you make two separate deposits on this occasion in those amounts of money, \$3,000 into one account and 2,500 into another?---It's probably a part of the payment, mortgage payment. I don't recall. It's just, I mean I have to put those into the accounts because I pay bills with them or - - -

Which account was the mortgage account?---Which, which one is this one, I'm not - - -

Well, I'm asking you, which account was the mortgage account?---It's the, this one is - - -

We're looking at page 129. Is this the - - -?---Yeah, this is the second mortgage, this is the other mortgage.

Is this a mortgage account?---Yeah, that's one of the mortgage accounts, yeah.

10 THE COMMISSIONER: Sorry, the one on page 129?---Home loans, yeah.

MR BUCHANAN: So - - -?---This is one of the, I've got two mortgages, this is one of them.

Can we go back, please, to page 126. Can you assist us in relation to this account, the one that ends in the numerals 2-2-1-8. Is that a mortgage account?---Yeah, this is, this is the Ozsecure account.

20 Yes. So it wasn't a mortgage account?---No, this is a business account.

And why were you depositing cash into this account?---Because I have expenses I pay out. I get direct payments and I pay bills from there.

THE COMMISSIONER: Plus your loan to your daughter?---And plus the loan, sometimes from there, sometimes from another account.

Well, the two of 1,500 and 2,500 on 9 March, I take it - - -?---Well, that's a - - -

30 - - - that's the loan to Aisha?---Yes, correct, and - - -

I take it they're the money you'd pay for your daughter's mortgage?---Yes, correct. And you can see there's 3,000 and then there's 3,000, nearly 4,000, so she must have gave me the money just before that or the same day, paid it.

MR BUCHANAN: Can I ask if we could go forward now to page 133. This is an account in the name of you and your wife - - -?---Yeah.

40 - - - ending in the numerals 3-4-2-7. Is this a mortgage account?---No, this is the account that the mortgage is taken out of for the home, the home, the home loan.

In this case though if we go to page 134, you can see that on 9 March, the same day, you made a deposit of 2,500.---Yeah.

Where was the money coming from for all these deposits - - -?---I've had - - -

- - - on 9 March?---I've been, I've been getting on an average during that period, I think between 2012 and 2016, between 5,000, between three and \$5,000 a month from my daughter or her ex-partner.

And did you keep records of these transactions?---Well, the record is the payment that I make and he paid me for what I paid during that period. He, he gave it to me.

10 My question is, did you keep records of the transactions whereby you came into possession of these amounts of cash into which, which you were using to make these deposits?---It's, well, the record is my, my statement paying them the money for the mortgage.

Is the answer no, you didn't keep any records?---Well, that's my record, it's the statement that I use.

20 But it's not a record of where you got the money from.---What I got the money, it balances to what I paid out, that's the way I, that's the way I done it.

Could we go to page 137, please. So that's three transactions amounting to \$8,000 on 9 March. The next day is a deposit of \$300 cash recorded at a post office in Greenacre and it's a tax payment. Do you see that?---Yeah.

Whose tax payment was that?---Must be mine.

30 And where did those funds come from?---It's from money that I had. It's, what, \$300 cash here, \$500?

And none of these funds came from Mr Maroun?---No. Absolutely not.

Even though you had been to see him on 4 March, after he had come into possession of \$14,500 in cash?---No.

40 Can we go, please, to the transcript of Exhibit 171, and if Mr Hawatt could be provided with a copy of the hard copy of the transcript of Exhibit 171, please. It's not a very long conversation, Mr Hawatt, but I'll just give you the second page as well.---Thanks. Yep.

And can I take you to the first page, the third last entry on that page. You tell Mr Maroun that after you told him that you'd received the agenda for this Thursday, that would be a reference to the CDC meeting, we had - I'm sorry, I don't know that I put this on record. Sorry, the telephone conversation's on 7 March, 2016, commencing at 11.47am. You told Mr Maroun, "Yeah, we, we going to, we had a discussion regarding that, that they're," t-h-e-y apostrophe r-e, "not happy with the, with the IHAP anyway, so we're going to, we're going to go as officers' recommendation.

I think it's the right thing to do." What was the discussion you were referring to there? Was it the discussion you'd earlier had with Mr Azzi, which we heard or was it some other discussion?---I, I don't recall this, I don't recall this discussion even with Mr Maroun. I'm just trying to - - -

When you said to Mr Maroun they're not happy with the IHAP anyway, who was "they"?---Maybe the officers, maybe, I don't know. Could be, could be the officers.

10 And then you said, "So we're going to go as the officers' recommendation. I think it's the right thing to do." Why did you think it was the right thing to do?---Because the, from, from what I know, and again, I don't recall this particular discussion but council officers, they spend a long, a long time with, with applicants to assess an application. They understand it much more than IHAP or anyone else. So if they made a recommendation based on their dealing with the consultants' report and they made a, a recommendation, well they've done their work and most of the time they, they make the right decision. Sometimes IHAP amends those decisions slightly. But ninety per cent of the time, it's what IHAP recommended with
20 slight changes to it. So, to me, if supporting IHAP or the officers' recommendation, it went through the, the merit process, it went through the normal assessment process, so the council officers would have done the right thing anyway. So it doesn't really matter if I support the council officers or the IHAP. They both have done their job, and it's up to council, it's up to myself to see which one they support.

But - - -?---And that's how I, I look at it.

30 I'm sorry, you - I'm asking you about why you were telling Mr Maroun, "They're not happy with the IHAP anyway, so we're going to, we're going to go as the officers' recommendation. I think it's the right thing to do." Why were you telling Mr Maroun that in respect of his DA on this occasion?---He's probably asking, because he's asking me about his DA. He's, I mean, people always ask me and I, and I come back to them and give them a, and they say, and give them a response based on what I get, the feedback I get.

40 You were telling Mr Maroun what the decision of the council would be, weren't you, of a CDC?---I'm just telling him what, what I know, the feedback, it's the feedback I gave him.

You were telling him what the decision would be in relation to the IHAP report, weren't you?---I'm giving him feedback of what, again, I don't recall this discussion, but from reading from that, it's, I'm just giving him the, the progress feedback, that's, like I normally do with everybody else.

If I can take you, please, to another conversation, I think the transcript if we can, please? We'll see how we go with the transcript, in Exhibit - I'm

sorry, no, I apologise. We have to play it. Can we play, please, a recording of a telephone conversation on 9 March, 2016? So this is two days later, Mr Hawatt.---Yep.

Do you need a little break?---No, no, no, I'm okay.

This is on 9 March, 2016, commencing at 4.59pm, LII 5351, and it's an extract.

10

AUDIO RECORDING PLAYED

[10.48am]

MR BUCHANAN: Commissioner, I tender that extract of the recording LII 5351.

THE COMMISSIONER: Right. The audio file and transcript of the extract from the recording LII 5351, recorded on 9 March, 2016 at 4.59pm will be Exhibit 289.

20

#EXH-289 - EXTRACT OF TRANSCRIPT SESSION 5351

MR BUCHANAN: Excuse me a moment. Mr Hawatt, you recognised the voices of yourself and Mark Adler?---Correct.

30 If we can go please to the fifth page of the transcript. You see that on the top of the transcript it records that you said you had a talk, you rang Jim Montague over that and you said, Jim – I'm sorry, "I said, Jim, I said, this is bullshit. I said how could a committee that sits there for an hour make a decision that has taken our council staff six to 12 months?" Is that right, that you'd had that conversation with Jim Montague, complaining about the IHAP recommendation?---I, I might have had, yeah.

Well, when you say you might have had, is it possible that you were making that story up when you were talking to Mr Adler?---No, no. That's, I would have done it.

40 And so you were lobbying, were you, both councillors and the general manager, to procure a decision to support the officers' recommendation in respect of the car wash site DA for two additional storeys?---No, no. I, no, it's incorrect. I was making a complaint to the GM in regards to the, the IHAP. Nothing to do with any specifics. I think Mr Montague wasn't involved in anything specific, just general.

Excuse me a moment. If we could play, please LII 5383, commencing at 10.19. So there will be two extracts, Commissioner, of this rather lengthy

conversation, excising the material that's not relevant to the inquiry and this will be apparent in the transcript when we tender it. So it's the same day, Mr Hawatt.

AUDIO RECORDING PLAYED

[10.56am]

10 MR BUCHANAN: That's extract 1, for the record.

AUDIO RECORDING PLAYED

[10.59am]

MR BUCHANAN: Commissioner, I tender the audio file and transcript of those two extracts of that recording.

20 THE COMMISSIONER: All right. The audio file and transcripts of the two extracts from recording LII 5383, recorded on 9 March, 2016, at 10.19pm, will be Exhibit 290.

#EXH-290 – TWO EXTRACTS OF TRANSCRIPT SESSION 5383

30 MR BUCHANAN: Commissioner and parties, we have heard a couple of words which are slightly different from what those who have prepared the extract have recorded. If I could take the Commission to, in extract 1, second page, I think, and it's – these are not major changes, but we just have a – yes, so, on page 2, the word "objects" is in the fifth last attribution on that page, and the cursor is next to that word at the moment, we heard the word "objectives" being used by Mr Hawatt, rather than "objects".

THE COMMISSIONER: Yes. Do you, can you recall, Mr Hawatt?
---Correct, yeah, it should be, should be "objectives".

It should be objectives?---(No Audible Reply)

40 MR BUCHANAN: We'll make that note on our copy of the transcript. Still in the second, the first transcript but at the end of the – oh, sorry. Still the first extract, but at the end of the first extract – excuse me – and it's just a tiny change, the second attribution, in this case it's to Mr Adler, the last word in the first line, we heard the word "circumstances", plural, being used, rather than "circumstance", by Mr Adler. Does, do you see it, Commissioner?

THE COMMISSIONER: I'm sorry, this is, "and it would be absolutely in the circumstances"?

MR BUCHANAN: Yes.

THE COMMISSIONER: Can you recall, Mr Hawatt?---Oh, I don't (not transcribable) recall.

All right. I can't recall either but I think in the circumstances it probably makes more sense.

10 MR BUCHANAN: Commissioner, excuse me a moment. Would you just
excuse me a moment, Commissioner. Mr Hawatt, the evidence before the
Commission is that the IHAP recommendations at volume 17 in Exhibit 69,
page 273, was to refuse the development application on the grounds that the
clause 4.6 variation submission was inadequate, it had not addressed the
statutory requirements to justify the departure from the planning control in
relation to building height. There doesn't appear to have been any
consideration on your part in that conversation of the grounds for the IHAP
recommendation. That is to say you weren't at any stage addressing the
reason why the IHAP had recommended refusal. Do you want to respond to
20 that?---Well, well, I'm just, I'm just listening to the conversation with Mark
Adler at the time. Look, it's, I stick by whatever I said, I have to, listening
to what our discussion was, and, and I believe that our discussion based on
why we were supporting it, it was based on what I've been telling you all
along, that the IHAP has been making some incorrect decisions and I
believe that their, their decisions are, especially if they refuse an application,
it's, it's really difficult to, to refuse something after years of, of,
applicants waiting, talking to the council staff and then for them to refuse it
and based on some things like, you know, design and redesigning a shaft,
30 the light shaft which entails redesigning the whole building and starting all
over again, it's unfair.

But Mr Hawatt, I've just told you that the grounds for the refusal by the
IHAP, or rather the recommendation for refusal was nothing to do with
redesign or design at all, it was that the submission that had been made by
the applicant to justify the variation in relation to the planning control as to
building height was inadequate.

THE COMMISSIONER: Can we bring up page 273, please?

40 MR BUCHANAN: Yes, certainly, 273.---Yeah.

You see the basis of the IHAP recommendation that they set out there that's
in the business papers for the meeting of the City Development Committee
on 10 March, 2016?---(No Audible Reply)

You see that?---Yeah.

You'd accept that in your discussions with Mr Adler you were not addressing the merits of the IHAP recommendation.---Because Mr Adler was talking about the next door, how it's got 18 metres.

Yes, yes, yes.---And we're just trying to justify where that should be the same as the next door.

10 Yes.---And the laneway, and again, a good plan, 4.6 from my understanding is based on a good planning outcome. This was a corner site. It has a laneway. It has justification, like, as, as Mr Adler was saying there has been a reduction in the number of units. There's been a number of avenues, things that have been done by the council staff, which I believe that it met the 4.6 requirement. So I, I don't understand where IHAP is coming from on this one but - - -

But you accept - - -?--- - - - I believe 4.6 has been met.

20 You accept that in your discussion with Mr Adler you were not addressing the merits of the IHAP recommendation?---He was addressing it to me.

Well, he wasn't addressing it either.---He was. He was talking about the next door 18 metres. This is the same as next door and there was - - -

But that's a political consideration, Mr Hawatt - - -?---No, it's not. To me - - -

30 - - - not on the merits of whether clause 4.6, the requirements of the LEP had been met in the case of this development application.---I believe, personally I believe they met the 4.6 requirement as a better planning outcome.

In what way?---Well, it's got the, it met the objectives in regards to the, the residential number of requirements that needs to be there. It's on the corner site. It has a commercial component. It has got bigger setbacks. It's got a laneway. I mean, what, what more could you do with it?

40 None of those matters addressed the requirements of clause 4.6 of the Canterbury LEP, did they?---4.6 is a very general, 4.6 had to go to court to make a decision. Nobody knew what 4.6 was. 4.6 became based on the interpretation of, of, of each particular council, and 4.6 was based on a good planning outcome and, and, and a public benefit in general, and to me the, the council staff would have addressed those two things in regards to 4.6. So I don't know why IHAP would have refused it on that basis when the council staff were happy with the 4.6.

Did you understand what the function was of the IHAP in relation to council or the City Development Committee when it was considering a development application that had been considered also by the IHAP?---Yeah.

What was that function?---Just to be independent of the – actually, it became the reason they, we brought in IHAP, it became a very difficult position of councillors at one stage to support certain applications or not to support certain applications became, when the community, certain areas, certain applications where there was pressures on the community either for or against, and I think IHAP became an independent body to come in and, and neutralise the difficulties that councillors were facing at one stage.

10 And what did you understand the role of the IHAP was in relation to council or the CDC when considering a DA that had been considered by the IHAP?
---Well, I think they had a guide, they had a guide, and the guide, they had to follow the guidelines in regards to their responsibilities and objectives, so I don't, I don't remember the, what the guide, the guideline was in regards to the IHAP existence.

Excuse me a moment. Could we play, please, a recording – I'm sorry, no, we can I think use a transcript in this case. Exhibit 172. This was recorded, it's a conversation recorded on 10 March, 2016. It's a short conversation,
20 Mr Hawatt, commencing at 12.28pm.---Yep.

10 March, 2016, that evening, was the time when the CDC met to consider Mr Maroun's DA.---Yeah.

This conversation was at 12.28pm. Did you see Mr Maroun on the way to the meeting?---Look, I don't recall. I don't.

Do you remember meeting Mr Maroun on the day of the meeting of the CDC?---I don't recall.

30 Is it possible that you met him?---Could be possible but I don't recall.

And what would have happened? What's likely to have happened on that occasion?---I don't know. Just they wanted to show me something. I don't know what, I don't know, wanted to hear, hear what I have to say maybe or show me something. I just can't recall.

Did you have to reassure Mr Maroun that his development application, as you understood it, would be likely to be approved?---Look, I don't recall
40 this meeting if we had it.

Can I take you to volume 17 in Exhibit 69, please, page 273. You can see there agenda item 13 is 538-546 Canterbury Road, Campsie, the car wash site, and that you moved a motion that clause 4.6 submission to vary clause 4.3 of the Canterbury Local Environmental Plan 2012 be supported. Why did you move that?---I, I, I don't remember this. I don't even remember that one. What's, 4.6 - - -

Well, what it amounts to, you see, if you can look at the second part of the resolution, that the development application be approved subject to the conditions identified thereafter. So it's a two-part motion.---It could be to do with the IHAP. I think it's (not transcribable) I don't know, unless, I'm not sure. I can't remember that one.

Well, can I take you to page 278. Can you see against the letter C, just above the table that records the votes.---Okay, yeah.

- 10 The Independent Hearing and Assessment Panel's recommendation was not supported and the City Development Committee adopted the officers' recommendation.---Yeah.

You did not move that any reasons be given for not accepting the recommendation of the IHAP.---I don't know, I can't, you have to go back to the, to the meeting and find out there's a recording of what the debate was. I just can't recall.

- 20 Well, the minutes don't record that you moved or that council resolved that the IHAP recommendation not be supported for the following reasons, and then A, B, C or anything like that.---I don't recall this meeting and if there was a debate, it would have been on a record, it would be recorded. I mean, the minutes, they don't put all the debates that's discussed on the minutes. It's, it's, you have to go back to the recording and find out what the reasons we have. We normally justify any reasons why we don't support IHAP. That's normally a tradition.

- 30 And why isn't that recorded in this case?---Well, for the minutes, in the minutes?

Yes.---I mean, I don't record the minutes. As I said, this could be just a debate that was on the council floor. You'll have to go back to the recording. There's a recording, should be a recording.

Can I take you, please, to volume 2 in Exhibit 52, page 289. We'll start, perhaps, at page 287. Can you see that this is the first page of part of the Canterbury Council policy register, in this case in respect of IHAP policy? Can you see that?---Yep.

- 40 And if I can take you to the second page, that is the commencement of the policy. It identifies what the IHAP will do under the heading Principles. Do you see that?---Yep.

And then if I can take you to the next page which is page 289 of volume 2, clause 6.4.2. "The City Development Committee or council will provide reasons in its resolution of a DA matters on occasions when it does not support a recommendation from the panel." That did not happen on this

occasion, did it? You can see from the resolution?---We normally, we normally provide reasons, yes.

Why didn't it happen in this occasion?---I don't recall what happened. We have to go back to the, to the recording.

Well, the recording isn't going to help the fact that it appears that this aspect of the council policy was not complied with in respect of the motion you moved.---No, it's, of course it will help because it will show, because every
10 to me we do move against IHAP, we have a reason why we moved against it.

But it's not in the resolution from your motion.--- It doesn't show of the, it doesn't show it on there but it shows the debate, it's a debate, you give reasons based on the, we always do it on a debate basis, not on anything else. It's debated like (not transcribable) for example we, the reason I'm supporting the thing, against, and we give reasons for it and it's debated on the floor but not the minutes is recorded on that.

20 Mr Hawatt, you both said usually the reasons are in the resolution and secondly, you can see that it was council policy at the time that the reasons be provided by the CDC or council in its resolution of a DA matter on occasions when it does not support a recommendation from the panel. Can you assist us as to why there was no compliance with that policy on this occasion?---I don't write the minutes and - - -

But you drafted your motion, didn't you?---Wait, wait a second. I don't write the minutes. I don't write the reasons – my, my motion, if I drafted a motion, we don't normally put in anything else but it's debated. If I move
30 to move amendment, it's debated on the floor, it's not written down as such. It's, it's a debate that's, reasons through debate. You have to go back to the, to the voice recording.

Mr Hawatt, the resolution that you moved provides no explanation as to why the IHAP recommendation was not supported and why the clause 4.6 submission of the applicant to vary clause 4.3 of the LEP in respect of the DA be supported. What were the reasons?---I don't write the minutes. We, we, we debate - - -

40 No, I'm asking you, I'm asking you what were the reasons why the IHAP recommendations were not supported and the clause 4.6 submission of the applicants was supported.---Well, there would have been reasons at the, at the time. We would have had the debates on it so you have to go, I don't remember what the reasons are but there would be reasons through the debate that we had.

Could it be that you didn't have any merit based reason for supporting the applicant's clause 4.6 submission or rejecting the IHAP recommendation in

respect of Mr Maroun's DA and that's the reason no reasons appear in the resolution?---That's, that's incorrect and if you can see, the majority of the councillors supported it, not just myself.

What was it about Mr Maroun's clause 4.6 submission to vary the planning control for building height which appealed to you as being a reason why his submission should be supported? What was it, what did it say?---Well, from my understanding, 4.6 is, it allows, this one was a, the next-door neighbour - - -

10

No, I'm sorry, I'm not asking what 4.6 is. I'm asking what was it about Mr Maroun's clause 4.6 submission that led you to move that that submission of Mr Maroun's be supported? What was it about his submission?---What I'm saying is, you got to go back to the debate. I, I move, if I move an amendment, then it's based on a debate that we have in council. And the debate justifies why the amendment was moved. You need to go back to the recording to find out, I can't remember the reasons behind it.

20

Mr Hawatt, the, I can't see in here a recording of you declaring an interest in this item, agenda item.---Why should I declare an interest?

I think you told us that Mr Maroun was your friend.---He is a friend, but we don't declare him just because we know every person. Every person that I represent is a friend.

No, no, no. You declare interests of friends, not because you know a person, but of friends.---Oh - - -

30

Why didn't you declare your interest in this DA because the applicant was your friend?---But I had no, there's no, there's nothing to declare, because there's no, there's no benefits for me to declare, even if he's a friend.

You had a relationship with Mr Maroun that you've told us was sufficiently close for you to be seeing him on a regular basis and socialising with him because he was your friend.---Correct, so, but doesn't - - -

And you didn't declare that to the council.---Because there's no, there's no personal benefits for me in, in that regards, and I don't need to declare it.

40

And you breached the council code of conduct - - -?---No, I - - -

- - - in failing to declare that you had a nonpecuniary interest in that respect, didn't you?---No way.

I note the time, Commissioner.

THE COMMISSIONER: All right. We'll adjourn for morning tea and resume at about five to 12.00.

SHORT ADJOURNMENT

[11.27am]

MR BUCHANAN: Thank you. Mr Hawatt, you had been in contact with Mr Maroun since 2013, we've seen the evidence of that.---Yeah, I've known him since I've worked in council.

10 And you had had numerous contacts with him on the phone, haven't you?
---Yeah.

We were talking about as at the meeting of the CDC on 10 March, 2016, and you had been having meetings with Mr Maroun, at his place, usually, since September, 2015 - - -?---Yep.

- - - on the evidence before the Commission. Is that, you accept that.---Yep.

20 And you'd had regular meetings with him to discuss progressing his DA.
Correct?---I had regular meetings with him to, whatever. I mean, it's not specifically for his DAs, as I, as I said before, ninety, probably ninety-nine per cent of, everything else but his DA. Could have been, yeah, on occasions, yes.

There was no doubt that you were a close personal friend of his.---I've known him from day one, from, since I've went into council.

30 THE COMMISSIONER: So he was a close personal friend?---Not a, I've known him. Not as a, like, we didn't socialise with each other. I only went to his house because he couldn't, he couldn't drive, so I went to his house, but not as a socialising to that extent.

MR BUCHANAN: But you've told us, I couldn't tell you how many times, Mr Hawatt, that you were socialising with Mr Maroun.---At his house because he can't drive. He can't come and see you. He can't, you go to his house. And I'm in Earlwood many times, and I go in and see him.

40 Well, that's an explanation then as to why the venue for the socialising is Mr Maroun's residence in Earlwood, but not an explanation for the regularity with which you were socialising with him, other than that you were a close personal friend.---No. Whenever he calls me, I, I, if I'm in the area, in Earlwood, and I used to be in Earlwood quite often, and I'd drop in and see him.

You didn't think that it would have been appropriate to disclose your relationship with Mr Maroun to the other councillors whilst you were arguing as to why his application, his development application to add two storeys, should be approved on 10 March?---I mean, Mr Maroun, just like

any other person that calls me for assistance and help, I don't go out of my way unless I believe in, in a particular application, and if I don't believe in, in, their support, I, I won't support it, doesn't matter who they are or, Mr Maroun or any, anyone else.

But that's not the point of the requirement to disclose a relationship with an applicant, is it? The point is that the other councillors should be aware of it and that you should not participate in the debate. That's the requirement.

10 ---I, I have, I have no interest for me to declare. And I have a lot of contacts with a lot of people over the years. And if I need to declare interest on every person that calls me for assistance that I know. And Mr Maroun is not the only person I have, I've sat with on many occasions. And I treat them all the same way.

How many other developers had you had the same degree of acquaintance with – that is to say, of going to their place on a regular basis and socialising with them, irrespective of whether it's their place or somebody else – and you then supported their DA on council?---Look - - -

20 How many people fell into that category?---I've helped a lot of people over the years.

How many people - - -?---I, I don't, I - - -

30 - - - fell into that category?---I don't recall how many people I've visited, but Mr Maroun probably a unique person because he can't, he used to ring me when I was in Earlwood, and he can't drive. He's unique. And I gave you the reasons why he can't drive. And that's why I visit him at his house, because he can't, he's, he drank too much, he can't, he can't drive, drink drive.

We've seen plenty of transcripts of conversations that you had with Mr Azzi about Mr Maroun and transcripts of conversations that you had with Mr Maroun. In them, there is no reference to his inability to drive and whether that meant that you felt sorry for him, or - - -?---No, that's - - -

- - - that you had to go to his place, rather than meet somewhere else.---No, no, he can't drive, mmm.

40 That might be the case, Mr Hawatt. What I'm pointing out to you is that it doesn't seem to have been a predominant factor in your relationship with him, that he couldn't drive, and yet you're now pointing to it. What I'm - - - ?---No, it's always been, it's always been (not transcribable)

What I'm asking you is, irrespective of where you were meeting with him, you were having regular socialising, socialisings with this man, at a time when his DA was before council, and immediately leading up to it, and afterwards, as I'll taking you to in a moment.---I've been meeting him

before any DAs was in council. He calls me all the time. We'll sit down. If I'm in Earlwood, I'll drop in to see him. And it's been, been going for, for a long time, even when there's no DAs in council.

And that demonstrates, doesn't it, that you had a relationship with him that you should have disclosed.---I, I don't believe I needed to, because I had, there was no, and there's no interest benefits for me in order to do, to disclose anything.

10 Well, if you had disclosed it, of course, you would have had to have absented yourself from council chamber whilst it was being discussed, and not participated - - -?---Yeah, but there's - - -

- - - in the vote.---Correct. There's, but there's no (not transcribable)

And that would have been a problem, wouldn't it?---A problem for what?

Getting the DA through, given that there was an IHAP recommendation that it be refused.---What are you talking about? The majority of the councillors supported it. Even if I wasn't there it still would have been, it would have got up. If, if you look at the numbers that supported it, it didn't make any difference.

20

And so are you saying that that justifies you in not disclosing - - -?---No.

- - - your relationship with Mr Maroun to council?---If I believe, if I believe I need to justify it I would have justified it. I don't believe I needed to.

30 You see it was dishonest of you not to declare your relationship with Mr Maroun to that meeting of the CDC on 10 March, 2016, wasn't it?---It's not, not, not dishonest of me, no.

You were misleading the CDC in the circumstance that there was a code of conduct requirement to disclose a friendship with an applicant and you were saying nothing and yet you were advocating for the DA to be approved. That was misleading them, wasn't it?---I don't mislead anyone. There's no, nothing - - -

40 And that was dishonest, wasn't it?---It's not dishonest and there's no misleading. That's your opinion.

So can I take you, please, to the transcript of Exhibit 173. This is a conversation the next day, 11 March, 2016 at 9.03am. Mr Maroun rang you. He asked you, "How did it all go last night?" And you said, "Oh, it was good. We had a little bit of controversy from our bloody mayor, the lunatic, but he voted, he voted against it and it was, he was the only one and there, there was, it was seven councillors last night, the three missing, and

we had six against one.” And then Mr Maroun asked, “So it passed?” You said, “But yeah, of course, yeah.” And Mr Maroun then thanked you.
---Yeah.

Do you see that?---Yeah, because he was asking me about it, yeah.

10 It tends to indicate, doesn't it, that you had a relationship with him where you were promoting his interests in relation to the property the subject of that DA and then not disclosing them to your fellow councillors?---That's incorrect. I've just followed up on his calls, on his inquiries, and I'm just progressing that.

And you didn't disclose your interests in, your relationship with Mr Maroun in your conversations with Mr Adler either, as we have seen, did you?
---Yes, I have no need to disclose my interest and there's nothing to disclose.

20 You knew however that personal friendships fell into the category of relationships that were required to be disclosed under the code of conduct, didn't you?---If there was a, if there was a, some sort of a benefit or business dealings or, there's nothing there, just a person that I treated like any other person who asked for support.

Can I take you, please, to another transcript, Exhibit 174. If you could read that to yourself. This is a telephone conversation where you rang Mr Maroun on 11 March, 2016 at 1.54pm.---Yeah.

30 Why did you want to go to see Mr Maroun on this occasion, at 1.54 the day after the meeting of the CDC?---He must have asked me to call him. I don't know. I don't recall.

Well, we've seen what happened in the preceding conversation. “How did it all go last night?” “It was good.” “So it passed?” “Yeah, but of course.” You told him what had happened.---Yeah.

40 So why did you ring him at 1.54pm the same day to ask him whether he was at the gym and then to arrange to catch up with him at 3 o'clock that afternoon?---Oh, look, I don't recall. I might have been in Earlwood during that period of time and, and traditionally we catch up in the afternoon. I mean it's a regular thing we do.

Catch up for what purpose?---I always socialise, drop in and see him, talk to him, just general discussions.

If I can take you to Exhibit 175, please, the transcript of it. You can see that that's a message that you left for Mr Maroun on 18 March, 2016, at 1.44pm, wondering whether he was going to be in Earlwood to catch up for a coffee

and that you would be there later and for him to give you a call when he was ready.---Yep.

Then if I can take you to Exhibit 176, please. At 1.55pm, the same day, you got a call from Mr Maroun telling you that he would be at the gym around half past 4.00 if you were free to come over, and you agreed to do that. Do you see that?---Yep.

10 Did you receive a payment from Mr Maroun on that occasion?---No, I haven't.

Did you give Mr Azzi any money that you'd received from Mr Maroun on that occasion?---No, I didn't.

Can I take you to Exhibit 177, please. This is the transcript of the conversation on 23 March, 2016, commencing at 5.13pm and it's just one and a bit pages, so if you could just read it on the screen to yourself, please. ---Yep.

20 What was it that you had written to Mr Maroun about when you said that you'd sent him an email for Port Macquarie?---I think he just wanted information for my nephew, which I forwarded on to him.

Were you trying to promote your nephew's units as an investment to Mr Maroun?---I just, he just said, "Do you know anybody?" I said, and I, I knew Mr Maroun and I just said, "Look, are you interested? My nephew got someone," and that was it. It's, and I passed it on to him.

30 Did you have any anticipation that if you were able to arrange a sale of any of your nephew's units a Port Macquarie to Mr Maroun, you would be able to claim some sort of commission?---No. Personally, I never even thought about it. I mean, my personal position, I've assisted my nephew and I just passed it on to him. That was it.

40 And then there was some exchange between you and Mr Maroun which hasn't been caught entirely, towards the bottom of the first page, but you indicated that, "Pierre will, is going to be in the area." Were you arranging for Pierre Azzi to go and see Mr Maroun?---No. He might have asked us to catch up and I said, "Look, I won't be there but Pierre will be in the area." That's, that's, that's what I'm reading here and it seems to be the position.

If I could take you to Exhibit 178, please. This is a transcript of a conversation, a two-page transcript, Mr Hawatt, a conversation between you and Mr Maroun on 5 April, 2016, commencing at 8.12pm.---I read it,

Oh, you had a chance to read it?---Yeah, sorry, yeah.

If we could just give you the second page as well.---Yeah. Yep.

You were still – I withdraw that. You’d given your nephew Mr Maroun’s contact details?---I must have, maybe he can talk to, talk to him, yeah.

And what was it that, looking at the second page of the transcript, you and Mr Maroun had discussed the previous night, 4 April, 2016?---I don’t recall. I don’t remember this, this discussions.

10 Can I take you please to a different property now, 548-568 Canterbury Road, which was the Harrison’s site itself.---Yeah.

If I can give you a little bit of background, that thinking of 2 October, 2014, 2 October, 2014 was the date that the Residential Development Strategy planning proposal came back to council after having gone on public exhibition. I’ve asked you some questions about that before. That exercise started in October 2013, there had been changes made to the planning proposal.---Yep.

20 It had then gone to the Department, gone on public exhibition, in October 2014 it came back to council.---Yeah.

And the same day, 2 October, 2014, by coincidence, the Joint Regional Planning Panel approved a DA by Mr Demian for a six-storey development on 548-568 Canterbury Road.---Is that the Harrison, is it?

Yes.---Yeah.

30 And just for reference purposes, that’s volume 11, pages 213 to 217. And I said that the planning proposal for the Residential Development Strategy had come back to council that day, 2 October, 2014, and what occurred then, we’ve been through this already, you moved for the planning proposal to go through and 548 Canterbury Road was a component of that planning proposal and the proposal so far as that property was concerned was seeking a height limit increase from 18 metres to 25 metres.---Ah hmm.

40 Now, if I tell you then that there was on 16 December, 2014, an application on Mr Demian’s behalf by that company, Statewide, that Mr Daniels was associated with, to add two storeys to the six-storey approved development on the Harrison’s site.---Yeah.

And it was to add two storeys as I indicated earlier, that’s for reference purposes, volume 19, pages 4 to 12. And then if I can give you another piece of information please, on 23 December, 2014, Mr Montague wrote to the Department of Planning in which he said, look, a number of sites have been identified by the Roads and Maritime Services as being properties they have concerns about and it’s going to hold up the planning proposal if those sites remain in the planning proposal that went through on 2 October, 2014

and so we are taking out of the planning proposal those particular sites that the RMS had concerns about. Do you understand that?---Yeah.

So that happened on 23 December, 2014 and we know that 548-568 Canterbury Road was one of those sites.---Ah hmm.

10 So the references for that are volume 11, pages 232 to 3 and page 216. I should indicate that there was also a section 96 application which accompanied the application to add two storeys to the approved development on the Harrison's site to mollify the approved development to accommodate the extra units, additional car parking to accommodate the extra units the subject of the DA to add two storeys as such. Do you understand that?---Yep.

20 So that was the state of play as at December, 2014. Can I ask you – I want to take a step back now from this particular site, although this site is a site that had this particular issue and the issue I want to raise with you is, where council had resolved that a planning proposal be prepared to vary planning controls in the LEP and of course the process was that it would then go to the Department for Gateway and then if they approved it, go on public exhibition and so on. Where that had happened, did you have an understanding that that had any relationship with or relevance to consideration of a development application which did not comply with the existing planning controls, say in relation to height, but would have been close to if not actually within the planning controls if they'd been amended as per the planning proposal? Now, do you understand what I'm asking you?---Yeah, I'm just trying to work it out.

30 That's okay. I just want to make sure you do understand.---Yeah, just, can I just – what you're saying is, what you're saying, basically saying, there's a planning proposal which has got to go through the Gateway and advertising back, and there's a, would you say, an amendment to change the planning proposal using 4.6? Is that - - -

No, well, yes, yes. You are right. An application is lodged after that occurs - - -?---Using 4.6?

40 Yes. Using 4.6 and pointing in justification, amongst other things, to the fact that council had resolved that a planning proposal be prepared to allow a development of that size or height?---Yep.

Even though the current LEP doesn't allow it?---Correct, yep.

You understand that particular situation?---Yes, correct. What's, so what's your question?

My question is what did you think about that strategy? What did you think of a strategy of an applicant saying, look, I want an extra two storeys, I

know the LEP doesn't allow it but council has in the past resolved that there be a planning proposal which would change the LEP which, if that change was made, would allow a development of that height. Please approve this DA because, amongst other things, you have a policy of saying that the planning control should be changed to allow that height?---I mean that, that's something that, I mean, again, I'm just from memory, and things like this happen I think quite often, whereby there was a, again, if I recall, there was the RMS, the bundled everything together based on what you're saying, that the letter was sent back to the RMS, they bundled everything together in regards to the study on Canterbury Road and people, a lot of applicants were getting impatient for the wait and some of these already had approval from the RMS and if I recall, I think Harrison's is probably one of them that had the approval from the RMS in, in regards to independent approval and not part of the, the package of all the developments along Canterbury Road as an example. So presumably, if that, that was the case, and I think from memory may be the case, is then yes, Mr Demian would probably want to, because of the delay, to go through 4.6 in regards to putting, putting a better planning proposal, which I believe he did that in regard to creating the laneway in regards to the setbacks and there was a lot of negotiations back and forwards between him and the, and the council staff and his, and is planners in order to achieve that result. That's what, what, from memory based on what you're saying, what, what I believe had happened.

Well, in this particular case, the case of the Harrison's site at 548 Canterbury Road, the RMS had not approved - - -?---I think from memory - - -

- - - it in respect of the - - -?---Not everything, but individually I think they approved this.

There was an issue as to in fact whether the RMS had in fact been consulted at all in respect of the DA for the extra two storeys.---No, I think RMS, look, RMS already asked council before that to prepare a full study along Canterbury Road from, from Hurlstone Park all the way down to Punchbowl, from memory, and I think council took quite a while in order to, to get that report, so RMS was aware of, of the plans along Canterbury Road and the issue they had was based on of course it's their road and the access, and the access along those developments and the laneway, the laneway issue that came up, we, we, I'm very much in support of, would, would have addressed the concerns in regards to having in and out access instead of coming in from Canterbury Road, come through the back laneway which makes it much safer and, and what the RMS basically wanted from my memory and understanding.

Well, thinking of the period 2015/16 were you aware of an argument that was put forward by council planners that it was not legitimate to approve a DA which sought a height which was not allowed by the LEP simply on the basis that council had resolved that there should be a planning proposal

seeking an amendment of the LEP to allow such a height?---I don't recall that one. I don't recall it.

10 So did you think it was legitimate to disregard what was in the LEP simply because council had decided otherwise?---No, that's incorrect, because I've supported a similar one on, in Roselands along Canterbury Road where I met, I met the residents and they had very strong concern in regards to the privacy from the back of the building into their backyards and, and there was like, at least 30 residents at the time and the solution was that we push the building at the back forward, and there's one lady in particular, she had a swimming pool and she sort of - - -

Sorry to interrupt you, Mr Hawatt, but can I just point out that that's not addressing my question.---It's two storeys.

My question to you is, the LEP is a law that is, it's a planning instrument made at a State Government level. You understand that?---Yeah.

20 And developments to which the LEP applies have to comply with the LEP. ---Correct, that's - - -

30 It wasn't legitimate, was it, to approve of developments which did not comply with the LEP simply because council had resolved that it would like the LEP to say something different?---I think in the, in the LEP, in the LEP, and it's not our LEP, the State Government put 4.6 in there and the reason they put 4.6 is to allow the flexibility that we're talking about. It's not illegal. So therefore going back to that other one, I pushed, and the residents were in support, to give this guy an extra two level and push him further, further in towards Canterbury Road, away from the residents and it justifies, which is a public benefit, the residents were happy, we gave him two levels but we pushed him away from the residents. 4.6 works well, and that's why there's 4.6, to allow flexibility. They're not that rigid, the State Government.

40 But it is simply not legitimate, is it, to use clause 4.6 and point to council's resolution for a change to the planning control in the LEP to justify a departure from the planning control, is it?---It is, it is legitimate, because 4.6 allows council staff, the council to make the decision based on a good planning outcome and some public benefit. That is, that, that is the flexibility, the, in the LEP that the State Government put in, not the council, in order to have that flexibility. It's not that rigid, the LEP. It's flexible, because there's a lot of objectives in there. If it meets the objectives, all the LP, LEP is based on the objectives, based on the planning outcomes and everything else in there. It all comes together. It's not one thing or the other as you're saying.

Mr Hawatt, I just need to point out to you that you're not answering my question.---I am.

My question is directed to whether it is a relevant consideration, when applying clause 4.6, to point to a council policy that the LEP be changed. ---A council policy? I don't understand what you're saying.

10 A council resolution that the LEP be changed.---If the, if, if there's a resolution to change the LEP through the Gateway process, that's a, that's a, that's another process that you follow. But the other process is, is 4.6, which is part of the LEP, part of the State Planning, that can be used to justify the changes, to give that extra two levels, to give that extra FSR, and if it, if it, if it was a good planning outcome, then you can justify it.

20 So, is this a fair summary of your evidence? You did not think it was a relevant consideration in applying clause 4.6 to a DA which sought a variation from the planning control that applied, by the LEP, to point to the council resolution? You didn't think that was something that should be taken into account?---No, it, look, anything can be taken into account, depends on the merit, depends on the applicant, depends on the application, depending on the timing. Look, everything is taken into consideration. As far as I'm concerned, the planners assess it based on the merit, and they come back with a result, and we, and we, and we look at that, and the recommendations they made, and we, we assess it from there. That's our position.

30 Can I take you, please, to Exhibit 69, volume 19? I just want to take you to a number of pages in this particular volume which, if we look at page 78 first of all, you can see there in, on 22 February, 2015, there is a series of SMSs between you and Matt Daniels. If I can take you to page -- and there's another one on page 80, 23 February. Can I take you to page 99, please? Again, texts between you and Matt Daniels on 7 April, 2015, about time to catch up. Page 101, on 9 April, another text this time by you to Mr Daniels. Page 111, a text from Matt Daniels to you on 12 May, 2015, "Please call Matty." What was your relationship with Mr Daniels in this period, the first half of 2015?---I've, I've known Matt as a Liberal person from, from - - -

Liberal Party?---From the Liberal Party, yeah, from a long time ago.

40 So you knew him because of the shared political affiliation?---Yeah, correct.

And was that what the contacts were about between you and him that I've taken you to, in the first half of 2015?---No, there's a mixture, from, from these calls, there was three things from memory that, that Matt is, was interested in. And one was political, there's no doubts. The second was, he had his own site along Canterbury Road in Belmore that he was talking, talking to me about and then a few times, not that often I have to say, he spoke to me about the Harrison's site.

Did you organise meetings between him and council staff in relation to Mr Demian's projects or any of them?---I, I don't recall. I don't recall. I don't recall that one.

Do you recall talking to Mr Daniels about any of Mr Demian's projects?
---His projects, especially the ones at Belmont I recall very well.

10 No, no. Mr Demian's projects.---Oh, sorry, Mr Demian. Look, he might have mentioned it a few times but again from my understanding, I think, what's the name, Mr Demian had his own, his own thoughts and I don't think he wanted anybody to get involved. That's from memory and but he did, he did speak to me about it but it wasn't, it was more to do with his sites.

Did you organise meetings on behalf of Charlie Demian with council staff, including Mr Montague?---I, I might have organised meetings, I might have.

20 And why would you have done that?---I was being requested from Mr Demian. Maybe there were some issues.

And why would you do that, rather than leave Mr Demian to do it himself? What was it that you brought to the transaction?---From, from what, from what everybody knows of myself, I'm a pro-development person and I have my own idea of, of what I believe things should be done. I have a bit more knowledge than other councillors in regards to planning and, and he probably saw something in me that, that was pro-development, a person he can talk to, a person who understands his issues. It's, that's the way, that's the way it is and that's what happened.

30 But what was it that you could assist with in organising meetings on his behalf with council staff, including Mr Montague, that's what I'm asking?
---Because he was having problems with the staff. That's why he called me.

But what is it that you could – what difference did it make if you became involved?---I could just coordinate the meetings instead of them fighting and not talking to each other, I bring them together and they can sort it out. I mean, when the councillor gets involved, most, most of the time the staff and, and, and people act and try to resolve the problems and issues. That's not unusual.

40 And would it be fair to say that when you were intervening on his behalf it was with a view to progressing his applications towards a favourable outcome?---From, from what I, my understanding, there was lots of tension between him and the council. I came into it when they couldn't resolve their problems, try to, try to bring the Department in together and I understood where Mr, Mr Demian came from. He had, he had some, I mean, he had some issues but what he was doing in regards to his site, and I still believe it, I think it, it meets the merits of, of what he wanted and to

give him the two levels, I had no issues with it personally because he's given council a laneway, he's made major setbacks and gained more open space so he's done, he met, he met the criteria of 4.6 and I believe he did and I had no problems in supporting the extra two levels for that, on that particular site and I believe it and I think it's a, it's based on its merit.

10 And so are you saying what you've just told us is the reasons why you intervened on his behalf with council staff, including Mr Montague, to progress his application towards a favourable outcome and those are the reasons why?---He made requests. I believed – look, people can make requests on, on, on behalf. If I don't believe in something, I wouldn't, I wouldn't support it.

But on this occasion, you told us you did believe in it.---I did believe, correct. So he asked me - - -

20 So you - - -?---Wait a second, hold it. Wait a second. What you're saying is you're trying to make it into something sinister. It's something that I believe personally and it meets the merits and, and someone requests my help and support and I do that and, and if, if, your wording is to help him achieve his results, no. I'm helping him in order to, to progress his application based on his request and I believe in my, my support for that, for that particular application. It's simple as that.

You believed that the application had merit?---Had merits, had merits, yes.

30 Could you have a look, please, at Exhibit 69, volume 19, page 161. Can I take you to a series of SMSs that you were involved in. Here it's a text to Mr Stavis on Saturday, 20 June, 2015. "Hi Jim/Spiro. Can we meet with myself, Pierre and Charlie Demian on Tuesday to discuss Charlie's developments along Canterbury Road? Please let me know. Thanks, Michael Hawatt."---Yeah.

You can take it from me, page 163, that you sent the identical text message to Mr Montague at the same time.---Yeah.

40 Are you able to assist us at this point as to why you were trying to organise this particular meeting?---Well, I must have, Mr Demian must have spoken to me about the issues that he was facing.

And do you have a memory of what they were at this point?---Oh, he had a lot of issues, I can't remember which one, which one they are.

June 2015?---I don't remember which issues but he had a lot of them. I just can't recall.

And when you say he had a lot of them, do you mean that he was in your ear fairly constantly?---No, no, whenever he had a problem he called me, like everyone, you know.

And he called you fairly frequently?---Whenever he had an issue, and he had a lot of issues.

If I can take you then to page 167, please. Excuse me a moment, Mr Hawatt. You can see that that is a text message on Monday, 22 June, 2015.
10 You're saying to Mr Montague, "I have confirmed meeting on Thursday 4.00pm with Charlie Demian at council. Pierre and I will be attending as well. Michael Hawatt."---Yeah.

Can I just, sorry, I think I might have skipped over page 165. I didn't mean to do that. Back on the Sunday, 21 June, 2015, Mr Stavis texted you at 7.12pm, "Hi Mike, just checked my messages. Re Charlie Demian's jobs, the GM said we'll meet later this week. FYI I met with Charlie two weeks ago re the corner Chelmsford/Canterbury Road DA and he agreed to make the changes and I'm waiting for amended plans. Re the Harrison's site,
20 we're waiting for RMS as discussed, but he agreed to submit further supporting info." And then he goes on to talk about two other projects which I think when you look at them you'd agree don't relate to Mr Demian.---Yeah, correct, different things, yeah.

Is that right?---Yeah.

Chelmsford and Canterbury Road, that was 570 Canterbury Road?---That's the Harrison's site.

30 No, the one next to the Harrison's site on the western side.---The same block.

Yes.---Yeah, same block, yeah.

On the western side of the block.---Yeah, but it's part of the same.

Yes. So I've taken you to Mr Stavis's response to you, I've taken you to your text to Mr Montague on 22 June that you confirmed a meeting for Thursday 4.00pm. I can tell you the Thursday was 25 June, 2015. Excuse me a moment. If I can take you, then, please, to page 169. These are texts
40 exchanged with Mr Stavis on 22 June, commencing at 7.28pm. Your message is there, "I've confirmed meeting on Thursday 4.00pm with Charlie Demian at council. Pierre and I will be attending as well." Then Mr Stavis responded, "Okay, no worries. Do you know what Charlie agreed to do at my last meeting with him?" You responded, "He has made changes but needs to discuss further. He is running out of time. His project is nearly three years of waiting." Just pausing there, the project at 548 Canterbury Road had been three years in the works before council because of the

original application for seven storeys, then it was wound back to six storeys, then ultimately that was approved by the JRRP, and then there is this DA for two additional storeys.---Yeah, back and forward, yeah.

10 Then Mr Stavis responded to you, “I know, Michael. I really do understand. Don’t forget, I used to represent private clients and understand their commercial pressures. I can definitely deal with his DA on corner of Chelmsford/Canterbury Road if he’s made the changes I recommended, but it’s the Harrison’s site that I don’t feel comfortable dealing with until I get our traffic study to say it’s okay, which I should get next week anyway. Happy to discuss.”---Yeah.

Excuse me a moment. So can you recall that particular meeting?---Look, I don’t recall, but from reading this I think Charlie Demian still had issues. He had some concerns and he needed to sort it out with Stavis.

20 Was there anything said at the meeting on Thursday, 25 June, about the planning proposal, the fact that it no longer incorporated 548 Canterbury Road but the result was that there was no amendment of the LEP that was anywhere within the Department or council even to allow a 25-metre development, 25-metre-tall development, on 548 Canterbury Road?---Look, I don’t remember the specifics, no. I just, I know more the general of what’s going on, but the specifics, no, I don’t recall.

Did Mr Montague ever indicate to you that he thought he’d been ambushed in this meeting?---I, I don’t, I don’t recall, no, I don’t recall.

30 Can I take you to page 172 in volume 19. The meeting you’ll recall was scheduled for 4.00pm on Thursday, 25 June. We’re looking at text messages commencing at 5.53pm, so close to 6.00pm, on Thursday 20 June. And the first one is to you from Charlie Demian, and it reads, “Please call when possible.” Do you see that?---Yeah.

So it sounds as if the two of you are not in the same room. That is to say, there’s been a meeting, commenced at 4.00pm, the meeting’s over and you have parted ways. And after parting ways Mr Demian texted, “Please call when possible,” and you responded at 5.55pm, “Everything is okay. Jim will call you. Do you see that?”---Yeah.

40 Was there some unhappiness on Mr Demian’s or Mr Montague’s part at the conclusion of the meeting?---I don’t recall. I, I just, I don’t know, but sounds like they still have issues. I don’t recall.

It sounds, doesn’t it, as if Mr, as if you knew at 5.55pm, that something that had happened that might at least, if not actually had caused Mr Demian to be unhappy, and that you were going to reassure him by having Jim call him, Mr Demian?---I, I don’t, look, I don’t recall this.

Do you accept, though, that that's - - -?---Could have been there's a problem, I don't know, there's, oh, it sounds like there's still issues, and - - -

And it also sounds like, doesn't it, that you were with Mr Montague that you texted this to Mr Demian, because how were you able to predict that Mr Montague would ring him?---I might have spoken to Jim, he might have called me, I might have called him, I can't recall.

10 Only two minutes between 5.53 and 5.55pm.---Oh, he, we might have been together, I don't recall. I just don't recall this meeting.

And Mr Demian then thanked you at 5.56pm for your text message. Do you, were you present then, when Mr Montague rang Mr Demian?---I, look, I don't recall this, honest, I don't - - -

Did you hear, get a report, whether you were present or not, as to what happened between Mr Montague and Mr Demian in this exchange?---No, I don't remember, no.

20 Can I take you, please, to page 155? I'm taking you back now to 18 June, 2015. This is an email conversation. It starts out with an email from you to Spiro Stavis. We haven't got a time and date, but we can probably assume that it was early in 18 June, or at the latest, late on 17 June, 2015. And can you see what amounts to a shopping list of properties - - -?---Yep.

- - - in your email to Spiro Stavis?---Yep.

30 The Jimmy Maroun sites, looking at number two, included the car wash site, didn't it?---Yeah.

That was on Canterbury Road, Campsie?---Yeah, but the other one's also Canterbury Road, Campsie, so I'm not sure.

I'm sorry, I didn't - - -?---The other, the Robbo one is also on Canterbury Road, Campsie.

All right.---So I don't know whether it's for that, or - - -

40 But it says "sites" so maybe it was both of them.---Yeah, maybe, maybe.

Do you remember what it was that you wanted - - -?---Oh, look, I, I can't recall this, oh, look, I just responding to the enquiries I got, and I just gave him the list and say, look, these are the, all the follow-ups, you know, give me some response on them. And, and I said there are others, so I must have received a lot of enquiries on it, for that particular time.

Item number 4, that would be in relation to 548 Canterbury Road, Campsie, the Harrison's site.---Yep.

And you said, you went on to say in the email, “There are others, but this will do.” Was this an agenda you were sending to Mr Stavis for a meeting with him?---I don’t, I don’t recall, maybe, I don’t, I don’t know.

It looks like it, though, doesn’t it?---It could be, it could be, I don’t recall. Could be.

10 And you can see – sorry, if I take you up to the next email, you can see that Mr Stavis forwarded your email to Gillian Dawson, and asked for an update and any associated documents for the relevant sites below.---Yeah.

My meeting is on, at 3.30pm tomorrow.---Correct. Yeah, that’s probably a meeting with Stavis, yeah.

That would have been Thursday, 19 June.---Yeah. Could be, yeah. That sounds, sounds right, where I gave him a list, and all the others to follow, yep.

20 It looks as if you’re fairly, you’re involved in a fairly detailed way with the, organising the business of the planning division, so far as concerned the jobs of applicants for whom you were an advocate, doesn’t it?---No, I just, look, I support the people that help, that call me for assistance. I go out of my way, and that’s the way I am, to help and assist people. That’s my job. I don’t ignore them.

30 Yes, but my question though is, you were involved in a fairly detailed way in organising the business of the planning division so far as concerned those matters, weren’t you?---No. I mean this is inquiries from people calling me. These are inquiries that I get.

You say that, but even if it’s correct, that’s simply an explanation. What I’m asking you to accept is your interaction with Spiro Stavis was you getting involved in Spiro Stavis’s work to direct him to the next step, the next thing that needed to be done in relation to particular matters that the planning division had that you drew to his attention.---That’s incorrect. This is not really directing him to do anything, these are just inquiries and I want some feedback on it. I mean this is not directing him.

40 If you are arranging meetings, aren’t you helping to organise the business of the division, so far as concerned those particular sites?---Look, if people call me for help and assistance I organise meetings to get, to get progress, I organise meetings to meet with them to, to meet with council, that’s my job as a councillor. That’s what I do under the Act.

To get involved in organising the work of a director in the council?---These are the inquiries I receive, this is the feedback, I sent it to him and I got a lot of inquiries and it’s go through one by one with him, progress.

So did you have – I withdraw that. What contact did you have with Mr Demian in relation to making sure that his application for the Harrison’s site progressed quickly enough for his satisfaction?---Just whenever he had issues he just used to call me and we met sometimes to discuss his issues and I mean that’s just general like anybody else.

And he called you from time to time?---Yeah, he called me from time to time.

10

And you called him from time to time?---Of course I responded back, if somebody calls me I call them back.

You got on well with Mr Demian?---Well, on and off, sometimes he gets a bit pushy but generally I have, as I said to you before, my position is I look at the merit, it’s irrelevant whether the person, whether I like him, he doesn’t like me, the issue is, he became a bit pushy and, and there was issues between him and Spiro Stavis and end of the day I backed Mr Stavis.

20

But at the end of the day in relation to Harrison’s site, you were asked by Mr Demian to intervene, to arrange for his application for the two extra storeys to be progressed quicker than it would have been had you not intervened. Would that be fair to say?---No, it’s not. Look - - -

30

What’s wrong with that?---All the enquiries that come through councillors, they get priority and we normally put, make representation on their behalf and it’s progressed. It’s quicker than normal, better, better than a person making it direct. So we, we get involved when issues arise, when there’s, especially with, the one with the Harrison’s. There was a lot of issues between Demian and, and, and Stavis and there was, and the planners. There was lots of heated debate and discussion and we were the, the meat in the sandwich as you can say, trying to resolve these issues, try to make the representation on behalf, not just the applicant but in this case, or the, if, if the applicant was doing the wrong thing, well it’s up to us to make the judgement on it, and my judgement was that the planners were doing the right thing and I backed Stavis on many occasions.

40

You’re talking about 570 Canterbury Road and Mr Demian’s DA to add two storeys to that approved development, aren’t you?---No. I’m talking about Harrison’s as well, anything, including Harrison’s.

What was the nature of the dispute with the planners over the two additional storeys for the Harrison’s site?---I don’t know if Demian was concerned, he – the problem is sometimes a request is made by a planner, you need to do this, this and that and then, and then they shift the goal post and this happens quite often and the guy gets annoyed saying, “You told me to do it, I did it this way and then now you’re asking for something different.” This is an ongoing argument between the two parties. That’s, that’s normal and we,

we, we hear both sides of the story and we're trying bring some sanity to the discussion sometimes. That's all we do.

I note the time, Commissioner.

THE COMMISSIONER: Okay. All right. We'll take the lunch adjournment and resume at 2.00pm.

10 **LUNCHEON ADJOURNMENT**

[1.00pm]