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INDEPENDENT COMMISSION AGAINST CORRUPTION

PATRICIA McDONALD SC  
COMMISSIONER

PUBLIC HEARING

OPERATION DASHA

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON FRIDAY 20 APRIL, 2018

AT 2.00PM

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

THE COMMISSIONER: Mr Robson, or not Mr – yes, Mr Robson, sorry, I'm having a Friday moment, sorry.

MR ANDRONOS: It's the last session, Commissioner, for the week.

10 Mr Robson, you might remember just before lunch I put to you the figure of 85 days being the mean gross processing time for development applications in the 2013/14 financial year. You remember I put that question to you? ---I remember you putting a question to me and mentioning a day, a 40-day period.

Yes. I wonder if the Commission staff can get Mr Occhiuzzi's 28, no, not that one, Mr Occhiuzzi's 29 November, 2017 statement up on the screen, and if a copy could be provided to Mr Robson. Mr Robson, if you could turn to the third-last page of the exhibits.---This is page 135.

20 Mine aren't paginated but I could describe it to you as a page which is in landscape, it's a table of KPIs and it's a continuation of a table that runs for a few pages before that.---Yeah, okay.

That's the one, the one on the screen is correct. Now, Mr Robson, these are, you can assume, the KPIs and outcomes as recorded in Mr Occhiuzzi's performance report for 2013/2014, and you'll see on the page that I've asked you to look at, at the table in the row, "Improving Organisation." You'll see if you go across to the second column under the heading "Strategy," the second entry is, "Meeting Community Expectations Regarding Processing of Development Applications."---Ah hmm.

30 Now, that is obviously an objective which you would agree with?---If it's in that table in the strategy, yes.

MR BUCHANAN: I object. Commissioner, my submission is that Mr Andronos has made his point and this material is already in evidence. The witness has said what he understood to be the situation. Mr Andronos has the benefit of this when it comes to making submissions. When I say this, I'm talking about this table that, as it were, getting it into evidence when it's

40 already in evidence through a witness is not a useful thing to do during this hearing.

MR ANDRONOS: I take my friend's point. I just wanted the witness to understand that it wasn't an arbitrary figure that - - -

THE COMMISSIONER: And also, I note, it's Mr Montague who signs this assessment and in addition it's not the mayor or the mayor at the time.

MR ANDRONOS: Yes. I'm not trying to tie him to the document. The document is a business record so it would be admissible even if we had the higher standard. Simply, it records that 85 days was the figure.

THE COMMISSIONER: Yes.

MR BUCHANAN: If I can just make this point so that we don't waste more time in the same fashion. The witness has not disagreed with that proposition.

10

THE COMMISSIONER: Are you happy to move on?

MR ANDRONOS: Well, yes. Apart from the suggestion I'm wasting time. Now, in your third statement, you refer to 28 Oatley Street in connection with the conduct of Councillors Hawatt and Azzi. Do you recall that?  
---Yes.

And on the basis of what Mr Occhiuzzi had told you, you formed the view that the conduct of Councillors Hawatt and Azzi had been inappropriate?

20

---Yes.

Now, was that because of the fact of the on-site inspection or some behaviour they had exhibited on site or both or something else?---Sorry, will you rephrase that, please?

What was your basis for forming the view that their conduct had been inappropriate?---First of all, it was not an authorised site inspection as a result of a council resolution. It was a site inspection organised at the behest of, I presume, the owner with the collusion or agreement of Azzi and  
30 Hawatt, and Marcelo attended.

Yes. And was it the behaviour they exhibited on site as well?---I couldn't relate to the behaviour they exhibited on site, except for the fact that Marcelo had indicated that they were pressing for a resolution to the problem and asking him to repair it straightaway.

Yes. Now, in your statement you say that you formed the view there was no point trying to explain to them the inappropriateness of their behaviour.

---That was true.

40

And that was your view at the time?---That was my view, knowing the attitudes of both Hawatt and Azzi.

Yes. Was that because you thought they were beyond any control that you could impose?---Yes.

And you, as the mayor, were the only person within council who could have imposed any control, if anyone could?---There is no ability for a mayor to

officially control council, councillors. The councillors are basically a law unto themselves and they make their decisions. And what they considered to be appropriate or inappropriate behaviour.

Well, certainly Mr Montague couldn't exercise any control over their behaviour, could he?---No.

He had no authority to do so?---No.

10 And their conduct did appear to you, though, to be in violation of the code of conduct, didn't it?

MR BUCHANAN: Well, my friend could rephrase that as a specific conduct or conduct generally.

MR ANDRONOS: Sure. Well, you recall that Mr Moses, for the council, took you to some passages within the code of conduct this morning.---Yes.

20 And do you recall, I'm not sure if he took you to this one but I think he may have. "Persons subject to the code must treat others with respect, courtesy, compassion and sensitivity."---True.

And that, "Councillors must not be overbearing or threatening to council staff."---Yes.

And that's what they had been doing, isn't it?---Yes, yes.

30 Yes. Now yesterday you said in response to a question from Counsel Assisting, in relation to their conduct, that you thought you had been managing the situation in a reasonable way.---Yes.

Yes. For those who are following it's in the transcript at 298 at about line 40. Was the situation you were referring to the conduct of Councillors Hawatt and Azzi?---(No Audible Reply)

Is that the situation you were managing in a reasonable way?---Principally, yes, principally, yes.

40 Yes. What were you actually doing to manage that situation?---Well, there was very little action that I could have taken. If there's an inference there that I should have referred to the code of conduct I was only getting the information second-hand, it should have been up to Marcelo to make that complaint.

So there was really – when you say managing it in a reasonable way, what was the actual management on your part that you're referring to?---Trying to reduce conflicts within council and getting the business papers processed.

To some extent did that involve accommodating Councillors Hawatt and Azzi?---The answer to that would be yes, however there was – I would always operate within the safeguards provided by particularly the Gateway with regard to LEP.

10 Now, in relation to the 28 Oatley Street episode in May 2014, the immediate outcome of that was that Mr Montague authorised Mr Occhiuzzi to refuse to attend site meetings with councillors?---That was as a result of a discussion that Mr Montague and I had regarding unauthorised, as it were, site inspections, as a result we put the block in that the director was not to attend site inspections at the request of councillors but only at the request of the council.

That was a direction made by Mr Montague in the exercise of his authority though, wasn't it?---That's true.

Yes.---With my advice.

20 Yes. Now, if Mr Robson you could turn to your third statement, 17 May statement, paragraph 11. Sorry, did I say 17 May? I mean 9 May, 2017 I'm sorry. I'm trying to follow Mr Buchanan's lead and call it the third statement.---Right. I've got the statement.

Yes. Paragraph 11, which is page 3 of the document, Mr Robson. Now, if you could read that whole paragraph to yourself and then come to the last sentence - - -?---Ah hmm.

30 - - - where you say, "As a result I was made aware that Montague had issued two warnings to Occhiuzzi regarding his performance."---Ah hmm. Yeah.

Now, this is really just a question of clarification. Are you saying there that Montague issued warnings to Occhiuzzi regarding his performance as a result of the episode at 28 Oatley Street or are you saying that as a result of that episode, I'm sorry, that as a result of that episode you became aware that the - - -?---I would say that following that event I became aware, but I don't know whether the warnings were as a result of Oatley Street or other issues.

40 So you are not affirmatively saying that Mr Montague warned Mr Occhiuzzi about his performance as a result of Oatley Street, you're not saying that? ---I don't know whether he made a warning based on Oatley Street.

Yes, yes. Mr Robson, if we could come now to the events of October and November 2014. Now, I think you may have already given this evidence, I'm sorry if I'm going over ground that's been covered, but between October and November 2014 Mr Montague raised with you his idea to have a panel to interview the candidates?---Yes.

And he said to you, "I want to include Councillors Hawatt and Azzi because they're the only ones interested in planning issues."---I don't recollect the fact that he said that they were the only ones interested in planning issues, but it may have been the case.

Certainly that would accord with your recollection of their interest at the time?---Yes.

10 Yes. You didn't object to their inclusion on the panel?---I felt it was not appropriately my place, I felt that I should be on the panel, which I was, and how the panel was structured was up to the general manager.

Did you think that having Messrs Hawatt and Azzi on the panel might be a good way to satisfy the consultation requirement under section 337 of the Act?---I felt that it might go some way but the official consultation would still have to take place.

20 But they were among the leaders on council, weren't they?---They led a particular group which had the numbers, so if you constitute those as leaders, then yes.

Yes. And do you agree that Mr Montague could well have thought that providing them with a role in the process could make them more likely to accept its outcome?

MR BUCHANAN: I object, Your Honour. Just a little bit too speculative in my submission to be of assistance to you.

30 THE COMMISSIONER: Yes, I reject that.

MR ANDRONOS: This morning in answer to some questions from Mr Moses – sorry, I'll come to that, I withdraw that. You attended the interviews on 17 November of course?---Yes.

And it was a long and tedious day, was it not?---By the end of it, yes.

Yes. And through that Councillors Hawatt and Azzi were rude and overbearing in their manner towards some of the interviewees?---I'd agree.

40 And they were Ms Bishop, Mr Connell and Ms Jones?---And to a certain degree the other candidates as well.

All five of them?---To certain degrees, yes.

Now, is it fair to say that by the end of the day you were no longer as active and engaged in the process as you were at the beginning of the day?---By the end of the day I recall my back was aching from sitting in the chair and

I'd adjust my position accordingly, but I was still attempting to give it my full - - -

Yes.---But having been a long day it could be said that I was tired.

Yes. I'm not going to press it any further, Mr Robson. Now, you've given some evidence that at the end of the day there was some brief discussion about the candidates.---Yes.

10 Everybody expressed a view?---I don't know whether Carpenter expressed a view but the other, the other members of the panel, yes.

And of the four members of the panel, nobody thought the job should be offered to Ms Bishop or Mr Connell. Is that correct?---True, yes.

And I think you gave some evidence this morning that there were in effect three finalists, being Ms Jones, Mr Manoski and Mr Stavis?---Yes.

20 So with respect to Ms Bishop and Mr Connell, would it be fair to say that they were effectively eliminated by the interview process from consideration?---They were eliminated as a result of the discussions of the panel, but as you can understand the process of the scoring was loose to say the least.

Yes. But you didn't disagree with those, you didn't disagree with that assessment - - -?---No.

- - - with respect to Ms Connell, Mr Connell and Ms Bishop?---No.

30 Now, Councillors Hawatt and Azzi said that they liked Mr Stavis.---I don't know whether the term liked was used but they were, they felt that Stavis was the candidate that they said should be employed.

Did Mr Azzi also say that he thought Mr Manoski might be worth employing.---I can't recollect that.

Did Mr Hawatt say anything along those lines?---I don't recollect.

40 You said in some of your evidence this morning that the perspective you brought to bear – and I'm paraphrasing here, of course – the perspective you brought to bear in your assessment of the candidates is that you were looking for someone who would be the best fit for council. Do you recall that?---Yes.

And that was your view?---Yes.

And best fit for council would involve, amongst other things, technical expertise?---Technical expertise as stated within their qualifications as

listed. I was not in a particular position to assess if any technical questions had been asked of the committee because that is not my level of expertise.

Yes. And amongst the other criteria, you considered that the ability of an incoming director of planning to get on with council would be relevant to whether that person was a good fit for council.---It would be one of the requirements that I would be looking for.

10 Yes. And that would include getting on, as a matter of reality, with Councillors Hawatt and Azzi.---I think the fact that the terminology you're using, and giving me the fact that we're talking about getting on, I would prefer to use the term be able to, not "handle" but to, yeah, well, "handle" or "respond to" would be better than "get on with", because getting on sort of implies that they would just roll over and do what they wanted. What we were looking for and I was looking for in particular was somebody who would stand by the guidelines, the LEPs, the DCPs and look to the best interests of the council rather than the councillors.

20 Well, maybe put it this way. The best fit for council would be somebody who could have a constructive working relationship with councillors. ---Certainly.

Yes. Do you recall Mr Azzi saying at the end of the day, in the course of the discussions that the four of you had, words to the effect of "I don't want that leftie greenie from Leichhardt"?---No, I don't.

30 Do you recall him ever saying that?---I don't recall but I have seen that quote appear in a number of places, but I cannot ascribe it to anybody in particular or at any time during the interview.

Have you seen that only in the context of this inquiry?---Yes.

When you talked in your evidence yesterday about managing the situation with Councillors Hawatt and Azzi in a reasonable way, did that include not unnecessarily provoking them?---Yes.

40 Yes. And did you think that it was possible that appointing Ms Jones to the position would be a provocation to one or both of them?---No, it never came into my consideration.

The next council elections weren't due until 2016. That's right, isn't it? ---They were scheduled to be.

They were scheduled. They of course didn't take place because of the amalgamation.---That's true.

But certainly for the period 2014 to September 2016, the council you had was that which was elected in 2012?---That was right.

Yes. And so whatever was going to happen in the future, Councillors Hawatt and Azzi were going to be on council for close to another two years, weren't they?---No. Sorry, when we, we're - - -

From late 2014.---2014, given that the council election was due September 2016, yes.

10 In your third statement, you say at paragraph 20 that you had no personal knowledge of any of the candidates, and you go on to describe the terms of the code of conduct, this in the second sentence.---Paragraph 20, yep.

Paragraph 20. "Under the terms of the code of conduct, that if any member of the panel had any prior contact with any applicant, they should acknowledge that fact and recuse themselves prior to the panel interviews." Sitting there, in the Commission now, do you say that's an accurate summation of how the code of conduct worked?---My understanding of section 4 of the code of conduct. Yes.

20 Yes. You're aware that section 4 of the code of conduct deals with both pecuniary and nonpecuniary interests?---Yes.

And a nonpecuniary interest could include certain familial relations, that's right?---Yes.

Certain friendships?---Yes.

30 I don't want to have to delve into the code – this is something which we can do as a matter of submission later – but are you saying that any contact at all would constitute ground for recusal?---No. I would say that there is a certain latitude allowed for nonpecuniary interests and it is up to, and always has been basically, up to the person involved to make their own call.

Yes. Well, of course if there had been an internal applicant for the position, everybody would have met that person, wouldn't they?---It would be, basically, if your knowledge could be construed to give any particular applicant an advantage.

40 Yes. That's the point. Now, Mr Robson, in both your 17 May, sorry, your 9 May, 2017 statement and your 6 June, 2017 statement, you refer to a conversation which you say took place between you and Mr Montague one evening shortly after the interviews.---Yes.

Was that before or after you sent your 26 November email to Mr Montague?---I can't recall.

Now, you understood that as a result of – I withdraw that. As a result of this conversation, you understood that Mr Montague was alleging that

Councillors Hawatt and Azzi were threatening to sack him unless he hired Mr Stavis?---Yes.

And you understood that this was a violation by them of the code of conduct?---Yes.

Yes. And so far as you were aware, Mr Montague wasn't seeking to conceal from you the fact that he'd been threatened?---No.

10 When he came to you, he was concerned about how to handle it?---He was asking my advice, yes.

Yes. Well, he was seeking some direction and assistance from you?---If you construe asking me whether I had the numbers support him should an attempt be made to sack him, yes.

Well, are you saying that the only interest you had was in answering the direct question he asked you?---My recollection is yes.

20 Is that a serious answer?---Sorry?

Is that a serious answer?---Well, I understood the situation, the, the reason that Azzi and Hawatt were making, putting a fair amount of pressure on it, so I just wasn't surprised.

30 So other than the fact that you could count numbers on council, did you have no interest in the fact that Mr Montague was reporting to you this kind of conduct on the part of two of your councillors?---That is true. However, the conversation finished straightaway by, by the general manager leaving, but also under the terms of the code of conduct it was not really, as far as I was concerned, it was not for me to make that complaint. It would have been the general manager who has actually first-hand knowledge of it. I was only operating on second-hand knowledge.

40 Are you saying that the only courses of available were to make a complaint or for Mr Montague to take his chances on the floor of council?---None of those thought processes were involved at that time. As I said, the general manager knocked on the door, asked me the question, I gave him the answer and he left.

The answer you gave him was basically, well, maybe I can defend you, maybe I can't. That's basically it, isn't it?---No, I just simply gave him what I thought would be the numbers on the floor which actually based to an answer that I doubted whether he would have the numbers to be supported.

So your view at the time was that on a vote on the floor of council he would lose and he'd be out of a job?---That was my view.

And you didn't say to him, Jim, that's outrageous, they can't do this, we must go to ICAC?---No, he didn't give the opportunity.

You didn't say to, you didn't say to Mr Montague, I'll call them into my office and tell them this isn't on, it's not the sort of behaviour we have here at Canterbury?---The relationship I had with Councillor Hawatt - - -

10 Could you just answer my question?---No.

You didn't do either of those things?---No, no.

There's no reason you couldn't have done either of those things was there? ---No, I didn't do either of them.

There's no reason you couldn't have?---The way you put it, no.

20 Did you regard the conduct of Councillors Hawatt and Azzi in this regard as acceptable?---No.

But you were accepting it, weren't you?---I felt there was little that I could do to actually negotiate with them.

But negotiation with them would have been a solution in your view, would it?---I don't know, because it was never actually, there was never an attempt to actually make it.

30 But in your view that would have been, that would have been a reasonable approach to take with them, wouldn't it?---In retrospect, possibly.

And you couldn't, you wouldn't be able to – sorry, I withdraw that. You couldn't see anything wrong with trying to negotiate with them at this time? ---Except for the fact the relationship was extremely poor and would have been considered to be a waste of time.

But apart from that practical reason that it might not yield results, you didn't see anything wrong with trying to negotiate with them, did you?---If the opportunity had arisen, yes.

40 In answering yes you're agreeing with my proposition?---That it situation had arisen in which negotiations or discussions could have taken place then I would have taken that opportunity.

Now, in your email to Mr Montague on 26 November you express some preferences and then say, "Ultimately it's your call." That's right, isn't it? ---That was my position.

And that was the, that was the position you took consistently through this process?---Yes.

That's right. Now, that decision could well have included hiring Mr Stavis, couldn't it?---Yes.

And with the knowledge of the pressure that Mr Montague was under, you were also prepared to countenance Mr Stavis being hired over and above Ms Jones?---Yes.

10

You didn't regard that pressure as being disqualifying for Mr Stavis?---No, because it was a judgement call from the general manager to make.

But you didn't, did you ever turn your mind to whether or not Mr Montague was exercising his power correctly?---No, because I felt that he, if he had hired Mr Stavis over the others again it was his judgement call and he had decided that Stavis was the best, best candidate for the job.

20

If, and in your view that was a judgement that was open to Mr Montague? ---My view stated to this Commission and to Mr Montague all along was the ultimate decision for the appointment was his and his alone and whatever that decision was to be, I would support him.

Mr Robson, with respect you are not answering my question.

MR BUCHANAN: Oh, with respect that is a very clear answer to the question that was asked of the witness.

30

MR ANDRONOS: It most certainly is.

MR BUCHANAN: He's rejecting the proposition that's involved in the question and making it clear what his position was.

MR ANDRONOS: With respect, I'm not asking what his position was as to whether or not he had the authority or he had an interest. I'm asking him whether he thought it would have been open to Mr Montague, in the exercise of his power, to make that decision. I press the question.

40

THE COMMISSIONER: I was of the view that he'd answered it but, Mr Robson, can you answer the - - -

THE WITNESS: I'm still trying to get in my mind clearly what the nature of the question is, I'm sorry.

MR ANDRONOS: Did you think it was open to Mr Montague, in the proper exercise of his authority, to make an offer of employment to Mr Stavis?---Yes.

Thank you. Now, on 8 December you say that Mr Montague told you he was going to offer the job to Mr Stavis, do you recall that?---If the record shows it was, my statement says 8 December, I'll say I agree with that.

Well, do you recall him telling you that he was going to make an offer to Mr Stavis before the offer had been made?---Yes.

And again you said that this was his call and you fully support that decision.---Yes.

10

And you didn't see anything wrong in Mr Montague's conduct?---No.

You didn't express any further reservations to Mr Montague beyond what you had put in your 2016 email to him, where you ranked the candidates one, two and three?---Sorry, can you repeat that, please.

You didn't express any further reservations to Mr Montague about hiring Mr Stavis beyond what you had put in your 26 November email to him, where you ranked the candidates one, two and three?---I don't recall any conversations apart from those stated for the record.

20

So you didn't believe that Mr Stavis was an unmeritorious candidate, did you?---I didn't believe Mr Stavis was the best candidate.

Can you answer my question?---His candidacy had merit, as did all of them.

You thought he was better than Mr Connell and Ms Bishop, though, didn't you?---Only to the extent that Mr Connell and Mr Bishop, I think, had been virtually discounted by the time Stavis's interview had taken place.

30

You didn't believe that the conduct of Councillors Hawatt and Azzi was a sufficient reason for Mr Montague not to make the offer to Mr Stavis, did you?

THE COMMISSIONER: Sorry, the conduct during the interview process?

MR ANDRONOS: Well, I'll say the conduct of – sorry, I should clarify. Thank you, Commissioner. You were aware that Councillors Hawatt and Azzi had made threats to Mr Montague?---Only when Mr Montague told me.

40

Yes. But you were aware of that by 8 December, weren't you?---I'm not sure of the date.

Well, you knew about it before Mr Montague told you that he had decided to offer the job to Mr Stavis, didn't you?---It had to have occurred prior to that, yes.

And you didn't believe that those threats made by Councillors Hawatt and Azzi were a sufficient reason for Mr Montague not to make the offer to Mr Stavis?---My personal opinion on whether the behaviour or the pressure that Mr Montague was being put under, it was only relayed to me by Mr Montague. And again, I reiterate, ultimately it was his call whether he succumbed or agreed to whatever he did with it.

10 So you didn't think that Mr Montague was duty-bound to reject Mr Stavis because of the threats he'd been under?---Again, it was just another fact Mr Montague had to consider. Whether it had knocked Stavis out or not, I didn't know whether Hawatt and Azzi were acting in collusion with Stavis or on behalf of Stavis or what. It was just they were pushing their preferred candidate.

So am I right to infer from that answer that you didn't think that their conduct, in threatening Mr Montague, disqualified Mr Stavis from consideration?---No. It was my position.

20 Now, you're aware of course that Mr Montague received a letter from Ms Carpenter a few days later on 12 December?---Yes.

And he showed you the letter?---Yes.

That letter expressed some serious concerns?---Yes.

You were aware by this time that some council staff had also expressed concerns?---Yes.

30 Mr Montague subsequently informed you of some additional reference checks which had been conducted into Mr Stavis?---Yes.

And again at this point, when Mr Montague raised these matters with you in discussion, your position just was that whatever Mr Montague did you would support?---Yes.

40 And you didn't express any view beyond that?---The view would have been that it would have been better to have these present, been presented at the time of the interview, but again it was stressed that it was his decision for the appointment of hiring and firing of staff.

And that could include withdrawing the offer to Mr Stavis?---It could.

It could include honouring the offer to Mr Stavis and him starting work sometime in January?---It could, it could.

On 17 December, Mr Montague informed you he was going to withdraw the offer to Mr Stavis?---I, yes.

Yes. And he had that conversation with you after he had told you that Councillors Hawatt and Azzi had threatened to sack him if he didn't hire Stavis?---Well, the sequence of events, yes.

Yes. That showed some courage, didn't it?---In my opinion it certainly was a bit of a red rag to the bulls, so I would say yes.

Yes. He could lose his job?---That would be the consequences if Azzi and Hawatt would follow through on their threat.

10

And on your count of the numbers, there wouldn't be enough support on the floor of council to defend him, would there?---Given the conditions that were there and the people involved, there was always the possibility of the council being split along five-five.

Who were the five, who were the five who would vote for his retention?---I wouldn't know the five that would vote but I had a feeling that there was a potential for five to vote.

20 Well, Hawatt, Vasiliades, Nam and Azzi in your view were certain votes against him?---Yes.

Votes you expected to be in his favour were yourself with a casting vote, of course, if it was five all, Paschalidis-Chilas and Eisler?---Yes.

Well, that's four-three, and perhaps Saleh.---Yes.

Which might get you to four-four.---Yes.

30 And then there were two who you didn't know about, being Adler and Kebbe?---I felt, at that stage, Kebbe would probably vote with the general manager. Adler, probably not. But these, these were only impressions. It was never ever tested on the floor at council.

But it's a slender reed to gamble your whole career on, isn't it?---Well - - -

Do you agree with that proposition?---It's an interesting situation. It'd be a bit of a gamble, yes.

40 Yes. And it was a gamble he was taking, not you.---Well, that's your statement and that is basically a true statement, I guess.

It's a gamble he was taking because he was prepared to withdraw the offer to Mr Stavis because he thought that was the right thing to do.---I would say yes.

Yes. And of course, the risk that you and he foresaw eventuated the very next day, didn't it, when councillors aligned with Councillor Hawatt and Azzi, imitated moves on council to call an extraordinary general meeting? ---I received emails on 19 December from, SMSs I think from Nam, or 18 December from Nam and Vasiliades, saying I should call a meeting.

Yes. Now, could the witness be shown volume 4, page 33.--- Yes.

10 Yes. Now, do you recognise this as the text of an email that you circulated to councillors on 19 December, 2014?---Yes.

MR BUCHANAN: Text I think.

THE COMMISSIONER: Yes.

MR ANDRONOS: Sorry, text. I'm indebted to my friend.

THE WITNESS: Yeah, SMS, yeah.

20 MR ANDRONOS: It was a text that you sent?---Yes.

And you say this, "After narrowing the applicants to three and having taken advice from selected councillors and checking references, the GM offered the position to one applicant." Now, that I think is uncontroversial. "2. Subsequent to that offer being made, certain information came to light which caused the GM to do a further deeper reference check. As a result of these checks and after seeking legal advice the GM decided to withdraw the offer. Councillors should note the authority to hire and fire staff is solely the responsibility of the GM." And then you go on to offer a confidential  
30 face-to-face briefing. Do you recall sending that?---Yes.

You don't make any reference in that text to the threats that had been made against Mr, against Mr Montague, do you?---No.

You don't say to the councillors, don't you people realise that this meeting being called is the, is a threat being made real and eventuating. You don't say that, to you?---There had no, been no meeting called.

40 Well, didn't you, did you receive correspondence from Ken Nam and Con Vasiliades seeking to initiate moves on council to call an EGM?---I'd received emails saying I should call but there had been no meeting called.

Right. So apart from that technicality that the meeting hadn't been called yet, the fact that they were initiating, they were seeking to initiate an EGM, didn't it occur to you that that might be evidence of this threat eventuating? ---To be honest at that point in time, no.

You were aware that the threat had been made?---Yes, but - - -

In precisely these terms.---I honestly would say that at that time I did not think that those, make that particular connection, and if you're asking why I didn't put all of that information into the SMS, as you can recognise, I've got poor eyesight, the iPhone is very small with its text and I really did not think that it would help and offering the ability to talk to the GM which the councillors had the opportunity to do, they should do that.

10 So when you say you didn't think it would help, help, help who?---Well, to be honest I didn't even consider doing it. I just simply responded to the calls for the meeting saying that I received a couple of SMS's, they should talk to the GM. That was the intent of that particular message.

And beyond that you weren't going to get involved. Is that right?---No, that's wrong. I was certainly involved in it but I'm certainly not going to talk about threats to the GM, if the GM wanted to talk to individual councillors and make clear that those threats had occurred then that was his job to do so.

20 Now, a few days later, 23 December, you received a memo from Mr Montague. That's at volume 4, page 46. I'm not going to ask you very much about the content, Mr Robson. You might be able to just answer this question without refreshing your memory, but by all means look at the document if it would assist. Mr Montague, in that memo proposed withdrawing the offer to Mr Stavits and effectively starting the process over again. Do you recall that?  
---Yes.

30 You presumably didn't disagree with that approach.---Given the fact that I understood by this stage that both Manoski and Jones were not interested, there was no other alternative.

Well, you'd never disagreed with anything before. You weren't going to disagree now, were you?---Sorry?

You had never disagreed with anything before. You weren't going to disagree now, were you?---With regard to what?

40 The course that Mr Montague was proposing.---No. No. I thought it was an appropriate course of action.

And did you believe that this might defuse the situation with Councillors Hawatt and Azzi?---The fact that it would defuse the situation I felt was not a consideration. The fact that we were short of a director and we needed to employ a director, we had to take appropriate action to do so.

So is it that you didn't turn your mind to whether or not this would defuse the situation?---No, not, not in particular.

Is that a serious answer, Mr Robson?---Yeah, it is.

This is at a time when you're receiving communications from councillors that they want to terminate the employment of a general manager – who's been there for over 30 years – over the employment of a particular director of planning. The general manager comes up with an alternative approach and you don't turn your mind to whether or not that might defuse the situation?

10

MR BUCHANAN: I object. I should have taken the objection earlier – and I acknowledge that, Your Honour, Commissioner – but the threat to the general manager, on the evidence, did not occur until 24 December in the notice calling for an extraordinary meeting of council with that as one of the motions. The email from Councillor Nam – which is annexure 3 to the third statement of the witness, as can be seen if one turns to it, and I appreciate that the pages are not numbered – urges the witness to call an extraordinary council meeting to discuss this issue. There's no threat to the general manager in it.

20

MR ANDRONOS: I'm indebted to my friend.

THE COMMISSIONER: Yes.

MR ANDRONOS: He's right. I'm sorry. That's my mistake. My friend is right. So, Mr Robson, you heard all that. I don't press that question in relation to that particular period. Now, just at about the following day, I think it was, on Christmas Eve, Councillors Hawatt and Azzi come to your home. That's right, isn't it?---Yes. Ah hmm.

30

And the threat that I erroneously said had been made on the 18<sup>th</sup> was in fact made on the 24<sup>th</sup>.---Yes.

Now, having seen the threat being made on the 24<sup>th</sup>, did it occur to you that the offer made by Mr Montague on the 23<sup>rd</sup> was not going to have any positive effect at all on the rancour and division in council?---I can honestly say the memo on the 23<sup>rd</sup> did not come into my thoughts on the 24<sup>th</sup> at all.

40

And as at the 24<sup>th</sup>, you knew in the clearest possible terms that Mr Montague's job was actively in danger.---Yes.

So you contacted Mr Montague?---Yes.

And you told him?---Yes.

He wasn't surprised?---He said he wasn't surprised.

You arranged to meet the following Monday, the 29<sup>th</sup>?---Yes.

And on that Monday, when you meet with him, he tells you of an inducement that had been offered to him two days earlier?---He told me of a meeting that had been held on the 27<sup>th</sup> and the conversation and offers that were made by Hawatt and Azzi.

Now, is it fair to say that when Mr Montague told you about this conduct, you formed the view almost immediately that this was corrupt, a corrupt offer?---I felt immediately, yes.

10

And is it the case that up until then you might have regarded the conduct of Councillors Hawatt and Azzi as perhaps unacceptable, perhaps a breach of the code, but did you think prior to this time that it might have been corrupt as well?---If I had first-hand knowledge rather than second-hand knowledge, if I'd been at those meetings I would have said yes and I would have reported them myself. As it was, the discussion I had with Mr Montague on that day, I advised him strongly to make a report to both ICAC and the OLG, which he did.

20

Well, he'd independently reached the same view, hadn't he?---I don't know because I can't recall the specifics of the discussion save that we met, he told me about it, we agreed that it was something that should be referred to the ICAC because we both believed that it was corrupt behaviour and as the offer had been made to him it was his responsibility to make that call.

And I think you said this morning in your evidence that that's what he did?  
---Yes.

30

Yes. Now, you didn't see any indication that Mr Montague was considering accepting this offer?---Which offer. Oh, the offer made on the 27<sup>th</sup>?

Yes.---No.

No, no. He didn't try to conceal from you the threats that had been made?  
---No.

He didn't try to conceal from you the inducements that had been offered?  
---No.

40

And on the basis of what you saw up to 29 December, you didn't consider that Mr Montague had done anything wrong at all?---Can I just say no, no, I didn't. Whether I would have reacted in the same manner personally put in that position, I don't know, but as I said, ultimately it was his call to make on those, all the factors that were involved.

So just to clarify for the purpose of the transcript, when you say no, does that mean you're agreeing with the proposition I put, that he didn't, you hadn't seen him do anything wrong at all?---Technically, no.

Are you agreeing with the proposition I put?---I'll agree with the proposition.

Thank you.---So I can go home.

10 You wouldn't believe the confusion the transcript can cause. It's my fault for asking a question in the negative. Now, a couple of weeks later Mr Montague shows you the email that he received from Councillor Hawatt. If we could just get that up on the screen, it's volume 5, page 256.---Dated 14 January?

I think it's the 13<sup>th</sup> but I could be wrong about the date.---So which page are we looking for?

Volume 5 - - -?---253.

256.---256, yes.

20 Mr Montague brought you a hard copy of this, did he?---I assume so, I, the address, the email was not addressed to me so it must have been a hard copy provided.

And I think you described this in your evidence I think yesterday as a "gotcha" moment.---Yes, I believe Ms McClymont made that point.

30 Yes. At this stage you and Mr Montague had already been in communication with ICAC for several days?---Yes, because I came to the view that because of the seriousness of this it was something even though it was really all second-hand that I should make ICAC aware of the fact.

This was a gift, wasn't it? Here's Mr Hawatt offering the same inducement in writing that he had made in a private meeting a few weeks earlier. It's a gift in terms of proving the corruption?---It was, it was certainly an imprudent move.

40 Yes. And there was obviously no question in your mind that Mr Montague might be persuaded by this offer?---I believed that Mr Montague had no intention of accepting this offer.

And if you go over the page to 257, you'll see his written rejection of the offer. Did he show that to you at the time?---I can't recall being shown it but I know that it was in preparation because I stressed that the GM had already had two meetings without me present and that, considering the gravity of the situation, the fact that it had been reported to the ICAC, that any future meetings should at least include me.

Yes. Now, the EGM was appointed for 27 January and you've explained to us already how that came to be the date that was selected.---I might add that the original selected date was the 22<sup>nd</sup> but because of commitments for Australia Day, it had to be brought back to the 27<sup>th</sup>.

Now, you made the statement, which is recorded in the minutes at volume 4, page 235, if that can be brought up on screen.---Volume 4, page?

235, Mr Robson.---Yes.

10

Now, you see the statement that you make there?---Yes.

Did you have any legal advice when you expressed that view?---It would have only been, nothing in writing, it would only have been verbal.

But you spoke to a lawyer about that?---Yes.

Do you recall who it was?---I do recall that Stan Kondilios was at various meetings with the GM around about that time, so I, it may have been Stan.

20

Yes. But you can't be sure who it was?---I can't be sure but it would lead to me to believe that, my belief that it was most probably Stan.

Yes. Of course, you subsequently received some legal advice from an eminent administrative lawyer, Mark Robinson SC. Do you recall receiving legal advice about two weeks later?---Yes.

Did you request that advice?---The request, yes, we did, at the request of the Office of Local Government, who recommended that we get legal advice.

30

So, they made the request?---Yes.

They recommended to you that you do it?---Yes.

And did you personally see the advice when it came in?---Yes.

Now, going back to the EGM and its immediate aftermath, is this a fair summation of the situation, that this was simply a terrible time on council?  
---Yes.

40

There was a great deal of bitterness and rancour?---Yes.

Yes. You were sick of it?---Yes.

Mr Montague, to your knowledge was sick of it?---I would imagine so.

There was personal public humiliation for you and Mr Montague because of the stories in the Herald?---There, there were a number of stories in the

Herald. My attitude, basically, I wouldn't call it public humiliation because I mean I, having been on council for many, many years, you develop a thick hide and stories of this nature would just not, you know, they'd be unpleasant but you just move on.

Well, there were articles following the meeting of 27 of January about, about the disarray that had been experienced at that meeting.---I believe so. I can't recall it.

- 10 Made the council look like a rabble and - - -?---It could possibly have. I, I specifically, I don't recall any stories be it may have been, by that stage, I'd stopped reading the press.

People were hurt and upset and angry on all sides?---I couldn't speak for the other side.

Certainly on - - -?---Jim and I were concerned about it and upset about the, the situation, yes.

- 20 Council still had its regular business of providing governance to the people of Canterbury area?---Yes.

DAs were piling up?---No, not to any extent. We had Gill Dawson, who was working in a position of acting director, and she had processes in place. Whether they were piling up, I don't know. If they were piling up it may have been due to an excessive number of DAs coming in, but I personally cannot recollect any backlog.

- 30 Well, you had one person fewer in the Planning Department than you had had in that department on, say, 6 November.---Well, staffing issues would always cause a backlog. So if you work on the assumption that not having a director caused backlog, then there would probably have been a backlog.

Now, at this stage Mr Stavis was already on the payroll as planning director, wasn't he?---I was not aware of that, I don't think, at that time.

But you accept now that he had been employed by council since 19 January?---I understood that the verbal, later that the verbal contract that had been made stood as a contract.

40

But do you recall if he was being paid but had been directed not to come to work?---No, I can't recollect that at all.

Did you believe at this time – and I'm talking about the last few days of January and the first few days of February – did you believe at that time that Mr Montague was safe from being sacked by council?---I believed that he had a stay of execution, if you'd like to put it, for at least three months, because part of the legal vice, legal advice – and I remember I think the

word they used was “negativised”, that my acts on the 27<sup>th</sup> had negativised the motion, which meant that a motion of that call, of that nature could not be sent to council again for at least a three-month period.

Yes. That’s a procedural advice that stops councillors bringing the same motion again and again if it’s rejected. You can only bring it once every three months.---I assume so. I hadn’t actually thought about it until I saw the legal advice.

10 But quite apart from that, did you believe that Mr Montague was safe from being sacked because of the basis that you gave to the meeting on 27 January, which is that sacking him would be an act of reprisal contrary to the ICAC Act?---I believe that my actions, as I said, as a result - - -

Could you just answer that question. Could you just answer that question. ---Look, the question, the answer to the question is simple, that I believe that at least he had a three-month reprieve because they did not have the ability to bring those motions before council again until that three months had expired.

20

Thank you. Can you now please answer my question, which is directed to whether or not you thought the basis you gave to the meeting on 27 January was a reason that made Mr Montague safe.---At the time I made the decision, no, I did not believe that. I simply made that decision.

Now, getting back to where the council was at the end of January, beginning of February. Well, I think you've told us that you accept there was a great deal of bitterness and rancour that you were sick of and you believe Mr Montague was sick of it. In your position as mayor, did you think that there might be some need for some kind of circuit breaker that could allow council to get back to the business of providing local government to the people of Canterbury?---I, yes.

30

And it would be in the interests of council and the community as a whole for that circuit breaker to be provided as soon as possible?---Yes.

Now, on 2 February you received a memo from Mr Montague, which is in volume 5 at page 11. I think Mr Moses took you to that today, and Mr Buchanan may have taken you to it yesterday. I wonder if that could be got up on the screen. You're obviously familiar with this?---I'm familiar with the memo, yes.

40

You're familiar with it now. Now, there Mr Montague sets out his reasoning for intending to proceed with the appointment of Mr Stavis.---Yes.

And before we go into that, you countersigned that, that’s your signature at the bottom right?---Yeah, that’s my signature, yeah.

And by countersigning it you indicated your acceptance of and endorsement of the contents of this memo?---Yes.

Now, these are the reasons that Mr Montague gives. Firstly the EGM, the events of the EGM, that's obviously meant to be 27 January not 27 February, demonstrated clearly the majority of councillors are in favour of the appointment. You agreed with that, didn't you?---Oh, the appointment of Stavis, yes.

- 10 Yes. The second point, It would avoid potentially costly legal proceedings?  
---I think the advice was that we would have to pay out Spiro.

The legal advice you'd received was that the probabilities were all in favour of Mr Stavis in any dispute.---Ah hmm.

That's the advice you received, isn't it?---Yes.

- 20 And this third point, that Mr Stavis's appointment is in the best interests of the community and of council as a whole. You agreed with that, didn't you?---Mmm. Yes.

Yes. And this was at least part of the circuit-breaker that you and I were discussing just a moment ago. Do you agree with that?---I thought, I would say yes, but I actually thought you were referring to the, the letters that I'd send to the Minister to act as a circuit-breaker, but yes, I'll agree that this is the case.

- 30 Yes. And obviously because this is his document you would have thought at the time that this was Mr Montague's view as well?---This memo is the result of a discussion we had, however as my original statement said that I thought that I received this after the meeting of 13 February, not before, but seeing it's got the date of 2 February I have to assume that I had, but I think if I had seen it before the meeting of the 13<sup>th</sup> it may have changed the situation with that meeting, but I have to assume that it's dated 2 February.

So as at 2 February when you received and endorsed this memo, you didn't see anything in Mr Montague's conduct in honouring the offer of employment to Mr Stavis that was in any way wrongful, did you?---No.

- 40 You thought it was a perfectly reasonable solution to the problems that were facing council and facing Mr Montague?---Given at that point of time, yes.

Yes. Now, if we could just go back to your statement, I think this is the 9 May, 2017 larger statement, third statement, paragraph 68 which I think you've just been alluding to. Just for clarity, you accept that a conversation you had regarding the current position of the offer to Stavis and its legal standing was a conversation which took, and that Mr Montague, he was seeking legal opinion, that must have taken place prior to the 13<sup>th</sup>. You

agree with that proposition?---Given the evidence that the memo's dated 2 February I have to assume that to be the case, but honestly when I made this statement I believed that the conversation and I'd seen the advice and signed the memo after the 13<sup>th</sup>, but it seems that it was the 2<sup>nd</sup> so I'm in error.

I'm not accusing you of attempting to mislead anyone, Mr Robson, you accept that it occurred prior to the 13<sup>th</sup>. Now, could you please, could the witness please be shown volume 5, page 96. You'll see, Mr Robson, this is part of the minutes of the EGM of 13 February, 2015.---Yes.

10

And at the top of page 96, page 3 of the document, is a motion moved by Councillors Kebbe, Adler and Azzi that a selection panel be formed for the purposes of interviewing and recommending to council a person to fill the position of general manager.---Yes.

Do you see that? You're in the chair?---Yes.

20

You rule the motion out of order, basically because the position of general manager had an occupant?---And that was the statement made by the Office of Local Government in a letter on 11 February, so true. The, the office wasn't vacant, so therefore they can't fill it.

So it's a fair inference, from the fact that they moved that motion, isn't it, Mr Robson, that no deal had been done where, if Mr Stavis had been employed, Mr Montague wouldn't be sacked? It's a fair inference from those events, isn't it?---Well, the inference was that they were still going, the, the actuality was that they were still attempting to terminate Jim, so if a, a deal had been done, it certainly wasn't effective.

30

So either no deal had been done or a deal has been done which they weren't honouring. They're the two possibilities, aren't they?---True.

Yes. Now, Mr Montague never told you that a deal had been done that they weren't honouring, did he?---No.

No. So if we go back to, I have no further questions.

THE COMMISSIONER: Thank you.

40

MR ANDRONOS: Thank you.

THE COMMISSIONER: Mr Doyon, have you got some questions?

MR DOYON: Yes. I do, Commissioner. Not too many, I hope. Mr Robson, I appear for Mr Vasiliades, the councillor, the younger, and I'll ask you questions if you don't mind. It was your recollection - - -

MR BUCHANAN: I'm sorry, would you mind speaking up?

MR DOYON: Yes. Sorry, I will. Is that better?

MR BUCHANAN: Thank you very much.

MR DOYON: No, that's okay. If you can't hear me at any stage, please let me know. It's your evidence, isn't it, that Mr Vasiliades is a nice guy?

MR BUCHANAN: I object. Not probative of anything.

10

MR DOYON: Yes, I'll move on, Commissioner. You're aware, of course, that Mr Vasiliades went to the Commonwealth Games twice for weight lifting?

MR BUCHANAN: I object.

THE COMMISSIONER: Isn't it along the same lines?

MR DOYON: I'm getting to a point, Commissioner. Mr Vasiliades came in to council on a platform of sport, did he not?

20

THE COMMISSIONER: I'm sorry, what does that - - -

MR DOYON: That was the platform on which he ran, Commissioner, a platform of sport based initiatives.

MR BUCHANAN: Your Honour, sorry Commissioner, I maintain the objection. Perhaps my friend could indicate the relevance of the questions he asks.

30

THE COMMISSIONER: Yes. Can you assist in that way, please?

MR DOYON: Well, what the questions go to, Commissioner, is that Mr Vasiliades did not have a particular interest in planning matters.

MR BUCHANAN: Ask that question but it'll be obviously not Mr Vasiliades talking but this witness talking about his impression or understanding for what that's worth.

40 THE COMMISSIONER: Yes.

MR DOYON: Earlier in your evidence today, you mentioned, what is referred to pink papers. Do you remember giving that evidence?---Sorry, repeat that? My mind just went blank.

No, that's okay. Earlier in your evidence, you referred to some documents which you referred to as pink papers.---Yes, yes.

And pink paper all right confidential documents?---Yes.

And they're very important documents?---Yes.

And only councillors are, well councillors are entitled to view pink papers?  
---Yes.

And perhaps some directors of council are entitled to view pink papers,  
correct?---Yes. That's right.

10

Yes. And you, if you were of a belief that a councillor was distributing pink papers to a person who wasn't entitled to view them, that would raise a suspicion in your mind, wouldn't it?---It would raise a suspicion. However, I feel, just in retrospect that the accusation or the, the statement regarding Con Vasiliades passing papers on could be determined as being hearsay and second-hand because I couldn't verify that fact independently. So, if it was possible to withdraw the statement - - -

20

THE COMMISSIONER: Is this because your evidence was you were told something after your wife - - -?---I was told something by my wife as a result of a conversation with - - -

She had with - - -?--- - - - Vasiliades's wife, and there is no concrete proof that I can - - -

All right.--- - - - put my hands on and say, yes, he was doing it.

30

MR DOYON: I appreciate what the witness just said, Commissioner, but I would like to take it as quickly as I can a little bit further. I'm conscious of the time and that it's been a long day.

THE COMMISSIONER: Yes.

MR DOYON: But I will take it further if I might. But whether you heard it second-hand, hearsay or otherwise, if you were of that belief that would raise a suspicion in your mind, wouldn't it?---It would raise a suspicion, yes.

40

And you would consider it to be a serious concern?---If I could prove that fact, yes.

And you had this belief at a time when you reached out to George Vasil to make contact with Mr Vasiliades about going along with Councillors Hawatt and Azzi's plan to terminate Jim Montague's contract.---No, I can't, I can't say with any certainty that I knew of that fact before all of this occurred or whether it occurred sometime later in 2014.

But it occurred in 2014, this - - -?---No, it could quite easily have occurred in 2015.

Was it not your evidence this morning, Mr Neil asked you a question about why you reached out to George Vasil. Do you remember being asked that question?---Yes. Yes.

And as I understood your evidence, you wanted to reach out to him because you understood that perhaps George Vasil could persuade Mr Vasiliades.  
---Persuade would be too strong a word. I would say influence.

10 It's my understanding of your evidence, in response to Mr Neil's question, that part of the reason why you thought George Vasil could influence him was because of this conversation that you had with your wife. Was that your evidence?---No. There was no direct connection. If, if it was, then it was an unintentional connection between the claim about the pink pages and reaching out to Con. To my mind, there was no connection between those two facts.

But this belief you had in relation to pink papers, you had this belief before 20 January, 2015?---I cannot recall.

20

Well, if you had that belief before – sorry, Commissioner. You ultimately submitted, well, made a submission, rather, to the ICAC on 20 January, 2015?---Yes.

And you spent several days preparing that commission? Sorry, submission, rather.---Yes.

And it was a very detailed document?---Yes.

30 You had it proofread?---I believe so, yes.

And there's no suggestion in that document that you were of a belief that Mr Vasiliades was distributing pink papers to any other person? Is that the case?---Well, if, if I'd had a reasonable suspicion, I may or may not have included it. But I cannot say when I became aware of it.

And I want to suggest to you that there's no reference in that document to any suggestion of Mr Vasiliades distributing pink papers.

40 MR BUCHANAN: I object. Object. The evidence speaks for itself.

THE COMMISSIONER: It does, Mr Doyon.

MR DOYON: It does. It does, Commissioner. Nothing further, Commissioner.

THE COMMISSIONER: Thank you. Have we got Mr O'Gorman-Hughes? Any questions?

MR O'GORMAN-HUGHES: No questions, Commissioner.

THE COMMISSIONER: And Mr Pararajasingham, any questions?

MR PARARAJASINGHAM: Just very briefly, Commissioner. Mr Robson, can you hear me?---I can, thank you.

10 So you know I appear for Mr Stavis. I just have one area I want to ask you about. Just wondering if I could just tease out some more details concerning this USB. It's the case that you were informed by an ICAC officer that a USB had been located amongst Mr Stavis's records, correct?---No.

No? What were you told?---I was asked by the investigator whether I'd lost anything, and I said, no, I can't – oh, maybe I'd lost a USB. And she said, oh, can you identify it? And I said from memory it was a red-and-black SanDisk – of which I had many at home – and I had lost it, I thought, at council.

20 Are you able to say approximately when you lost it?---I think the investigator asked me that and my response was, and I'll give you my response, which was, "I would have lost it presumably about the time of the last document on the USB."

And do you know what that date is?---I don't have the USB so I couldn't tell you.

30 Okay. So is it the case that the ICAC submission that was on this USB, that's, is that the only place - - -?---Sorry, could you speak up a little?

Sorry, sorry. Is it the case that the ICAC submission that was located on the USB, is that the only place you saved it?---I saved it at home as well on my home computer, but I took the USB in to use the council facilities for filing, not for filing but for stapling, punching holes and printing.

Okay. And this USB you would take to council offices on a regular basis? ---Yes, I'd take it with me.

40 And your evidence was that it was on a red and black kind of a nondescript USB?---It was a generic USB.

Right. So it certainly didn't have a - - -?---No labelling on it.

- - - ICAC submission sticker on it, did it?---No.

And is it your position that to your, as far as you know, you misplaced that USB, potentially at the Canterbury offices?---It was my belief that I had misplaced it but there was also the potential because sometimes I'd be

absent-minded after a long day like many people would, I would leave the USB stuck in my computer overnight and then retrieve it with horror the next morning.

I understand. And did at any time did you hand that USB over to any other person?---I handed the USB over to my PA who would go in for the purpose of printing documents either on letterhead or on blank paper and then she would return the USB. So it was a case of I'd give it to her, she'd give it to me.

10

And certainly you can't rule out the possibility that perhaps she misplaced the USB?---No, because then I would have been looking for it specifically.

Nothing further, Commissioner.

THE COMMISSIONER: Thank you. So we've got nobody, Mr Lloyd isn't here, I think we're up to Mr Taylor.

MR TAYLOR: I have no questions, thank you, Commissioner.

20

THE COMMISSIONER: Thank you. Mr Buchanan?

MR BUCHANAN: Just a few, Commissioner. Arising from Mr Moses's questions to you this morning, volume 5, page 11 of the documents, this is Mr Montague's memorandum to you of 2 February, 2015, and there's a reference in the second-last paragraph of that to any further unhelpful publicity surrounding this appointment and consequent negative impact on staff, et cetera. Do you see that?---Yes.

30

You answered Mr Moses by saying that you imagine the McClymont articles and other articles would have had that effect. Can I just ask you to have a look, please, at volume 4, page 247. Do you see that particular article reproduced?---Yes.

And that article is not about expenses or the like but rather an attempt by Mr Montague to, well, to use the headline, repel an attempt to sack him, citing the ICAC of 29 January, 2015.---Yes. I mean the email, the email, the, the article from what I can see sort of implies that, I mean the headline certainly implies that it was Jim Montague pulling the strings, but in this particular instance it was my decision to do what I did.

40

But this is not about the Il Buco restaurant or anything like that?---No, it's not about Il Buco, no, no.

And - - -?---It's simply a favourable report I think of the events.

No, I apologise. I misled you. I have misled you. There's a reference to it in the second-last paragraph on page 247.---Yeah.

But that's not the whole lot.---The tenor of the argument, of the discussion, no.

And can I also ask you to have a look at page 241 in the same volume.  
---Yes.

Did you see this article in the Leader?---To be honest, no, because I never get the Leader, so I cannot recall that at all.

10

But this is an article dated 28 January, 2015, in which it's talking about the attempt to install Mr Watson, I think, as the acting general manager in lieu of Mr Montague.---As I say, I can't recall actually looking at that particular article or seeing it.

Again the publicity was not confined to the expenses issues that you were referring to earlier.---No, it, it is a clear reference, even from the headline, that it is talking about what was eventually called the unlawful meeting which followed me opening and closing the legitimate extraordinary meeting.

20

And it's also not just the McClymont articles? This is obviously not a McClymont article.---Not that I know.

Can I ask you another question. If I could just – excuse me a moment. We can pull it up if you need to, but you've probably seen enough of it, the 2 February, 2015 memorandum by Mr Montague, which you endorsed.---Yes.

30

I just want to ask you a straight question. Don't worry about the other questions you've been asked on the subject. My question is, when did you place your endorsement on that piece of paper in relation to the date which the document bears? Just - - -?---My, look - - -

- - - forget about everything else you've said.---No, no - - -

Forget about everything else you were asked.---No.

40

When did you put your signature on it?---I thought a lot about this last night and went and checked my records, and my feeling still remains that I saw that document after the meeting of the 13<sup>th</sup> and that's when I endorsed it. I may honestly have just not noticed the date, but that's my feeling and I still maintain that feeling, that I signed it after the 13<sup>th</sup>.

And just to clarify, did you endorse it in Mr Montague's presence, he having asked you to sign it or intimated that you should sign it?---I believe Mr Montague brought it in, showed me the memo, and I signed it at my desk. But that's my recollection.

Commissioner, that's all I have by way of further examination of the witness.

THE COMMISSIONER: Mr Robson, we're nearly done.---That's all right.

Can I just ask you something, and my recollection it was Mr Moses who asked you some questions about the LEP and being – no, it wasn't, sorry, it was Mr Buchanan – being the vision of council as to how development would occur within the Canterbury community.---Yes.

10

Now, can you just give me a chronology? The LEP was actually dated 2012.---Yes, that's true.

But it was, I think, started maybe January 2013.---Possibly. We had a deadline to meet, otherwise we would have lost the funding which the government had given us to complete the task. The previous LEP was dated 1970, so it was an old document that had been patched together and revised and patched and revised. The idea of putting LEP 2012 together was simply to take all of that patchwork and bring it up to date with the standard  
20 descriptions – being R4, R5, R2, whatever – so that you could look at an LEP for Parramatta and an LEP for Canterbury and you could understand what was happening in each of those locales because of the standardisation. And the process again had obviously attracted the interest of a lot of developers and a lot of individual people who felt that their changes should be included in the LEP, but there wasn't a time frame to do that so it was decided that we would do – within 11 months – give them the opportunity to present a case to have those amendments included in - - -

30 In the DCP.--- - - - the LEP. The DCP is the fine grain which is basically if, you might allocate an R4, which is a certain height, but the DCP might say you must allow a laneway.

All right. The council that we've been discussing, they, sorry, the councillors that we've been discussing during your evidence, they were elected during 2012?---They were all elected 2012.

40 And did all of those councillors have input into the LEP 2012? Were they part of the process?---They were part of the process. Whether they availed themselves of the ability to take part in that process was up to them, but there were a whole series of workshops where each aspect of the changes, where it was relevant, were discussed, as brought forward to council in the workshop, so that everybody had an idea of the nature of the changes being made.

And if you wanted to be involved in the processes at council, you could have been?---Well, it, it really, at these workshops, yes, but ultimately those decisions had to be made by the full council. And I mean if, that might have been their sole involvement, then it was up to the individual councillor.

Anything arising? All right, now can Mr Robson be excused?

MR BUCHANAN: That would be my application.

THE COMMISSIONER: Thank you, Mr Robson.---My pleasure. Oh, well, actually - - -

No.

10

**THE WITNESS EXCUSED**

**[3.41pm]**

THE COMMISSIONER: Should we start Mr Manoski?

MR BUCHANAN: Could we? 20 minutes of time that we could use.

20 THE COMMISSIONER: Yes. Now, let me confirm, Mr Moses, you're representing Mr Manoski?

MR MOSES: Yes, Commissioner.

THE COMMISSIONER: If you want to - - -

MR MOSES: Mr Manoski is present, I think. Yes, he is.

THE COMMISSIONER: And Mr Manoski, do you want to come forward? Now, Mr Manoski, do you take an oath or an affirmation?---An oath.

THE COMMISSIONER: Mr Moses, is there any application for this?

MR MOSES: Section 38, Commissioner.

THE COMMISSIONER: Now, Mr Manoski, you've had an opportunity to discuss with your legal representatives, the direction I can make under section 38?---Yes.

Can I just again emphasise that it does not cover false evidence, anything false evidence that a witness would give during a public inquiry. That is an offence under the ICAC Act, along the lines of perjury and the protection doesn't cover that sort of conduct. So, pursuant to section 38 in the Independent Commission Against Corruption Act, I declare that all answers given by this witness and all documents and things produced by this witness during the court of the witnesses evidence at this public inquiry are to be regarded as having been given or produced on objection and there is no need for the witness to make objection in respect of any particular answer given or document or thing produced.

**PURSUANT TO SECTION 38 IN THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY THIS WITNESS AND ALL DOCUMENTS AND THINGS PRODUCED BY THIS WITNESS DURING THE COURT OF THE WITNESSES EVIDENCE AT THIS PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION AND THERE IS NO NEED FOR THE WITNESS TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED.**

MR BUCHANAN: Thank you, Commissioner. Your name is Simon Manoski?---Correct.

Your current occupation?---Director of planning at Canterbury-Bankstown Council.

And you have made three statements in relation to this matter before the Commission?---Correct.

Can I hand you this folder, and could I just ask you confirm it contains copies of each of those three statements. And the first is dated 3 November, 2016, is that right?---Correct.

And it largely concerns matters touching on a planning proposal in respect of 15-23 Homer Street, Earlwood?---Correct.

And it has some seven annexures to it.---Yes.

You made a second statement dated 23 February, 2017.---Yes.

That largely touches upon the recruitment of Mr Stavis as director of city planning?---Yes.

10

You made a third statement dated 5 May, 2017.---Correct.

And it's a very short one about your candidature for the position of director of city planning which was ultimately awarded to Mr Stavis?---Correct.

Can I just ask you to introduce yourself to the Commission, and I ask you to do this through the questions I'll ask you, because I will be asking you questions which are intended to draw upon your expertise.---Ah hmm.

20

And to that purpose we need to know what your expertise is and what its basis is. Do you understand?---Yes.

In your first statement you have given a bit of a background for your employment. Can I just take you first of all to your academic qualifications. Paragraphs 7 and 8, you have a Bachelor of Town Planning and a Masters of Environmental and Local Government Law from Macquarie University? ---Yes.

30

I'm sorry, that's misleading, you have a Bachelor of Town Planning and a Masters of Environmental and Local Government Law?---That's correct.

Now, what, can you just give us precis, starting with the oldest and arriving at where you are now, of your career.---Starting at - - -

Your first job.---So we started from university, from the Bachelor of Town Planning with an architecture firm in Northbridge.

What firm?---Devine Erby Mazlin was the name.

40

Architecture firm?---Architecture firm.

Thank you.---Subsequent to that we had, there was a number of different roles, we had a role with Bankstown Council in their development assessment arm and then also their strategic planning arm and - - -

Were they jobs or consultancy positions?---They're jobs.

Yes.---Yeah.

When you say we, you mean you?---As in I.

Yes.---Subsequent to that a number of different roles including with  
Leichhardt Council as a strategic planning, in a strategic planning capacity  
and then also with the Department of Planning for a number of years in a  
number of different roles with the Department of Planning. Subsequent to  
the Department of Planning it was within a strategic project role with, with  
Bankstown Council, subsequent to that, or there were two roles with  
10 Bankstown at the time, in a project manager role but then also as executive  
director of the communications area, subsequent to that was with the Inner  
West Council as a group manager in the strategic planning area and now  
most recently with Canterbury-Bankstown Council as director (planning).

When did you start with Canterbury Council, Canterbury-Bankstown  
Council as director of planning?---It was September 2017.

And so essentially you've been involved in land use and planning work at  
increasingly senior levels of responsibility?---Correct.  
20

In particular can I ask you about your work as director in the office of the  
director-general of planning, is that right?---Yes.

Doing strategic projects?---Not, that was more a policy advisory function.  
So the, the office of director-general was effectively a conduit between the  
Minister for Planning's office and the Department of Planning and I was in  
an advisory or policy advisory function which one of its functions was to  
look after the Cabinet process within the Department of Planning,  
ministerial and parliamentary services and what have you.  
30

And between June 2014 and December 2014, you had a position at the  
department where you were, tell me if I've got this wrong, general manager  
responsible for Sydney Metropolitan east and west regions?---That's  
correct.

What were your responsibilities in that role?---So the, there were a number  
of different roles there was, what's termed the regional teams in Department  
of Planning, let me take one step back. The department's broken up into at  
the time five regions, the Sydney Metropolitan Region being one of them.  
40 The role of the Sydney Metropolitan Regional Team was to, among other  
things, process planning proposals and issue gateway decisions for planning  
proposals that were submitted to the department.

And if people didn't know by now, those planning proposals would come  
from consent authorities like councils or exclusively from councils?---So,  
planning proposals could come in from generally, councils, but who are  
termed as relevant planning authorities but relevant planning authority may

also be the Secretary of the Department of Planning, may also be a panel appointed by the Minister as well.

Now, what has been your experience working in a team or section in a council considering or assessing development applications and/or reporting on submissions for planning proposals? In each case what I'm specifically interested in is the role that you played, if any, inputting to reports that went to council on those two subjects.---We've been, from the council perspective, we've been part of teams which are responsible for preparing reports to council, recommending a rezoning take place which would be bringing together of a number of different reports and advice to council recommending that a planning proposal progress to Gateway for determination.

And have you been involved in writing reports on whether consent should be given to a development application?---Yes, I have.

And including cases where those applications had been accompanied by a submission under the equivalent of Clause 4.6 of the Canterbury LEP for exemption from a development standard in the LEP?---Look, under 4.6 personally I haven't written reports but under my current role we are responsible for reviewing those reports and if need be questioning on their way to whether it's a panel and even hearings as a panel - - -

Excuse me a moment. My learned friend has very kindly pulled together in volume 3 of the evidence, commencing at page 72, Mr Manoski's resume, which is far more detailed, I need to record for the record, than what I've led from the witness. And in your current position, do you sign off on reports on development applications that go forward to council?---At the moment, there are no reports from development assessment that go to council, they - - -

You've completely cleared the backlog?---Sorry?

There's no backlog whatsoever at council - - -?---No because - - -

- - - of development applications?---No, the development applications are not determined by council - - -

I see.---? - - - they're determined by under delegation by officers or by Independent Hearing Assessment Panel or by the district panel.

When you did work in the area of a council's planning office or development assessment office and either you ran that office or you were writing material to go forward to council perhaps through a director, are you able to say what you regarded as being "best practice" in ensuring that what went forward was the correct advice and the best advice, so far as might concern, a difference of opinion between planners or between planners and

the director or between planners and directors on the one hand proponents on the other or councils on the other, so far as concerned, what ended up in your final report?---Okay - - -

MR MOSES: Commissioner, the witness motioned for a glass of water, may I have leave to approach the witness?

THE COMMISSIONER: Yes you certainly have.

10 THE WITNESS: Isn't that nice.

MR MOSES: It's all part of the service.

THE WITNESS: In terms of the assessment of development applications, look we would, as much as possible, assess a development application against the relevant planning controls under the Development Control Plan of the council. It would need to ensure that it accords with the relevant provisions and objectives of the zone under the Local Environment Plan. There may have been instances or there are instances where it differs or  
20 differs from those controls that would be then subject to a justification. Now, I would, as an author, if I was comfortable to depart from a control and put my own justification forward but only to the extent that I'm comfortable with. Under the 4.6 control, I understand there's a number of tests that need to be met, so to speak, under 4.6, some of them being that the control is unnecessary or it's unreasonable or - - -

MR BUCHANAN: Or in the best interest environment, that sort of thing. ---That's right or the control's been abandoned. So those are the tests I would apply.

30 What if the proponent put forward a justification which in your professional opinion didn't pass muster?---Can you repeat the question.

Yes, what if the proponent put forward justification for a departure from planning controls, whether it be in a clause 4.6 submission or it be in a submission for a planning proposal where you thought the proponents justification was adequate?---We've be responding to the proponent telling them, in my professional opinion, that we could not support what they're requesting.

40 Would a report go forward to council?---I would at least give the opportunity to the proponent to respond whether they would like to amend their application, design what have you, but if not, my position would still stand and my position would formulate the response or would formulate the report itself.

Would you, if you weren't the director and the report had to go forward under the name of the director, would you consult the director?---Yes.

And what if the director disagreed with you?---My position would still be my position though, regardless.

Unless you were persuaded that you were wrong?---Well in my professional, unless there was new information that came to light, my professional opinion would be, it is what it is.

10 If a report goes forward to council in the name of the director, ultimately is the director responsible for the contents of the report?---Yes.

Does the director have the power in those circumstances to modify what you might have written in the draft for the report?---Yes.

Did that happen very often in your experience in the work you did?---No.

20 And tempting as it might be to answer because you're always right, why was it rare, that is to say, to what extent were there disagreements between you and your superiors or, as director, between you and a planning officer as to what should be put forward to council in a report about an application to vary planning controls?---I guess the approach that I would have taken or do take is that if there was a departure from what was asked or compared to what your professional opinion is, you would go and brief your own director so to speak and make it clear in terms of or justify and provide reasoning why your position is your position. As you said, at the end of the day, the director does own the report but in my experience generally, we've been, the director's position has been consistent with what we've recommended.

30 Should the director change things that have been drafted in the report and not consult the author of the draft about those changes? Is that good practice?---I wouldn't call that good practice, no.

Why not?---Well if, if you're a subordinate to a director and he's changing his, his or her report, you'd hope that, as a good leader, you'd be using it as an education process in some respects as well, in terms of why you're changing something from what you, what the subordinate recommended.

40 Should there be some kind consultation process between the drafter of the report and the person under whose name it ultimately goes forward?---I believe so.

If, in writing a draft for a report, there are different options which would be available which council could consider, did you in that situation present those options in the report or did you simply select the option that you preferred and leave out the other options?---I think it's always important to present the options but it's also important to, as a professional, give your recommendation. Now, whether that recommendation's taken or not taken, that's for whoever the decision maker is. But I do, from a good practice

perspective, I do think it's important to give those options, reasons for those options but also a recommendation.

10 Why is it good practice for the ultimate decision maker, council, to know what the option are that are open to it as a consent authority or as the party that orders a planning proposal (not transcribable)?---There are so many different factors to a, a development, in terms of its, the controls, in its impacts and what have you. So, I think there's no, it's not a linear process and yes, there are differences of opinion but as, as an author of a report, I think it's important to demonstrate again, what those options are.

One more matter. Is it proper for a director to supress information that has been placed in a draft report before it goes forward?---Can you define supress in a report?

20 Material about what has happened or options that are open? Material that the drafter considers is relevant to the decision that has to be made by council?--- You know, I wouldn't call suppressing that type of information good practice if that's answering the question.

Yes. That is a suitable time, I have obviously more to ask the witness.

THE COMMISSIONER: Yes.

MR BUCHANAN: But that's a convenient time for me at this stage, Commissioner.

30 THE COMMISSIONER: Thank you, Mr Buchanan. You'll have to return Monday morning. Anything anybody – oh, yes.

MR PARARAJASINGHAM: Yes, Commissioner, there's just one matter if I could raise.

THE COMMISSIONER: Yes.

40 MR PARARAJASINGHAM: I'm instructed to put something on the record, and I have raised it with Counsel Assisting. Commissioner, today there was a news article in the Sydney Morning Herald titled, "ICAC Hears of ex-Premier Morris Iemma's Graphic Outburst," under the hand of Ms Kate McClymont. Commissioner, about halfway down the article there is a paragraph which reads, "Judith Carpenter, who is in charge of the recruitment process, was furious about the selection of Mr Stavis. She informed Mr Montague that there were issues about his, quote, 'personal integrity' end quote. Further details Ms Carpenter provided about Mr Stavis's integrity have been suppressed by the Commission." Now, Commissioner, with respect that is misleading. It is an erroneous characterisation of the evidence yesterday, or two days ago, which was to the effect that true it is, Ms Carpenter did express, did use the expression

'personal integrity' in a letter sent to the general manager but the effect of her evidence with regard to the two references was that those references related to Mr Stavis's performance and competency, they did not touch on the issue of his personal integrity. I simply note for the record that the inference from the article is that those matters, those two references did concern his personal integrity. That is, as I said, misleading and an erroneous characterisation of the evidence and I just note that for the record.

10 THE COMMISSIONER: All right. Thank you, Mr - - -

MR BUCHANAN: Commissioner, Mr Pararajasingham raised this with me, as he said, beforehand. I have checked the contents of the two documents concerned, as you know, they are the subject of non-publication orders. I can confirm that they do not touch upon the integrity of Mr Stavis.

THE COMMISSIONER: Right. Thank you Mr Pararajasingham for bringing that to our attention.

20 MR MOSES: Commissioner, just one matter. I understood from an earlier indication that Mr Khouri was being recalled on Monday.

THE COMMISSIONER: Oh, yes.

MR MOSES: I just wanted to understand, do you want Mr Manoski here on Monday morning or is Mr Khouri being interposed? We're in your hands. We'll do whatever's convenient to the Commission. I just want to clarify that.

30 THE COMMISSIONER: Thank you for raising that. I'll wait for some assistance.

MR BUCHANAN: Yes. Well, perhaps we could deal with this extramurally if that's convenient. But my friend is correct.

THE COMMISSIONER: Mr Manoski, you'll be told.

40 MR MOSES: If my friend could just let us know also about Mr Stewart in light of Mr Khouri coming back, whether, whether Mr Stewart's required on Monday or some later stage, please, Commissioner.

THE COMMISSIONER: All right. We stand adjourned until Monday morning.

**THE WITNESS STOOD DOWN**

**[4.06pm]**

**AT 4.06PM THE MATTER WAS ADJOURNED ACCORDINGLY**  
**[4.06pm]**