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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 27 APRIL, 2018

AT 10.00AM

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

MR BUCHANAN: Commissioner, today, I don't think we have any administrative matters to raise with you.

THE COMMISSIONER: So, straight on to Mr Stewart?

MR BUCHANAN: Resuming with Mr Stewart, if that's convenient.

THE COMMISSIONER: Mr Buchanan.

MR BUCHANAN: If the witness's statement dated 28 March, 2017 could be returned to him, please, and this morning, Mr Stewart, I'm going to be asking you questions at the outset about the meeting on 30 March, 2016 at Mr Khouri's house, which commences on page 6 of that statement.---Yes.

10

You told us about the contacts you had from Mr Montague that set up the meeting. You say in paragraph 15 that Mayor Asfour and you travelled separately to Mr Khouri's house and you arrived at about 6.30pm, and present were Mayor Asfour, Mr Khouri, Mr Montague, Councillor Azzi and Councillor Hawatt. That was all?---Yes.

You say in paragraph 17, you asked Mr Montague where Mayor Robson was but intended that sarcastically because you assumed that by him not being present, a deliberate decision had been made not to invite him?

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---That's correct.

At that time, what was your understanding of Mayor Robson's support on council?---My understanding was that there was none other than perhaps Councillor Eisler, but certainly not from the councillors that were present at that moment.

Did you have any understanding, however, of the relationship between the general manager and Mayor Robson?---I, I always had the understanding that the general manager had high respect for the office of the mayor, supported the mayor in his dealings and nothing demonstrated to me otherwise in terms of the relationship between the two.

30

And you tell us that Councillor Hawatt responded to your enquiry by saying, "Fuck Brian. He's an idiot."---Absolutely.

You remember that?---I do.

Can you tell us now, in your words, about how the, how the conversation panned out?---Effectively, as we were sitting at the table, Councillor Hawatt dominated conversation in general conversation around what was happening within the local government reforms space at that time.

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In the context of - - -?---Council amalgamations. Councillor Hawatt felt like he was bringing to the table, new information in relation to what the government was doing. The information he was bringing to the table, I had heard those rumours within the industry months earlier, so it certainly wasn't new news to me but he felt like he was bringing special confidential information which I felt was not so.

And is that what you've set out in the bottom half of paragraph 19? That the government was going to amalgamate the two councils?---Yes. Councillor Hawatt was saying that the decision had been made, made by the government to amalgamate the two councils. That was publicly out there, that that was a proposal that they were looking at and the rumours within the industry, quite broadly, was that the government was going to move on its proposals at that time.

- 10 Did Councillor Hawatt indicate, I withdraw that. In your statement, second last line of paragraph 16, you've said that he indicated that his high level contacts in the Liberal Party had told him.---Correct.

Rather than the government?---Correct.

Did he indicate what those contacts, or who those contacts were?---No, he didn't. He indicated that this was information from the premier, which was Mike Baird at the time, but not from him directly but from others within the Liberal Party.

20

You say that you reiterated the process that would be undertaken by Bankstown Council, which you told us about yesterday, and indicated that essentially the matter was out of your, out of the hands of those present at the table?---Absolutely.

And asked, "What are we here for"?---Yes.

- 30 Can I ask you, then, to tell us in your own words about what happened after you asked that?---Councillor Hawatt continued to dominate conversation in talking about Mr Montague and him being a great general manager. They praised him, they talked about that the future holds, that he needed to be treated with respect through that process and they started to talk about what decisions Jim Montague was going to take in terms of his next steps, which was to retire, and that they felt that he could still, after that moment in time, after retirement, come back and continue to be a part of the organisation as a consultant.

- 40 So, you indicated that Councillor Hawatt dominated the conversation but you then used the third person plural, "They." In your statement you say Councillors Hawatt and Azzi said these things. Can I ask you, what was the contribution that Councillor Azzi was making, at least at this stage of the conversation?---Councillor Azzi's contribution was small but in support of the things that Councillor Hawatt was saying. Councillor Hawatt did all of the verbalisation. Councillor Hawatt was animating and leading and directing. I don't recall words from Councillor Azzi, other than that he was supportive of the things being said by Councillor Hawatt.

And in your statement, paragraph 23, obviously if at any stage you think there's something in your statement you need to change, then just tell us, but you said that, "Councillor Azzi and Hawatt agreed with each other, that Mr Montague will retire, and that when the government appoints me, I should bring Mr Montague back as a consultant on the same pay conditions as he's on now." They were referring to you?---Yes.

10 And the premise of this part of their contribution to the discussion was that you would be appointed general manager of the amalgamated council?  
---Yes. My understanding was that, yeah, the two councils, my understanding of what was in their mind was that if the two councils were going to come together, there could only be one general manager and that if one general manager stood aside and wasn't there, that it would be natural that the one left standing would become that general manager. I understood that that was what was in their mind. My belief of what was to follow would be that the government would follow a process and that it wouldn't necessarily pan out that way.

20 THE COMMISSIONER: Sorry, would not necessarily pan out?---Correct.

MR BUCHANAN: You say in your statement that Councillors Azzi and Hawatt, and I'm looking at paragraph 21, indicated their view that Mr Montague was at the end of his career. Do you have a recollection now that that's what they said?---Yes.

Or indicated?---Yes.

30 And so the understanding as they seemed to, that there could be only one general manager, their understanding was that it, the new general manager wouldn't be Mr Montague but rather would be you?---Yes.

When the proposal was raised that Mr Montague be brought back as a consultant on the same pay and conditions as he was at that time, you say in the middle of paragraph 23, that you indicated you weren't going to commit to doing anything in a role that you may or may not be appointed to. Is that right?---Yes.

40 You were essentially indicating, you weren't prepared to jump the gun?  
---Correct. I wasn't prepared to jump the gun and I also wasn't prepared to be dictated to by these people.

Can you just tell us a little bit more about that? What was it that you were feeling at the time that this, the conversation was heading in this direction?  
---I felt like they were hedging their bets to make sure that they were trying to cultivate a relationship in favour with me. And also if it wasn't me, to continue to have Jim involved in some way, shape or form. But I think they wanted to, I felt like they were trying to hedge their bets as to what the future may hold.

In paragraph 24, you say that Councillors Hawatt and Azzi indicated that they had agreed that a new aquatic centre should be built at Wiley Park. Can I just stop there? When you say in the statement, "They had agreed," do you mean those two had agreed or that Canterbury Council had agreed? As you understood what they were saying?---Councillor, my understanding was that Bankstown Council was going through a process of reviewing its aquatic centres. Because Bankstown Council was going through that process, I was aware that Canterbury Council had separately, with a  
10 different consultant, commenced a similar process of reviewing its aquatic centres. I don't know where that was, where that was at, but Councillor Hawatt was certainly of the view, at this meeting, that there should be a new aquatic centre at that location and Councillor Azzi was in agreement.

And someone said that the aquatic centre should be named the Jim Montague Aquatic Centre?---Yes.

Do you remember who said that?---Councillor Hawatt.

20 And was that something that Councillor Azzi contributed to in terms of what was said or indicated?---My recollection is head nodding and general agreement.

Paragraph 25 you say that Mr Montague took over the conversation at this point and spoke of his long career and that he was closer to the end than the beginning and that you then indicated words to the effect, "That's all very interesting, how do you think this is all going to happen?"---Correct.

30 You say at paragraph 27, "Mr Montague advised that he still had a lot to offer in local government and wanted to look after his people." Is that right?---Correct.

Did he use the words, "my people"?---No, I - - -

You've got "people" in inverted commas?---No, my recollection, it was his people and my understanding was it was referring to all of the 500 odd employees at the organisation.

40 Did he say something about wanting to be a consultant?---Yes.

Do you remember as best you can what he said on that subject?---The conversation from Jim was around the end of his career obviously, many people who knew Jim for a long time knew that he was struggling with the fact that he was closer to retirement than the beginning of his career and it was a very difficult thing for him to come to terms with personally in terms of what the next steps may be. I didn't feel like Jim wanted to go anywhere, it felt to me at that moment in that meeting like that was the course of action that Councillors Hawatt and Azzi wanted him to take but I did feel like no

matter what the future held or no matter what the process was, that he wanted to be a part of it and it seemed to me that he felt like this course of action that was perhaps laid out by Councillors Hawatt and Azzi was an opportunity to still be a part of the future.

You say in paragraph 28 that he asked you to ensure that his personal staff on council at Canterbury were looked after. Is that right?---Yes.

10 And that you say you reiterated the comments that essentially proper processes would need to be followed regardless?---Correct.

You say you asked at paragraph 29 Mr Montague when he was planning to retire. Is that right?---That's correct.

And what was said?---At this moment in time I felt the whole proposition was quite absurd, I felt by - - -

20 What proposition?---The proposition that Jim would retire, that I would get the job and that everything would be beautiful. If there was to be a forced amalgamation it would be a very difficult time for everybody, I was very clear on the understanding that that would involve an administrator to be appointed by the government or perhaps administrators, there was no understanding of what the role of councillors would be and it would be paramount that we would then need to go through a proper process for everybody. It was also very clear that through any amalgamation, whether it be forced or voluntary, that there be protections in place for the staff to allow time for the organisation to settle and structure itself and look after its people.

30 These were all thoughts that you had had already even before this meeting? ---Yes, in my mind, in my mind, but the notion that they would orchestrate that Jim would step aside, Mr Montague would step aside, I would just by default get the job and that he would still be there seemed quite fanciful to me. I was uncomfortable with the conversation, I felt the best way to bring it to an end was to bring it to a head and that's why I asked the question about how is this going to happen.

40 You say at paragraph 30 that Mr Montague indicated that he would have a letter of resignation in his pocket. Can you tell us what was said on that subject?---Well the answer to my question was that Mr Montague felt like he would have a resignation ready for the moment that the proclamation came. I was quite astounded at the conversation in this period of time because it showed a complete lack of understanding as to how amalgamations have worked within local government right across this country forever.

Can I just stop there? There had been amalgamations of local government bodies in New South Wales prior to this date?---Yes. Yes. There had.

And in other states?---Yes, there had.

And you being in the industry, or being in the sector, you had followed what had occurred in those cases?---Yes, and we were facing this very thing, so I had been informing myself about how this process might work. It was very clear to me that any amalgamation would be instantaneous by proclamation. It might not have been but I would have been very surprised if it wasn't and as it turns out, that is what happened.

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And that's what you, in paragraph 31, tell us that you said to Mr Montague when he indicated he intended to have a letter of resignation in his pocket ready for the date of amalgamation?---Correct.

THE COMMISSIONER: The knowledge that you gained by looking at past amalgamations, that lead you to describe what was being proposed as fanciful?---I didn't propose it to them as fanciful, I - - -

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No, your description today?---Yes. In my mind it was fanciful, yes.

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What have you learnt about past amalgamations and the way that they proceeded that resulted in you describing it today as fanciful?---There was two main things that lead me to that. One is that we had researched proclamations and read those proclamations and seen that but more importantly, the minister for local government I think around this time was Paul Toole. I'd been in large forums where I'd heard the minister for local government speak where he as a former mayor was subject to an amalgamation I think between Evans Shire and Bathurst Council and he talked about his experience of learning of being amalgamated through a fax centre in the fax machine instantaneously. So it was very clear to me that the minister in himself had experienced this and articulated to large forums of people in the sector that that's how the process worked.

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MR BUCHANAN: And can I just clarify, the thing or things that you thought were fanciful, on the one hand you've spoken about Councillors Azzi and Hawatt and to a lesser extent Mr Montague laying out a, as it were, a stepped plan of what would occur to look after Canterbury City Council employees, to look after Mr Montague, on the other hand you've spoken about Mr Montague saying he intended to have a letter of resignation in his pocket to take effect on the moment of amalgamation. What was it that you considered to be fanciful, either or both?---Well Councillor Hawatt didn't appear to me to be interested in the employees of the council, only Jim.

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Only in Jim?---Only in Mr Montague. Mr Montague had a concern for the employees of the council. What I felt was fanciful was the notion that if one of us stepped aside, naturally the other would get the job and the other one would come back in through another mechanism without any thought, without any process, to employ a consultant on some 300,000 a year plus

needs to go through a process. At that time it would've required a resolution of council either by administrator or administrators. It was a lengthy process around doing something like that that didn't seem to be of any concern to councillor Hawatt in proposing this at the meeting.

You say in paragraph 32 that the three of them, Mr Montague, Councillors Hawatt and Azzi appeared to be surprised at the notion that amalgamation could occur, essentially without notice?---Yes. And I was surprised that they were surprised.

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You say in paragraph 33 that Mr Montague then suggested to Councillors Hawatt and Azzi that he would hand his resignation to Mayor Robson after the amalgamation, if that was the case?---Correct.

And you then pointed out that Mayor Robson would cease being mayor upon proclamation of the amalgamation?---Correct.

With the consequence - - - ?---There would be nobody to hand a resignation to.

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You go on to say that you stated ultimately that the decision concerning an amalgamation was a decision for the government. Paragraph 35, you say Mr Montague, you then suggested he would get a resolution from his council, that his retirement be accepted the moment proclamation happened. Do you recall what Mr Montague said in that regard?---Exactly that, it was a further proposition as to how he might retire. I felt through this conversation that Mr Montague wanted to be there until the very end, I felt like he wanted to be there beyond that date but he certainly didn't want to go before he had to.

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And you say in paragraph 35 that there was a feeling you had or an understanding you had from what Mr Montague said that he was concerned to preserve his entitlements?---Yes.

What did he say in that regard?---Exactly that, that he had entitlements under his current contract and that it was important to him that he be paid those entitlements.

40 And you say at paragraph 36 that you said something to the effect, "I don't know how that is supposed to work, that's a matter for you to seek advice on, I get the impression you don't want to retire, I don't think you're going anywhere."?---Correct.

You've said it in paragraph 37 but can you tell us how Mr Montague responded to that?---Well he didn't respond to that, he moved on, so paragraph 37 is moving on from that conversation to just moving towards the future of the new organisation.

There was a reference to “clean out the cupboard”. Is that right?---Correct.

In those words?---Correct.

And who used those words?---Mr Montague.

10 In your statement you say he said, “This is an opportunity to clean out the cupboard.” What did you understand it to mean? I withdraw that. You tell us in paragraph 38 that you asked him what that was supposed to mean and he indicated that there would be a need to get rid of senior staff except Mr Stavis?---Correct.

All the time the focus was on Canterbury Council. Is that right?---Until this point.

20 And can you just tell us what your recollection is of once Mr Stavis’ name had come up, what was said?---At this point in time I had knowledge that Mr Montague had had some frustrations with other directors at the council so it didn't come to me as a surprise that perhaps he felt like there may be better people out there. Mr Montague however didn't have any knowledge of my directors. I had knowledge of them. They were very good capable experienced directors in their various fields, this upset me greatly because he had no understanding of them to start making comments about the people that work for me. I was upset at this point in time and took him to task upon singling out Mr Stavis because previously he'd told me that he didn't want him at the time he was going through the recruitment process.

30 And you say in paragraph 40 that you looked at Mr Montague and said, “You didn't want him, what happened to that?”?---Yes.

And then going over to paragraph 42, you indicate that Mr Montague told you, “I was wrong. I know I didn't want him at the start but I was wrong and he’s doing really well fixing everything up and making changes.” Is that the gist of - - - ?---Yes, it was.

“I made a mistake, things have gone okay., indeed, better than okay since his appointment”?---Yes. He was indicating that he was happy with his performance.

40 Now you say that Mr Montague then referred to the other directors at Canterbury Council by name, and made disparaging remarks about them? ---Yes.

And that’s in paragraph 43. And return to the subject of Mr Stavis, you can see what you’ve said there. Can you recall and tell us what he said about Mr Stavis at that point?---Yes. He indicated that Mr Stavis was the best planner, obviously referring to a comparison between Mr Stavis and the director of planning that was then at Bankstown Council.

And who was that at that time?---Scott Pedder was the director of planning.

P-e-d-d-e-r?---Yes.

So Mr Montague indicated an acquaintance with Mr Pedder or Mr Pedder's work?---No.

10 He didn't?---No. I felt like this comment was being made without any knowledge whatsoever of Mr Pedder or his work.

And you say that Councillor Hawatt, paragraph 44, at this stage contributed an opinion about Mr Stavis.---He did, very clearly and very directly.

Can you tell us what he said?---He did say that Mr Stavis had to be there because he was a forward thinking person who gets results.

20 Did you have any understanding as to what Councillor Hawatt meant by, "Gets results"?---I had my concerns.

At that time, what were your concerns?---My concerns were that Mr Stavis didn't necessarily apply his expertise in assessing planning proposals and development applications perhaps as I would have expected as an external observer of Canterbury Council.

30 And what was the basis for that concern at that stage?---There were several. Firstly, in January of 2015 – no, if I take a step back, sometime in 2014, through regular conversations with Mr Montague, he had expressed to me that there was frustrations with the planning department, its processes, its times, very general in nature but he was under a lot of pressure to improve the performance of the planning unit. Bankstown Council had, at that time, and for a long time prior to that, seconded on a contract basis DA assessment staff to other councils. I offered an employee to Jim, on a contract basis, which he accepted and I had a young female planner working out of Canterbury Council. I can't remember when they started, but certainly in January of '15 the Bankstown manager and team leader brought her into my office to have a conversation with me, and she advised me that she was assessing a boarding house – I don't know the address or any other details – that she had consulted, determining the matter by way of refusal  
40 with her team leader, and subsequent to that called the applicant and the applicant told her not to refuse that application, that the new director would be starting in a few weeks and would sort it all out. So, just wait till then. When she told me this information, I prepared it into a section 11 report and forwarded it to the Commission. My employee advised me that she wasn't comfortable working at Canterbury anymore. I rang Mr Montague and told his what happened and that I would be withdrawing that employee from Canterbury Council.

And did you?---I did.

All right. Now - - -

THE COMMISSIONER: Now, can I just stop, that was pre Mr Stavis being appointed?---That was in January of '15 and I think it was right towards the end of January, '15 that I sent my section 11 to the Commission and my understanding from what the employee told me, is that Mr Stavis had not yet commenced in the building.

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You gave this example when Counsel Assisting asked you about, as an external person, concerns you had that Mr Stavis didn't necessarily apply his expertise as you would expect. Does anything come to mind after Mr Stavis had taken up the position as director?---Yeah. So, I mentioned earlier that there were several things that gave me some concerns. Another one was on the, well, during 2014, a member of the Bankstown community told me they were having some issues with an application at Canterbury Council. I don't recall getting too many details on the location or the exact nature, but they indicated to me that they had a fully compliant application and that the council officers were supporting the application and that the councillors continued to not determine the matter but kept deferring the matter, wanting them to add laneway which would benefit the adjoining building. My advice was, "If it's been in council that long, take it to court,"

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That again is pre Mr Stavis?---But then in February of '15, that person came, I met them at a, at a community event, I asked them how they went with their court matter and he said that his business partner had been called into a meeting with Mr Stavis very soon after his commencement of employment and that he advised them that if they provided the laneway he would allow them two extra levels on their building, and that they rejected that notion. That certainly gave me concerns, and another incident that gave me concern, well I wouldn't call it an incident but with these concerns and the fact that me and my team monitored the business papers of all the surrounding councils, I started looking at some of the reports, my planning staff, my director and my manager were bringing to my attention. Some of the planning reports going to the council which, on their reading, and certainly in discussing it with my experts, it didn't appear that the reports matched with what we would have expected. One in particular was a matter at 998 Punchbowl Road, Punchbowl, and the reason why that one was something that we looked at is because immediately, Punchbowl Road at that location is the boundary between the two councils and immediately across the road is a very large site called Club Punchbowl and Club Punchbowl were in conversations with our planners around a planning proposal for their site, and through a lot of work that we had been doing we were arriving at lower heights and lower FSR on a much, much larger site and it seemed unbelievable to us the recommendations that were being put and the resolutions that were coming out of Canterbury Council directly across the road on an extremely isolated site. That also gave me some

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concerns about some of the decision making and whilst I wasn't privy to any of the information, it raised a red flag for me, yes.

MR BUCHANAN: Paragraph 45 of your statement, you say at this point you became quite agitated at the issues being raised and spoke your mind?  
---Yes.

10 Can you tell us your recollection of what you said?---There was a couple of points that needed to be clearly made. I was very angry, I was very angry at the aggressive nature of Councillor Hawatt in the conversation and also I was very angry about being dictated to by Councillor Hawatt. I made it very clear that no matter what power they thought they had, the government was going to make decisions, it was clearly going to follow a process and clearly Councillor Hawatt wasn't part of that process. So he had no power in this situation despite the fact that he was trying to assert at this meeting that he had some influence. I believed him to have none, and I asserted to him that I wouldn't have Mr Stavis as my director of planning and whilst I had some concerns, that was a direct statement to Mr Hawatt to let him know that I wasn't going to be dictated to by him.

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Paragraph 47 records you saying, "I know how it works, if I'm the GM and if you get on council and if you have the numbers and you don't like the way I do things or the results then you fuck me off."?---Yes.

You recall saying that?---Absolutely.

30 And you say at paragraph 48, you said, "There's one thing I can tell you, I'm not like him", pointing to Mr Montague, "where I will concrete my feet to the desk and do anything to stay there, and I won't have Spiro Stavis as director of planning."?---Yes.

Do you recall saying all of those things?---Absolutely.

40 Paragraph 49 is more by way of summary, is it, as to what occurred after that or is it a reference to what had occurred before that on the subject of Councillor Hawatt and Councillor Azzi as you, to use your words, trying to sell Spiro to you?---Mr Montague was silent, I think he was very uncomfortable with the conversation, I might have pointed at Mr Montague but my eyes were firmly on Councillor Hawatt, again that was a conversation to let Councillor Hawatt know that I wasn't going to be dictated to by him. Councillor Hawatt, I cannot recall the exact nature of how he was trying to sell Mr Stavis but it was around getting results, there was nothing specific but getting results, he's improved processes, he's improved DA times and one thing that stuck out to me is that people are happy with him, people, to me, not meaning council staff but meaning developers in the development community, that's how I took it.

And then after an exchange where you say you said, “You know where I stand on this, do we understand one another?” And Councillor Hawatt replied, “We agree to disagree,” you left the meeting?---Yes.

And Councillor Asfour?---I, I walked out immediately. He didn’t leave at the same time as me.

THE COMMISSIONER: You were at Mr Khouri’s house?---Yes.

10 Was he present during all this discussion?---Yes.

Did he contribute at all?---Not at all.

MR BUCHANAN: Did you have any conversation with Councillor Asfour afterwards about whether anything had occurred at the meeting after you left?---The next day I spoke to Councillor Asfour and he told me that he left shortly after me.

20 Can I ask you this, did you make any notes of what had happened or been said at the meeting?---Not immediately at the time.

When was the first record you created?---I can’t recall the date of that but I do recall having a conversation with one of council’s lawyers about, about this interaction and asking them to take some, some notes down for me in the event that it may be needed.

External lawyers?---Yes.

30 And so I just want to clarify then, when you gave this statement were you referring to any notes or had you been assisted beforehand by any notes or any record, or was it all off the top of your memory?---No, this, this, this was in my memory, this was a traumatic experience I would say and I’d thought about it a lot and I still think about it a lot. What I was assisted by is, I couldn’t remember the exact date but I had made an appointment in my calendar so I was assisted by my Outlook calendar in terms of recalling the date of the meeting.

Did you ever return to Mr Khouri’s house?---No.

40 Did you ever go to Councillor Azzi’s residence?---Yes.

How often?---Infrequently.

How many visits in total?---Two that I can recall.

And when were they?---The first was September of ’15 I believe. In my statement I’ve mentioned some previous meetings about amalgamations, the September meeting, September ’15 is Councillor Azzi’s house.

Yes. And the second occasion that you can recall?---I can't recall when it was but it was in and around that time.

And what were the circumstances of those visits?---The September '15 was around amalgamations and so too was the second time, but the first time was the one I remember most around amalgamations.

10 And was it a business meeting or was it a social event at which business was discussed or what?---It appeared to be both.

Thinking of the September 2015 occasion, who else was present?  
---Councillor Asfour, who wasn't the mayor at the time, Bechara Khouri was present, Mr Montague was present, Councillor Hawatt was present, obviously Councillor Azzi was present and Mr Montague had invited the secretary of the USU.

The?---The secretary of the United Services Union.

20 Yes.---And the general secretary of the New South Wales ALP was there, as I recall.

And it was a social event at which business was discussed, one of those items being amalgamations?---The invitation was to talk about amalgamations - - -

I see?--- - - - but the setting certainly felt more social than businesslike.

30 And from whom did the invitation come?---I was invited by Mr Montague. I believe Mayor Asfour was invited by the general secretary of the ALP. And he spoke to me, that he, the general secretary of the ALP didn't know what the meeting was about and didn't particularly want to be there without somebody else.

Thinking of the second occasion, was that a social or business or mixed?  
---Again, it, it was around amalgamations but less people, shorter and because there was less discussion I, I don't have a good recollection of the finer detail of that meeting.

40 Now, I have a reason for asking this, Mr Stewart. Do you happen to recall what day of the week either of these meetings or visits you Councillor Azzi's house occurred?---No, I don't.

Do you happen to recall whether it was a weekday visit or a weekend visit?  
---Definitely a weekday, definitely a working day.

On both occasions?---Yeah.

Could it have been at the end of the working week for either of them?---I can't recall.

THE COMMISSIONER: Your diary didn't help?---No. I could consult it now but in consulting my, my diary with my recollections I, I, I don't remember the day of the week.

10 MR BUCHANAN: Paragraph 53 and 54, you tell us about the invitation for expressions of interest for the position of interim general manager at the merged councils and that they closed on 13 April. You submitted an expression of interest, I take it?---Certainly did.

And then you tell us about a meeting that you say took place in your office on Monday, 18 April, 2016 which Mr Montague. You've even got the time there, so I take it, again, you've consulted your diary for this?---I have.

And again, was there any note made of what was said at the meeting?---No.

20 You've set out in paragraphs 55 through to 57, what occurred. There was an exchange about putting in an expression of interest and Mr Montague was the one who indicated that he had put in his. Is that right?---That's correct.

And you expressed surprise or indicated that you thought he was going to retire?---I wouldn't say I was surprised but I was making the point to him that it didn't accord with the last time we'd spoken about amalgamations and what he was going to do with his future.

30 And you say, "Mr Montague looked out the window and then said something about why he did it." And you've recorded that as, "I had to put it in because Michael and Pierre made me do it. I had to."---Yes.

Have you got a recollection, today of that occurring?---Yes. I do.

And that he presented as uncomfortable, you say, in your statement, before asking you, "What are you going to do when I get the job"?---Yes.

His words.---Yes.

40 And you say in paragraph 56, you told Mr Montague that you would leave and that Mr Montague was surprised. Can you give us your recollection of what occurred?---My recollection is that I'd always know Mr Montague to be a strong character with a lot of experience and somebody that others in the industry looked up to. In my office that day, he didn't present that way. He'd clearly been going through an ongoing difficult time. He presented as a beaten man. I wasn't entirely convinced he knew what he was doing or, or why, with respect to putting in the expression of interest. I was a little affronted that he wanted to know what I'd do when he got the job. But I was very honest in the fact that I would leave. I knew well enough that the two

of us have very different leadership styles and that if he was appointed by the government to run the organisation, then I'd be best to leave it to him.

And you say that you asked Mr Montague what he would do if you got the job, and you say Mr Montague didn't really know how to answer that?

---Yes.

10 THE COMMISSIONER: Just looking at the words, there's a comparison that you said to him, "What will you do if I get the job?" and your account of what Mr Montague said to you was "What are you going to do when I get the job?" which comes across as rather arrogant just looking at the words "What will you do when I get the job?" not "if I get the job". But that sounds different from the way you've described him, that you knew him as a strong character but he didn't present that way on the day.---Absolutely. And when you read the words in the statement, you can interpret it that way. But he was definitely presenting as sombre in the meeting. He was not arrogant at all. I didn't believe there to be any bad blood between us, despite everything that had occurred. He felt more like a victim to me than the strong character I'd always known. But in that meeting I think what shone through was that he'd had well over 30 years of experience in local government. Relatively I was a newcomer. I think it was inconceivable, perhaps, that I might be chosen over him.

MR BUCHANAN: Inconceivable to him?---Inconceivable to him. Perhaps not in an arrogant way but I specifically chose my words in response to use the word "if" knowing that still it wasn't a foregone conclusion and I would have backed myself in that two-horse race in any case. So I was, I was a little offended but we still finished amicably in that meeting.

30 Paragraph 59, you tell us about amalgamation occurring on 12 May and your appointment as interim general manager. What happened to Mr Montague's position on that day?---Mr Montague was appointed by proclamation as the interim deputy general manager of the new council.

And what happened to the councillors at Canterbury City Council on that day?---Their positions were vacated.

Was some advisory body created that accommodated the former councillors of Canterbury City Council?---Yes.

40 Could you tell us about that, please.---Some of the guidance from the government was that it would be a good idea to put local representative committees of councillors together so that administrators could still involve the formerly elected members of the community in seeking advice at council in its decision making and operation of the new organisation. There was guidance only provided, and different councils approached that in different ways.

What did Canterbury-Bankstown Council do?---The administrator and myself had a number of conversations around how we would manage that, and I had shared all that I knew about the former Canterbury Council with the administrator. The administrator had his own cause for some concern around planning at Canterbury Council, so we thought very carefully around who should be on those committees. What we did was seek some advice from DPC, or Department of Premier and Cabinet at the time. The administrator shared that he had some concerns. The view which the administrator and I reluctantly supported was that if there was no direct  
10 evidence of wrongdoing, it would be inappropriate to exclude somebody from a committee, and that we either have everybody or nobody, so we chose to have all the former councillors except one who had a court matter running, and he was set to the side until that matter had run its course, and we set up a structure where we had the two former mayors plus two other councillors on a primary committee, and then we broke up the rest of the councillors into three subcommittees looking at different areas of policy, budget and so on.

Policy, budget, and what was the third area?---And so on. I can't remember exactly what, what the names of those subcommittees - - -  
20

Was it specifically planning or development?---We didn't, we didn't have a, we did not have a planning or development subcommittee at all, no.

And can you recall who the two councillors from Canterbury Council were who were put into this primary committee?---Councillor Robson as the former mayor was certainly one, and I can't recall the other but it may have been Paschalidis-Chilas.

30 It wasn't Councillor Hawatt and it wasn't Councillor Azzi?---No, it wasn't.

How long did that advisory body last?---It lasted until the administrator vacated – sorry, I apologise – three months before the administrator vacated, he - - -

And when did that happen, when did the administrator vacate I mean?  
---September of '17.

40 And it seems to go without saying, but I'll just ask you, that advisory body set up in the way you've indicated had not decision-making role in relation to development applications or planning proposals?---None whatsoever.

And for how long was Mr Montague the acting general – I'm sorry – acting deputy general manager?---I can't recall the exact dates but it was not for a long period of time. Very shortly after 12 May Mr Montague stopped working in the office and stopped being paid, but he vacated his position early in July, as I recall.

Mr Stavis was director of city planning at Canterbury City Council on 12 May. What happened as between Mr Pedder and Mr Stavis in relation to a director of planning position for the amalgamated council? Just in a formal sense, if you wouldn't mind.---Yes. So I had thought about this before amalgamations as to how I would approach, so I was able to move very quickly in this space in consultation with the administrator. The first meeting that the new council had was on 24 May. At that meeting I adopted an interim organisational structure where every director was given a discrete responsibility. So as you could imagine, there was two finance directors,  
10 two planning directors and a duplication of responsibilities. I broke those roles up into specific accountabilities and assigned those specific accountabilities to each of them with a clear instruction that I would have a final structure within three months.

And so you allocated specific planning responsibilities to Mr Pedder and to Mr Stavis. Is that right?---Yes, I did.

Did Mr Stavis separate from council?---Yes, he did.

20 When did that occur?---Again I can't recall with absolute certainty but it was - - -

Your best recollection?---Around August.

THE COMMISSIONER: And what were the roles or accountabilities that you assigned on the interim basis to Mr Stavis?---So there was two responsibilities primarily in planning, one being strategic planning, the other being development assessment. There's also health regulatory compliance, but they're the two main ones. I gave Mr Pedder the strategic and I gave Mr  
30 Stavis the development assessment.

MR BUCHANAN: In your statement at page 15, paragraph 60, you talk about a call that you received from Mr Khouri in June, sorry, in about June 2016 where he asked you to meet Mr Marwan Chanine. Can you recall that telephone conversation?---I recall that it happened, I don't recall the words.

And what was the gist or the effect of what was coming from Mr Khouri?  
---That the Chanines had some matters that were before the former  
40 Canterbury Council that they needed to have some conversations about.

And how did you respond to that?---I was happy to arrange a meeting and I asked what properties it was about and what DAs it was about.

And you have said in the third line, at paragraph 60, that there was a meeting on 18 July and another on 11 August.---Yes.

Attended by yourself, together with Mr Pedder, and you've identified Mr Chanine's matters, being a development application at 212-218 Canterbury

Road – you've given us a DA number – and then the sale of a council car park in South Parade, Campsie.---Yes.

Can you tell us, how would you describe your reliability of the recollection of the two meetings at this stage?---Reasonably well.

The meeting on 18 July, 2016, was 212-218 Canterbury Road discussed at that meeting?---Yes, it was, yes.

10 And what happened at that meeting in relation to that property?---I think in my prior testimony I'd mentioned that the Chanines hadn't been on my radar, so my recollection is, is that this is where the Chanines came onto my radar because Mr Khouri advised that they had some urgent matters with the former councillor, and as a result of a proclamation they had some issues that they needed to talk about. I do not meet with any person with respect to a development unless I know what it is. The reason why I have some memories around it is because I then got my team together and I informed myself. I didn't rely on Mr Stavis. I asked for other staff to get the file, go through the nature of the issue, talk to the staff doing the assessment to give  
20 me some understanding of what was happening with that particular application before they came in for the meeting.

And who attended that meeting on 18 July, 2016?---Together with Mr Pedder there was Marwan Chanine and Bechara Khouri.

Ziad Chanine wasn't there?---I don't recall that he was. He may have been but I don't recall that he was.

30 Now, why did you not have Mr Stavis there, given that the responsibilities you'd allocated to him was development applications?---I didn't have Mr Stavis in any meetings that I had with developers. So all meetings post-amalgamation, I would inform myself. Sometimes I would ask for some briefing material from Mr Stavis. But as I had earlier noted, I had some red flags and concerns. So on every instance where any application came to my knowledge from any source, a complaint to the administrator or whatever it was, I would get independent people that I knew and trusted to interrogate the files, to review the briefing materials, and to provide me with a brief of information about exactly what was going on in their mind, because I  
40 wanted to only deal with people that I could trust. At that point in time I did not know Mr Stavis and I didn't trust anybody in the planning space other than the people that I'd been working with for sometime and had developed trust with.

Now, in paragraph 61, you set out in some detail the stage that 212-218 Canterbury Road, Canterbury was at at that time. This was in July 2016. ---Yes.

And I don't propose to ask you any questions about that unless there's something in that paragraph which you want to add to or change.---It's pretty straightforward.

The August meeting, did 212-218 Canterbury Road come up at that meeting on 11 August? Or was that about Campsie?---I don't believe so. I don't believe so. My recollection is that both these meetings were specifically about those particular DAs.

10 That is to say 212-218 Canterbury Road was on 18 July and 46-48 South Parade, Campsie was on 11 August?---That's my recollection.

And I take it, you have, I withdraw that. You consulted files or documents to set out in paragraph 61, the detail of the situation in relation to where that DA was at, at that time?---In preparing my statement?

Yes.---No, that's from memory.

That's from memory?---Yes.

20

Thank you. Can I ask you a specific question about Mr Stavis once you took over as interim general manager at the amalgamated council? Was an audit conducted of Mr Stavis' work before he left or anything that could be described as an audit. I'm not saying should have, I'm asking about events. ---Of his work?

Yes.---No.

30 Of his division's work?---There was a, a number of things that we did do. Obviously - - -

40 I actually want to try and confine this, if we can, Mr Stewart. I just want to, if it was suggested that Mr Stavis had been put under audit in say, late May, 2016, do you know of anything to which that could be referable?---The only thing that we did that would have had the word audit, is we definitely did an audit of all of the decisions made in process with respect that DAs and planning proposals along the entirety of Canterbury Road to the point where we even prepared a GIS map, mapping all of the sites and then a spreadsheet detailing all of the decisions and requests that were currently with the former Canterbury Council.

And was that something to which Mr Stavis was asked to contribute?---No

Was he involved in it?---I don't believe so.

All right. When did that begin and when did it end?---I can't recall. It began early at the instigation of the administrator. And then it was ongoing

for many months even after Mr Stavis left, as information came to hand, we would update that information.

After the 30 March meeting in 2016, at Councillor Azzi's house, did you have any further meetings or discussions with Pierre Azzi or Michael Hawatt?---After the, the, the Bechara meeting?

10 Yes.---I don't, I recall coming face to face with Michael Hawatt in a meeting of the representative committee that the administrator had put together and Michael Hawatt would send some emails with respect to constituent issues, mainly around compliance issues but I don't recall any other conversations. In terms of Councillor Azzi, he would continue to come to council functions. I recall when he came to the representative committee and he was put on the same committee as Councillor Hawatt. I don't recall any conversation at that meeting.

THE COMMISSIONER: And sorry, it was the representative?---The, the committee of former councillors that the - - -

20 The advisory one?---Administrator out, yeah, advisory group.

And sorry, which, you said they were broken up into a number of committees.---Yes.

Which one were they on?---I can't recall with certainty but I think it was the policy review committee.

30 MR BUCHANAN: Did you know at the time of amalgamation a man by the name of George Vasil?---Yes.

What did you know of, or about Mr Vasil at that stage?---At that stage, at the time of amalgamation, I was aware that he was a friend of my father from back in the 1970s.

Your father, being?---Christopher Stewart. They were - - -

40 What position or positions had he held?---None. My father was a weightlifter who'd represented Australia and so too had Mr Vasil. I never knew of him until the amalgamation conversation came up, I should say I didn't know of him until 2012 when Con was elected to the council.

Con Vasiliades?---George's son.

Yes.---And I met them at a conference in Canberra, it would have been the Australian Local Government conference, can't remember what year, and I think most of the Canterbury councillors were there and we met them in the Exhibition Hall and I was introduced to them and George noted that he knew my father, so that's how I knew of George.

And did you encounter George Vasil after amalgamation?---Once.

And what was that?---George had rung the office of the administrator and the general manager seeking a meeting with respect to, I think it was the Hurlstone, Hurlstone Park Chamber of Commerce wanted to come in and he was coming in with them as a member of the Chamber of Commerce. As I recall it was to do with planning proposals that the council was looking at more generally in that entire area in terms of the heights of the building. I had planning - - -

You say that general area, which general area do you have in mind?  
---The town centre of Hurlstone Park. So it was no particular site.

Thank you, yes.---The Chamber of Commerce led most of the conversation around, I can't remember the exact nature of it but council was on exhibition with something at the time. Staff came in and took notes for the file and dealt with the matter and that's the only time I recall having a conversation with Mr Vasil post-amalgamation.

20

Was there a farewell dinner held for Mr Montague - - -?---Yes.

- - - which you attended - - -?---Yes.

- - - at a restaurant called Flying Fish - - -?---Yes.

- - - in Jones Bay Wharf?---Yes.

And was that towards the end of May of 2016, so shortly, a few weeks after amalgamation?---I can't recall the exact date but I do recall that it was after Mr Montague had finished in the office and I think before he'd come off the books of the organisation. So he was still technically an employee but had finished.

30

Do you know who organised the dinner?---I believe it was Bechara Khouri.

And who organised for you to attend?---Councillor Asfour let me know that there was a farewell dinner and that it would be probably a good idea for us to attend and show our respects.

40

And who was there?---I recall Asfour brought his wife and I brought my partner, Mr Montague and his wife were present, Bechara Khouri, I recall Rob Furolo.

Furolo?---Rob Furolo, Robert Furolo, former mayor.

Yes. Either former Councillor Azzi or Hawatt?---Both Councillor Azzi and Hawatt were there and I believe George Vasil was there as well, and Tony Stewart, the former deputy mayor at Canterbury was also there.

And was this around a table or was it a room taken?---My recollection it was upstairs around a table.

10 Can I turn to some broader general questions to elicit your opinions about issues relating to governance. In part a council's good governance would rely on the quality of the relationship between councillors on the one hand and the general manager on the other hand. Would that be fair to say?  
---Absolutely.

And in a model of good governance a general manager would provide frank and fearless advice without fear of reprisal?---Sorry, how did you - - -

In a model of good governance.---In a model of good governance, yes.

20 That's what a general manager would do?---Yes.

If the witness could be supplied please with volume 5, page 39 of the documents in Exhibit 52. Page 39. Do you see that that's the front page of a contract of employment between Canterbury City Council and James Cleland Montague? I'd ask you for – in case you need to know it, that it was signed on 11 February, 2015 for a period going to 2017.  
---Yes.

30 But I wanted to take you to page 53 of volume 5 and just ask you to quickly peruse clauses 10.3, 10.4 and 11 with a view to asking, first of all, have you heard of a standard contract for general managers put out by the Office of Local Government?---Yes.

Are you on one?---Yes.

And I'd ask you to assume that this is based on such a contract at least. Do clauses 10.3, 10.4 and 11, just on a quick skim through of them, look familiar to you?---Yes.

40 The clauses provide different ways in which a general manager's services can be terminated.---Yes.

And clause 11 in particular deals with the question of termination payments depending on the mode of separation.---Yes.

One mode of separation, if I could take you to page 54, is clause 10.3.5, "Council giving 38 weeks' written notice to the employee or alternatively by termination payment under clause 11.3." And you'd accept that in the

context of the whole of 10.3 and 10.4, that's essentially a termination without reasons being given clause?---Yes. Yes.

And so it allows for a general manager, in effect, to be dismissed without reasons being given?---Yes, it does.

And the dismissal, of course, would necessarily occur at the hands of council by resolution.---Correct.

10 That was the case, as you understood it, before you came to the amalgamated council in 2016.---Yes.

Is there, at least in theory, a possibility that a general manager might alter their behaviour in relation to councillors in order to avoid the risk or reduce the risk of termination without reasons?---Yes.

20 Is there a risk that there might be an impact upon the model of good governance that we spoke about earlier, whereby a general manager would give frank and fearless advice to council by reason of that mode of separation being available?---Yes. Yes.

30 Can I just ask you, just taking a step to one side and talking about you now, what was your relationship like, can you summarise it, with the councillors on Bankstown Council before May 2016?---I felt like I had a very good relationship with all of the councillors. You'll note from my career summary that I had been at Bankstown for a long time, so I was able to develop relationships, develop trust. They got to understand my leadership style and the way that I would work with them, and I, I believe that I was appointed because I liked the way that I dealt with them. I was efficient around what I did and I was frank with my advice. And I felt like I was able to have, at times, good, robust conversations with all of them that always had respect between the two, two of any interaction I was having with another councillor.

And so obviously there was no attempt ever to roll you when you were at Bankstown Council?---No. Not that I'm aware of.

40 Your relationship with the administrator on the amalgamated council before the recent elections, how would you describe that?---Excellent.

After the recent elections, was it September, 2017?---Yes.

You've now got a council to whom you report of elected councillors?---Yes.

And how would you, in summary, describe your relationship with that council?---Similarly, I would call it excellent. It's a different dynamic because the majority of them have never served before and they're turning to me for advice and for guidance in settling into their new roles.

You have given evidence that you got the impression and indeed the language used by Mr Montague was that his council had fallen under the dominion of the junta and that he was under their influence. Is that fair to say? Is that the impression you got? Tell me if you want to qualify that.---I like the way you put the, the power that Councillors Hawatt and Azzi had. I always had the feeling that, that Jim was alone, Mr Montague was alone in trying to run the organisation as it should be. And how did you word that last, that part?

10

Well, that- - -?---That he was under their influence?

That the council was controlled, essentially, by the junta and that he was under the influence of the junta.---He was influenced by them. I don't think I had any information to say that he was under their influence but he was certainly being influenced by them in many ways.

And just to clarify that, you gained that impression from both conversations you had with Mr Montague yourself?---Yes.

20

And I take it was supported by, to the extent that you had information from other sources?---Correct. And I saw the way that they spoke to him at those occasions. It was certainly not with any respect.

Do you have a view as to whether the termination without giving reasons clause in the standard contract for general managers needs to be reviewed at all or whether, in your opinion, it serves an essential purpose?

30

MR MOSES: I object, Commissioner, only because of this, that I think ultimately that's going to be a matter for submission, which Counsel Assisting will make, which will be informed by employment law considerations. I think it's a bit unfair to put the witness in a position where he is subject to a contract of employment himself, executed by him in terms employed by the council where he's offering an opinion in respect of the provision of that contract. I don't think it's going to assist the Commission with how it deals with this matter. It's a matter that will be subject to submissions. I think asking him that is not really fair when he himself has executed the contract in those terms.

40

THE COMMISSIONER: All right. Mr Buchanan?

MR BUCHANAN: Well, Your Honour, the objection seems to be twofold. One is that it's not fair because the witness has such a clause in his contract – and just, we should clarify, you do?---I do.

Thank you. But the other is that it wouldn't assist the Commission. In my submission, there is no unfairness that is apparent in asking Mr Stewart to comment on it, although I am certainly happy to ask Mr Stewart whether he

feels that he is at liberty to answer such a question, absent the fact that he is required to answer questions. But the question of whether the Commission would be assisted, Commissioner, if I could remind the Commission that former Mayor Robson has given evidence on this subject and has, in fact, pointed to what he described as, he indicated that it had some utility. And that, in my submission, if the Commission is going to review or provide any recommendations about the vulnerability that a general manager has to influence by councillors where they hold the power of dismissal without giving reasons – which has the potential, if this submission is made, for corrupt influence – then the Commission needs to know if this clause, in the opinion of those who have something to do with it, serves a useful purpose.

THE COMMISSIONER: Mr Stewart, I'm interested in this because, as Mr Buchanan has said, it's an issue that has arisen. But I take Mr Moses's point, that you were subject to a similar contract and subject to a similar power of dismissal. Mr Buchanan, you were going to ask a preliminary question.

MR BUCHANAN: I'm happy to ask a question. Do you feel comfortable answering the question I asked you about what your opinion is about the potential effect of that clause in the standard contract on a model of good governance at a council?

MR MOSES: I object to that question. I think the question more will be does he think it's appropriate for him to be expressing a view on it, rather than whether he feels comfortable. I think one can assume, by the way he's given his evidence, he's a forthright witness. It's a question of whether it's appropriate to be expressing a view. And as I said, this is really a matter of contracts of employment and employment law principles, and I think the reasons point that my friend has made will no doubt need to be thrashed out in final submissions, because you've got to go back to basics as to why you'd do that. There's a long line of cases on this. But I think the question is does he think it's appropriate for him to be commenting, rather than comfortable.

THE COMMISSIONER: I don't agree with you that it's purely a matter of contractual law. There's obviously that aspect and I'm not interested, with respect, about any views on the legality of it. But I am interested because one side of me thinks, well, you know, that's standard in a contract of employment that an employer has a right – given certain notice or payment out – of dismissing or terminating the employment of somebody, and they have a right not to give reasons. But it's put in this context that Mr Buchanan has raised, where there might be that concern of corrupt conduct developing, and that is where I am interested in your opinion. So, Mr - - -

MR MOSES: I think the point that I was trying to make was whether the witness thinks it's appropriate for him to be commenting on a provision of

his contract of employment and what he thinks about it. I think that was the point I was making, rather than using the word “comfortable”, whether - - -

MR BUCHANAN: I'm perfectly happy to modify the word and adopt the language proposed by Mr Moses.

THE COMMISSIONER: And you've probably forgotten what that - - -

10 MR BUCHANAN: Do you think it's appropriate that you comment on it?  
---I'd be guided by my counsel, but I'm happy to make a comment on it.

THE COMMISSIONER: I would be assisted by a comment.

MR MOSES: It's a matter for the witness.

MR BUCHANAN: So my question, I think you understand, is given the desirability of frank and fearless advice being given by a general manager, that it might come up against different views being held by the council, and given that the councillors at council have a power to terminate without  
20 reasons, is there in your view a role to be played, a need for that termination without reasons clause?---I, my general comment is that what's paramount is the relationship between the general manager and the councillors, which isn't always in an individual's control. And when things don't go well, the terms and conditions provide the framework within which that relationship can be separated. All boards need to be able to move in a different direction, and sometimes CEOs need to move in a different direction. There's no doubt that right across the local government industry, Local Government NSW, representative bodies and all GMs agree that there needs to be a conversation in this space. I think there's some focus on the 38  
30 weeks. I think you should be turning your mind equally to the fact that contracts also come to the end of their periods, whether they be two, three, four or five-year contracts. And there's time periods within which the current CEO or general manager needs to ask the council whether it, advise the council if it wants their contract renewed, and the council has time to advise that individual. Council laws also have at their disposal to let a general manager's contract run out without giving them any guidance, and then they're separated with nothing. So I think there's many clauses in here. However, my view is that it's the relationship and the decision-making process that needs to have some guidance, some independence and  
40 transparency, in my mind.

Thank you, Mr Stewart. A different topic. Could the witness please be shown Exhibit 61. Could you go to the last document in that volume, please, and it's headed Department of Planning and Environment City of Canterbury-Bankstown Council SEPP 1 and Clause 4.6 Audit, and it's got the word “Draft” stamped across it.---Yes.

Before today have you seen this document before?---Yes, I have.

You were aware of the audit being conducted when it was conducted?

---(No Audible Reply)

Not necessarily?---Yes, yes. I don't remember the exact dates but I, I recall how it came about and generally when it happened, yes.

10 How did it come about?---In June or July of the new council I'd obviously been looking over a range of things, there had been some comments made by staff that they were unhappy, there were some anonymous complaints to the administrator about planning issues, and I'd already walked into the new organisation with my red flags and concerns. So my planning team were on an ad hoc basis bringing things to me, and it was very obvious that the way clause 4.6 was being used at Canterbury Council was very, very different to the way it was being applied at Bankstown Council. And I had conversations with the administrator about this and I also had a regular routine meeting with the Department of Planning and I asked one of the employees as at the meeting, who I recall was the liaison officer appointed to amalgamated councils, that I would like a clause 4.6 audit to be  
20 conducted, and the reason for that being that I needed to know the department's view on what was appropriate because it's a very difficult thing to continue to hold the line or taken an approach that applicants believed was wrong. If the department wasn't going to support my view I needed to know that and I felt that an audit would be the way to solve that. In discussing it with the administrator I believe he then wrote a letter to the secretary of the department asking for a 4.6 audit. Sometime after that I was advised that they would in fact undertake an audit.

30 Before then had you been aware of such an audit being conducted of the use by Bankstown Council say of - - -?---No.

- - - clause 4.6?---No.

Had you been aware of an audit being conducted by the department of any council's use of SEPP 1 or clause 4.6?---Not to my knowledge.

Do you remember the name of the departmental liaison officer?---Brett Whitworth.

40 Thank you. That is my examination of Mr Stewart. Thank you.

THE COMMISSIONER: Look, we'll have a morning tea adjournment. We'll be back in 15 minutes, thank you.

**SHORT ADJOURNMENT**

**[11.34am]**

THE COMMISSIONER: Now, Mr Neil.

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

THE COMMISSIONER: Mr Andronos.

MR ANDRONOS: Yes, Commissioner. Mr Stewart, I appear for Jim Montague. You've been employed at general manager level in local councils since at least 2011, is that correct?---Yes.

10

And you were in an acting capacity prior to that. Is that correct?---Yes.

And in the time you've been working at that level, is it right, you've formed a good understanding of the role and responsibilities of a general manager? ---Yes.

And during that time you've also kept abreast of developments that affect planning and strategy at local council level, at least insofar as the Bankstown local government area and its immediate surroundings are concerned?---Yes.

20

Now, at paragraph 5 and 6 of your statement you've set out your understanding of the key accountabilities in your role as interim general manager of Canterbury-Bankstown Council? And feel free to look at it if that would assist.---Yes. As I turn to it, that's cut and pasted out of the government's position description for the role of interim general manager.

Yes. Yes. And it broadly but doesn't precisely correspond, it broadly corresponds but not precisely with the functions of the general manager under section 335 of the Local Government Act?---It's a reasonable overview.

30

Yes. And they generally reflect the key accountabilities of general managers of councils throughout New South Wales?---Yes.

And the accountabilities you've identified in your statement generally reflect the key accountabilities of general managers of councils as they existed in the period 2014-2016?---Yes.

40

Yes. Now in subparagraph 6G of your statement, Mr Stewart, you refer to, you say this, that one of the accountabilities is to contribute significantly to the development of council's strategic direction, guiding the preparation of the draft Community Strategic Plan, Delivery Program and Operation Plan? ---Yes.

Now, I want to ask you about the Community Strategic Plan. Is it the case that Canterbury-Bankstown Council, is it Canterbury-Bankstown or Bankstown-Canterbury?--- Canterbury-Bankstown.

Thanks. Canterbury-Bankstown Council is in the process of drafting a new Community Strategic Plan?---Straight after amalgamation there was an interim one put together. We currently have one on exhibition, I believe.

Yes. And you've been involved in preparing that?---Yes.

10 And let me just ask you some questions about what the document actually is. Is this correct? It's a high-level document that council has to develop and endorse within a certain period of each election, each ordinary election of councillors?---The Community Strategic Plan is the 10-year vision for the city.

Yes. And it identifies the council's main priorities and aspirations for at least that 10-year period?---Yes.

Yes. And that is the highest level of strategic planning undertaken by local council, isn't it?---It's highest in the hierarchy. Yes.

20 Yes. And all the other plans developed by council as part of the integrated planning and reporting framework must reflect and support the implementation of the Community Strategic Plan. Is that correct?---Correct.

And it sets out the priorities and aspirations but it must also set out strategies to achieve those priorities and aspirations in the future?---Do you refer to the Community Strategic Plan?

30 Yes.---My understanding of the Community Strategic Plan is that it's aspirational in nature but not detailed in content.

No, it's not detailed but it does set out the nature of the strategies?---It sets out the, the vision.

The vision.---For the city, yes.

40 And those strategies which are identified, they're not articulated but they're identified in the Community Strategic Plan, they have to take into account issues and pressures that may affect the community and the level of resources that will realistically be available?---I would say that level of detail wouldn't live within the Community Strategic Plan but certainly within the Delivery Program and the Operational Plan.

Yes. Well, I'm suggesting to you that the strategies which are identified do have to take into account, I'm not saying they have to articulate them, but they have to take into account the issues and pressures and level of realistically available resources? Do you agree with that?---Well, just to be clear, are you talking about the Community Strategic Plan or other strategies that would be delivering on that plan?

I'm talking about the Community Strategic Plan.---So, that document would be visionary which would guide the development of the four-year Delivery Program, which is a document that each incoming council must put together, which effectively becomes its charter as to what it will do over its term to deliver on the vision of the community. In that Community, in that Delivery Program is where more discrete actions of the council will be articulated which include strategies and resources that should be developed and applied.

10

Yes. I think we are talking about the same thing. it might be easier at this point, if I could prevail upon the Commission staff. There is a document which I provided to my friend, Counsel Assisting this morning. It's a copy for the witness, copy for the Commissioner. Mr Stewart, do you recognise that document?---No, I haven't seen this before, no.

Could you just take a moment to familiarise yourself with it? You say you haven't seen it before?---No, I haven't.

20

Well, I'm going to ask you to accept from me, well, ask you to assume for the purpose of your evidence today, that this is the Community Strategic Plan of the City of Canterbury adopted by Canterbury City Council on 13 February, 2014.---Yes.

Yes. Now, you'll see that this document sets out at page 5, it's a quick guide to the integrated plans. You'll see that the top left-hand corner in the blue box, it identifies that this document identifies long-term aspirations. And then it goes on, on that page, to identify certain programs which would come under this document, is that correct?---Supporting documents, yes.

30

Supporting documents. In the hierarchy of planning, they come underneath it?---Correct.

Now, you don't need to spend any more time looking at that just at the moment. In identifying the principles that will guide the Community Strategic Plan, you understand there is such a thing as the Council's charter?---Yes.

40

Yes. And the charter is the set of principles expressly mandated in the Local Government Act?---Yes.

But otherwise it's up to the community itself to decide what the principles will be that will underpin its Community Strategic Plan?---Yes.

Council may add its own principles so long as they're not inconsistent with the charter, is that correct?---I'm not particularly following the use of the word "principles" in terms of flowing it into the Community Strategic Plan.

Well, you understand what the charter is?---Yes.

And perhaps would it assist you to see section 8 and following of the Local Government Act?---Yes.

Yes. I wonder if the Local Government Act could be got up on the screen.

THE COMMISSIONER: Did you have one of these at Bankstown at the same time?---Yes.

10

So it's standard for councils to have this - - -?---It's a, it's a legal requirement to have the Community Strategic Plan. The other councils' documents that I've seen in the councils that I've worked at had aspirational directions for the city, but it had nowhere near the level of detail that this document contains. The detail of this document would have sat, in my experience, within the Delivery Program, which is a supporting document underneath within the hierarchy.

20

And you make that comment just by quickly having a look through it and - - -?---If I turn to some of the actions, it does look familiar in, in formatting and content. That's the sort of detail I would expect to see in a four-year Delivery Program.

How are we going with section 8?

MR ANDRONOS: Section 8. I'm indebted to the Commission staff, Commissioner. So you see section 8 identifies the object of having principles in the Act itself. Do you see that?---Yes.

30

And then sections 8A through to 8C identify the guiding principles.---Yes.

And you understand that this comprises the council's charter?---Yes.

And the council's charter comprises the set of principles which a council must take into account in establishing its Community Strategic Plan.---I took this charter to be that they're the guiding principles in terms of how it conducts the entirety of its business.

40

Certainly that must be correct.---Yes.

But it must also include the Community Strategic Plan.---Of course.

Yes. But it's correct isn't it, that a council may take into account other matters such as strategies announced by other public bodies in formulating its Community Strategic Plan?---Of course.

Of course. Now, you're aware of the Sydney Metropolitan Strategy released by the New South Wales Government?---Yes.

Yes. Was that, do you recall when that was?---Oh, I believe 2005.

And it's been updated from time to time?---Currently we have a South, South District Plan which has been set by the Greater Sydney Commission, yes.

10 Yes. And one of the functions of the Metropolitan Strategy or its more location-specific subcategories - - -?---Yes.

- - - if I can put it that way, is to estimate or form predictions on Sydney's likely population growth.---The role of the Metro Strategy at the time?

Yes.---Yes, it's set targets.

It sets targets and makes predictions?---Yes.

20 Yes. And are you aware, and if you don't know the actual figures it's not a problem, that the draft Metropolitan Strategy as it existed in February 2014 - - -?---Yes.

- - - estimated that by 2031 the population of Sydney would have grown from 4.3 million to 5.6 million people?---Yes.

Yes. And that Greater Western Sydney would be home to more than half the population?---Yes.

30 The population over 65 years old would more than double to 900,000 people in that time?---If you say so.

Well - - -?---I don't remember those exact figure but they were the types of statistics set forth in those documents, yes.

Yes. Well, sir, you don't have to take my word for it, not that you can't, but - - -

40 MR BUCHANAN: Commissioner, I think speaking for the Commission to the extent that I can, I take Mr Andronos's word for it and I don't know that the witness is putting in contest.

THE COMMISSIONER: You're not contesting the figures that are being put to you?---I, they're figures that I don't know, but I do know that those statistics were the sorts of things contained in those strategic documents, yes.

MR ANDRONOS: Yes. Well, just for more abundant clarity - - -

THE COMMISSIONER: Can we progress?

MR ANDRONOS: - - - it's page 48 of, of the Community Strategic Plan.

THE COMMISSIONER: Okay.

MR ANDRONOS: Now, it's the bottom left-hand quarter.---Yes.

Yes. And the numbers are also at, and also at page 9 of the same document. But anyway, look, I, yes, and the, yes, the left-hand side of page 48.

10 Anyway, moving along. Now, are you aware of the draft South Subregional Strategy?---I wasn't familiar with that document, no.

But you're aware that such a document exists?---Yes.

And are you aware that the contents of that strategy estimated substantial population growth in the local government areas of what could broadly be called the southern suburbs of Sydney, substantial population growth in the years up to 2031?---Yes.

20 And do you recall that it set a target of an additional 42,000 dwellings in those local government areas in the period to 2031?---So Bankstown Council was in a different district area so I wasn't familiar, but it would have set targets.

Yes. Now, I'll just go to page 9 of the document. You'll see – just back one page, page 9. I'm following the numbering on the coloured boxes. Yes, that's the one. Page 9 of the document. You'll see that Canterbury City Council was estimating that another 12,000 people would be living in the Canterbury Local Government Area by 2023. Do you see that?---Yes.

30 And the local government area would need an additional 4,000 dwellings by that time.---Yes.

Yes. And you didn't, and sitting here today, you don't see anything wrong or aberrant in those predictions as at 2014?---No.

No. So, you would agree that the expected population growth and the demand for housing at the Canterbury Local Government area, would be relevant matters for council to consider in formulating its peak planning document in 2014?---Yes.

40

Yes. And you accept that it is part of a general manager's obligation to conduct the day-to-day management of council in accordance, amongst other things, with the Strategic Plan?---Yes.

Yes. And it follows, doesn't it, that a general manager has to take these matters, and by that I mean the population growth and demand for housing

projections, into account in exercising the general manager's day-to-day function?---Yes.

Yes. Now, if I could take you back to the document at page 14 of the document, you'll see that one of the objectives within the Community Strategic Plan is identified there at 1.2, "Balanced development." Can you see that?---Yes.

10 Yes. And you understand from this document, or perhaps simply from your knowledge of Canterbury Council, that balanced development was an objective of Canterbury Council, pursuant to this plan. Do you agree with that?---Well, I can see that from what's in front of me in this document, yes.

Yes. Now, you would agree, wouldn't you, that the question of what constitutes balanced development by definition requires the weighing of countervailing priorities, doesn't it?---Could you please repeat the question?

20 MR MOSES: Commissioner, I object. I'm not sure how this is going to assist the Commission. At the end of the day, the document speaks for itself and ultimately it is Mr Montague and others who are going to have to justify their actions. If their case theory is that they made decisions in accordance with this plan which this person here, that is Mr Stewart, was not responsible for, then they'll give that evidence and you'll have to make your assessments based on that. But I don't think asking this witness about this document, which he didn't draft or have input into, is going to assist, I would have thought. That's a matter for the Commission.

30 MR ANDRONOS: I'm not asking about the document. I'm asking about the concept. Because if what is in issue is whether or not Mr Montague conducted himself in accordance with his responsibilities, Mr Stewart – who was put forward as somebody who can express views as to the appropriateness of certain conduct and, in effect, as the general manager expert who the Commission is relying on – I'm entitled to ask him questions about whether or not certain decisions would fall within the concept as articulated here. And if they do, then my case will be that Mr Montague has complied with his obligations.

40 MR MOSES: But the question is, what decisions are we talking about? Is this hypothetical or are we going to go to certain planning decisions that were made (not transcribable) from Mr Montague and ask this witness to opine on it? I mean, at the end of the day, if that's where we're going, well, you'll allow it and let's get to it, but I would have thought that's not going to assist the Commission. It's ultimately a matter for the Commission to deal with.

MR ANDRONOS: With respect I'll conduct my examination my way and if I propose to do it at a high level of generality it's not for my friend to prevent me. If the Commission would allow me the latitude to ask these

questions my submission is they'll be relevant and of assistance to the Commission.

MR MOSES: It's not a matter of preventing, I just took the objection. It's a matter for you, Commissioner, to make the ruling.

THE COMMISSIONER: All right. Mr Buchanan - - -

10 MR BUCHANAN: Your Honour, Commissioner, I have a somewhat different concern and the concern is that the question, in order for the answer to be of assistance, would need to take into account the context, and there's a very large body of evidence both that has already been received and is yet to be received as to the context of the decisions that were made, and this witness is not going to have that context before him. This is going to reduce considerably the assistance any answer he might give to the point of no value at all.

20 MR ANDRONOS: With respect it's questions of context that I wish to bring to the Commission's attention through this witness.

MR BUCHANAN: But not, it can't be the whole context. That's the point I'm trying to make. Yes, this document might be one part of the context, but there's a far greater context than that and there is very much fine detail that comprises that context which is simply impossible for this witness to take into account.

30 MR ANDRONOS: Well, that, with respect, is precisely the issue. The Commission's been taken to small picture matters without looking at the big picture and the big picture can be dealt, it would have been dealt with by now had the objections not been made, we would have been through this by now.

THE COMMISSIONER: Mr Andronos, I am having difficulty at this high level of the assistance that I'm going to gain from the questions you're asking, but are you saying to me that on this particular topic there are just a number of discrete questions you're going to ask and it's going to be finished relatively quickly?

40 MR ANDRONOS: Indeed, indeed Commissioner.

THE COMMISSIONER: All right. You can ask those questions but you're on notice.

MR ANDRONOS: May it please the Commissioner.

Now, Mr Stewart, I was asking you questions about, about balanced development. You would agree wouldn't you that balanced development by definition requires weighing or balancing countervailing priorities. Correct?

---Notionally, yes.

Yes. Now, on the one hand for example there is an imperative to maintain continuity in existing communities, isn't there?---Yes.

To not change the character of a neighbourhood or a precinct radically over too short a period. Would you agree with that?---These are among many possible heads of consideration.

- 10 Yes, yes. But I'm just going to ask you to look at a particular axis of considerations. On the other hand there are pressures to accommodate a growing population. Correct?---Yes.

And you are aware that the Metropolitan Sydney Strategy contemplated growing the population in areas close to the Central Business District of Sydney?---Yes.

Yes. And Canterbury is of course 17 kilometres away from where we sit right now.---Yes.

20

Yes. Well-served by public transport and roads?---I believe so.

Yes. There's existing electricity, water and telecommunications infrastructure all in place. Do you agree with that proposition?---Yes.

Yes. And also if a suburban centre has ambitions to be a commercial and business centre it would assist to have a large population living nearby, wouldn't it?---Yes.

- 30 And you would agree that on this axis of balancing factors you have attention of accommodating population growth on the one hand against the perhaps desire to restrict population growth for any number of community reasons.---They're two of many of the aspects in considering balanced growth.

Yes, yes. And just looking at that particular axis, you would agree that reasonable minds may differ as to where the appropriate balance should be drawn in any particular community, wouldn't you?---Yes.

- 40 And views could differ according to the political orientation or philosophy or outlook of a particular person?---Yes.

You would expect maybe, to put this crudely, the grannies and maybe the left of the ALP to be more restrictive in the sort of development that they would see as appropriate compared perhaps to the Liberal Party and maybe the right wing of the ALP.---I wouldn't necessarily say that, no.

But matters of political philosophy, would be relevant?---Every individual in every council brought a different view of each different place within their cities. That's for sure.

Yes. And each of these views might be honestly and reasonably held in good faith as to whether a particular development falls within the concept of balanced development within the meaning of a particular Community Strategic Plan?---I wouldn't necessarily entirely agree with, with that.

10 But you would accept that there is a range of views which would be reasonably available to people?---Definitely a range of views.

Not saying every view would be acceptable but there would be a range of views?---A range of views, yes.

Yes. Now, from a general managers point of view, in terms of exercising his or her day-to-day functions, that person could form the view that decisions that had the effect of increasing density in residential development could represent a balanced development in certain circumstances?---Could you please repeat the question?  
20

No, I will abandon that question. Now, I want to ask you a few questions about the general manager relationship with council.---In general?

In general to start with anyway. Now, you accept that the general manager is responsible for ensuring the implementation of council's decisions?---Yes.

And that the general manager carries out all of his or her functions within a policy framework approved by council?---Yes.  
30

And in this regard, is it fair to say that the general manager is really an administrator who carries out policies of the elected council?---In that aspect of the role, yes.

Yes. And the general manager's role is also to ensure that council staff carry out the policies of the elected council?---Yes.

In your experience, elected councils may have strong views on matters within the council's jurisdiction. Correct?---Yes.  
40

They are, after all, elected officials?---Yes.

They are answerable to their constituents?---Yes.

You can assist in devising strategies and policies but ultimately, these are matters for council?---Yes.

And once the policy is set, your role is to implement them?--- Yes.

Yes. Now, as a practical matter, and I think you might have already given evidence to similar effect this morning, you would agree that a general manager must have a reasonable working relationship with council?---Yes.

Now, council will have its, obviously will have its leaders and its followers. ---Yes.

10 The leaders may have that role by dint of officer party leadership or they may simply become leaders by force of personality or even intellect?---Yes.

And they will not necessarily be leaders just because they have the office of mayor?---Yes, correct

Yes. It'll be a matter of whatever are the power dynamics on that particular council that particular time?---Yes.

20 And as a general manager, you have to work with the council the voters have given you, not the council you might choose if it was up to you?---Yes.

And so does it mean that the general manager must have a reasonable working relationship with the leaders on council, whoever they are in fact? ---I maintain all of them and that would include them.

Yes. Now, as general manager it's your responsibility to hire, direct and, if it comes to it, fire staff, is that correct?---Yes.

30 In hiring or dismissing senior staff, you're aware of the general manager's obligation under the Act to consult with council, of course?---Yes.

Now, you've given evidence that you are aware of the offer of employment that was made to Spiro Stavis in 2014. Were you aware that that offer was made following a process which involved him being interviewed by a panel made up of councillors?---Yes.

Yes. And you know that that panel was made up of Mayor Robson, Councillors Azzi and Hawatt and Mr Montague?---Yes.

40 Now, you're familiar with the term junta or junta?---Yes.

As it was applied by Mr Montague to Councillors Azzi and Hawatt?---Yes.

And you understood from that that they were in effect leaders on council? ---Yes.

Yes. Do you agree that convening an interview panel, including councillors who were leaders on council, was one available approach to ensuring consultation with council on a decision to hire a director of city planning?

---That's one possible approach, yes.

Yes. It doesn't strike you as an approach which is not properly available to a general manager in seeking to ensure consultation?---Sorry, could you rephrase the question?

I'll try and express that in the positive. You accept that that is an approach that would be available to a general manager acting properly if he wanted to ensure consultation with council?---It's a possible approach.

10

Yes.

THE COMMISSIONER: Is it one that you've ever adopted?---Not in that same fashion. I have had the mayor and deputy mayor involved in a process of recruiting a senior staff member. What I did was I set forth a report to the council about the process. I advised the council in the report about my proposal to do my preliminary process and take the final two candidates through to an interview, including the mayor and deputy mayor, and I had the council resolve that that process would satisfy them with respect to section 337 of the Act, and the final interview was conducted with the mayor and deputy mayor of the day with myself and the employment consultant.

20

MR ANDRONOS: Thank you, Commissioner. Turning now to the question of directing staff. In the exercise by the general manager of his or her power to direct staff, the general manager might well be faced from time to time with situations of unsatisfactory performance, correct?---Yes.

And these might be demonstrated by failure to meet KPIs?---Yes.

30

There might just be poor productivity or poor quality of work output?---Yes.

Yes. And in those situations, isn't one possible management response for the manager to, let's say, get firm with the staff member?---Yes.

Yes. You might need to put the staff member under pressure to perform, mightn't you?---Yes.

Yes. Taken as an example, the failure to meet deadlines. Let's say the consistent failure to meet deadlines. The general manager might take the view that he or she needs to call up the staff member and give them a hurry-up.

40

MR MOSES: Commissioner, I object, not because of anything (not transcribable), I don't understand how this is going to assist the Commission. Again, we're dealing more with general rather than specific. I mean, we can be here all day with these. These are all matters that are part of the statutory powers of the general manager and are 101 HR matters. I

don't understand how this assists. I mean, is there a proposition that is going to be put to the witness so that we can get on with this?

THE COMMISSIONER: I am - - -

10 MR ANDRONOS: Well, if, well, Commissioner, there is evidence already given in this Commission by members of staff of Canterbury Council where they say that Mr Stavis had been put under pressure by Mr Montague. Now, it's all put in a wholly unsatisfactory way because it's put on the basis of  
10 second or third-hand hearsay. But the fact of pressure by Mr Montague is in evidence before the Commission. Now, if what Mr Moses is saying is that that evidence is irrelevant, then the Commission ought not take that into account. I'm happy with that and I don't need to ask this question. But that evidence is before the Commission and there may well be – I apprehend – a suggestion that that pressure was necessarily improper because it was pressure. Now, I am meeting that apprehended allegation.

20 THE COMMISSIONER: All right. I can understand that. Where I'm starting to have a difficulty is that you're still very much at that kind of general level, and that's not going to be helpful for me. Can you frame the questions more specifically as to meeting what you perceive to be the ultimate either contention that's going to be put against your client.

30 MR ANDRONOS: Well, the problem is, Commissioner, the contention is put at such a high level of generality and in such a diffuse and – had this been a court – inadmissible way. To meet the allegation, I can descend to no greater level of detail than the level at which the allegation is put. It's in Ms Dawson's evidence, for example, where she said she was of the impression that Mr Stavis was under pressure from Mr Montague.

THE COMMISSIONER: Ah hmm.

MR ANDRONOS: There was no evidence as to what that pressure went to. So my question for this witness, who is here in effect as the expert general manager, is whether or not the kind of pressure that is the subject of evidence in the most general of terms is necessarily evidence of some kind of impropriety on Mr Montague's part.

40 THE COMMISSIONER: Ah hmm.

MR ANDRONOS: Mr Moses's objection, and I understand the objection, is that this is at such a high level of generality it can't assist. Well that's fine, but that's the level at which the allegation is put, the allegation that I'm meeting.

THE COMMISSIONER: How much further are you going on this?

MR ANDRONOS: Two questions, three questions.

THE COMMISSIONER: Two questions please.

MR ANDRONOS: Well, I can just put that question. You would accept, Mr Stewart, in your experience as a general manager of local councils that the mere fact that a general manager puts a director under pressure does not mean that he or she is misusing his authority.---No.

10 The role of director of city planning is a senior and important role in any council organisation. Correct?---Yes.

That person, I think you might have already given this evidence, will necessarily have some interaction with councillors?---Yes.

That person will have to implement council's planning controls?---Yes.

And that person will have to do so mindful of the strategic direction set by council the Community Strategic Plan?---Yes.

20 Yes. Now, there is significant scope for conflict with council if the councillors form a view that the director is not sympathetic to the strategic direction of council.---I have some difficulty with that proposition on the basis that the Community Strategic Plan is a very high-level document and in my experience, and I wasn't part of Canterbury Council, but in my experience the council would develop a range of strategies, housing strategies and development strategies to guide and articulate exactly what sort of development in what locations it wanted, and that's what would have guided the outcomes. I don't believe that the high-level strategy to just  
30 balance development as two words would be the guiding strategy for the director.

Well, leaving aside that particular document, if the director was perceived as not being sympathetic to the strategic direction of council there could be room for conflict, couldn't there?---Yes.

Yes.

40 THE COMMISSIONER: Can I just ask, in the strategic direction of council how would a director of city planning ascertain that, is it through things like a LEP that was developed by the council or - - -?---The LEP would be the very last thing in a strategic process. The Metro Strategy that was raised earlier would set targets.

Ah hmm.---Every council dealt with this in different ways, but certainly there's a requirement to develop a strategy as to where the housing should be within the city in a general sense and then there's significant work and community consultation around setting the broader strategies within areas, which would then at that final stage translate into a DCP and LEP. By way

of example, as the general manager of Bankstown Council, before my time the strategies set targets on the City of Bankstown in 2005 and there's still current strategic documents before the council to finalise the delivery of those strategies as we sit here in 2018, so it's a long process of developing a range of taking the high level strategy down to very specific controls, the LEP is the final piece of that process.

10 But I suppose what I'm getting at is the ascertainment of the philosophy or perspective of council, you need to ascertain it objectively and the way you do that is through such documents as a LEP, a DCP or other policy documents developed through council?---That's, that's the final articulation.

20 Ah hmm.---Again every council is different, but the council I was at, at Bankstown Council developed a housing strategy which said that it wanted to have majority of its new growth around centres, and then it looked at how much centres could accommodate, then it looked at supporting infrastructure that would be required if it was to have that many new dwellings, then it would develop a structure plan for each centre as to what that might look like and what exact infrastructure would be required then that would be translated into a LEP.

But again each step that you've identified, in a sense, it's been objectively ascertained and determined and articulated.---Yes.

30 MR ANDRONOS: Thank you, Commissioner. Now, the last question I asked you, Mr Stewart, was about the scope for conflict with council if councillors formed the view that the director wasn't sympathetic to the strategic direction of council, and I think you agreed with that proposition. Now, my next question is this, taking that scope for conflict into account, it would be a relevant matter for a general manager to take into account in hiring the person he or she thinks would be the best person for the role of director of city planning, wouldn't it?---That would be a (not transcribable) consideration, yes.

Now, I'll take you now to some of your earlier evidence and your statement, Mr Stewart. In your statement and your evidence yesterday and today, you referred to a meeting at Bechara Khouri's house on the 30<sup>th</sup> of March, 2016.---Yes.

40 I think it's fair to say you didn't particularly want to be there.---Correct.

And you didn't see any particular need for that meeting.---Correct.

Yes. Your view, and that of your mayor, was that Bankstown City Council had passed the Fit for the Future threshold and could resist merger with any other council, is that right?---Yes.

Yes. Now, when Mr Montague invited you to the meeting, he did so in a phone call?---Yes.

And in that phone call he invited you to a meeting at Mr Khouri's house. ---Second phone call, yes.

Yes. When he invited you to a meeting at Mr Khouri's house, he already had a venue in mind for the meeting, didn't he?---Mr Khouri's house was the venue.

10

That was the venue that he had in mind when he contacted you.---The second time.

Yes. In your statement you say that you suggested the meeting take place at Bankstown Council chambers?---Offices.

Council offices.---Yes.

20 But when you made that suggestion, Mr Montague had already indicated he'd already invited you to the meeting at Mr Khouri's to take place at Mr Khouri's house, hadn't he?---No, the first conversation where he called me to ask for the meeting, he didn't indicate that there'd be a location, and he'd get back to me with a location, because he didn't want to come and meet at the council office.

Well, I'm suggesting to you, Mr Stewart, that what Mr Montague was suggesting to you was that the meeting take place on, as it were, neutral territory.---Yes.

30 Yes. And he no more wanted to have a meeting at Bankstown Council than he would have expected you to want to have the meeting at Canterbury Council.---Yes.

Yes. Now, in your account of that meeting you refer to statements being made by each of Mr Montague and Councillors Azzi and Hawatt. You've given quite extensive evidence about that. Now, I'm going to make some suggestions to you about that meeting.---Yes.

40 Now, you've indicated some of those statements made you quite agitated. ---Yes.

And I'm suggesting to you that in your agitation you have misattributed to Mr Montague certain statements that were not made by him in your evidence. Now, first can I take you to this. When Mr Montague said that he wished to continue to work, he only put it as high that he wanted to work as a consultant to assist in the transition from the separate councils to an amalgamated council. That's correct, isn't it?---Yes.

He wasn't seeking a permanent position. He simply wanted to be a consultant for the purpose of the transition.---Yes.

And when you said in your statement that Mr Montague said words to the effect of getting rid of all the senior staff except for Mr Stavis, my suggestion, Mr Stewart, is that if you heard those words they were in fact said by somebody else, not by Mr Montague. Do you agree that's possible?  
---It's possible.

10 It could have come from Councillor Hawatt or Councillor Azzi, couldn't it?  
---Not from Councillor Azzi.

But it could have come from Councillor Hawatt?---It could have.

Because you gave evidence today that you understood when Mr Montague said he wanted his people to be looked after, that you understood he was referring to all 500 staff at Canterbury Council.---That was clear to me, yes.

20 THE COMMISSIONER: Why didn't you think it could be Mr Azzi who said it?---Mr Azzi's not the most articulate individual and Michael Hawatt was certainly doing all of the talking.

MR ANDRONOS: Now, I suggest also that Mr Montague never made any comment where he was comparing Mr Stavis to Mr Pedder.---He never compared Mr Stavis to Mr Pedder.

30 When he said words to the effect that, he said words to the effect that Stavis was the best planner that Canterbury Council had had, he wasn't making any other comparison. That's the case, isn't it?---Well, that's an assumption, that's certainly not how I took it.

Yes. But you accept that it's possible that you misconstrued that and that's really what he had said?---It's possible that it was misconstrued.

Yes. I suggest also that if anyone said the words, "It's time to clean out the cupboard," it was not Mr Montague.---My statement is as I recall it.

40 Yes. How long after the meeting did you first commit that statement to paper?---Certainly longer than six months but I can't recall with certainty.

You can't recall. You can't recall when you committed it to paper or you can't recall - - ?---No. I can't recall when I committed it to paper.

Yes. So it's possible that with the passage of time you may have misremembered who said what?---It's possible.

At paragraph 34 of your statement you say that Mr Montague made statements about Andy Sammut and Wayne Cooper. As with some of the

other statements I've taken you to, do you accept that that might have been said by someone other than Mr Montague?---Not those comments, no.

Had you met Andy Sammut or Wayne Cooper at this stage?---Yes. A number of times.

Yes. Well, I just have to formally put this. I'm putting to you that those words were not said by Mr Montague. You just have to respond to that.

10 THE COMMISSIONER: Do you agree or disagree with that?---I don't agree with that.

MR ANDRONOS: I'll take you to the meeting in 18 April. Now, in your account, you've given no evidence that at this meeting, Mr Montague said anything about the Canterbury Staff to suggest to you that he didn't see a future for each of them in a newly amalgamated council. That's right, isn't it?---Correct.

20 And that's because he didn't say anything at that meeting, did he?

MR BUCHANAN: On that subject.

MR ANDRONOS: On that subject, yes.---In my, in my office?

Yes.---No.

30 No. Now, still on that meeting, you've given an account that Mr Montague gave you a reason for putting in his application for the position of general manager of the amalgamated council. You've said that he told you that it was because, "Michael and Pierre made me." Do you see that?---Yes.

Now, you didn't have any notes of this conversation, did you?---No.

No. And I'll suggest to you, your memory of that conversation is incorrect. You just have to respond to that. you either agree - - -?---That's how I recall it.

40 That's how you recall it. I suggest to you that he didn't say anything about Pierre and Michael making him do it, it just that he wanted to have a role in the ongoing council and he was under the impression that the only way he could have a role in the ongoing council was if he made that application. Do you agree with that?

THE COMMISSIONER: Sorry, are you suggesting that Mr Montague said that?

MR ANDRONOS: Yes, that Mr Montague said that.---Well, that's not how I recall it.

Are you aware that Mr Montague ever had that belief in the period of about April, 2016?---It would accord with me that he would have had that belief.

That in order to have any role at all he needed to apply for the role of general manager?---Yes.

10 Now, in your statement you have Mr Montague saying to you the words, "What are you going to do when I get the job?" Now, I suggest that what he said was, he didn't use the words "when I get the job" but "if I get the job". Do you agree?---He may have misspoken but I certainly recall that vividly because it upset me.

But you knew he had no expectation of getting the job, you knew that at the time?---Well, I didn't have an expectation of getting the job but I think Jim thought that his experience might stand him in much better stead than myself.

20 I'll ask that question again. You knew he had no expectation of getting the job?

THE COMMISSIONER: I think he answered it.---No, I - - -

MR ANDRONOS: No, he - - -?---I didn't know that.

Well, he was in his late sixties and you were in your early forties. Is that correct?---Yes.

30 And people's views of age being what they are you would expect that would put you, a man in the prime of your life, in a better position to get the job than him wouldn't you?---I don't believe that he had that expectation.

But that was your view wasn't it, that you had better prospects than him? ---That was my view of myself.

Yes, as subsequent events have demonstrated. You're correct and he, and if he had a different view he was wrong.---Yes.

40 Now, you've said that the meeting finished amicably.---Yes.

And I suggest to you that the exchange that you had with him, subject to the version I'm putting to you, but the exchange you had with him that you recalled at 55 and 56 of your statement was a fairly light-hearted exchange wasn't it?---Yes.

You were two successful and proud men?---Yes.

Would you agree you're both A-type personalities?---Yes.

You're a generation apart of course?---Yes.

Mr Montague had provided you with some support and guidance from time to time early in your career?---Yes.

10 And the conversation about the general manager's job was not a serious conversation between genuine rivals was it?---I would say that we both knew through no fault of our own that we were rivals. We both knew that at the end of the day there wasn't going to be two general managers but at this time, before and after it, I felt like I had a good respectful relationship with Mr Montague and I didn't feel there was any bad blood or ill feeling between us whatsoever.

And that meeting didn't change that?---No.

Thank you, Commissioner. No further questions.

20 THE COMMISSIONER: Mr Doyon?

MR DOYON: No, Commissioner, no questions.

THE COMMISSIONER: Mr O'Gorman-Hughes?

MR O'GORMAN-HUGHES: Mr Stewart, I appear for the Office of Local Government. You gave some evidence before about the need for the termination without reasons clause in the standard contract for general managers.---It's a little bit hard to hear you just at the moment.

30 THE COMMISSIONER: Could you try and speak into the microphone.

MR O'GORMAN-HUGHES: Mr Stewart, I appear for the Office of Local Government. You gave some evidence before about the need for the termination without reasons clause in the standard contract for general managers.---Yes.

40 And I just wanted to ask you if the clause were not there in your opinion would there be difficulty in carrying on in the position as general manager in the event that there was a breakdown in the relationship between the councillors and the general manager?---As I said, the relationship between the general manager and the councillors is paramount and if there's a breakdown it's absolutely difficult with or without the clause.

Thank you. Without the clause what difficulties specifically do you see in the ability of the general manager to continue in that role?---It's a complex issue and it's quite difficult to answer and there's a lot of varying views, but at its highest level a board needs to be able to have some say over

its CEO and if the relationship has broken down there needs to be some mechanisms and a process by which that can be dealt with with certainty.

You say dealt with with certainty. If the clause are not there, are you saying that there would be uncertainty because of the need for the council to rely on alternative clauses in the standard contract in order to remove the general manager?---What I mean is that if the clause is not there and there's a breakdown in the relationship, that has the potential to persist for some time. I'm not concerned so much with the impact on the individuals but the  
10 general manager is the leader of the organisation, tone comes from the top and it permeates through the organisation, so that relationship is paramount.

And I take it then that your opinion is that the clause serves a role in a sense of bringing to a head quickly the question of whether or not the general manager will continue in the position in those circumstances?---It serves a role.

I have nothing further, Commissioner.

20 THE COMMISSIONER: Thank you. Mr Taylor?

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

THE COMMISSIONER: Mr Pararajasingham.

MR PARARAJASINGHAM: I have no questions.

30 THE COMMISSIONER: Mr Moses?

MR MOSES: Nothing, Commissioner.

MR BUCHANAN: One matter, Commissioner.

Can I just ask you to think back to the situation you were describing in answer to questions from Mr Andronos of an interview panel that you had convened to essentially choose between a shortlist of two candidates - - -?  
---Yes.

40 - - - where the panel had included the mayor and the deputy mayor. Is that right?---Yes.

Had there been anyone else on that panel?---That particular appointment was some time ago. There was, but I can't recall the individuals. Sorry, yes, the consultant that I used to run the process.

The recruitment consultant?---Yes.

Was part of the panel, not just an observer?---No, no, part of the panel.

And do you recall the position being filled on that occasion?---Yes.

What was that?---It was my direct replacement, the director of assets and infrastructure.

10 And to get to the situation of having a panel to choose between the two shortlisted candidates, had there been a shortlisting or culling process - - -?  
---Yes.

- - - of candidates that applied?---Yes. I'd been through an extensive process with the consultant in advance of that.

Had there been any preceding interview panel? That is to say, this panel that you were talking about, was it a second interview?  
---Yes.

20 What was the preceding interview panel process, as best as you can recall?  
---A typical interview process where the applicants came to a traditional interview.

Comprising the panel? Sorry, I should have been clearer.---It was myself, someone from the HR Department and the consultant. In this instance I was the technical expert, because I was replacing myself as the head of engineering, and went through a merit-based interview process. The shortlisted candidates from that process were to be put forward, and there was two that I was happy to employ.

30 THE COMMISSIONER: I was going to ask, you said the technical expert was me because I was replacing myself.---Yes.

With these senior staff positions within council, at an interview panel would you expect and think it's good practice to have some kind of expert there?  
---Yes. I've done some recent recruitments, obviously, with the amalgamation and I've done just that.

40 MR BUCHANAN: Changing the subject now. You were asked by Mr Andronos about alternative versions of your account of what occurred at Mr Khouri's house on 30 March, 2016 in terms of statements that you had attributed to Mr Montague. One in particular that Mr Andronos asked you about was the statement in relation to getting rid of senior staff at Canterbury except Spiro Stavis. You were asked whether it could have been said by somebody else and you said it's possible. You don't believe it was said by Mr Azzi for the reasons you gave, but it could have come from Councillor Hawatt, you said, in answer to Mr Andronos.---Yes.

My question to you is, having had the opportunity to evaluate your memory, as it were, as a result of Mr Andronos's questions, who do you believe made that statement?---I still maintain that my statement is as I recall it.

Made by?---Mr Montague.

I tender the document shown to the witness, City of Canterbury Community Strategic Plan 2014-2023, adopted 13 February, 2014.

10 THE COMMISSIONER: Yes, the City of Canterbury Community Strategic Plan 2014-2023, adopted 13 February, 2014, will be Exhibit 63.

**#EXH-063 – CCC COMMUNITY STRATEGIC PLAN 2014 - 2023  
ADOPTED 13 FEBRUARY 2014**

MR BUCHANAN: The Commission pleases. I have no further questions for the witness. He can be excused.

20

THE COMMISSIONER: Right, thank you, Mr Stewart.---Thank you.

**THE WITNESS EXCUSED**

**[1.01pm]**

THE COMMISSIONER: We'll have the luncheon adjournment, resuming at 2 o'clock.

30

**LUNCHEON ADJOURNMENT**

**[1.01pm]**