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29/04/2019

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INDEPENDENT COMMISSION AGAINST CORRUPTION

PATRICIA McDONALD SC
COMMISSIONER

PUBLIC HEARING

OPERATION DASHA

Reference: Operation E15/0078

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON MONDAY 29 APRIL, 2019

AT 2.00PM

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

MR DREWETT: Commissioner, not a matter of great moment but I was going to ask if we could just have five minutes around about the 3.15/3.20, just to stretch our legs.

THE COMMISSIONER: Yes, certainly.

10 MR DREWETT: It would be useful. Thank you.

MR BUCHANAN: Commissioner. Mr Hawatt, if I could show you, please, the transcript of Exhibit 120. This is a telephone conversation that you had on 28 April, 2016 and the exhibit is just an extract from the recording. Initially you had called Mr Azzi and then, as you'll see from the extract, Mr Azzi said, "Marwan wants to talk to you," and we've looked at this before. What I want to take you to, though, is you'll see that it is a – if we go over to the bottom of page 1 – you spoke with Mr Chanine about the lawyers and wanting to sign something. Do you see that?---Yep.

20

This is all in relation to the contract for sale of 31 Santley Crescent, Kingswood. Over onto page 2, Mr Chanine says then if you can give him the go-ahead to exchange as soon as you sign. Do you see that?---(No Audible Reply)

Mr Chanine said, "I believe he's got all the documents." You said, "No, we'll do that, we'll do that." You then said, "Hey, listen. How much, how much is he paying again for the exchange? I forgot." Chanine said, "\$30,000," and you said, "30, okay." And then Chanine told you that the cheque and everything was sent last week. Did you understand from that that the money essentially was under the control of Mr Chanine?---No, no. I was just asking him, 'cause he's the one who's arranged the, the buyer and I just arranged, 'cause he's the one that calculated what the option fee, based on the per cent of the sale.

30

Well, I haven't actually got to that yet. What I'm asking about is, why is it that you and Mr Chanine are talking to each other on this telephone conversation about the purchase by somebody else whom Mr Chanine has introduced of your property?---Because I haven't met the, the buyer who he introduced and he's just relaying the messages to what I asked for. I mean, I just, I wasn't sure exactly what, what the amount was so I was, so I was asking him because he, he would have known.

40

Well, before we get to the amount, Mr Chanine seemed to have knowledge of the payment of the means by which it was being paid and documentation being transferred to your lawyers the previous week. Do you see that at that bottom of page 2 of the transcript?---Yep.

What was your understanding as to how he came to have that knowledge?
---Because he's the one who, he does options all the time. He's got a lot of
knowledge in regards to the options and option fees and - - -

10 But this is a particular transaction where Mr Chanine is giving you
information about what is happening in this particular transaction between
that third party that he had introduced and you, and what was your
understanding as to where Mr Chanine was getting his knowledge from as
to the cheque and everything having been sent last week?---Well, he must
be coordinating, he must be talking to the buyer.

Do you think it's possible that you understood that the transaction was one
in fact between you and Chanine?---No. I'm talking to Chanine because
he's the only one I've been talking to.

Why can't you talk to the purchaser?---Because I haven't, he introduced
him, I haven't, I haven't met the, the purchaser.

20 Why couldn't you talk to the purchaser yourself?---Because I was talking to
my lawyer and I happened to talk to Chanine and I asked him the question
based on communicating with him. I mean, it's simple as that. It's not - - -

Well, the question I wanted to ask you about is the second last entry, the
bottom of page 2 of the transcript where you said, "He, he can't, he can't
increase it to 50, you think?" Why did you ask Mr Chanine whether the
price could be increased to 50 when Mr Chanine was not involved in the
transaction?---To talk to the guy, to talk to the, the guy who's buying it.

30 Did you think that Mr Chanine controlled the purchaser?---No but originally
I was asking him for the 300,000 in order to pay back and that's when I said
to them, I said, look, I need to the 300,000 to pay back the other, the, my
son-in-law and, and his partners and, and that's why I was pushing him to
do that quickly. So I was talking to him because he understood the position
I was in and it's up to him to relay it back to the – it's like, it's like Pierre
telling me to talk to Marwan but he had nothing to do with it. That's the
way we, we, we normally operate in regards to passing messages on.

40 How did you understand it to be that Mr Chanine knew what the purchaser
was paying you?---Because I told him. I gave him the figure of 1.5, which I
was after.

Well, I just point out that in the middle of page 2 of the transcript, he tells
you, you ask him how much this third party is paying for the exchange and
Chanine tells you, "\$30,000." So you both think he would know and it turns
out you're right, he does.---Well, because the third party would probably
also – look, you've got to remember Chanine, Marwan is, is an expert in
those areas. He knows the contracts and the commission, and the, the fees
and charges for option fees and it's something that he's an expert and I think

the, the guy who is buying it would probably be replying on his expertise as well. I mean, he's, he's going us a favour.

You knew that Mr Chanine understood all the details of this transaction which were between you and a third party, didn't you?---He understood of course because he, he knew the buyer.

10 Why should that necessarily mean that he knew how much the option fee would be?---Because he knows the calculation, I know there's a per cent, some percentage point that they use for the, based on the sale.

So had you in fact made this arrangement that it should be an option fee of \$30,000 with Mr Chanine?---No, that's why I was asking him how much it was. I mean I couldn't recall because my lawyer probably would have, would have, would have had that information. I'm asking him because I'm talking to him because he knows the buyer.

20 You see it doesn't make any sense that you would think he would know how much the option fee was in this transaction that you were having, not with him, but a third party, unless you thought Mr Chanine was familiar with the details of the transaction.---No, that's incorrect. I mean if I wanted to deal directly with him I'll deal directly with him, but the point is - - -

Well, you were in this conversation, weren't you?---Yeah, but I'm talking about if there was, if he was the buyer, I have no problem with him being the buyer personally, but if he introduced someone else and he knows the contracts and he knows the fees - - -

30 How does he know the contract?---Because he knows, the guy does contracts all the time with options and from my understanding with him.

Yes. But how does Mr Chanine know, as at April 2016, as far as you understand, how the purchase is being transacted in the first instance, and secondly, what the purchase price is, and thirdly, that the cheque and the documents had gone through the previous week?---Well, he - - -

40 As you understood it, how did Mr Chanine know any of those details at all? ---Because originally he's the one we talked, I was talking to, originally, he was the one who was going to, to buy it originally and then he changed his mind and found another buyer but he was still using his brother as the architect, so yeah, the link is still there with the, with his brother who's going to be the architect to do the work on behalf of the buyer, so I don't see any issues with that.

No, the link I'm asking you about is, Mr Chanine's knowledge of how the purchase is being transacted, by option, the purchase price, \$30,000, and that the stage the transaction was at was that the cheque and everything had been sent the previous week. How does Mr Chanine know any of those

things if he is not the purchaser or controlling the purchaser, to your knowledge?---To my knowledge he introduced the buyer and he, he's dealing with the buyer probably in regards to his brother and, and I don't know what else, but from my understanding is, he introduced the buyer, he knew about what was going on because he knows all the contracts and the option associated with, with contracts of sales.

Is it possible that you had agreed with Mr Chanine that the purchase should be by way of option?---Purchase by way of option?

10

Yes.---No, he, no, they wanted the option. They asked for the option.

Chanine did?---Well, his - - -

Is that what you're saying?---Through, through his buyer, his buyer wanted the option and they sent it to my lawyer.

20

Had you not negotiated an option agreement with Mr Chanine before this third party came into it?---Personally I didn't want an option, I preferred a direct sale because I just wanted to get it done, but to them, they wanted the option, they wanted to do their due diligence and their plans and everything else.

So as far as you knew, Mr Chanine had proposed that the transaction be a purchase by way of option and then he brought in a third party to be the person who would engage in that transaction with you. Is that fair to say? ---No, originally he wanted to buy it, originally, I think he changed his mind.

30

He, Mr Chanine - - -?---Mr Chanine changed his mind.

- - - then proposed an option, didn't he?---Yeah, he changed his mind. No, no, the option was always been in the, in the system. The option, this guy does options, that's, that's his, his way of doing business.

Chanine's?---Chanine's, yes.

40

Yes.---So as far as the option's concerned, he changed his mind but he committed to finding a buyer, another buyer, and he probably gave him all that information in regards to the system and the option fees and, and, and the sale value and he's got his brother to do the architect work. That's the, that's what my understanding is in that regard.

And your question of him as to whether he could increase it to fifty – second last entry on page 2 of the transcript of Exhibit 120 – is a question that you address to the purchaser, isn't it, the person who controls the funds available to be paid to you by way of purchase?---Well, I'm asking him to talk to the purchaser, to, to pass that on.

This transaction was really a transaction, when it went through, between you and Mr Chanine using a third party, wasn't it?---No. It started off that way and, and he changed his mind, and he introduced a, another buyer.

10 And was the reason why another buyer was introduced to disguise the fact that a person who had a number of projects that were before council for council's consideration was engaging in a commercial transaction with you, a councillor on that council?---He changed his mind. To me, if he would have continued with it, and anything that comes up that's his, I would declare interest. I had no problems with that.

In relation to the DAs for 212-222 Canterbury Road and 4 Close Street, Canterbury, you had contact with Mr Stavis in relation to that matter?
---Sorry, which one is that again? It's - - -

The ones on the - - -?---Harrison?

20 - - - southern side of Canterbury Road, but sort of southeast of Canterbury Station. Next to the railway line. Two DAs - - -?---Sorry - - -

- - - of Chanine's.---Chanine's one, yeah. It's, this is the Doors Plus one, is it?

Oh, and the Chanines called it the Doorsmart Project.---That's the one, yeah, yep, yep.

30 So you had contact with Mr Stavis in relation to that project?---I might have made an enquiry on their behalf, yeah.

Did you have contact with Pierre Azzi about it?---Oh, I, I, he might have, I think we might have, because I think there was an enquiry to both of us.

Did you have contact with Mr Marwan Chanine about it?---I'm not sure if he's, he's the one who made contacts, I don't know. I don't recall.

Who else would it have been, Ziad Chanine?---Ziad could be one, yeah (not transcribable)

40 Did you have contact with Ziad Chanine that you can recall about that project, those DAs?---Oh, I don't, I, oh, but I can't, I can't recall, no.

Did you have any contact with Mr Montague about those two DAs?---We might have, we might have, well, we could have, we could have.

What might you have had contact with Mr Montague - - -?---I think - - -

- - - about in relation to those two DAs?---I think there might have been some issues in regards to RMS, from memory. Not, I'm sorry, not the RMS. State Rail. And some lane, laneway at the back, access some laneways. I, I don't, I think it's just a memory, oh, look, I don't recall too much about it.

And what were the stumbling blocks that you recall in relation to those two DAs?---I think it's to do with the State Rail, that's my memory.

- 10 Was there a, an issue that was drawn to your attention in relation to a rear setback in relation to the developments the subject of the DAs?---Yeah, there could be something at the back, yeah, there was some talk about a lane, I think, access lane or something, I'm not sure.

And what about a rear setback, making the building smaller, reducing the developer's lot yield?---I, I don't recall that.

You what, sorry?---I don't recall.

- 20 You don't recall any issue to do with that?---What I recall, there was a laneway, maybe setbacks, but I don't recall the details in regards to what are the, the detailed issue in that regard.

Did Mr Marwan Chanine ever raise with you a concern that he had about a risk that he wouldn't be able to build as big a building because it was proposed that a setback be imposed at the rear of some three metres instead of a setback of nil?---I don't, I don't recall that, no.

- 30 No-one ever raised that question with you?---I don't, I don't remember, no, I don't recall.

Did you have any contact with Bechara Khouri about those two DAs or that project?---He might have mentioned it. I don't recall. I don't, I don't recall the details. All I know is there's a, sorry, a Doormart [sic] - - -

You understood – I'm sorry.---All, all I know is that area was a, a ghetto and needed some really, some big changes there.

- 40 And who first used the word Doormart in your presence?---That's what I, I think I read it somewhere, Doormart.

Yes. Where did you read it?---In the transcripts, of the hearing, yeah.

Of the Commission's inquiry?---Correct, yeah.

All right. You didn't hear anyone use that name?---Well, I know the place, I know the place where the, they're talking about because it's a door place

and, and I, I, I, recall that's it's a real, a ghetto of an area there. That's the only thing I remember from it.

Did you have any understanding that Bechara Khouri had any involvement in the DAs?---Look, I, I don't recall if he, if he even spoken to me about it. I don't, I don't, I don't recall. He, he might have but I don't recall.

10 Did Mr Khouri organise any meetings for you to have with the Chanines or either of them in relation to the DAs?---I don't think, I think they've got, they can have direct, they've got direct contacts. Unless there's a serious issue that nobody can resolve and, and they ask me for some assistance. I, I, I don't recall even to, arranging meeting in that, in that area, in that regard.

If the officers' recommendation had proposed the imposition of a setback at the rear of the proposed development, which would result in a reduction of lot yield, that would have been a serious issue for the developers, wouldn't it?---Look, all, all I remember is they had approval. That's, that's my memory.

20 No, no. Could you just answer my question, please. You understand, don't you, that if a setback is imposed that has the effect of reducing lot yield. That is a serious issue for any developer, isn't it?---It depends if they've got to get, if, for me, we've, we've seen setbacks increase but heights, sorry, setbacks reduced or increased but with additional heights given. So sometimes they give and take so I'm not sure in this regard whether they're just taking something without giving them an extra two levels or, or one level. I'm not sure. I don't recall this but if you're talking about, is it just giving without any other justification? I, I just, yes, there is a benefit if that's the case or it could be a loss but it depends. I don't know what the
30 discussion was in regards to giving something back in return. I don't know.

And are you saying no one ever raised with you? Pierre didn't raise it, Bechara didn't raise it, Marwan didn't raise it, Montague didn't raise it? ---Yeah, it was, loom, it's - - -

In relation to a proposal that was in the recommendation of the officers' report for these two DAs that would have resulted in the investors losing lot yield?---I, I don't worry about how much they lose or how much they make. It doesn't worry me.

40 No, that's not what I'm asking you. Are you saying you had no contact - - - ?---I'm not saying that.

- - - with anyone about that subject?---I didn't say that. I said I don't recall.

That's why I'm asking you, Mr Hawatt.---I don't recall.

Can you answer my question - - -?---I don't recall it.

It just seems inconceivable, given your relationship with Marwan Chanine, let's just take him for a start, that there would have been nothing said that would have stuck in your mind about the effect of the officers' report being adopted by council in respect of his DAs.---They may have made some enquiries through me. I might, I might have, I may have made enquiries to Spiro and, and to Montague. I don't recall. I might have done it. I'm not saying I didn't or I did. I just, I don't recall.

10 Do you recall being interested in the development, proposed development?
---Interested in, in what way?

That's what I'm asking you.---If, if somebody made an enquiry, I would have followed it up for them.

Well, was there an enquiry?---I don't recall.

If the witness can be shown, please, in Exhibit 69, volume 26, page 251.
20 This is an email conversation from Spiro Stavis to Ziad Chanine and
Marwan Chanine on 24 October, 2015, looking at the bottom of page 251.
---Yeah.

It does go over to 252 but there's nothing on it. And you can see that Mr Stavis has said to Ziad that he referred to a meeting and noted that, to use his words, "We agreed that two issues remain outstanding before our assessment can be finalised." So this is before the officers' report has been finalised, you understand?---Yeah, yeah.

30 And then he identifies them. "Justification of the proposal's non-compliance with the rear setback control under the DCP and submission of an urban design report justifying the proposal's non-compliance with the front setback control under the DCP."---Yep.

He says, "I've committed to reporting the DA to the November IHAP meeting." Do you see that?---Ah hmm.

Now, just pausing there. Does seeing this email ring a bell with you?---No, it doesn't.

40 Do you understand why Mr Stavis would have committed to reporting the DA to the November IHAP meeting?---(No Audible Reply)

Would anyone have put pressure on him to progress the DAs to ensure that they were considered at the November 2015 meeting of the IHAP?---I don't recall.

Did you put pressure on him to do that?---Put pressure on him to do what, to, to put it in IHAP?

The November 2015 meeting of the IHAP, rather than say the one after that, which I suspect was early 2016?---I don't recall even, I, I don't even recall these discussions.

Well, can I ask you, are you sure about that? Because you can see at the top of the page that that conversation was cc'd to you. I'm sorry, it was sent to you by Mr Stavis, it was sent to you and Mr Azzi.---I, we might have made an inquiry but I don't, I don't remember this, this email at all.

10

Well, it was sent to you on Sunday, 25 October, 2015 at 8.44pm. Mr Stavis said, "Hi guys. See emails below FYI." Why did he use the word "guys" rather than Dear Councillors Azzi and Hawatt, do you think?---You've got to ask him that, I don't know. It's probably his way of doing it or something.

But you're the one who had the relationship with him.---Yeah, but I use the word sometimes, hi all, hi guys, hi team, hi whatever.

20

Yes, to people that you work with, people that you are trying to achieve things with.---That's, to me that's just a, it's just a friendly, it's a friendly comment, that's all it is.

Do you have any understanding about why Mr Stavis sent it to you and Mr Azzi and not any other councillor?---We might have made an inquiry. When we make inquiries we're registered as a councillor making an inquiry on behalf of an applicant, they could have spoken to me and, and Pierre and we made the inquiries and, and then it's registered and they keep us in the loop after that.

30

And why did you make this inquiry?---It must have been a request to make an inquiry.

What was the inquiry?---I, I don't know, depending if there was issues, I don't remember this thing, there could have been issues in regards to the setbacks, could have been issues in regards to whatever the problem is, I don't know.

40

And you're telling the Commission, are you, that you have no recollection of any issue at all, let alone those which are identified by Mr Stavis in his email to you?---The issue I mentioned are the railway and there was a thing at the back, so the laneway access in the back, through the back, and - - -

Nothing, no mention of a laneway in Mr Stavis's correspondence with Ziad. ---No, it's an access, it's to do with an access through the back I'm sure.

Still no mention of it, is there.---Well, no, that's my memory.

So why, the question is, can you assist us with why it would be that Mr Stavis would have sent these emails to you?---We must have made an inquiry for him to send it to us.

Yes. And you can't assist us with the nature of the inquiry?---I don't even remember this email. All I remember is vaguely I can remember about the whole as an overall thing, but nothing specific.

10 Are you saying that you had such frequent communications with Spiro Stavis to try to progress various development proponents' projects in council that you have difficulty separating one from another, or indeed the issues that you raised with Stavis on behalf of development proponents, in this case the Chanines? Is that what you're saying?---No, what I'm saying, if I remember, I represent people. I don't care who they are. If I make representation, I'll make representation. It doesn't worry me. But I don't remember this particular one. If I did, I will tell you.

20 But it's your friend, Marwan Chanine.---I don't, he's not, he's not my friend as a friend. He is a person - - -

The man you went out to the nightclub with.---No, no. I, it's just, we made introduction - - -

The men, the man - - -?--- - - - to meet up with Godfrey Vella, not (not transcribable)

The man who refers to you and the boys - - -?---(not transcribable)

30 - - - as being the group that should be arranged to attend the nightclub.---Oh, that's just a, a, a passing, friendly comment. Doesn't mean anything, as far as I'm concerned. I don't recall. That's, that's my answer.

But it's quite clear, isn't it, that it was your friend Marwan Chanine who instigated you intervening with Stavis about the, a late stage in the assessment process in which Mr Stavis seemed to think that you needed to be kept abreast of his communications with Ziad and Marwan Chanine. That's clear, isn't it?---No, all I did, if I made an enquiry, I would have been in the loop, and Stavis will, would just keep us in the loop. That's it.

40 So you accept that you would have made an enquiry about the subject matter of his email to the Chanines, his email at the bottom of page 251?---I, I, I don't - - -

This is the one that's about those two issues that - - -?---I, I don't recall this email. I'm going to repeat it.

I'm not asking you whether you recall it. I'm just trying to understand your evidence when you say it would have been in response, he would have sent it to you in response to an, an enquiry - - -?---From before.

Yes, from before. And that the subject matter would have been the subject matter of the email that Stavis sent to the Chanines - - -?---Not - - -

10 - - - on 24 October, 2015.---Not necessarily. Could be some other matter, but look, just because they're talking about another matter, he could be talking, oh, I could be making enquiries about one thing, and then he, he's communicating – because we made that enquiry about different things, and he, but he's keeping us in the loop about this one, which, which may not, may not have anything to do with that enquiry that I originally made with him. I've got to look at the correspondence and, and work out what the, what, what I was asked to, to make an enquiry about. I just don't recall this one.

20 Have you got correspondence which disclosed what you were enquiring of - - -?---I don't, I don't recall - - -

- - - Mr Stavis about in relation to this DA?---No, I don't recall.

So the relationship you had with Mr Stavis, as at October, 2015, was one whereby even where you didn't make an enquiry about the subject matter of what he sent to you, he would keep you apprised of his thinking during the assessment and what the obstacles might be for a recommendation for approval of a development application? Is that a fair inference for us to draw from your evidence?---No.

30 Why not? Why is that unfair?---Because, because what I said and what you're saying is completely different. What I'm saying to you is I might have made an enquiry for something different. He's, and then he put me in that link, and then he makes, and then if they're communicating with each other, and he's keeping me in the loop of what's going on, that's all it is.

But the question is, why is he keeping you in the loop unless he thinks you either want to know or need to know?---I don't have, I don't control, have control. If we make an enquiry, that's tradition and - - -

40 Well, no, you did have control of Mr Stavis, quite clearly you had control of Mr Stavis.---I'm not Mr Stavis. Look, all I'm saying is, generally for respect of councillors, if we make an enquiry, we are kept in the, in the picture, in the loop of any other correspondence that goes through for that particular enquiry.

Really?---Yes.

You would expect a director, if they had been asked by you about an aspect of a matter that was before them some six months ago, that they would continue to keep you cc'd on correspondence they were having with the proponent until the end of the matter?---Yes, if it's ongoing, yes. It's, as I said, A to Z.

Did you indicate to Mr Stavis that there was some urgency about these particular DAs being finalised before the end of 2015?---I, I don't recall.

10 How many enquiries did you make, to use your term, with Mr Stavis in relation to this development?---I, I don't recall that.

Well is it a few, is it many, is it average?---Maybe average.

And what is average for your enquiries to Mr Stavis on behalf of the proponents of major commercial developments in the local government area?---I only respond if someone - - -

20 But what was average? How many times?---An average is depending on the number of calls I get, if I get a, a call then I follow it up.

That's what I'm asking, what's an average number of calls that you would make to Stavis about a DA or a planning proposal for a major commercial development?---I, I don't, look, it depends on, to me, I, I, depends on that calls I get from the, from the applicants. It depends on how many times they called or what the issues are. I just, then I make the enquiries, I just can't recall.

30 If we could go to volume 28, please, page 160. This is the first page of that part of the business papers for the City Development Committee of 3 December, 2015, which reproduces the IHAP report, the IHAP report there is dated 24 November, 2015, in relation to, in this case 212-218 Canterbury Road. Can you see that?---Yep.

And I can assure you that there is a very similar report in respect of 220. That's at page 164. Can you see that?---Yep.

40 And in both cases the recommendation was that the development application be refused. We can go off the one that we're looking at, at the moment, this is for 220-222 Canterbury Road and the reasons were exceeding the maximum permissible floor space ration by over 50 per cent. In the case of 212-218, it was exceeding the maximum FSR by over 100 per cent, and as well that the grounds of the application for variation under cause 4.6 were not satisfactory, they didn't demonstrate that the statutory, I'm sorry, the LEP requirements for allowing a variation had been satisfied. You see that?---Ah hmm.

You would have got those business papers a few days before 3 December, 2015?---Yeah, presumably, yep.

Do you remember, now that you can see the IHAP recommendation there, do you remember finding out about it?---I don't remember. I don't remember that.

It would have been a surprise to you, wouldn't it?---No. Why should I be surprised?

10

Well, was every development application that was submitted to the IHAP refused? Not all of them were refused, were they?---No, no.

Were you unhappy, what was your reaction to this outcome from the submission of these two DAs for the Doorsmart project to the IHAP?---I, I need, I need to understand the, the reasons why – to me, I have, I have my own opinion and, and judgement on, on certain, certain developments and I, personally, anything around the railway station should not have an FSR but it should have a minimum size unit, unit size. That's my position.

20

Why didn't you move that there be a planning proposal put forward to the department to achieve that outcome?---Which outcome?

To eliminate the requirement for, to eliminate the planning control of a maximum FSR for these sites?---I would have, if I had the, I don't know, I should have, it would have been better. To me, minimum size units would have been the best way to get a better outcome in regards to the size of apartments that are built and without the FSR and that would work, I think that would work much, much more better and the controls, the control as a councillor, as I said before, the controls, our DCP controls do not work correctly with the, with the current structure of, of developments on, on (not transcribable)

30

Sorry, can I interrupt you. This isn't anything to do with the DCP, this is a planning control imposed by the Canterbury LEP.---Yeah, correct, but I'm saying is FSRs, personally I don't, they don't work.

And so as far as you were concerned, it didn't matter what the IHAP said, you would not follow the recommendation if it was based on a failure to comply with that planning control.---No. My position is I need to understand the, the, the reason for the refusal, does it meet objectives, does it meet objectives or not. The four point, is it, the 4.6, as I said, is exceptions to the rule, whether it meets that as well, I don't know. I need to look at it. I mean you're asking me to make a decision based on, on what I'm reading here, it's going to take a while to understand the reasons behind it and the reasons why, if there's a change, the reasons why we made a change.

40

So you spent time, did you, reading the IHAP report to understand the reasons of the IHAP in this case?---At the, at the, at the time, yeah, but I don't remember this.

And what was your thinking once you had read the report?---I had to look at the report, the council officer, I mean you're showing me this, might have been adopted, I've got to see was the council officers' one we adopted? I don't remember.

10 Well, no, it wasn't.---So it wasn't adopted either?

We're coming to that.---Oh. So nothing's been adopted. So what are you asking me questions about then?

Well, I'm asking you, at the meeting on 3 December, 2015, you participated and you voted. Had you read these reports of the IHAP in relation to the DAs?---I, I don't, I don't, I mean if there's nothing recommended for support approval, we can't, we can't approve something if it wasn't recommended by the officers or, or the IHAP.

20

They recommended something. They recommended a deferred commencement.---Oh, which one, the council officers?

Yes.---So deferred, what's the deferred, this is for the State Rail I presume?

Well, a deferred commencement to allow a rear setback to be included in the developer's plans.---Yeah.

30 Instead of it being nil setback and three metres setback.---So was that - - -

Now, what I'm asking you – please, if you just pause, I'm asking you the questions if you don't mind.---Yep.

I'm asking you, did you read these IHAP reports?---I don't, look, I don't remember. I don't remember what approved it.

What was your thinking about the IHAP position, the position the IHAP took?---Do you want me to look at it now and make a judgement?

40 No, I'm asking you to tell us.---I don't remember this. I can't, I can't tell you if I can't remember this.

Did you have a discussion about the IHAP recommendations for refusal with anyone?---No. I don't remember this. I don't remember it.

When you say, "No," and then, "I don't remember," - - -?---No, I don't recall this IHAP recommendation or that report.

Do you think it's likely that you had a discussion with somebody about it?
---I might, I might have, somebody might have spoke to me about it.

Well, no, no, I'm not asking whether you might have. Do you think, having regard to your relationship with Marwan Chanine, your relationship with Pierre Azzi, your relationship with Bechara Khouri, do you think you, do you think it is likely that you had a discussion with anyone about the IHAP reports for these two DAs?---It's, it's likely they called me if there was a problem.

10

What happened when they called you, or perhaps you called them?---I've got to find out what, what the issues is.

Did you have a discussion with Pierre Azzi about the officers' report recommendation for a deferred commencement, that is to say, deferred until the plans were amended to impose a three-metre setback at the rear of the proposed development?---Look, I, I don't, I don't recall this, this application.

20

Do you recall Pierre Azzi thinking about that deferred commencement condition?---No, I don't recall his thinking.

Do you recall whether Marwan Chanine was happy to find out that council was proposing that commencement of any consent be deferred until the plans were amended to make his proposed development smaller?---I don't recall talking to him about it.

The likelihood is, though, that you did, isn't it?---I don't recall.

30

You accept, however, that the likelihood is that you did talk to them.
---Yeah, he might have called me. But I don't recall the, the, the application or the issues associated with it. He may have called me.

How many times were you involved as a councillor in a matter that Marwan Chanine had before council where the recommendations were adverse to him?---The, the only one I recall in regards to Marwan is the one in Campsie, the one in South Parade.

40

You don't recall any concern at all expressed by Marwan or Ziad about this particular matter?---I, I don't, I don't recall it, no.

Excuse me for a moment, please. Did you have any discussion with Mr Montague about these development applications and what should be done with them when they came to council?---I don't recall.

And did you have any discussion with Pierre Azzi about what should be done with these recommendations and when they came, when they came to the City Development Committee?---I don't recall.

Could we have a look, please, at volume 28, page 179? Can you see that on that page there are both 212-218 and 220-222 Canterbury Road DAs considered?---Yep.

This is in the minutes of the CDC meeting of 3 December, 2015. You voted in favour of the motion on each occasion?---Yeah, with the rest of the councillors, yep.

10 Does that excuse you, does it - - -?---No, no - - -

- - - from exercising any judgement at all - - -?---No, it just - - -

- - - in exercising, in casting your vote?---No, it had, it, we must have been debated and, and the rest of the councillors must have been happy with the debate on the, on that (not transcribable)

Well, why were you happy with it?---Well, I'm supporting the rest of the, I'm with the, the recommendation must have been okay, it's acceptable to, to everybody. Yes, I would have.
20

Well, this I can assure you wasn't the recommendation in the officers' report. It wasn't the recommendation in the IHAP report. What I want to ask you about is, what can you tell us about where, about this particular motion that was moved by Councillor Azzi in each case?---Sorry, the, the A, you're talking about A?

Yes, that the general manager be authorised to issue the consent and that the committee decided not to accept the IHAP recommendation, what can you tell us about that?---So this one is so it won't come back, I don't know, come back to council and giving delegated authority to the general manager.
30

Yes. Why did you agree to that?---Well, I don't know, to me, I, I don't see any issues with it here. I mean, it's, it's, it's approved with the, with those conditions, and then those conditions will come back as a delegated authority without coming back to council.

What this meant was that the recommendation by the, in the officers' report for a deferred commencement until the plans had been amended to impose a three-metre setback at the rear of the proposed developments would not be accepted, and what I'm wondering is why didn't you follow the officers' recommendation in that case?---Oh, look, I, I, I don't know, I don't know what - - -
40

Given your attitude to the officers' recommendation, particularly when it was made by Mr Stavis.---I, look, I don't, I don't, honest, I don't remember this. I don't remember it.

Is it possible that you were aware that there had been communications behind the scenes involving Mr Montague?---No, no. For, look, for, for this to, to go through, it's, I mean this has happened before. I think I've seen this before.

Yes, you did. You saw it in the minutes of exactly the same meeting.---The same one?

10 Yes, in respect of 548-568 Canterbury Road, Campsie, Mr Demian's property.---Oh, yeah, this is the same one, yeah, that's right, yeah. So this won't, won't come back from, it's been approved, deferred commencement to, to whatever, to, to say four, four weeks and I'm not sure whether this is the same because it started coming from to council and say wait another month if it comes back to council. This is, gives the council, the, the general manager delegated authority. That's, that's what I – I don't see any issues with it. I don't see issues with it at all.

20 Do you have a recollection of a general manager's memo to councillors about the matter that preceded the consideration by council of the agenda items?---I, I can't, I don't remember it, no.

Did you have any discussion with Mr Montague or with Mr Stavis about the wording of a motion that might be provided to council to adopt in respect of these two DAs?---Again, I don't recall but I might have but I don't recall it.

And if you had, what would that conversation have been like? What would it have been to the effect of?---To say he, he's got delegated authority.

30 Well, who would have commenced the conversation?

MR ANDRONOS: I object to this.

THE WITNESS: No, you're asking me things I can't answer.

MR ANDRONOS: I object to this. It's one thing to speculate on the likelihood of a particularly conversation taking place, it's another thing to ask a witness in the witness box to script a possible conversation that may or may not have taken place. It can't possibly be of assistance, Commissioner.

40 THE COMMISSIONER: Mr Buchanan?

MR BUCHANAN: Well, Commissioner, the basis for the question is that the witness frequently responds to questions that something might have happened or could have happened, and as it turns out that what he means that it did happen, and so I'm just trying to explore whether that's the case here. I appreciate there's some logical force to Mr Andronos's objection but, Commissioner, my question really is simply based on the fact that so often the witness has responded to questioning with language to the effect of

it might have happened or it could have happened and we find out what he means is that, yes, it did happen.

THE COMMISSIONER: And then we get some more detail subsequently.

MR BUCHANAN: So that's why I asking the question. Maybe I should try and reframe it or - - -

10 THE COMMISSIONER: Yes, look, I can see where you're coming from and I do appreciate that in respect of other topics there had been that tendency of an initial I don't recall and then we go get some detail. Maybe if you can rephrase it.

MR BUCHANAN: Yes. Did you ever, about any subject, discuss with Mr Montague or with Mr Stavis the tactics or strategy that might be adopted to get something through council?---No. I don't recall talking about tactics or, or strategies. I mean, if it came, for, for this to come up, the general manager sometime he might, might be aware, sometimes he's not aware.
20 Could be moved on the floor of the, on the, on the, on the floor during the debate that somebody might move it and the general manager, all he can do is sit back and, and watch. He can't say yes or no because the councillors make that decision on that night and it's, somebody could have moved it and said, given the GM delegated authority and I can't be, I can't imagine the GM's going to say no when council said we want you to have delegated authority to do that. So I just, I, I can't recall debating it or talking to Jim, Mr Montague on this. Unless it's debated on the floor.

Or Mr Stavis?---Or Mr Stavis?

30 You didn't ever discuss with Mr Stavis the idea of delegating authority to the GM to consent to any development application before council?---No, I don't recall that. They're, they're the same ones that, from the other one. I don't recall.

You see, you and Mr Azzi played very significant roles in the conduct of council meetings so far as it concerned planning and development matters, didn't you?---We make enquiries on behalf of people - - -

40 Please, can you answer my question? You played very significant roles in the conduct of council meetings so far as concerned planning and development matters, didn't you?---I, I am deputy chair of the city planning and I moved all the motions, 90 per cent of, 99 per cent of motions as the deputy chair. So if you say that I play a big role it because I moved them all, so be it but that's the way, that's the way it is. That's how we move it.

You played a big role in ensuring that particular DAs were approved by council and the City Development Committee, didn't you?---I moved 90 per cent, 99 per cent of motions in regards to city planning, yes.

But you and Mr Azzi had the support of the councillors that you described at the A Team, didn't you, in the handling of planning and development matters before council?---No. They all have their own independent mind. When we debated, the, a person who can put up a good argument on the floor and it's supported by the councillors or not supported by the councillors. It's debated. Each person has an opinion.

10 It wasn't very often, was it, that you and Mr Azzi were defeated in relation to planning and development matters at council in 2014-2016, was it?
---Well, that's, that's the case like saying IHAP five-nil every time, five-nil, five-nil, five-nil, five-nil, what does that mean?

Can you answer my question.---Yeah, but it's the same thing. So in other words, on person controls the five.

THE COMMISSIONER: So is the answer yes or no?---It's, it's not - - -

20 Is it not often that you and Mr Azzi were defeated in council on planning issues?---No, that's not, we just debated like normal. No, it's not any specific - - -

MR BUCHANAN: You're not prepared to answer that question.---No, but it's not right.

You see - - -

THE COMMISSIONER: No - - -

30 THE WITNESS: You're taking away something that it's not correct. I said before 99 per cent I moved motions.

THE COMMISSIONER: We're not asking you that. You're being asked by Mr Buchanan whether during the period 2014-2016 that it was not often that you and Mr Azzi were defeated in council on planning issues. Now is that yes or no?---I have to say, it's either a yes or a no, I just can't, I can't say yes or no because it depends on what it is, what the issue is, what the debate is.

40 But no, no, no, you're now turning - - -?---Specific - - -

No, Mr Hawatt, listen. You're now turning to the merits. If you answered we were never defeated, then there might be an issue about well, why does that come but Mr Buchanan's just trying to establish - - -?---No, we got defeated - - -

No, listen. Step number one, was it not often that you and Mr Azzi were defeated in council on planning issues? Now is your recollection, yes, look

we usually got everything through or, no, 90 percent of cases we lost?---No, we normally, most of the time the councillors support whatever's moved.

So the answer is, yes, you got through?---Yeah, it was always like that, yeah. Most of them, 90 per cent.

MR BUCHANAN: And you and Mr Azzi essentially controlled the outcomes of council consideration, CDC consideration of the planning and development issues by marshalling the numbers, is that fair to say?---No, that, that's incorrect, no.

And you marshalled the numbers because you had almost invariably the support of the councillors you called the A Team?---That's incorrect.

What's incorrect about that?---Each councillor had their own independent mind. It's debated on the council floor and it's up to each individual councillor to make the decision which way they would vote. It's not up to me or up to Pierre Azzi.

20 The problem, Mr Hawatt, is we have a limited insight into how things worked because we have numbers of sets of minutes of meetings of the council and the City Development Committee in the period 2013-2016 and it does seem from those that you always succeeded. And so what I'm just trying to explore is, was that always the case or can you assist us that there were some occasion when people did exercise an independent mind and voted against you and Mr Azzi and I gather you concede that no, that didn't occur very often?---It hasn't occurred very often because most of the time, recommendation, we don't write the recommendation. I don't write the recommendations, Pierre Azzi doesn't write the recommendations. The council staff write the recommendation and we move the recommendation of the council staff.

And that was why it was a good thing to have Mr Stavis there, wasn't it? ---To do what?

As the director of planning and write the recommendations?---From his, from his staff, not from - - -

40 You knew that all those recommendations were vetted by Mr Stavis because he had to sign off on the report, didn't he?---He doesn't go against his staff. He doesn't go against his staff.

Excuse me a moment. Did you, do you remember anything to do with a legal advice that you saw that had been submitted as you understood it by the applicant, Mr Chanine's company?---Legal advice for what?

In relation to these two DAs for 212-222 Canterbury Road and 4 Close Street?---I don't recall there was a legal advice.

You don't recall seeing one, you don't recall Mr Montague drawing attention to one?---To do what, to say what, I don't, just remind me.

To say that it was an okay thing to have a nil setback on the proposed development site and therefore that the deferred commencement condition should be deleted?---I don't remember that.

10 You don't remember a discussion with Pierre Azzi about why these particular motions should be considered or how they should be considered?
---I just said I can't recall, recall it.

But you would have had such a discussion, wouldn't you?---I might. I don't recall it.

20 I mean we've seen how you discussed, we've heard how you discussed with Pierre Azzi on the phone what the council would do in response to an IHAP recommendation for deferral or refusal, haven't we?---That's the discussion at the time.

You have predicted, and accurately, what council would do in relation to an IHAP recommendation with Mr Azzi. Did you not do that in respect of these particular matters that came to council?---But these were, these were moved recommended for approval.

Yes, so did you discuss them with Mr Azzi beforehand?---Are you saying we, Pierre - - -

30 No, I'm not saying, I'm asking. Did you discuss - - -?---I don't recall.

- - - these motions that Mr Azzi moved with him before he moved them?
---I don't recall. I don't recall these motions.

But it's inevitable that you would have, isn't it?---Anything is inevitable. I don't recall it. It's just, it's something, yes, it could happen or no, it could not happen. I don't, you're asking me the impossible.

40 Do you have any discussion with Mr Barakat about the outcome of the IHAP report or the Sydney Trains aspect or the nil rear setback aspect of the deferred commencement?---I might have actually, I might, him, him, I might, I might - - -

And what might you have, what discussion might you have had with him - - -?---Because I remember - - -

- - - on any of those subjects?---No, no, because I remember talking to him, I mean he might have raised that with me because he, he raised an issue

regarding him running for Strathfield, he might have raised this issue at the time. I don't, I can't recall 100 per cent, he may have.

I note the time, Commissioner, is this an appropriate time?

THE COMMISSIONER: Is that a convenient - - -

MR BUCHANAN: Yes.

10 THE COMMISSIONER: All right. We'll have a very brief adjournment, about five minutes.

SHORT ADJOURNMENT

[3.13pm]

MR BUCHANAN: I'll show you a memo from Mr Montague to the mayor and all councillors dated 3 December, 2015, volume 28 in Exhibit 69, page 167. Its subject is, as you can see, those two particular DAs. And the
20 memo goes for two pages. And I'm going to just take you to the recommendation at the end of the second page. Do you see that?---Yes.

That the committee resolved to approve both applications as follows, and then the terms of the first part of Mr Azzi's motions appears. Do you see that?---Yeah.

The second part of Mr Azzi's motion isn't there, it isn't referred to. Mr Azzi's motion that was agreed to was that the IHAP recommendation not be
30 accepted. Did you have discussion with the, with anyone about whether the IHAP recommendation should be or should not be accepted?---I don't, I don't remember even this.

Pointing to the memo?---Memo, yeah, I just, I don't remember that, so it must be the chairman come up with that, I don't know.

Can I take you to the second page still but a bit higher up on the page, and if we can go to the third paragraph. Third paragraph, second sentence.
"Given the above, our rezoned site has the potential to absorb the building separation distances should the two DAs be approved with a nil setback.
40 The legal opinion concludes that approval of a nil setback for these two DAs allows for the reasonable, orderly and economic development of our site as well as the two DA sites." Now, does the word, "our site," and "our rezoned site," in those paragraphs refresh your recollection that in fact that property that was affected by the nil setback in the proposed development was owned by council, being the old bowling club in Close Street?---Yeah, it sound like it, correct, yeah.

And you understood at the time that it was owned by council?---Correct, because it's run down, that was, when we closed the club down it wasn't operating.

And so you understood, didn't you, that if there was a nil setback then the setback requirements that applied would mean that the separation distance between the two buildings would have to be absorbed by council, to use Mr Montague's terminology. He said, "Our rezoned site has the potential to absorb the building separation distances should the two DAs be approved with a nil setback."---Because it was probably, because as they say, there's a lot of open space there, that's the only thing I can think of, it's all open space, there's a club inside and there's open space, so presumably what, what they're talking about is that site that council owned will, will become a very valuable site in the future.

And you understood that absorbing the building separation distances necessarily meant a loss of potential development value by council in respect of its site.---Oh, not really. It's, there's a lot of open space there. It's, I'm not sure what the - - -

20

Why does it matter whether it's open space or closed space? What Mr Montague was telling you was that the council site would have the potential to absorb the building separation distances. That is to say, it would have to be something like six metres or – as in fact would have been the law – nine metres between buildings at that point. In other words, that council wouldn't be able to build up to three metres or let alone nil setback. It would have to have an even larger setback than would otherwise be the case because the development being proposed by the Chanines would have occupied the whole of the site next door. You understood that?---Yeah, I understand that but - - -

30

And why did you agree to that given your concern for the ratepayers?---The ratepayers will benefit greatly if, if the council, if the club is used in the future for developing, for development. The ratepayers will benefit greatly.

40

The limitation, of course, on the development would be that there would have to be a greater separation distance between the two buildings than would be the case if the three-metre setback that had been recommended in the officers' report be implemented.---Even though there may be a setback, council, what's to stop council from putting an extra two levels? I mean, to me what I believe is really height, height should be much higher with a, with a, with a smaller building envelope in order to have more open space. So I mean, I could look at it and have, yeah, more open space, higher. Council's not losing. They could, they could benefit greatly by, by putting an extra two levels or, or three levels or make the building a bit more narrower and, and higher. It's, it's right on the railway line, it's, and, and, and, and the, and the river. It doesn't, there's no impact on, on any local residents or any housing. It, it, there's a block of units there and it's all

open space. So the ratepayers will benefit absolutely greatly out of this concept what Mr Montague is raising.

10 What I want to suggest to you is the position you took was one which didn't have regard to the interests of the ratepayers in maximising the development potential of the bowling club site.---That's, that's incorrect. I've always, I've always supported getting a greater yield for, for the council. It's the opposite. Mate, I would, if you said to me put an extra four levels, I would say, yes, great. No, there's no, there's no way you can lose with council out of that.

What might have been the contact that you had with Barry Barakat about the - - -?---He could have made an inquiry. I, I just don't recall. But there's, I remember one definitely, I met him over political one, but he may have raised something with me. I don't recall.

20 You understood Mr Barakat was a person who had a financial interest in these two DAs?---I understood there was some link. There was a link between them.

Where did you get that understanding from?---I don't know. I can't remember. There was a link – I can't remember who told me. Could, could be maybe Khouri. I don't, I don't remember. I don't remember (not transcribable)

Did Khouri tell you about his interest, his pecuniary interest in the site? ---No, actually I didn't know he was involved in that.

30 It's unusual, isn't it?---Yeah, it is unusual. Yeah, yeah.

Why should Mr Khouri conceal from you his financial interest in a potential development the subject of DAs that you were voting on, you were going to vote on? Why should he conceal that from you?---Well, he probably wanted to conceal it because he might have felt he was a friend and put us in an obligation, probably best to keep it secret. I don't know. It's up, it's up to him. You'll have to ask him.

40 Don't you think he should have disclosed to you - - -?---He should have, yes, he should have, yeah. He should have.

Are you disappointed in him that he didn't disclose it to you?---I am disappointed, yes.

Excuse me. Can I take you to another topic now, please? Exhibit 281. I want to ask you, please, Mr Hawatt, about a review of the council code of conduct which occurred in 2013. So if I can just set the background for this, please. There might be a way of doing this by putting the document in front of you. Can I take you to – I'll just see if we can find a document that you

would have seen at the time. At its meeting on 22 August, 2013, council considered an agenda item, Code of Conduct Review, and you can see here that in the business papers there was a report by Mr Sammut, and under the heading Background in the middle of the page, he – if we can enlarge that a little bit, please – he provided the background for council’s consideration of the matter by, in the second last paragraph, “In late 2012, local government released the new model code of conduct for local councils,” and in the last paragraph of his report on that page, “The new model code was adopted by council on 28 February, 2013. The council further resolved that the adopted code be reviewed and amended to reflect our requirements and be the subject of a further report.” Now, do you recall the revised code of conduct coming before council in 2013 after the government had promulgated a new model code?---Oh, I don’t, I don’t recall that properly, no.

Do you recall the code of conduct ever being before council?---Yeah, there was, vaguely, I, I remember there was a vague discussion regarding code of conduct.

And what was the vague discussion about?---Just changes to the, to the code of conduct we had.

What are the changes that you can recall?---Oh, I have to go through it. I don’t remember.

Well, do you recall any concerns you had about changes to the code of conduct that were proposed?---No. I don’t recall.

Do you recall ever trying to achieve changes to the, to proposed changes to the code of conduct?---I might have raised something, but I, I – there, there could be something, but I don’t, I don’t remember or recall what it was. Could have been something, I don’t remember.

If I could take you, please, to – we’ll take you to minutes of the meeting of council held on 25 July, 2013, so that’s earlier than that paper from Mr Sammut that was taken to the 22 August, 2013 meeting of council. This is still part of Exhibit 281 and if I can take you, please, to page 3. Can you see agenda item 2, Code of Conduct Review, resolved Councillors Hawatt and Azzi that the matter be deferred to the council meeting on 22 August, 2013 to allow for a councillor workshop?---Yep.

Can you tell us why you moved that?---Well, it’s for me to move, councillor workshop would have been, a much better chance to have a councillor workshop than, than wait until it’s finished to see what other issues might come up. That’s - - -

What was it that you wanted considered by councillor workshop?---A council workshop is a, a number of things that, that arranged at a workshop. It’s not one thing that I've got.

Yes, but what was it on this occasion?---I don't remember. I don't, I don't remember if I had any, any particular concerns about this.

Excuse me for a moment. We'll just show you a document that was before council at the time of that meeting on 25 July, 2013. Well, no, I apologise. I'm wrong about that. It was prepared in response to the motion that the matter of the code of conduct review be deferred to the August meeting of council. Can you see that this is a memo from Mr Montague dated 31 July,
10 2013, to the mayor and all councillors and its subject is Councillor Workshop Code of Conduct. Can you see that?---Yep.

In the second paragraph, you see that a workshop has been scheduled for Wednesday, 14 August, 2013. Can you see that?---Yep.

Now, do you see in the second – I'm sorry. The subheading Part 3, General Conditions for Development Decisions. Do you see that subheading?
---Yep.

20 Second paragraph underneath that subheading reads, "In order to dispel any suggestion that parties at the meeting may" – I'm sorry, I'm going to have to take you to the first paragraph. "Councillors participating in meetings regarding applications for development with staff, developers and other parties prior to completion of assessing officers' report thereon is a practice that has potential for raising concerns about perceived partiality on the councillors part. Without controls in place to ensure transparency and confidence in the integrity of the practice, there is a risk that council's overall public standing may suffer adversely." Did you agree with Mr Montague about that?---Yep. It was, I had no issues with that.

30 The second paragraph under that heading read, "In order to dispel any suggestion that parties at the meeting may have received partial treatment or were otherwise unduly favourably or unfavourably dealt with, an amendment is proposed to the code of conduct that councillors not attend such meetings unless both the developer (applicant) and affected parties (objectors) are present. As councillors are required to have an open mind when determining development applications at council or City Development Committee meetings, councillors should not be seen to be favouring any one party over the other at predetermination meetings." And then we went on to
40 talk about similarly when applications are likely to be determined under delegated authority. In the next paragraph he went on to say, "It is also proposed that minutes of the predetermination meetings be taken and place on file where they will be accessible to all councillors and other interest parties in accordance with the Government Information (Public Access) Act. Councillors are reminded that code of conduct prevents councillors approaching staff below manager level." Is this matter coming back to memory now?---I, I don't, I don't remember it, no.

You don't remember it?---I don't remember it.

Did the workshop take place?---I can't recall.

Did you attend a workshop on a proposal to amend the code of conduct or to review it?---I, I don't recall the workshop or even attending the workshop or being there. It's been years ago. What, what, what year is that?

10 You usually did attend councillor workshops, didn't you?---Not all the time, no. Sometimes I missed out. Depends. Sometimes you make it, sometimes you don't.

Well, this was a proposal by Mr Montague to restrict the access that councillors would have to staff when considering pre-DAs and applications that might be determined under delegated authority, it would restrict them so that you couldn't attend the meetings unless both the developer and affected parties were present and it would require that minutes be taken. It's not likely, is it, that you had no interest in that?---I moved it. I moved to have it, the workshop.

20

Yes, that's right.---But I don't remember, so I don't remember what the conditions, what the general conditions was, I don't remember.

How could it be that you have no memory when you moved to have the workshop in the first place and then when we can see that the subject matter is something that is very likely to have interested you and Mr Azzi.---Look, I don't remember this. I don't remember it.

30 Well, what happened in relation to Mr Montague's proposal?---I don't know. Did we have a workshop? I think you've probably got the records more than I have. Did we have a workshop? I don't remember the workshop.

What happened to Mr Montague's proposal?---I don't remember this.

Is that an honest answer?---That's an honest answer, yeah, I don't remember this.

40 Well, we can see the outcome of the meeting of the workshop if we go to page 57 of the business papers of the meeting of council held on 22 August, 2013. And if we could enlarge the bottom half of the page, please, can you see that Mr Sammut reported to the meeting of council on 22 August, 2013 that, "The following new provisions are recommended for inclusion in our code of conduct as it is considered that they will further enhance good governance practices at Canterbury. These amendments include clarification of the requirements related to development meetings as agreed at the councillor workshop of August 13, 2013." Do you see that?---Yeah.

So you can see that the workshop did happen.---Was I there? I can't remember. Is there any list of who attended?

Please, Mr Hawatt.---I don't remember this.

You can see that the workshop did happen.---Yeah, but I don't remember who attended. I can't remember being there.

10 You can see that the workshop did happen, can't you?---Yeah, but did I go, was I there?

You're not prepared to even answer that question that you can see - - -?---I don't - - -

- - - on the page in front of you - - -?---Yes, I said yes.

- - - that the workshop did happen?---I said yes, but I don't remember it. I don't recall this meeting.

20 The workshop resulted in changes to what Mr Montague was proposing. Do you remember that?---No.

Do you remember that the changes were that instead of the restrictions being on meetings with staff for predetermination DA meetings, it be a restriction on meeting involving staff below manager/director level, unless both the applicant and other interested parties are present.---Yeah.

Do you see that change?---Yeah.

30 And there's a second change. The second change was the words, "on council premises," that councillors could attend pre-DA meetings involving staff below manager/director level if they weren't on council premises, but if they were on council premises, then you had to have both the applicant and the interested parties present.---Yeah.

How did those changes to Mr Montague's proposal occur at the councillor workshop?---How did they occur?

40 Occur.---I don't recall. But, but reading this, councillors must not attend a predetermination, it's a pre-DA.

Yes.---I've never attended a pre-DA meetings.

I'm not asking you that. And please don't take it from that response, Mr Hawatt, that I'm accepting that answer either, but I'm asking you what was it that happened, as you understand it, at the councillor workshop to result in those changes, those loosening of the controls that Mr Montague had

proposed in relation to meetings in relation to pre-DAs with staff?---I don't remember this. I don't remember it at all. Don't recall it.

You weren't involved or aware that these changes were proposed to Mr Montague's proposal?---Look, at the time I probably would have if I was there, but I don't remember.

10 Well, you were the one who wanted the opportunity for councillors to consider the code of conduct review, so it just seems surprising that you would have no memory of what occurred in, on the occasion that you asked be scheduled to consider this very subject.---Just because we move a motion, doesn't mean we own the motion. We move it, someone in council must move it and second it. I don't, just because one of the councillors moves it, doesn't mean they own that motion. You're making out there's, I move it and that's my motion and it's, I should know about it. Ninety per cent of times we move motion we don't know, it's just as recommended, as recommended, as recommended. We don't know what the motion is.

20 But on this occasion it wasn't recommended, was it - - -?---It was moved - - -

- - - that a councillor workshop be conducted on the review of the code of conduct?---No, but it's moved, it's moved, a, a request - - -

30 So the question is, why did you and Mr Azzi procure the deferment of consideration of it by council and the creation of an opportunity to have input that was not recorded about the changes that would be made to the code of conduct?---We must have been asked. It must have been up, coming through the, from the director or someone had to move it. I just, I don't remember.

Asked by whom?---Could be the director, Andy Sammut or, someone's got to move it in council, so if there was a workshop that was prepared, they were getting ready to, to, to set up, somebody in council must move it and second it and, and vote on it.

40 Now, you, the outcome at council at its meeting on 22 August, 2013 required that there be training provided for councillors and staff on the new code. You were happy for that training to be provided to councillors and staff on the new code.---Yeah. Nothing wrong with that.

Were you involved in any of that training?---I don't recall.

You would have, if training had been organised for councillors, you would have attended it, wouldn't you?---I think I would attended the original, original ones from, from the, from first elected to council. I'm not sure about any new ones after that. I don't, I don't recall.

Why wouldn't you have attended the training that council organised for councillors and staff on the revised code after the new code had been promulgated by the government and then amendments made by council?
---Look, I might have but I don't recall it.

Is there any reason you wouldn't have attended?---I might have been busy or away or not, not, not always that we, we attend workshops or meetings. Sometimes we, we miss out because we, something comes up. I don't know.

10

If I can – excuse me a moment. So did you agree with the changes that were proposed, if I can – you can see there, Mr Sammut reported the outcome of the councillor workshop to clarify the requirements relating to development meetings. Just pausing, before I take you to them, you were very interested in development meetings, weren't you?---I was the, the deputy chair of the development committee, so yeah.

20

Yes, you were very interested in the subject of development meetings, weren't you?---I was the deputy chair, so I was chairing, sometimes I chair the, the committee meetings, yeah, sometimes I don't.

But this is the subject of meetings with developers. You were very interested in that subject, weren't you?---I'm interested in, in, in responding to people's enquiries, whether be it development, and most of them were, yes, development. Most of the enquiries, they come through development. And any other than I, I get called for. Oh, could be cleaning, could be street issues – whatever.

30

And didn't you - - ?---I follow them all.

Did you not attend any pre-DA meetings with Mr Chanine?---I don't recall pre-DA meetings. I don't attend pre-DA meetings. Generally, I do not pre-DAs between the, the applicant and the staff and they sit down and, it's, before a DA is submitted, they sit down and work it out. That's what a pre-DA is, to see if there's any issues with it.

40

Or with Mr Montague, pre-DA meetings with Mr Montague?---No, no, nah, nah. We, I don't, I don't recall, I don't recall attending any pre-DA meetings.

So, can you have a look, please, at the text under the heading, Proposed Addition, this new clause 3.12 of the code, what did you think about that?
---3.12?

Yes.---Well, it says, "Councillors must not attend pre, pre, pre-DA meetings, assessment meetings on council premises." I, I haven't, I don't recall attending any pre-DA meetings.

Yes, but were you in favour of that change being made to the code of conduct?---I mean, I, I have no problems with it. If I, if it's been adopted, that means we all supported it, most likely.

Well, it was adopted.---It was adopted? Yeah. So we – did, did I vote against it, did I? I can't remember.

No.---So, so I must have supported it.

10 No, it was adopted by council.---Yep.

So what did you think of it? Did you think it was a good thing, or - - -?
---Well - - -

- - - didn't go far enough, or - - -?---Well, we all supported it, so that, that was it. It's, we, I didn't really take it, thought any otherwise. It's just there, and we put it in, supported it.

20 Can I ask you, did you think that it would have been better if the motion had been expressed or the change had, so the new clause 3.10 had been expressed as extending to meetings with the general manager and director?
---I'm, I'm not sure what you're trying to get at.

Well, do you see that it's, what it does is restrict councillors in having pre-DA meetings involving staff below manager/director level? My question is, do you think that it would have been more appropriate if the restriction had been extended to meetings of, with all staff, including the general manager and the director of planning?---Never thought of it.

30 Well, that was what was proposed by Mr Montague in the first place, and it was after that was proposed that you, I'm sorry, that the councillor workshop was held in August. And you, so you're sure you never thought of it?---I don't recall this. I don't even recall this workshop, what, what was discussed in the, in – I, I don't recall it.

You didn't declare an interest, did you, when the DAs were approved for Mr Maroun's property? I think we've established that.---I had no reason, I had no reason to declare interest.

40 And you didn't declare an interest for the approval of Mr Demian's property at the Harrison's site or the extension of the Harrison's site at 570 Canterbury Road.---I had no reason to declare interest.

You didn't declare an interest in relation to the planning proposal for Mr Faker's property.---I had no reason to declare interest.

You didn't think that you needed on those occasions to declare that you had an interest by reason of your relationship with those developers?---No,

because I always believe what, what, what I believe in is correct or not correct, I support what, whatever I believe is right or, or not right.

But whether or not you do that, you're saying that you - - -?---I believe in, in what I do.

- - - vote in accordance with your assessment of the merits.---Correct.

10 Whether or not you believed that the proposal before you had merit or not, you knew, didn't you, that there were requirements in the code of conduct to declare an interest, to avoid conflicts of interest and to declare any interest that you had.---I had no interest to declare.

Please, can you just answer my question?---I had no interest to declare.

Please answer my question.---Yeah.

20 You knew that you had an obligation under the code of conduct to declare when voting on approval of things like submissions for planning proposals or development applications or section 96 applications to avoid a conflict of interest firstly, you knew that the code of conduct required that, didn't you? ---There was a code of conduct and I didn't break the code of conduct. I believed, I did what I believed was correct.

THE COMMISSIONER: So you knew it contained that provision?---It had provision. I don't recall what's in there but one thing I had, I knew if there was any benefit or financial benefit or, or whatever towards me, I have to declare it or any relative or something like that.

30 So financial benefit or any relative?---Yes, that's my understanding.

MR BUCHANAN: So you knew that financial benefit would be what was called by the code of conduct a pecuniary interest?---Correct. And you knew that a relationship such as being a relative of the developer would be a non-pecuniary interest?---Correct, unless, yeah.

40 And you knew that the code of conduct didn't confine the requirement to disclose an interest to relationships which were just of family, didn't you, you knew that it was personal relationships such as relatives?---Well, I mean son-in-law and daughter is a, is a relative which I believe should be declared, but the rest that I had no financial benefit or any other links towards it, I, I, there's no need for me to declare it and I believe I followed the code of conduct to that extent from what I believe was correct.

You knew that the code of conduct required that you declare an interest if you had a non-pecuniary interest such as a relationship which included a friendship with the proponent, didn't you?---No, that's not correct.

But you did know that, didn't you?---Did know what?

I'm not asking you whether you failed to declare such an interest, I'm asking you, you knew that the code of conduct required that you disclose that you had an interest such as a relationship which included a friendship - - -?---No, not - - -

- - - with the proponent, didn't you?---No, no, not with a friend.

10 THE COMMISSIONER: So your view is that the code of conduct didn't require you if it was a friend's application - - -?---Correct, yes.

- - - to declare that friendship?---Correct, correct.

MR BUCHANAN: It doesn't make much sense, does it, Mr Hawatt. Why would the code of conduct require you to disclose a relationship such as the fact that you might be a relative of a proponent and hate their guts on the one hand, but you don't have to disclose if you're favourably disposed towards them because they're your mate?---That's the way it is.

20

Well, that doesn't make any sense though, does it, Mr Hawatt?---Well, it does, yes. I mean a relative is a relative. You can, you can make all the interpretation under the sun, which is better as a relative, there's more, it's better to be more transparent if there was a relative. As a friend, you've got friend everywhere. I mean, it's like, you can be a friend of a club, you can be a friend of a, a sporting team, you can be a friend on a, having coffee with. You can, you can be a friend of somebody who comes and, and, and you go to their house and you have coffee with them to look at the issues. I mean, man, if you declare friends for every person, forget it, you won't be able to represent anyone.

30

You knew that a mere association with someone who might benefit from a decision of council on which you voted was something that you should disclose, didn't you?---I, I believed in, everything that I've done, I believe in the merit of it and whatever I support or didn't support, it's based on what I believe in.

40

If we can have a look again at Exhibit 281, it's minutes of the meeting of council, 22 August, 2013, page 4. See, the agenda item after the code of conduct review which was agreed to by council at its meeting on 22 August, 2013, and that was agenda item 6. Agenda item 7 was Financial Assistance Program, 2013-14 and can you see that the first part of the motion was funds totalling 82,189 plus GST be allocated to groups as recommended in the table, included in the attachments. Can you see that?---Yeah.

Can you see above that agenda item, that you declared, to quote the minutes, "A less than significant non-pecuniary interest in the following item. As stated, the nature of the interest as being his association with the Canterbury

Multicultural Aged and Disability Support Service Inc.”---Because I’m a director.

And you then left the meeting.---Because I’m a director.

Yes, you were declaring an association.---As a director.

10 It doesn’t say that. It just simply says you – what this shows is that you understood that were obliged by the code of conduct to declare a conflict of interest which was a mere association.---No, I’m a director.

And it’s not with a relative.---I’m a director. I’m still a director with this organisation. I’m a director of Multicultural Care. I’ve been with them for, like, 15 years or more as a director. Yes, because I was a director, I felt an obligation because we were receiving a grant.

20 You see, your failure to disclose your relationship with Marwan Chanine when voting on the DAs for 212-222 Canterbury Road and 4 Close Street was a dishonest exercise of your responsibilities as a councillor at Canterbury Council, wasn’t it?---That’s incorrect.

Because you knew that by exercising that vote in that way, you were benefiting one of the boys, one of your friends?---That’s incorrect.

You knew, however, that you were benefitting one of your friends, didn’t you?---That’s incorrect.

30 Well, what’s incorrect about that?---Nothing to do with a friend. I do, look, if, if it was my brother - - -

No, no, please. Please, please, please. Focus on my question.---I’m focussed on your question.

You knew that you were, that if the vote was in favour of the DA it was a benefit to the developer, correct?---If it was, it met the - - -

40 If the vote was in favour of the DA, it was a benefit to the proponent of the development? You knew that, didn’t you?---Of, of course it’s going to be of benefit to any person you support.

And you knew, therefore, that by voting in favour of those two DAs that you were contributing to a benefit being conferred by council’s resolution on your friend, Marwan Chanine, didn’t you?---That’s incorrect.

You knew you had an obligation to disclose your relationship with Marwan Chanine and therefore your interest in that matter, didn’t you?---I had no, no, I had to benefits.

And your failure to disclose that before the vote was dishonest, wasn't it?
---No, it's not dishonest. I never made anything dishonest. It's always been based on what I truly believe in, is correct.

10 If you knew that the effect of what you were voting on would be to benefit Marwan Chanine, why wouldn't you declare that?---There's nothing to declare because I don't believe I need to declare it. I, there's no financial benefit or any interest to me, not as anything else, and, and as a friend, he's not a friend. I have coffee with him. He rings me regarding to his concerns, like anything else. He doesn't visit my family. I don't visit him.

You go out to nightclubs together.---Nightclub is for a meeting for Godfrey Vella that I organised. It's not a social with me.

You negotiate for him to give you \$1.5 million.---That's his, he's buying a property that's worth that. That's, it's up to them.

20 You don't think that the commercial relationship that you had with Mr Chanine was something that you should have declared in relation to the DAs for 212-222 Canterbury Road and 4 Close Street?---For what? I, I never, there's no benefit for me on that. Just, I supported - - -

You were getting money - - -?---Getting money from where?

- - - as a result of your commercial negotiations with that man.---For, for my property. Not from him. I got it from his, his, his buyer that he introduced to me.

30 You knew you were getting that money as a result of your negotiations with Mr Chanine, didn't you?---What, what date is that? Hold on. What date are we talking about? What dates are we talking about?

You knew that Mr Demian was a friend of yours.---Mr Demian is not a friend of mine either.

40 He was a person that you had a close personal relationship with.---Got to know him. I got to know him through his issues with council. But he doesn't visit me, I don't visit him as on a, on a social basis. We might have seen, seen each other at, at Pierre's house but that was it.

And you were dishonest in failing to disclose your relationship with Mr Demian in relation to his matters before council.---I have, there's no need to declare it. I have no financial benefit whatsoever with him.

You knew that Mr Maroun was a friend of yours with whom you socialised regularly.---I still don't have financial benefit. It's just assisting someone. Again, I visited him because he can't drive and that was it.

You knew that you were obliged to declare your relationship with Mr Maroun when voting on his DA for 538 Canterbury Road, didn't you?---No, I voted on the merit of the application.

And it was dishonest to fail to do so, wasn't it?---It wasn't dishonest. I, I believe it's correct.

10 There was no merits in consideration. You simply heard about the IHAP refusal and immediately said, well, council will vote to approve it. That's what you told Pierre Azzi without even considering the merits.---I, I, I vote on the merits and I vote honourably and, and on the merit of the application. I don't care who they are.

Why did you tell Pierre Azzi that council would vote to approve it when told that the IHAP had voted to defer it?---This is for the, I don't recall this one.

20 For the car wash site.---To defer it for, for what? You're asking me something to - - -

Can I just ask you a related question? If a councillor does have a friend who will benefit from a decision that the council makes and that the councillor is going to vote on, do you think it is the sort of thing that other councillors need to know about or that the councillor needs to know about?---It depends the type of friend you've got. There's a friend there's a friend-friend. I don't know which, the, the, the people I, you're talking about at the moment, they're not, they're, you say they're a friend that you have coffee with maybe or they ring you, but they're not a friend where you, you go out and socialise, family, visiting each other. That's a different type of friend.

30 THE COMMISSIONER: So is that a friend-friend?---Yeah, that's a friend-friend. So the other ones are not friend-friend.

40 MR BUCHANAN: And a friend-friend is the type of relationship that you believe you were obliged to disclose to council before the council considered a DA which would benefit that person, is that right?---Look, I believe I, every, every person that I supported, whether it's Chanine to, to Demian, to whoever, I believe, I truly believe based on the merit of those application, if I wasn't happy with it, if I didn't not support it, I would not support it - - -

But don't you understand, Mr Hawatt, we're talking about something else. --- - - - and it was based on the recommendation of the council staff.

You're changing the subject.---No.

We're not talking about what you thought of it, we're talking about the integrity of the decision-making process at council, and as to whether all the

cards are on the table when other councillors are considering the matter, and whether there is a necessity under the code of conduct for ensuring that councillors are made aware when there is a relationship that a councillor has with a development proponent which means that they should be aware of that before the matter is voted on.---I didn't have any relationship where it, it entails that I need to declare interest on. So no, there's no, there was no relationship where I had to declare interest on and, and mention it to any councillors or at any meetings.

10 THE COMMISSIONER: You were asked by Mr Buchanan if a friend-friend had an application before council, was it your view of the code of conduct that you would have to declare your relationship with that person as a friend-friend?---It, it, it depends on the, the situation, but most likely I would, most likely I would declare.

So your view is that would be covered?---Yeah. Most likely. And it depends on the, the relationship, the friend-friend relationship with him.

20 MR BUCHANAN: And you accept that that was something you were obliged to do?---It depends on the, exactly what the situation is with the specific person.

Yes, I understand. But you accept that it was something that you were obliged to do.---It's not an obligation. It's up to the individual councillor to make that, it's up to them, it's -- look, it's left, in, in our code of conduct, it's left to the actual councillor to declare interest, pecuniary or nonpecuniary, or, or minor interest or not, it's up to them, but it was left to the, to the councillor to make that call. And it's a call. It's a call based on your honour, what you believe is, is the right thing to do at the time. It's not a
30 call where it's this or that, you know, or because he's a friend, you have to, you have to declare it. No, it's, it's a call that you believe is the right thing to do at the time, at the time. And I believed whatever I did at the time was the right thing that I did.

How do you know that that's what the code of conduct said?---Because the, I believe I had no pecuniary interest whatsoever, there was no, there was an arms-length - - -

40 Mr Hawatt, please answer my question. You just gave us a lengthy answer about your understanding of the code of conduct, and my question to you is, where did you get that understanding that that was what the code of conduct said?---That's a general understanding (not transcribable)

But where did you get it from?---Where we got it from? From, from years of being on council, I guess.

From reading the code of conduct, perhaps.---I might have read it once. Lucky if I read it once. But from experience - - -

Why, why, why - - -?---From experience - - -

Hey, hey, hey, hey. Slow down. Why are we lucky if you read it once?
---We, we are a - - -

Why are we lucky if you read the code of conduct at Canterbury Council once in the 20 years you were there?---Because - - -

- 10 Can you answer that question, please?---Because we are, we were, we're on, the part-time councillors, that we have a full-time job, that sometimes (not transcribable) when you read the, the council business papers, we don't read every, I don't read every, every line in there. I read the recommendations and I follow up any issues that associated with it. We don't have, I don't have, not, not every councillor has, is a full-time councillor to, to sit there and work on it. I have a job to, to perform. I have a family to look after and, and it's not a full-time job for me. It's part-time. So yes, if I can read, if I had the time to read, I would. But I don't read it all the time. I don't read every document that comes to the council. Otherwise, I'll be sitting
20 there full-time, doing council business without any, and, and, and, and, and jeopardise my own business.

Where did you get the idea from that your association with that community group was something that you should disclose - - -?---Which community?

- - - to council in its meeting of 22 August, 2013?---The community, the Multicultural Care?

- 30 Yes. Where did you get the idea from that that was something you should disclose?---Because I was a board, on, I'm a director, on a board, a director.

Yes. But why did you think that meant you should disclose it, if you hadn't got that impression from your memory of what the code of conduct said?
---No, because if I was just a member I wouldn't declare it but because I was a board director, yes, I declare it. That's what I believe is my judgement. If I was, you could be a member without being on the board, if I was just a member of that organisation, yes, I wouldn't declare it, but because I - - -

- 40 You weren't going to get any of the money yourself, were you?---No, we still - - -

Well, what difference did it make?---We still make the decision, we make the decision how the money's spent. We make the decision based on the funds that come in. I'm on the board.

So where, I'm asking you though, where did you get the idea from that that was something you should disclose?---From years of experience on council.

And what was that experience that led you to that view that that was something you should disclose?---It's just a general common sense approach.

10 What was common sense about it?---A common sense approach that we take, that we believe if there's a pecuniary interest you declare it, if there's a non-pecuniary interest you don't declare it and you make a judgement based on that particular time and, and that incident at the moment. That's, that's how we do it, that's how I do it.

Were you friends with the community group?---Which community group?

Or a friend-friend? The multicultural organisation.---I'm on the board.

Yes.---So I - - -

20 Were you a friend of them?---I'm a friend-friend-friend because I'm on the board board.

THE COMMISSIONER: Three friends?---So I become three friends, yeah, I'll declare it.

MR BUCHANAN: Can I take you, please, to Exhibit 223. This is a report by Mr - I'm sorry, it's a resolution of the meeting of council on 5 December, 2013, in relation to, if you can look at agenda item 3, Design Review Panel. Do you see that?---Yep.

30 The Urban Design Review Panel was a concept that you had some interest in, was it not?---Oh, it's something that I think we should have, yeah, it's important, designing, having good design buildings is very important.

This was the body that you considered could usefully be interposed at an early stage of the assessment process after a development application had been lodged to provide a preliminary view as to the design qualities involved in the proposed development.---Correct, yes, I believe that, yeah.

40 If I can take you, please, to pages 41 to 43 of this exhibit. It's the minutes of the meeting of council held on 29 October, 2015, and it's in relation to Independent Hearing and Assessment Panel review. And can you see that there's a motion there by Mr Azzi in relation to a number of dot point items in relation to the IHAP policy and constitution?---Yep.

And that there were some changes that were made as a result of a motion that you moved, if I can - - -?---Amendment.

- - - just take in the bottom of that page, page 41. If we can take you over then to page 42, please. Do you see that the motion that Mr Azzi had

moved, which I can tell you now was proposed by Mr Sammut, recommended by Mr Sammut in his report on the Independent Hearing and Assessment Panel review, had as item 3 “a day be set aside annually for councillors, staff and IHAP members to view completed developments and to discuss planning issues”. Do you see that?---Sorry, I’m just a bit tired. Sorry, where are we? Which one - - -

I’m sorry. I do apologise, Mr Hawatt.---Where are we now?

10 THE COMMISSIONER: I think we’re the page before.

MR BUCHANAN: Yes, I need to take you back to page 41.---41, yeah, all right.

And then it’s item 3. You can see there are four - - -?---Of six.

- - - parts of Mr Azzi’s motion.---Okay, yeah (not transcribable)

20 And item three was “a day be set aside”.---Yeah, yeah. I see that, yeah, sorry, yeah.

You moved a motion - - -?---An amendment to the motion.

Correct.---Yeah.

30 Correct. And it excluded that item that a day be set aside for councillors, staff and IHAP members to view completed developments and discuss planning issues. Was there a reason why you thought that should be excised, taken out?---Trying to work out why. I, I don’t, I don’t remember why, the reason for it. I don’t, I don’t recall, honest (not transcribable)

40 And if I can take you back to item 4 in the recommended motion that was moved by Councillor Azzi. “Community forums be held as necessary to explain to residents changes in planning practices.” That was amended by you to read “Community forums be held as deemed necessary by the general manager to explain to residents changes in planning practices.” Do you know why you made that change?---I don’t know. Could be just to have independent forums to have the community participate. I don’t know. It’s up to, up to the chairman.

Well, it made it less likely that they would happen because it required them to be convened by the general manager.---Well, not really because sometimes we get complaints. Look, I have to say, we get complaints from residents regarding IHAP because they’re saying is they don’t give them the opportunity to – they said, look, they, they can address IHAP but a lot of times residents come back to us saying, look, you know, they didn’t give us the, the opportunity to discuss this and discuss that and we tried - - -

Sorry, Mr Hawatt, I apologise for interrupting, but can I just point out that the original motion – number 4 on page 41 of Exhibit 223 – was “Community forums be held as deemed necessary to explain to residents changes in planning practices.” It’s not restricted to IHAP or indeed even about IHAP. It’s to explain to residents changes in planning practices. Why did you think that should not be available to be organised as seen fit by the staff but rather to be deemed necessary by the general manager?---Well, the staff wouldn’t want to get involved in community forums. I think the GM would be better placed to, to make that call. It’s a community thing. I think it’s something that the GM would handle very well. That’s what I believe.

In relation to the Urban Design Review Panel, do you remember that Mr Stavis over 2015 – after he’d started work, obviously – came up with a series of options for the Urban Design Review Panel for council to consider?---Yeah.

Did you have discussions with Mr Stavis about those options?---What, having the panel, a new panel?

20 Yes.---Oh, I, to me, that would be the best thing the council would have done.

Certainly. I’m not questioning that, but Mr Stavis came up with a series of options, in fact four particular options of different ways that the panel could operate. Do you remember sitting down with Mr Stavis or at any stage having a discussion with Mr Stavis about the type of panel and how it should operate?---I think he would have raised it. Yeah. I, I recall something about it because I was quite interested in, in having a, an Urban Design Panel with professional experts in there, independent experts from outside to make, to make their own recommendations. I, I, I remember there was something that I was quite interested in.

Excuse me a moment. If we can go to page 50 on page 94 of the meeting minutes for the minutes of the meeting of council of 25 February, 2016. You can see there that Mr Stavis has summarised four options and I’m not going to take you through the details of all of them and indeed I don’t want to mislead you but the table that he had set out there is not confined to that page but it runs on to the next page of the minutes of the, I’m sorry, of the paper that he had prepared for council as well. Did you have any discussion with him about what was the preferable mode of operation as to whether and the extent to which the public could be involved to the extent to which the public could be aware of what the Urban Design Review Panel did?---Look, I’m, my input would probably be, be general based on what I believe is, is a, it’s an idea, a good idea to have in architects and planners and people from outside with a different view, point of view in regards to looking at, looking from outside in and come up with good ideas. So I don't think I, I would have went through all this with him, it’s just too much, it’s something that

he came up with but I would have gave him my input in regards to the general position that I, I would like as well.

10 You see, the fourth option – which, I might add, he recommended – was one which did not involve a review by external specialists so much as option 1 did, and I’m just wondering whether that was something which you were in favour of, not having outsiders involved in the process as much?---No. I prefer outsiders. My position has always been having outside people looking in, outside experts in design, architects, planners, totally from outside. That’s my preference.

So did you disagree then with Mr Stavis?---Most likely I would disagree with him. I, even now I’m thinking about it, there’s no way I would – I would prefer outsiders. My position would have been to have someone from outside to come in. That’s position now. At the time, I’m not sure if I agreed with him but it would be stupid for me to agree with him on that, I have to say.

20 Did you have an argument, do you remember, a disagreement?---I, I don’t know, I don’t, I don’t recall this but I remember the, the panel idea he had come up with and, but generally, I, I don’t, I understand haven’t looked at those details, I haven’t seen them.

If I can take you back, please, to Exhibit 85, page 16. Just to finish this topic, Commissioner. This is from council’s electronic schedule of meetings and this is a meeting that was arranged by Mr Montague’s PA for inside council on 21 October, 2015 with the topic being Urban Design Review Panel. Can you see that?---Yep.

30 And that the attendees were identified as Mr Montague, Mr Stavis, Mr Azzi and yourself?---Yeah.

Can you assist us as to why you and Mr Azzi were organised to attend that meeting?---I don’t, I don’t, unless we showed, definitely I would have showed some interest in it, but I don’t know about Pierre Azzi, and probably was invited because of I showed interest in it, so I don’t, I don’t recall why he invited just Pierre and myself but me, all I can do is speak on my behalf, yes, I had showed interest in, in this, yes.

40 Could it be related to the fact that you and Mr Azzi were the deciding voices when it came to planning and development issues - - -?---No, no.

- - - at meetings of council?---No, I don’t think so, I don’t think so.

That would be an explanation, wouldn’t it?---No. I think Pierre might have showed interest as well, I don’t know.

Can you assist as to why no one else was invited, no other member of council, why you two and no other member of council?---Well, you'll have to ask whoever sent that email, but as far as, as far as I can read it, I definitely showed interest and I'm not sure about Pierre, most likely he would have, and nobody else. I mean if other councillors would have showed interest they probably would have been invited.

10 Are you saying that other councillors didn't really show much interest in planning and development matters at council in the years 2014 through to 2016 compared to you and Pierre Azzi?---To me it's, look, I don't know how other councillors operate in regards to their inquiries.

No, no, no, all you have to do is put in a box the interest that is shown in planning and development matters at council in the period 2014/2016 and divide up how much of that is the interest shown by you and Azzi and how much of it is the interest shown by other councillors. Would it be fair to say that the interest shown by you and Azzi would be far greater than the rest of the councillors combined?---Well, I got, I, to me, if I can speak on my behalf, I probably got the bulk of the inquiries in regards to planning and
20 people with issues, probably about 10 times than any other councillor. Yes, I would be the highest.

And why do you think that was?---Because, because I understood the planning, I responded to people, I supported them genuinely from A to Z, I, I kept pace with their concerns and they respected that and they liked that and they, the word spreads, I listen, I answer my phones and, and I respond to their calls. That's, that's the way I am.

30 And the fact that you're able to influence council decisions - - -?---I don't influence anyone's - - -

- - - in particular recommendations to council?---I don't, I don't influence anyone's recommendations or decisions, I go for what I believe in, I make inquiries on behalf of those, those residents, whoever calls me, and I, I, I take, I take whatever I receive into consideration and make my own judgement towards the end.

Is that a suitable time, Commissioner?

40 THE COMMISSIONER: Yes.

MR ANDRONOS: Commissioner, might I raise an administrative matter before we rise today.

THE COMMISSIONER: Yes, of course.

MR ANDRONOS: My friend, Counsel Assisting, has done a very good job of keeping the parties informed of his progress through this examination and

obviously things change in the course of time and we now apprehend that things are moving more quickly than had originally been expected, and that we'll certainly be likely – or I withdraw that – we are now likely to be in a position to conduct our own examinations this week, perhaps as soon as tomorrow we now understand. This raises a couple of things, firstly we have all at the Commissioner's suggestion put a whole lot of dates in our diaries next month and the month after.

THE COMMISSIONER: Yes.

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MR ANDRONOS: My first question is, can we safely take some, perhaps most, perhaps all of those days out of our diaries. I know I speak for others in this regard, people are juggling possible vacation of hearing dates - - -

THE COMMISSIONER: No, I understand that.

20

MR ANDRONOS: - - - and so the sooner we can be informed of that, I think certainly from the point of view of those, those of us on this side of the bar table it would be much appreciated. Secondly, the likely timing for our examination. It is a matter, obviously, of concern. We had – certainly I and I know some other counsel at the table – had been expecting we would get on later this week. There would appear to be no utility in rushing us on if the time is available and it falls within the original parameters of what the hearing was going to be, which was going to take us up to this Friday. Perhaps one way we could address this, and I don't know whether other people around the room have a view on this at this stage, but if the Commission were to understand how long we each expect to be with this witness, Mr Drewett could perhaps indicate how long he expects to need with the witness prior to conducting his examination and whether we could work backwards from the end of the week to fill in the timetable so that everybody can be adequately prepared, that will no doubt save time in the examination, although it might mean we're here until Friday and there would possibly be a prospect that we could wrap up earlier if we were forced on tomorrow. So - - -

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THE COMMISSIONER: So they're the two issues?

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MR ANDRONOS: Yes, and I think one way in which we could perhaps begin to address that, my friend Counsel Assisting may have a clearer idea at this stage, maybe something we can deal with offline, or it may be something which we can deal with formally in the Commission this afternoon or tomorrow morning so that everybody can know when they're likely to get on, to make sure they're adequately prepared.

THE COMMISSIONER: All right. Just before I ask Mr Buchanan, I had sent a message to the solicitor from the Commission to make the informal inquiry of the parties about how long they anticipated at the close today. First thing I just wanted to emphasise, we did have to the end of this week

originally booked. Next week, if we need next week, we've got to move down to LECC, which from a Commission perspective is a hassle because we've got to move all this down there, so I am very, very keen to finish the evidence this week. Can I just ask, Mr Drewett, putting you on the spot, have you got any feeling at the moment how long – I will give you obviously some time, as I've given other counsel, with your witness when I think Mr Pullinger will be the last person finishes – how long you would need?

10 MR DREWETT: I think I would need a day to have a chat to my client.

THE COMMISSIONER: I hope that's an ambit claim because I'm not minded for a day, but - - -

MR DREWETT: I must confess, Commissioner, it's come as a bit of a surprise to me.

THE COMMISSIONER: All right.

20 MR DREWETT: And I'd like to take that on advisement for my solicitor as well, but my initial thoughts would be a day, but maybe it can be quicker, I just don't know.

THE COMMISSIONER: Mr Buchanan, can I suggest this, if I adjourn now, if you can have that informal discussion with everybody about how long they currently anticipate, then I'll have a discussion with you outside the hearing room, and with a name, Mr Andronos, to inform everybody today that at the moment – and this is just off the top of my head – we might definitely vacate the June dates, or something along those lines.

30 MR ANDRONOS: Yes, thank you, Commissioner.

THE COMMISSIONER: But I think if Mr Buchanan can make those initial enquiries, then I can have a discussion with him and we can return to it first thing in the morning.

MR ANDRONOS: Thank you, Commissioner.

40 THE COMMISSIONER: All right, anybody else need to – oh, yes, Mr Pararajasingham?

MR PARARAJASINGHAM: Commissioner, for whatever it's worth, I join my learned friend's application. I would certainly like at least a day just to review all this material, and assuming we can get all the evidence done by the end of the week, if that can be accommodated I'd be asking for that as well, but perhaps we'll see how things go.

THE COMMISSIONER: You'd like a day out so that you can work out your re-examination?

MR PARARAJASINGHAM: No, no, no, no, I - - -

THE COMMISSIONER: Not re-examination, sorry, I withdraw that. Your examination of - - -

10 MR PARARAJASINGHAM: No, no, no. What I'm asking, Commissioner, is that, well, certainly, as at 16 April, we understood there was going to be at least nine days after this week. Last week, the Counsel Assisting indicated that he may finish by the end of this week. Lunchtime, we understand that my friend was going to finish on Wednesday. At 3 o'clock, we learned we might be on tomorrow. I'm just expressing some concern that Mr Hawatt is obviously an important witness. Some of the transcript was only available this morning. And I just need a little bit of time - - -

THE COMMISSIONER: All right.

20 MR PARARAJASINGHAM: - - - just to advance my client's interests, to consider the type of questions that I'd want to ask Mr Hawatt.

THE COMMISSIONER: All right. I'll take that on board.

MR PARARAJASINGHAM: Thank you.

THE COMMISSIONER: Thanks, Mr - oh, Mr Pullinger.

30 MR PULLINGER: I'm in a similar position, and if I can just endorse what's been put.

THE COMMISSIONER: All right.

MR PULLINGER: It's taken me by surprise that I may need to be ready as early as tomorrow and, to be quite frank, I'm unprepared if that occurs.

THE COMMISSIONER: Mr Pullinger, can I just ask you, you raised another commitment. When does it start?

40 MR PULLINGER: The 13th of - - -

THE COMMISSIONER: Of May.

MR PULLINGER: May.

THE COMMISSIONER: All right.

MR PULLINGER: Yes.

THE COMMISSIONER: Mr Moses, anything you – or are you all ready to go tomorrow?

MR MOSES: (not transcribable) always ready to go (not transcribable)

THE COMMISSIONER: All right. If the parties, instead of, if I could ask counsel, before dashing away, if you can have a discussion with Mr Buchanan, I'll then have a chat with him and we'll return to this issue first thing tomorrow morning. So we're adjourned until 9.30.

THE WITNESS STOOD DOWN [4.41pm]

AT 4.41PM THE MATTER WAS ADJOURNED ACCORDINGLY [4.41pm]