

DASHAPUB06518
12/04/2019

DASHA
pp 06518-06581

PUBLIC
HEARING

COPYRIGHT

INDEPENDENT COMMISSION AGAINST CORRUPTION

PATRICIA McDONALD SC
COMMISSIONER

PUBLIC HEARING

OPERATION DASHA

Reference: Operation E15/0078

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON FRIDAY 12 APRIL, 2019

AT 9.00AM

Any person who publishes any part of this transcript in any way and to any person contrary to a Commission direction against publication commits an offence against section 112(2) of the Independent Commission Against Corruption Act 1988.

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

MR DREWETT: Commissioner, thank you, on behalf of my client, for allowing him that opportunity yesterday afternoon to attend his appointment. He did, and I understand the appointment was about an hour late, if anyone was wondering just how surgeons – and the go-ahead was about a 1.30 by the time he got in, but he has asked me to thank the Commissioner. Can I also enquire, with respect, whether or not the morning break will be at 11.30 this morning and if so, whether you would contemplate maybe a five minutes break sometime during the morning. A two and a half hour session, perhaps with a five minutes break from now until morning tea so my client can stretch his legs and maybe just move around a little bit.

THE COMMISSIONER: Mr Buchanan, can we accommodate that?

MR BUCHANAN: A matter for the Commission.

THE COMMISSIONER: Look, we'll take a five minutes break at an appropriate point.

20 MR DREWETT: Thank you, Commissioner.

THE COMMISSIONER: Mr Buchanan.

MR BUCHANAN: Thank you, Commissioner. Mr Hawatt, have you - - -

THE COMMISSIONER: Oh, sorry, sorry. My trusty associate's just reminded me.

THE COMMISSIONER: Mr Buchanan.

MR BUCHANAN: Sorry. Mr Hawatt, have you had an opportunity to review the copy of the ASIC extract of companies related to you?---Yes, I did last night.

10 Thank you. Have you got that copy that I gave you yesterday with you?
---Yes, yes. Yes, I have, with notes on it.

Thank you. And could we have a look at it, please?---Yes. I can, I also, can I just - - -

Yes, please.---What I did is, I went through it originally and some of the companies in there that, that are, most of them, the one I, I put notes on, I've never, I might have been a director of one in, a few of them in Queensland but there's no activities so I went back and did another research, my own
20 credit checks, and some of these companies are there but not active. So I'll give you the one that I've, that I did as well, it might help you.

Thank you. If you could pass it to the Commission's associate.

THE COMMISSIONER: No, you can have a look first, Mr Buchanan.

MR BUCHANAN: Thank you. And so if I could ask you, in respect of the information on the two-page document that you generated, Mr Hawatt, what is it that you're saying in respect of those companies?---Well, as you can
30 see, there's no ABN, that means the, the companies are not active.

Oh, I see, right. And so as far as you're concerned, the four companies whose names and ABNs are highlighted, the ABNs being blank, are companies that are said to be associated with you but are not active, is that right?---Not active. I might have been a director but there's nothing, I forgot, even forgot about being a director for some of these companies because there's no activities in it.

40 If I could just quickly show Mr Drewett.

THE COMMISSIONER: Sure.

MR BUCHANAN: Commissioner, I tender the copy of the ASIC extract in respect of Mr Hawatt, which has been annotated by Mr Hawatt, and perhaps it could be, if this is appropriate, part of the same tender, the two-page document headed Michael Hawatt Consumer Credit Information with highlightings on it.

THE COMMISSIONER: Can I just have a quick look, please? Mr Hawatt, can I just ask, the first page has got shareholding and you've made some comments along the lines of "never been active," or "non-active" in respect of some of those. You don't dispute the shareholding, you're just informing the Commission that those particular companies have never done anything? ---Correct.

10 Okay. The copy of the ASIC extract, a personal name extract in respect of Michael Hawatt extracted on 9 June, 2016 with the annotations made by Mr Hawatt and then a two-page document entitled Consumer Credit Information Michael Hawatt, consisting of pages 6 and 10 of that document will be Exhibit 285.

#EXH-285 – COPY OF PERSONAL NAME ASIC EXTRACT IN RESPECT OF MICHAEL HAWATT EXTRACTED ON 9 JUNE 2016 WITH ANNOTATIONS MADE BY MICHAEL HAWATT AND A TWO PAGE DOCUMENT ENTITLED 'CONSUMER CREDIT INFORMATION' CONSISTING OF PAGES 6 AND 10

20

MR BUCHANAN: Mr Hawatt, we concluded yesterday by looking at the meeting that occurred on the afternoon of 24 December, 2014 at Mayor Robson's house between you and Councillor Azzi on the one hand and Mayor Robson on the other hand. Do you recall that?---Yeah, I recall.

30 Can I take you now, please, forward to Boxing Day 2014, volume 4, page 76. There's a text message from you to Mr Montague at 6.49pm which reads, "When can we catch up to talk?" Do you recall sending that to Mr Montague?---I, I don't recall, but if I sent it, I've sent it, but I don't recall it, no.

Do you recall that a meeting occurred between you and Councillor Azzi on the one hand and Mr Montague on the other hand, shortly after Christmas 2014?---There was a meeting but I don't recall the exact time and dates.

A meeting at the Bulldogs club?---Yes, there was one at the Bulldogs club.

40 And how did that meeting come to occur?---Could be from that message I've, you just read out.

So you accept, do you, that you initiated the meeting?---Most likely.

And why did you initiate it?---I didn't trust the mayor because I don't think he would do the right thing, he just wants to create turmoil, and I just wanted to ensure that the general manager understood what was going on.

What was there to prevent you from not only ensuring that the general manager knew what was going on but having a record of that by sending him an email?---Well, I had to make sure that he understood what was happening.

Yes. Why couldn't you just send him an email?---Oh, depends whatever's convenient. I, I just, could be an email, could be text messages, could be a phone call.

10 Well, obviously - - ?---I mean this is the way we operate.

Obviously an email would be much more convenient, it would take far less time, wouldn't involve you having to go anywhere and you could have cc'd Mr Azzi in on it and then there would have also been a record of it. So what was more convenient about going to the Bulldogs club to meet up with Mr Montague?---We've always used to, this is the normal thing we do. We always met at the club, sometimes we met at a coffee shop, it's just the way we operate. I use my phone as a convenient source of sending messages or communicating with people and that's normal as far as I'm concerned.

20

Well, certainly, it's normal to have a meeting when what you want to do is negotiate something, isn't it?---It's just a general discussion.

And given that you initiated the meeting, it would seem that you wanted to negotiate something with Mr Montague.---Just wanted to clear the air with him.

30 And in what way would you be clearing the air with him?---So he understood the, our position and, and what, and what's happening, so we can discuss it.

What was there to convey to Mr Montague?---Well, didn't want him to, to think the wrong, the wrong things, and we want to make sure it's an amiable discussion that we can have in regards to his position.

In regards to him losing his job?---Yes.

40 An amiable discussion?---Correct. And what he wants, because we knew that he wanted to retire, and we want to just discuss it further with him to get his opinion.

You said you want to negotiate the circumstances in which he would leave as general manager.---No. There was no negotiation, there was a discussions, and he told us what he, he felt and what he, what he wanted to do. That's, that's simple.

But what I'm asking you about is not what occurred, but why you set this meeting up, what it was that was in your mind, and what I am suggesting to

you is that, from the facts that we know, it would appear that you wanted to negotiate the terms on which Mr Montague would leave as general manager.---I don't negotiate, just wanted to hear his opinion, what he wanted.

And a negotiation invariably involves an offer, doesn't it?---Well, I can't make offers. It's up to the council to make those decisions. We can only talk about it, and discuss it. And that's exactly what we did. But I, I cannot make any offers as valid.

10

You did make an offer at the meeting though, didn't you?---It was a discussion. It's not an offer. It's a discussion. I cannot make an offer, because I'm not allowed to make offers. I can't make offers. It's up to the council, we can - - -

Well, you can if you control the numbers on council, can't you?---I don't control the numbers. Each individual councillor has his own opinion. I cannot control that. And it's up to them to make those decisions, the final decision, not myself.

20

And you took with you the man with whom you control the numbers, Councillor Pierre Azzi.---Because Councillor Azzi and I went to the mayor and, and gave him the, the, a piece of paper.

Why did you not take with you any other councillor?---It was Boxing Day.

Why did you not take with you any other councillor?---It was the Boxing Day holiday. And most people - - -

30

What did that, why, what difference did that make?---Well, most people are on leave, on holidays with their families, and, and Pierre was the only one who's available.

What attempt did you make to see whether any other councillor would be available?---I would have spoken to other councillors and most likely they, they weren't, they couldn't make it, so - - -

Well, the - - -?---I, I don't recall.

40

THE COMMISSIONER: Did you speak with them, or are you - - -? ---I don't recall, but the chances (not transcribable) because we, we communicated quite often. And I, I can't recall on that particular time whether I, I spoke to anyone else.

MR BUCHANAN: Well, we've seen that you were in regular communication with your colleagues in the majority on council. Indeed, you had communicated with them at some length by text message on Christmas Eve, 24 December, 2014, about what you were, you and Mr Azzi

were going to do that day. This is volume 4, pages 69-70. Why couldn't you continue that practice and send to the councillors a text message saying, "I think it'd be a good idea to have a meeting with the general manager. Who is available to attend?"?---Well, that's the way you operate. That's not the way I operate.

No, no, no.---But I mean, that's your opinion.

10 You did yourself, we can see the way you operated. You were in regular contact with your colleagues in the majority at council- - -?---Right.

- - - trying to get their support for what you were doing.---And I did keep them informed.

So you understand that your text messages have been extracted from your mobile phone?---Yes.

20 You understand that there is nothing by way of a text message of the kind that you have been employing to keep your colleagues in the majority of council informed of what you and Councillor Azzi were doing in your fight with Mr Montague, after the 24th, and until sometime later.---Yeah, that's most likely, yes, if that's the case, well, it means that I wanted to find out his, Mr Montague's point of view so I can relay it back to the, to the councillors.

You wanted to have a private meeting with Mr Montague where only you and Mr Azzi would know what was going down. Isn't that the case?
---That's not the case. What we like to do is just have an amiable discussion with the general manager.

30

If you were going to have an amiable discussion, why couldn't you have it over the phone?---Because we generally always sit down and have coffee, meet face to face and discuss it. This is a serious issue not a, a telephone issue. This is an issue that we needed to see him face-to-face.

Now, you went to the – I'm sorry, I should just show you the evidence that the Commission has, page 80. Mr Montague accepted your invitation at 8.57am in a text which said, "Michael, any time." Can you see that?---Yep.

40 Can I take you to page 82 and in part, I am wrong, this series of text messages on 27 December, 2014, shows that you copied Mark Adler in on a text message that you sent to Pierre Azzi at 11.41am, "Can we meet up with JM at Canterbury Leagues Club late this afternoon to discuss his options. Let me know your thoughts and time you are free." And do you see the message number 2 in this extraction was sent to Mark Adler, same message?---That's correct, yeah.

Did you get a response from Mr Adler? It's not recorded there.---The, if, if he didn't turn up, that means he didn't have the time.

But did you get a response from Mr Adler?---I don't recall. All, all I'm saying is, just my assumption is that if I invited him and he didn't turn up, that means he couldn't make it.

10 So these text message suggest that, in particular, what Mr Azzi is recorded as saying in response to message number 3, "Okay, any time," that this was an idea entirely of yours and that you were seeking Mr Azzi and Mr Adler's participation in the meeting?---They were the main ones who were active in that process.

Yes. And Mr Azzi is recorded as saying, message number 4 at 11.49am, "Me, you, Jim first." Do you see that?---Yes, I saw that, yep.

20 What did you understand was – I withdraw that. Did you have any understanding of why Mr Azzi said that to you?---Oh, I wouldn't, no, I don't understand why he said it but he might have wanted to try to resolve this issue with Mr Montague first.

But why should it be just, as far as you understood Mr Azzi, why should it just be you and him with Mr Montague before anything else occurred? ---Maybe he wanted to discuss it firstly with Mr Montague because he had a close relationship with him and he wanted to understand his position.

30 It's consistent, isn't it, with Mr Azzi understanding that you and Mr Azzi were the driving force behind the dispute with Mr Montague and controlled the numbers on council?---That's, that's incorrect.

You said to Mr Azzi, message number 5, "Okay, but don't say anything or make any commitment without consultation with our council colleagues." ---Correct. In other words, it's up to the councillors to make those decisions and that, it clearly shows that.

40 Well, it doesn't say that they would make a decision, it simply says they wanted an opportunity to consult with them before any commitment was made.---That's right. Because, so, because it's an open discussion. I can't give my, I can give my point of view and they've got to give their point of view which shows that it's not a decision that I'm making.

And then page 84, at 11.53am you texted Mr Montague to say, "Pierre you and I only at the Canterbury Leagues Club at 4.00pm. Is that okay?" Do you see that?---Yeah.

I'm sorry?---No, it's (not transcribable)

I do apologise, Mr Hawatt. I'll start again. Page 84.---Yeah.

A text message from you to Mr Montague on 27 December, 2014 at 11.53am. "Pierre you and I only at the Canterbury Leagues Club at 4.00pm. Is that okay?"---Yeah.

You didn't want Mr Montague to bring anyone with him. Is that right?---He didn't, I didn't ask him, I didn't, didn't think about it.

10 It suggests though, your use of the word "only," that not only would there be no other councillors but that you didn't want him to have a witness.
---No. The "only" is to do with what, the text message from Pierre saying that only you and I. I didn't talk about only you and I and Montague, he never said in his text message that only without Montague bringing anybody, it's up to him. The GM, he could have brought anybody he liked.

Well, no.---It's not clear.

You made it clear.---No, that's not clear.

20 THE COMMISSIONER: Just let him ask the question, please.

MR BUCHANAN: I do want to suggest to you that you made it clear with the use of the word "only" in that text message that you didn't want there to be a witness to what was said between you and Azzi on the one hand and Montague on the other hand.---That's totally incurred. The word "only" is repeating what Pierre Azzi wanted for him and I.

You saw Mr Montague at the Canterbury Leagues Club that afternoon?
---Yes.

30 What happened?---We just had an open discussion, what he wanted, what his, what he felt, what his position was and he was open to actually leaving. I was quite surprised. And just he asked for, from memory he asked for, you know, like, a car and a few other things if I recall somewhere, but he was quite open to, to going, but he wanted, and, and he said, sorry, that he had a, his 50 years or something or 30 years up and he wanted to, to finish by August or something like that and, and he wanted to go in an amiable way. And we, and we said that's no issues as far as I was concerned but it's up to the council to make those decisions.

40 Did you make an offer or did Mr Azzi make an offer to Mr Montague?
---There was no offers, just general discussions of what each, each party thought may be a way out to, to the problem.

Were there any terms discussed - - -?---Again - - -

- - - of, of Mr Montague's departure?---We, we can't make terms or conditions or offers, it was all discussions. Each person made an opinion,

different point of view, and that all had to come back to council to, to, to ensure that becomes binding.

Was there any discussion about money?---There was a very open general discussions about what he wanted, his payments, the retirement payments and things like that. That's the only thing, it was all general, nothing - - -

10 Did you or Mr Azzi say anything about money?---There was an open general discussion that Mr Montague wanted to be paid out. Of course there's money involved when you talk, when somebody wants to get paid out, but nothing's binding.

THE COMMISSIONER: So you did discuss money?---He, he was discussing payout for himself. He wanted the car.

All right. And the question being asked, did you or Mr Azzi say anything about money?---I don't recall telling him anything about money directly to him, but I recall him talking about payments that he wanted for himself.

20 MR BUCHANAN: I understand you've used the words, "I don't recall." I'm asking you a different question now. Was there, as you understand it, something that was said by you and/or Mr Azzi to Mr Montague at that meeting about money?---Both Pierre and I, I do not recall from, or I can, from my, my particular saying, I do not recall talking to him about money. We had a general discussions in regards to what he wanted.

30 Is it possible that you or Pierre Azzi spoke to Mr Montague about money? ---It's not possible because the, the motion that we put in that he's aware of, is to, to remove him as general manager and, and he accepted that and he wanted things to go, to go with that motion. So there's nothing we can talk about as far as money's concerned. The motion speaks for itself. There's 38, which is 38 weeks, I recall, from the motion.

Was there anything that you or Mr Azzi said at that meeting to Mr Montague to entice Mr Montague to leave?---Absolutely not. We weren't enticing him to leave. We respected him and we had a lot of respect for him, it's just there was, a, a different point of view on that particular case.

40 Well, it doesn't really – I withdraw that. It's not very consistent with respecting him to be trying to get rid of him in order to reverse a position he'd taken on the employment of Mr Stavis, is it?---It's, we can have a lot of respect for each other but have different point of view on certain things. That's not, we do respect each other a lot but we have different point of view, he had his point of view, I have my point of view.

So you knew that Mr Montague, if he left or was terminated without any reasons being given, would be entitled to 38 weeks' salary?---That's, that's under the Act, yes.

Was anything said at the meeting about anything in addition to that, on top of that, that might be available or paid to Mr Montague if he left?---We, we cannot make decisions to pay anything. The only decisions we can discuss, what's on the motion to pay him out and what he wanted. That's all I can say.

10 But you knew, didn't you, that you could move a motion at council any time you liked?---Any councillor could and it's up to the council to support that motion or not.

And so, therefore, you could put to Mr Montague something which you thought that you and Mr Azzi might get support for, or at least try to get support for from your colleagues and the majority on council.---It's up to the council. I, I don't - - -

20 Yes, I know. That's not an answer to my question. You knew that you were in a position to put a proposal as to payment to Mr Montague to council with a view to trying to persuade council to agree with you, didn't you?---That's incorrect.

What's incorrect about that?---Each councillor has their own mind. I mean, you're underestimating the intelligence of councillors. They all have their own mind.

THE COMMISSIONER: Mr Hawatt, you're not being asked that. You're not being asked that.---But he's directly saying this.

30 Mr Hawatt, just pause. Please listen to the question. You're not being asked that. I know, you've expressed the opinion that each councillor has their own mind, make up their own mind. I have heard that evidence but Mr Buchanan is asking you something different. So please listen to his question and answer that question.

40 MR BUCHANAN: And if I can preface my question by saying we very much appreciate you leaning forward into the microphone to make sure that what you say can be heard and recorded, but in fact, technically, it's causing difficulties with the audio. So if you can just remain where you are when you're answering, that'll be fine. Well, if we can just try that anyway.---I wasn't sure whether - - -

No, no. I appreciate that. Thank you very much. You had the power as a councillor to introduce a motion onto the floor of council, or put it on notice, about anything, didn't you?---Any councillor could do that.

Yes. And you could therefore move that there be particular terms or conditions accompanying the departure of the general manager, couldn't you?---Any councillor could.

Did you go to this meeting having in mind any particular offer that you might make to Mr Montague with a view to persuading him to leave early?
---It was an open discussion. I don't know what was in his mind, no.

10 You understand, don't you, that the Commission has evidence from Mr Montague by way of a relatively contemporaneous note – volume 4, page 78 – in which he purported to record the conversation that he had with you and Mr Azzi at the Bulldogs Leagues Club on 27 December, 2014.---It was his opinion.

And the gist, if I can summarise it, of what - - -

THE COMMISSIONER: Mr Buchanan, can I just confirm, is that actually page 77? Is that the document we're speaking about?

MR BUCHANAN: Maybe it is, Commissioner. No, sorry, I'm thinking of page 172.

20 THE COMMISSIONER: Oh, yes. That's the typed memo that was never sent.

MR BUCHANAN: Yes.

THE COMMISSIONER: Thank you.

30 MR BUCHANAN: The gist of Mr Montague's relatively contemporaneous note – that is to say, it's about a fortnight later – is that in that conversation with you and Mr Azzi on 27 December, you and Mr Azzi presented him with two options. The first being that Mr Montague was required to retire in August 2015, and that in addition to normal entitlements the deal would be that Mr Montague would be paid an additional eligible termination payment equivalent to 38 weeks' pay, based on his annual total remuneration package at the time of retirement. That's the first part of what Mr Montague says he was offered.---That's, that's, that's the, the motion which explains that, yeah.

40 Well, is it right that at this meeting on 27 December, 2014, you and/or Mr Azzi offered Mr Montague a departure in around August 2015, which would involve him getting not only his normal entitlements but a gratuity, in essence, of another 38 weeks' pay?---I don't recall that one at all. Just general discussion we had.

Is it possible that Mr Montague is right?---I don't think so.

Why not?---Because it's, doesn't make sense to pay him double.

Why doesn't it make sense? It's an enticement.---Sorry, we didn't entice him. It was a general discussion.

But it would have been good for you, wouldn't it, at that stage of proceedings, if Mr Montague had left and you had been able to put Mr Stavis back in as director of planning? That would have been a good outcome for you?---Well, we can't, because we had to get another director.

10 That would have been good for you, wouldn't it?---It's, it's no, we're not, we weren't after Stavis to put him in for that reason. It's a decision that was made by the GM. That was incorrect we made those decisions. It had nothing to do with Stavis.

It would have been good for you, then, if you'd been in a position to get Mr Stavis back into the position of director of planning, by reason of the person who made the decision as to who should be appointed director of planning leaving.---The position – sorry, I have to keep - - -

20 That's okay.---Mr Stavis happened to be the person involved in that contract. It could have been Donald Duck, and I would have done the same support. So it's irrelevant, that you could bring in Mr Stavis, it's got nothing to do with Mr Stavis. It's to do with what, what happened in regards to the actions of the GM. It could have been Miss Jones, I would have done the same thing.

That's not true, is it?---Yes, it is true. Hundred per cent.

30 And the other feature of Mr Montague's account – this is his unsent memo of 12 January, 2015 – is that in addition, Mr Montague would be given an opportunity to provide consultancy services to council to assist in the finalisation of a number of key projects.---The consultancy thing was, it might have been discussed, was to do with appointing another acting GM, or in the process of getting a permanent GM, that's all.

When you say it might have been discussed, might have been discussed at the Canterbury Leagues Club on 27 December, 2014?---Correct, yes.

40 Excuse me a moment. Now, if we could see, please, volume 4, page 77. Mr Hawatt, I wonder if we could just show you that it's a two-page document, you can see the second page there, we'll go to the contents of it in a moment, but I just wanted you to be able to understand that we're looking at a two-page handwritten document that I can inform you was located at your residence when the search warrant was executed there. Do you understand? ---Ah hmm.

Now, this is all in your handwriting, isn't it?---Yes.

And there is no doubt that it was, as it were, addressed to Mr Montague, looking at the top of the page?---Yeah.

10 The first point is, “Legally binding agreement for GM to resign his position at the end of August 0215.” Second point, “A gratuity payout of 20 weeks for 32 years of service to council.” And then there are a series of other terms and conditions that appear to revolve around the circumstances, political circumstances as they obtained at the time, and the departure of Mr Montague as general manager. If we could just take you over to the second page so you have an opportunity of seeing that. The second dot point on the second page is, “Close all restaurants and any hospitality accounts with the council.” The next dot point reads, “Honouring the contract of employment of Mr Stavis.” Do you see that?---Yeah.

And then the next dot point, “Upon a legally binding agreement for, we will withdraw the extraordinary meeting.” Do you see that?---Yeah.

20 When did you write this?---I think this was when we had a meeting at George Vasil’s office, sorry, Con, Con Vasil’s office, when we had the meeting with all the councillors including Councillor Adler and other councillors, and we went through this and some of the wording in there that I don’t even use myself, so, so it must have been discussions between the other councillors involved.

What wording that you don’t use yourself?---Well, gratit - - -

30 Gratuity?---Gratuity, I don’t even knew the, sorry, I don’t even know the word, so therefore someone must have, we’ve just been writing it together, all of us.

And you’ve noted, have you, that it’s spelt g-r-a-t-u-a-t-y, which is a misspelling?---Well, again, I don’t know the word so that’s why I’m saying - - -

Had someone suggested to you that a gratuity might be offered to Mr Montague?---No, this is a discussion amongst the councillors.

40 When did this discussion occur?---That could be, could be, look, I don’t recall the date, I’m not sure if there’s any dates on there, I don’t recall the exact date but there was a discussion amongst councillors in regards to this matter and then we moved the motion, if you look there’s a formal motion that’s similar to this you had before in regards to the extraordinary meeting that we called for.

When did this meeting occur?---I don’t, there’s no dates on it, I can’t recall.

No, no, no, just your recollection, when, in relation to the events that we’ve been talking about and that occurred subsequently, did this meeting occur?

---It could have, after the Bulldogs meeting with Mr - - -

After the 27th?---I think so, maybe.

Maybe?---Yeah.

And who was present at this meeting?---I think, I, I can't remember which, but I remember Councillor Adler was definitely there. He was involved in this and Council Kebbe was, was there. Councillor, Con was there.

10

Con Vasiliades?---Vasiliades. And, I think Ken Nam as well.

And George Vasil?---And, and – no, George is, George, you see him but you don't see him, he's like an invisible man but he comes and goes.

Did this word, gratuity, come from George Vasil?---No, no. That's from Mark Adler.

20 And was anyone else present?---Could be Pierre Azzi as well. I can't remember.

And why was the meeting held?---To discuss the issue of the general manager.

Who called it?---We'd been, we'd been discussing this with the issue as, as I mentioned yesterday, back and forward messages, so I might have called it for, to go through it and discuss it, from, from memory.

30 Why was – I withdraw that. And you made notes, did you, at the time?
---Yeah. I, I must have been, though discussions we're going through, yeah.

And where did the idea of a gratuity payout of 20 weeks for 32 years of service to council come from?---I don't, I don't recall.

Was that your idea?---Well, as you can see it's not, it's not even in my words, so it's not, most likely not.

40 Well, you say it's not your words but Mr Montague says it is.---Oh, that's not my words. I, I don't know what the word meant so I, you can see that it's not, I don't, I can't even spell it and I don't understand what it means, so, so, sorry, I have to say no.

Did it come from Mr Azzi?---He, he was worse than me, no, sorry.

What I'm trying to understand though is, why did you make these notes?
---Because we had a, we had an open discussion amongst the councillors at that meeting, and as we went along we had to sort of write some notes, and

then it had got typed officially as a motion. That's from memory. So these were just general discussions, it's not - - -

But these aren't discussions, they are terms and conditions.---They're discussions. Discussions with, with terms and conditions.

You say they arose out of discussions.---Correct.

10 But I'm pointing out to you that they're not discussions. There is not one party saying on thing and another party saying something else. These are terms and conditions.---The only terms and conditions would be an official formal motion to council, then you can say to me, yes, I will say yes, but this is just a general discussion, it hasn't been put forward to council. If these were put forward to council, I would say yes. If they weren't put forward to council, I say no. It depends.

Was it put forward to council?---I can't, there was, there was a motion in that similar to this but I can't recall what's in there, whether it's the same or similar, I don't recall.

20

You see, if it was truly created after 27 December, 2014, then the possibility exists, doesn't it, that certainly the first two terms or conditions, on page 77 of volume 4, arose out of you and Mr Azzi having your meeting with Mr Montague on 27 December?---That's, that's incorrect, unless the general manager asked for it. Otherwise, I wouldn't have even thought of it.

30 And you brought to the meeting, you and Mr Azzi brought to the meeting, terms 1 and 2.---It, it doesn't make sense. Where would I get the 20 weeks from? I have no justification to even think about 20 weeks and, and the gratuity. It doesn't make sense for me to bring this forward from my own mind because the 20 weeks, I wouldn't have a clue where that came from. I mean, I don't know how that was calculated, 20 weeks.

See, on Mr Montague's account of what occurred at the meeting, it would not be surprising if you had, before the meeting on 27 December, 2014, put your mind to what might be said to Mr Montague with a view to achieving your goals.---Well, if, if, if that's, if that's what you think, then as you can see it's not my idea. It's someone else's.

40 But you do understand that certainly as to the first two terms, they bear a striking resemblance to Mr Montague's account written up on 15 January, of what you and Mr Azzi said to him on 27 December.---This is not my wording, this is a discussion, open discussion that was made amongst the councillors, and where this 20 weeks came from I wouldn't have a clue.

Well, on your - - -?---It doesn't make sense to me.

- - - account it came from the meeting in which you took part.---Yeah, but how it was calculated, if I calculate it I can give you the answer, but I can't give you an answer where I don't know because I don't know how this 20 weeks came through.

Did someone say, oh, look, a gratuity payout of 38 weeks is a bit excessive, let's roll it back a bit, and then a decision was arrived at that it should be 20 weeks?---I don't recall now. I don't want to make assumptions. No, I, I, I don't recall this.

10

THE COMMISSIONER: Are you moving to something different, Mr Buchanan?

MR BUCHANAN: Yes and no, as in I'm just considering my next question.

THE COMMISSIONER: Okay. I'll sit back and be quiet.

20 MR BUCHANAN: You see this document you say is a record of what occurred at a meeting of the councillors you've identified at Ray White Real Estate Earlwood, but it also reads like an agenda.---It's unofficial unless it goes to, to the council.

It not an agenda that you natted out to collect your thoughts as to what you would say for the meeting with Mr Montague that you initiated on 27 December?---If, if, if it goes to a formal council meeting as a formal motion I would say yes, but a lot of times we can discuss things and write things and it goes in the garbage bin afterwards. It doesn't mean it's going to be officially moved forward with it.

30

Did you take these notes with you to the meeting with Mr Montague on 27 December, 2014?---No, I can't recall having notes with me. I can't - - -

What makes you think that the meeting of councillors that you've identified at Ray White Real Estate Earlwood of which these two pages were a product occurred after 27 December and not before?---I'm just guessing. I can't recall 100 per cent.

40 So this could have been created before 27 December?---I don't recall, I don't. I can't say yes and I can't say no.

If it was created before 27 December then the first two terms and conditions are consistent with what after such a meeting Mr Montague says you and Councillor Azzi presented to him.---Well, it doesn't make sense because some of the point in there, it's irrelevant to even discuss it with the general manager, so it wouldn't make much sense for me to take all this with things in there that's got nothing to do with the GM, it's to do with the process.

Can I take you to page 78. The third dot point on that page is honouring the contract of employment of Mr Stavis.---Correct, because we had an obligation to him.

Well, it does sound as if, contrary to the evidence that you gave a few minutes ago, that you were, you did have as a goal the employment of Mr Stavis as director of planning.---If that was Donald Duck on the, on the contract I would have done the same thing, it would have been for Donald Duck as well, because we had an obligation or contract to that particular person and it happened to be Stavis, it could have been anyone else.

Did you show this document to anyone?---If, if we were discussing it it's there on the, on the thing with the, with the councillors, so I don't, I don't think so. I don't recall, no.

Did you do anything with this document?---Well, what we did is, we typed a motion, if I recall from memory, if it's the same, I don't know what's in that motion, but if this hasn't gone anywhere that means it hasn't been done with anything else.

Is it possible that this is an agenda for a meeting of councillors at Ray White Real Estate Earlwood that you created and took to that meeting - - -?---No, no, nah.

- - - saying, "This is what we should be seeking"?---There's, no, this is, there's no, the, some of the words in there, and the ideas have got nothing to do with me, no, it doesn't make sense.

I have now concluded that line of cross-examination.

THE COMMISSIONER: Mr Hawatt, if this was unofficial, was going to end up in the rubbish bin, why did you entitle it Without Prejudice?---So, well, just in case I, well, I, we, we moved forward with it, because what happened is, during our discussions, Councillor Adler was making his own notes and then he retyped everything. We made an official motion, and I don't recall if this is from that one or not, or - - -

So Mr Adler was making notes?---Yes, as well.

And he typed - - -?---A, a formal motion that I remember that was put to the, to the extraordinary meeting that we were going to have. So I'm not sure whether that was linked to it or not.

Because "without prejudice" is used when you are negotiating and putting terms to another party.---Correct. Yep.

So that those terms, if there's some legal dispute, won't end up in court - - -? ---Because - - -

- - - as some kind of admission by you. So this – my reading of this at the moment is it suggests not a unofficial or ending up in the rubbish bin, that it's rather a more serious document, formal document.---No, well, we didn't want to have this, it's not a legal, the, the, without prejudice, from my opinion, is this is not a legally binding. We didn't want it to make it legally binding or anybody to use it saying this what you guys discussed, saying that this is only a general discussion, not a legal binding document. That's my interpretation of without prejudice, not, not any other way.

10

And you anticipate a press release, but the press release is going to not include point number 2.---I, I, I don't, I don't, I don't recall who discussed the, that particular point, but I don't recall - - -

But you recorded it. You recorded - - -?---Yeah, I'm recording the discussion.

You recorded a press release would be issued that was going to exclude the fact that a gratuity or a gratuity payment of 20 weeks was going to be paid. Why exclude that from the press release?---The, this is a confidential information. If we're going to give, oh, from my understanding there's a, a formality in regards to any to, anything to do with staffing, it has to be kept confidential.

20

But you were happy to have a press release for all the dot points after 3, but not about the gratuity, the gratuity payment of 20 weeks.---Because that's a, a financial thing, that should not be shown.

You were trying to hide it, weren't you?---No, come on, Commissioner.

30

Don't say, "Come on," to me to, please. You were trying to hide it, weren't you?---No, I'm not trying to hide it. This is not my wording. This is my, not my idea. I don't know who brought that forward. This is just a without prejudice, not to make it legal, because it's not an official document. It's just a general discussion. And that's exactly it was, and I'm not sure whether we moved forward or if it went to the bin. That's all I can say to you, Commissioner.

MR BUCHANAN: Can I just take you to a few other parts of the document? One is you told the Commissioner that the reason why the last dot point refers to a press release of the dot points after 3 is that the first three concern the confidential affairs, or the financial affairs of Mr Montague, is that right?---Whenever we discussed, sorry, whenever we discussed in council, generally financial affairs, it's always kept behind closed doors, and that's traditional way that we don't – it's, I don't think it's, it's right for anyone to discuss any type of payments to any, to any staff member, if, if there's anything like that. So that's, that's how we look at it.

40

Can I turn then to another aspect of it. The document doesn't purport to be the draft of a motion before council. Instead, it purports to be the draft of an offer for a legally binding agreement, a contract.---This cannot be legally until it goes to council meetings for approval from council. This is absolutely rubbish unless it's officially done in council.

Well, there are a few features that suggest it wasn't intended to be the basis of a motion to council. Firstly that it's headed Without Prejudice. Secondly that the first term is that there was to be a legally binding agreement. I just
10 point out to you that if it was to be a motion, then the general manager's position would be terminated, end of story. This is something which has, contemplates two parties and a subject matter and a price. The departure of the GM, a price of a gratuity payout of 20 weeks and obviously Mr Montague is deemed to be a party to it. The other parties can be seen on the second page. "Upon a legally binding agreement, we will withdraw the extraordinary meeting." "We" is you and Mr Azzi. You're the only two people who had called for the extraordinary meeting.
---"We" is the council as you can see from the discussions here.

20 The council had not called for an extraordinary meeting.---We as the council.

You and Mr Azzi were the only people who could withdraw the call for the extraordinary meeting.---We as the, all the councillors who were involved in the discussion are the "we", not Pierre and I. Everyone else is in there.

So I'll ask you to answer my question. The second last dot point, the council could not withdraw the extraordinary meeting. You and Mr Azzi were the people had called for it, therefore only you and Mr Azzi could
30 withdraw it.---No. The majority of the councillors, if they make that decision, we would do it. That's, that's we. Not, not Pierre and I. It's everyone.

I'm sorry. I'll just ask you to focus for a moment. The majority of council would not prevent you calling for an extraordinary meeting.---Always the "we" is to do with the councillors present at that meeting.

THE COMMISSIONER: No, no, no, no. Answer the question. You were asked whether if you and another councillor put forward a resolution for an
40 extraordinary general meeting, you were the only ones who can actually withdraw that motion. That must be the case.---Oh, yes, that's something, yes, that does happen all the time.

MR BUCHANAN: The council couldn't stop you moving something?
---No, anyone can, anyone can move a motion.

And so the sense of this is that it is a document written by you which you contemplate you and Pierre Azzi being one party and Jim being the other

party with a view to a legally binding agreement being arrived at between the two of you, which would involve Mr Stavis being made director of planning, and the words “without prejudice” are the absolutely classic standard header that is used for an offer of a contract with these terms in it. What do you say?---I say that’s incorrect what you’re saying.

10 Can I take you now please to page 115. We spoke yesterday about contacting Mr Johns and getting his assistance with the drafting of a motion with the requisite formalities for the termination of a GM. Remember that yesterday?---Yeah, the code of conduct.

Well, no. I understand where you’re going but I’ll just remind you, what we were talking about yesterday was a separate communication with Mr Johns where you consulted him and you also consulted Mr Maroun, Neddy Maroun, with a view to finding out what is needed, what are the requirements for a motion to terminate a GM.---Yeah.

20 Now this, however, is, as you point out, in relation to the code of conduct complaint on page 115, on 5 January, 2015, a text to Mr Johns at 10.59am, “I am at reception waiting.” You see that?---Yeah.

You were at reception at Sutherland Shire Council?---Probably.

Well, do you recall meeting Mr Johns at Sutherland?---Yes, I did. Yes, I did, yeah.

And you texted another person, Aisha, A-i-s-h-a.---That’s my daughter.

30 Thank you. “At meeting in Sutherland.”---She must have called me.

Right. And what was it that you were there for? What was your intention in meeting with Mr Johns on this occasion?---To, to prepare the code of conduct, to help me write it.

Code of conduct complaint?---Complaint, yeah.

40 And what was done in that regard? What happened?---We, we, we wrote the whole report on the code of conduct and went through it, and, and that was sent to, with the support of the councillors, was sent to the Office of Local Government.

When you say “we”, who?---Well, there was a signature from all the councillors, like - - -

No, I’m sorry. You said “we prepared the complaint”.---Oh, Kent, Kent Johns and myself.

Did you have the assistance of anyone?---No.

Did you take any notes with you?---No, just, just verbal discussions between him and I. He was typing.

How long did this take?---A couple of hours.

And did Mr Johns provide typing facilities, printing facilities for the creation of the document?---We were just discussing it and he was typing some notes.

10

Who was typing?---Councillor, Kent, Kent was typing.

If I could show you, please, page 117. I'm sorry, 116. This is at 1.46pm on the same day, 5 January. It's only sort of two and three-quarter hours later that Mr Johns sent to your email address an attachment to the email, being a Word document, Canterbury Council.docx. Do you see that?---Yeah.

Are you sure you didn't take any notes with you?---No, I would have asked him to forward it on to me, the, the document he typed.

20

But if we could have a look at the next page, 117 through to 122, and if we could just – yes, thank you. You can see that there's quite a bit of material in there, and I want to suggest to you it contains a lot of details about historical events.---Could be, like, my, my phone notes, I had a lot of phone notes in there, and text messages.

So you would have used your phone as a resource?---Maybe, yeah. Most likely.

30 You didn't take any notes with you?---I don't recall having notes. All I, all I remember is the, I had a lot of text messages and, and I used my, my phone as a lot of notes, but I don't recall having any documents. I don't.

Where did – sorry. Have a look, please, at volume 4, page 64. And if we could flick through this four-page handwritten document. That's in your handwriting?---Looks like it, yeah.

40 And it was located at your residence when the search warrant was executed. Why did you create this document?---I always write documents. Any motions that I'm going to move, I, I hand-write it and, and whatever comes to my mind, I put it in, write it down.

Do you think this might have been a draft for the code of conduct complaint that you prepared?---It could be a draft. Could be a draft.

Why did you prepare it?---Because we, we needed to put our position, point of view, because a, a lot of information that was being fed to the media and to the Office of Local Government and others were incorrect, so we had to

put our point of view across and show them exactly what was happening in regards to the issue with the general manager.

Well, you could have done that by media release, couldn't you?---No, the Office of Local Government is our body that we need to report to.

Well, sorry, you could have done that by media release, couldn't you?---We could have, but we didn't.

10 This had a different purpose, didn't it?---No, it didn't.

You wanted the Office of Local Government to weigh in on the dispute that you were having with General Manager Montague on your side, didn't you?---No, they, they weren't calling for the extraordinary meeting. That's why we made that complaint.

20 You were hoping, didn't you, that the Office of Local Government would take action if they were persuaded there had been a breach by Mr Montague of the Canterbury Council Code of Conduct.---It's our duty to make that complaint and I think it was a valid complaint.

But why make the complaint unless you want the person to whom you make the complaint to do something about the subject matter of the complaint? ---It's to do with the extraordinary meeting that wasn't, that was used to, well, to continue with, I remember this is, this is the one where the mayor just walked out of the meeting (not transcribable)

30 And if we could have a look, please, at page 106-109, and again if we could flick through it. This is your handwriting?---Yeah, looks like it.

And it's another draft, isn't it, of the same complaint.---Could write a lot of, a lot of drafts and change my mind on various ones and cross, as you can see there's a lot of changes, so it's not finalised.

So this was also found at your residence when the search warrant was executed.---Correct.

40 Why were you creating these drafts of the complaint?---Because whatever comes to my mind, I just write it and then I, I'll move forward for it to make it official to the, I'll re-type it and make it neater than this, this is just a draft, and I move forward with it.

Well, it's inevitable, isn't it, that you took a draft written by you to Mr Johns, and then you and Mr Johns knocked it into shape and put it through a word processor, a computer, to produce a typed document. That's what happened, isn't it?---I don't, I don't recall taking those notes.

Well, how otherwise could you explain the evidence that you've seen? Namely, that there are these two drafts found at your place in your handwriting of the complaint, and then Mr Johns sends you the typewritten version two and three-quarter hours after you arrived at his office.---If I took it with me, I took it with me, but I don't recall.

10 Can I just ask you about the first – I'm sorry. And I'm going to suggest that the draft commencing at page 106 is the first draft because it has many more changes, it's a lot more scrappy, whereas the version commencing at page 64 appears to be a second draft because it appears to be more considered, has far fewer changes, and appears to flesh out the contents of the draft commencing at page 106. Do you understand?---Mmm.

What do you say to that?---I, I, I have to read it through. I just, quickly, what I'm seeing here - - -

Well, what we can do, if we can show - - -

20 THE COMMISSIONER: I'm just thinking, Mr Buchanan - - -

MR BUCHANAN: Oh, certainly.

THE COMMISSIONER: - - - we could take our five-minute back-stretching exercise, and Mr Hawatt if you could, I think Mr Drewett asked you to stretch your legs, but if you could just have a read of both of those documents.

30 MR BUCHANAN: So I'll just give you a note of the pages. It's commencing at page 64 and then page 106. Four pages in each case. And we'll give you volume 4, and if you could have a look, please. And it's simply to answer the question, which do you think is the earlier draft. That's all that I'm asking you to do at this stage. You don't have to take into account the actual contents.

THE COMMISSIONER: All right. We'll adjourn for five minutes.

SHORT ADJOURNMENT

[10.16am]

40

MR BUCHANAN: Mr Hawatt, have you been able to identify which of the two drafts came first?---Yes, Mr Buchanan. I have to apologise to you first that the, the drafts on page 64, the ones that are most likely that I did take with me to Kent Johns's office.

Right. And so the one commencing at page 106, was that a first draft? ---Would be the motion, yeah, would have been a motion that I was drafting.

Well, it's not a motion. It starts, "We the following Canterbury City councillors wish to make a formal complaint." Do you see that?---Yeah, I think it's the second one from memory.

Well, no. I see. All right. What I do want to suggest is that there a couple of features that show that it's an earlier draft. If we could have a look, please, at page 106 on the screen, and can you see point 4, sorry, paragraph 4 down at the bottom, the reference in the second line of paragraph 4 to Simon?---Yeah.

And you couldn't remember his second name, could you?---That's why I put question mark, probably not.

Yes. You couldn't when you drafted this remember his second name, could you?---Well, I - - -

His surname.---?- - - must have forgotten it, yeah.

20 That's not exactly consistent with having had a preference for Mr Manoski all along, is it?---Just the name Manoski's not, you know, at the time wasn't that easy to remember the name, the surname, or spell it. So no, that's, that is consistent. He's, he was my choice, and this actually proves it as well.

The man who was your choice was a person whose name you couldn't remember at the time you drafted this?---The person that, Simon Manoski was my choice. His name, probably maybe the spelling, I've got a question mark, but he was this person, that's why I put Simon.

30 On page 107, paragraph 7, can you see that there's two references to Spiro? --- (No Audible Reply)

The second line in large capitals, Spiro?---7, yeah.

And then in the fourth line another - - -?---A few days - - -

- - - reference to Spiro, again spelt in capitals. Do you see that?---Yeah.

40 And in the second line you've added to the word Spiro in small writing, "Mr Stavis." Do you see that?---Yeah.

That's consistent with you initially writing Spiro - - -?---This is - - -

- - - and then later deciding, well, that needs to be changed to at least Mr Spiro Stavis, if not Mr Stavis.---That's - - -

See that?---You can interpret it any way you like but that's, your interpretation is incorrect, I have to say, it's an assumption.

Well, I haven't even put to you what my interpretation - - -?---Well, you're, you're, you're making assumptions.

Paragraph 6, "The GM hires Spiro." Do you see that?---Yeah.

10 The language you use to refer to Mr Stavis in this, I suggest, first draft or earlier draft, suggests that you had a relationship of some familiarity with Mr Stavis such that you automatically refer to him by his given name, rather than the name of the candidate who would have been Donald Duck, as you've said, but in this case was Mr Stavis.---Well, because as you can see, this is the issue that, the reason I remember Mr Stavis is because there was a massive issue in regards to his, his employment.

Yes, but you didn't call him Mr Stavis, you called him Spiro, suggesting a degree of familiarity with the man, consistent with having had numerous contacts with him, and meetings with him.---Oh, that's, that's, that's your assumption. That's an incorrect assumption,

20 Of the kind that you had not had with any other candidate.---That's incorrect assumptions you're making. What I'm saying here, if you read this, this a rough draft and it, it just, it, it talks about the process of what's happening and it talks about what happened with our choice, where the first person was knocked, knocked back, knocked, Simon Manoski was refused and then the same thing happened to, to Spiro Stavis, that's it. That's, that's exactly what I was writing, the process of what happened.

30 If we could go then to page 116 of volume 4. This is the email I took you to earlier, where on 5 January at 1.46pm, Mr Johns sent you a document, being an attachment, Canterbury Council.docx. Do you see that?---Yep.

And then over the page is the first page of the attachment and the attachment is a seven-page document addressed to the Office of Local Government.---Correct.

Together with, on the last page, space for the signature of councillors. ---Yep.

40 Then if we could go back to page 123, I'm sorry, go forward to page 123, please. We can see that three minutes later, three minutes after you were sent the version addressed to the Office of Local Government, you received another email from Mr Johns and it attached a document, the file of which was, Canterbury Council – Minister Letter Code of Conduct.docx, so you see that?---That's correct.

And then over the page is that attachment printed out, which is this time addressed to the Honourable Paul Toole, T-o-o-l-e, the Minister for Local

Government, and it's the same document but addressed to a different person, namely the minister, is that right?---That's correct.

Was that something that you and Mr Johns had agreed should be done, that the complaint should go to both the department and to the minister?---Yes.

THE COMMISSIONER: Would you remind me, what was Mr Johns' role? Who did he work - - -?---He was assisting me with the wording.

10 But he worked at Sutherland Council, did he?---No, he was a councillor.

Oh, he was a councillor at Sutherland, thank you.

MR BUCHANAN: He wasn't mayor at that stage?---He could have been mayor at that stage. I think yeah, he was the mayor, yes. He was, we were in his office, yeah.

And he was affiliated with the Liberal Party, as were you?---Yes.

20 Is that right?---Yeah.

Can I take you please to – just excuse me a moment. Exhibit 84. This is a series of text messages extracted from your mobile phone, and at page 4 of this series we can see item number 35, and the message is to you from Kent Johns on 5 January, 2015, at 10.23pm – so sometime after he had sent you these drafts of the code of conduct complaint – and the message read, “George Vasil has it.” That was a reference to the code of conduct complaint, wasn't it, or a draft of it?---Mmm, oh, it's, I don't recall, but I don't think so.

30 Why don't you think so?---Because Kent Johns's son was training at the Olympic gym, and I'm not sure whether there could have been some - - -

Mix-up?--- - - - might have some discussion regarding his son, I don't, I don't remember. I don't recall.

40 Was there a mix-up in as much as you had agreed with Mr Johns that a copy of the code of conduct complaint would be sent to George Vasil, Mr Johns told you that George had it, but the information you got was that George didn't have it and so there was some confusion.---I think, no, that's a, that's an assumption. I, I think it's to do with a completely different matter.

What's the completely different matter?---His son was training and he wanted his son to be training, weightlifting, and I think George wanted, sorry, his, Kent wanted his son to train with George and there, there might have been some discussion that sent him some information regarding his son, I don't know. There was lot of discussion regarding the son of, of Kent, to be training.

THE COMMISSIONER: Why were you involved in it?---Because I was, I must have been at the gym, because I was close to Kent. Oh, might have relaying a message to him, I don't know.

MR BUCHANAN: It doesn't make any sense for you to be involved, does it?---Yes, it does, I've always - - -

10 Unless it is something in which the three of you had an interest, and the three of you, we know, were - - -?---I was, I - - -

- - - all three were affiliated with the Liberal Party and all three had an interest in the staffing at Canterbury Council.---That's incorrect. Totally incorrect.

Well, certainly you and Mr Vasil did.---That's incorrect.

20 What's incorrect about it?---Because George Vasil has other issues with, maybe he might have had issue in, in, in Sutherland Council that he has properties there. What's it got to do with me? I mean, if, if he relayed a message via myself, because, because I have access to Kent, so, so be it. But I mean, he might have been complaining about some issues in, in Sutherland.

What does "it" refer to in that message?---It could be a, a document or some complaint or something that, that he received.

30 A code of conduct complaint?---No, it's nothing to do with the code of conduct on that one. I remember George was complaining to, to Kent about something in Sutherland, as a complaint.

What was he complaining to Kent about?---(not transcribable) some issues, he got a, some property there, he had property - - -

Which property?---Some Coles, Coles stores in, in, and there was some issue there with the parking, I don't know. George Vasil was complaining that he had some problems there at the time.

40 So how does that explain Mr Johns's text message to you that night "George Vasil has it"?---He might have sent him something, and I don't know what the, either they could have been sending some complaint or documents to each other, I don't know. That's, that's all I can say to you, but I, it's, I, I don't, I don't believe what you're saying about to do with the code of conduct. It's got nothing to do with, with George.

Well, the problem is, Mr Hawatt, that there's no responding text message which suggests that you didn't know what he was talking about.---But I

knew, there was some verbal discussions with Kent, George was complaining about some issue he had in, in Sutherland Council.

So did you ask Kent, "What are you talking about?", or, "Why are you sending this to me?"---He might have said has he received the, maybe some enquiry he made, I don't know.

10 Why would Kent Johns tell you that George Vasil has some inquiry he has made?---George might have asked me to, to follow it up for him. I don't know. I follow up a lot of things for people in different councils and issues, that's normal that we, people complain about not just Canterbury, they complain about other, other areas as well. I've helped, I've helped people in Sutherland with trees, it's got nothing to do with me but I assist people when they ask for it.

Now, the code of conduct complaint addressed to the department, was that sent?---Yes, it was.

20 Who sent it?---Well, I remember personally I went to, with, personally I went to the office, the minister's office and handed it to him.

When you say it - - -?---Handed, handed - - -

- - - what did you had to them?---The document code of conduct.

Do you mean the one addressed to the minister?---To the minister and to the Office of Local Government, because he was responsible because we spoke to his staff and they took the document to pass it on.

30 So are you saying that you delivered to the minister's office copies of both versions of the complaint?---Correct.

Where did you go to do that?---To his office in the city, the minister's office.

And why did you do that?---To make sure he got it because it's a big document and I went and saw him.

40 What's wrong with the post, Express Post if need be?---It was convenience, convenient to give it to him. I might have been in the city at the time.

Why was it you who was delivering it?---Because I had the document with me.

Yes, but why couldn't someone else have taken it?---Because I decided to take it.

Yes, but why?---I can't recall why, I just decided to take it instead of sending it.

It's another illustration of you being a moving force in taking steps to try to bring pressure to bear on the general manager, isn't it?---I was active in the process.

Was anyone more active than you?---We all played a role, different roles.

10 Was anyone more active than you?---Well, depends how active. If somebody's typing a letter and spending more time on it they're more active in doing the letter than, than doing something else. Each person had a role to play and I, I, I did my job and others did their jobs. That's all I can say.

What were the roles played by the other councillors?---Typing letters, meeting, for example Councillor Adler typed up and made decisions on a lot of the motions that we had, and that's a big, big job as well.

So Councillor Adler - - -?---Yeah.

20 - - - you're implicating?---Well, not implicating but he was involved in, in the ah, in the process of putting the motions in for our extraordinary meetings and other discussions and meetings.

And you knew, didn't you, that by providing these complaints to the - I withdraw that. You understood the department and the minister to be in its essence the regulator of council?---Correct.

30 By providing these complaints you were trying to get the department, if not also the minister, to take action adverse to Mr Montague, weren't you?
---Correct.

And if possible, also the mayor?---Correct.

You wanted to bring pressure on Mr Montague, didn't you?---Nothing to do with pressure, to do with calling for the extraordinary meeting which they didn't call for.

40 And you wanted to pressure him to back down on his decision not to honour the offer of employment to Mr Stavis, didn't you?---Nothing to do, there's nothing to do with pressure, this is a code of conduct complaint, nothing to do with pressure.

Was the one that was addressed to the department signed by councillors?
---Yes, they're all signed by councillors.

Excuse me a moment, Mr Hawatt. On 12 January, 2015, there was an article published in The Sydney Morning Herald with information in it adverse to Mr Montague entitled The King of Canterbury and His Princely \$50,000

Lunch Bills. This is Exhibit 59. You recall that, don't you?---Yes, I recall that.

One aspect of the information published was claims of regular lunches which Mr Montague had had a restaurant in Enfield called Il Buco. When did you – I'm sorry, you need to say something, is that right?---Yeah, I recall, I recall that.

10 Yes. When did you first become aware that the mayor was lunching with some degree of regularity at that restaurant?---Mr Montague told us.

When was that?---Oh, just, he came, he, he, came and, and called us and he was talking about the photographers were there at the restaurant and he was very upset and angry and, and they took, took photos of him and, and I think, I'm not sure if the mayor was there but there was, no, the mayor was there but he must have been outside the photo. Him and some people he was having lunch with.

20 Did you see Mr Montague when he talked to you about this or was it over the phone or - - -?---Oh, it could have been a phone call, no, I think it was a phone call maybe.

He made a phone call to you, did he?---Well, he made a phone call to a lot of councillors because I think we was concerned about the, the media.

Well, can I just ask you, did he call you about this article?---Well, he must have because I didn't know anything about until he mentioned it to me, yes.

30 What, you don't usually read The Sydney Morning Herald or you didn't at that time?---This is before, when the photographer, when the photo was taken, that's when we found out about it. So it was before it was published.

Oh, I see.

THE COMMISSIONER: So you were told by Mr Montague before 12 January about the photographer.---Yes, yes.

40 MR BUCHANAN: Oh, I see. And Mr Montague rang you to tell you about that?---He, he spoke, I can't remember whether he spoke to me verbally, face-to-face or he called me, I don't recall, but I a hundred per cent recall that he told me about it.

And did he suggest that you were involved in that?---No, no. Not at all. We, we backed him up actually. We didn't have any, we said, "Look, we understand that you've got pressure on you from the mayor, he wants to go to lunches every Friday," but we knew that the mayor just had a, he made that a regular thing and put pressure on the GM to take him and, and he was complain about that as well.

You had been at council for some 20 years?---20, yeah.

And you knew the general manager well?--- As a working relationship, yes.

You were a driving force on council?---No, not a driving force. I have never been a driving force. That only started when, when the, in the last two/three years for the councillors.

10 Is it possible that you had known for some time that Mr Montague was having regular lunches at that restaurant?---Oh, that's rubbish. The first time I, I didn't even realise they had a, they went to that restaurant. I don't even know where it was.

THE COMMISSIONER: And sorry, when did Mr Montague contact you to say, "I was at lunch and there were photographers outside"?---Councillors, could have been the same day or the next day, I can't recall.

20 No, no, no. Sorry, you said that occurred before 12 January.---Yes, yes.

So are we talking 2014, October, November, when?---Whenever the photographer was there, I don't recall, honest. It was on a Friday, I remember him saying it's Friday because that's when they used to go to lunch. So could have been the Friday before, which is the, the 12th, is it, which is Monday, is it?

In January?---Yeah, what, what day is that, Monday, the 12th?

30 But I assumed that you had this conversation with Mr Montague before things became antagonistic over Mr Stavis. So it must have been before mid-December 2014.---Could have been. I don't recall. All I know is when the photographer was there, that's when I heard about it and I don't recall the dates I have to say. I'm - - -

40 MR BUCHANAN: You were happy, though, weren't you, to use the information that was published in the media to place additional pressure on Mr Montague?---Look, that's, that's incorrect because I had a lot of respect for him and we had a good working relationship as a councillor and when he complained to us about the photographer at the time we sympathised with him and we backed him up. After that what happened is when they put a complaint about the iPad with myself and there was a lot of animosity and after that things just went the wrong way.

Can I just ask, I don't really want to know the details, but when was it in relation to the events we've been talking about that there was a complaint about you and an iPad?---This is some, again, I know who sent it but leaked information went to the media and - - -

Yes, but when?---During that period of the complaint.

Before or after the - - -?---After, after.

Well, before or after the call for the EGM was delivered to Mr Robson on Christmas Eve 2014?---I think it was after.

After that. Was it after the meeting with Mr Montague at the Canterbury Leagues Club on 27 December?---Yes, I think it was after.

10

Was it after the time that the code of conduct was generated in Mr Johns's office on 5 January?---I think you can tell the date, it's, it's a newspaper, it's one of the, The Telegraph, it was in The Telegraph newspaper, so I can't recall the exact date, it will be in there, to, to get the accuracy.

Was it before Mr Stavis started work in March?---I think it was after.

After?---I think so, because they used that against me to, to try to degrade me.

20

But by then you and Mr Montague were friends again, weren't you?---We were friends again after we resolved the issue.

Yes.---Yes.

Well, it doesn't sound as if then - - -?---But there was still, we still had to resolve it, they made a complaint against me to the Office of Local Government and they investigated the iPad and I got a report saying they have, they found nothing on me.

30

Yes, but I'm just trying to find out when this occurred, Mr Hawatt, that's all.---It was after the incident of the general manager to sack him. During, it's during the period of the turmoil but just after the, when we - - -

So we're talking perhaps January 2015?---Yeah, probably, probably round that period, yes. It's in the newspaper. I think there's dates for the newspapers you'll see that's when it came up. It was on TV and the papers, they made a big issues out of it.

40

Excuse me a moment. Can I ask you to go, if we can show you, please, volume 4, page 169, a couple of text messages extracted from your phone to and from Karl Saleh on 7 January, 2015. Mr Saleh texted you that day proposing an independent review by the Office of Local Government of the general manager's performance in the selection process for the position of director of city planning, and that the report of the review process and outcome be presented to the first available council meeting to enable councillors to determine an appropriate response. Do you see that?---Ah hmm.

You responded, “Food for thought. I will call you tomorrow. I am reviewing my position as I am not getting the genuine support from some councillors in regards to this matter. I promised one thing and then,” sorry, “I am promised one thing and then change of mind. You’re right about some people.” You didn’t indicate here what your attitude was to Mr Saleh’s proposal.---There was a lot of swaying and discussions and pressures put on councillors, the Labor councillors who I was working with, there was a lot of pressures from the unions, the Labor Party, there was really a lot of turmoil, and people were threatened with being sacked from the Labor Party and there was union pressure and a lot of the councillors were very scared at that time of the decision to make, because if they went against the GM they would have been sacked from the Labor Party. So there was, yes, there was a lot of pressures on and they weren’t sure which way they were going to vote on, on the issue.

But you didn’t, in your response on 7 January, indicate what you thought about the proposal that there be an independent review by the government of the general manager’s performance in the selection process.---I had to discuss it with the other councillors, it’s, it’s not - - -

Did you?---Yes, I did, and I, I don’t think they were happy with – because Councillor Saleh was really, was very, was playing politics in this whole thing, and we didn’t want politics to, to come into it. There’s, I don’t know. So, but they didn’t want to go ahead with this.

I see.---Mmm.

You consulted the other councillors on that proposal?---Yes, I did. On that proposal, yes.

Didn’t you think it would be a good idea, though?---It was a lot of good ideas floating, but the problem - - -

No, no, no, no, just this particular idea. What was wrong with trying to solve the impasse by having the government review your complaint as it were about Mr Montague’s performance in relation to the selection of the director of planning, and providing that report to council?---Oh, we thought it was a delay tactic.

What’s wrong with that? I mean, why – if it involved delay, what was wrong with that?---Well, it’s a tactical delay and we thought, look, this is not a, a sincere, a genuine move of the councillors. They’ve already, the majority of the councillors have already made their mind up in order to move forward with the, with the sacking of the GM. And this was just like throwing, in other words, a spanner into the works and create delays, and I said, look, you know, we, we’ve made our mind up. We’re going to move

ahead with it. We're not going to get people to coming in and, and throw spanner into the works and play games with us.

Well, doesn't that tend to indicate that all you wanted was the departure of the man who had the power to hire Mr Stavis?---No, it's just a lot of point scoring at the time. Very political point scoring, that's all it was. There's, the - - -

10 The problem with Mr Saleh's proposal was that a possibility was, a possible outcome would have been that the government would have reported that it thought Mr Montague's conduct was fine, not deserving of disapproval - - - ?---It's up - - -

- - - and that in the circumstances, there should be no change.---It's up to the councillors and the majority said, no, it's a delay tactics, it's a politically motivated move. We didn't want to go, go ahead with it.

20 Well, what this shows is, your priority was getting rid of Mr Montague, end of story, not resolving the process complaint that you said you had, and advanced to the government.---Well, it started off with trying to resolve it in a, a, in an amiable way. It didn't happen. There was, became animosity and it was, you know, like, going back to the iPad thrown into the, the scheme of things, and, and, and it just became turmoil and it's nothing was straight anymore. There's people getting involved from every, every angle you can imagine. There's pressures played on councillors. Look, we felt we just going to move, move, move forward with it. That's a decision of the respect of the, the councillors and that's their decision.

30 All you're doing, Mr Hawatt, is using words.---That's - - -

My question to you is, this, your rejection of this proposal, and particularly in the terms which you've given us to explain it, shows that as far as you were concerned, all you wanted was the departure of the man who had the power to appoint the director of planning.---It wasn't my sole decision.

40 And you accept, don't you, that if the government had conducted a review of the whole matter, there was a risk that it might conclude that there was nothing wrong with what Mr Montague had done, particularly in the ultimate action he took.---That's incorrect. It wasn't my sole decision.

Why wouldn't that have been a possible outcome?---As I said, there was a, it's a tactical delay with - - -

No, no, no, no. Why wouldn't that have been a possible outcome of a government review of the whole matter?---This is what the, the majority of the councillors did not want to go ahead with it, that's it. It's, it's up to them. It's up to their decision.

Can I take you then to page 179? This is another text to Karl Saleh, this time it's five days later, on 12 January. You texted Mr Saleh, "Do you still want to support him?" "Him" is obviously Mr Montague. I continue to read, "Your previous text message was initially used by Bechara, and then Robert Furolo. All that does is delay the removal of Jim. The Department of Local Government will laugh at us for being unable to act ourselves as council. This was a tactic that Jim would prefer, as it places him in a position to challenge any decision that may be made under unfair dismissal and may take years to resolve. Don't let them use you."---Yes. Correct.

10 Correct.

Your goal was to get rid of Mr Montague, wasn't it?---I think that explains it.

And, indeed it does.---But not the way you assume it, different, different.

When you said your previous text message, you were referring back to the one that we've been talking about on 7 January, where Ms Saleh proposed a government review.---Correct.

20

You said in your 12 January text message, "Was initially used by Bechara." In what was Mr Saleh's message of 7 January used by Bechara?---Well, it sounds like, from memory, they must have, they must have been using the same support for Mr Montague to use the same motion, position of the motion to get the Office of Local Government to, to review it. So that's why I mentioned that was a tactical move to delay it and this was, definitely by reading that, sort of memory coming back, it's definitely a tactical move that the rest of the councillors were not happy with.

30 THE COMMISSIONER: But where was Mr Khouri using it? You've said it's initially used by him.---He, he must have approached us and mentioned that idea and same with Furolo, because a lot of, there's been a lot of calls and, and meetings and discussions. I received a lot of calls in regards to this matter. After the, the thing erupted in regards to the sacking of Mr Montague - - -

MR BUCHANAN: We'll talk about the other calls later. We're talking about what you meant when you said that Mr Saleh's proposal was initially used by Bechara. What were you talking about?---Yeah, the, the same idea was, was used by Mr Bechara and Robert Furolo.

40

THE COMMISSIONER: And sorry, could you remind me who Robert Furolo - - -?---He was a former mayor of Canterbury.

Oh, thank you. Yes.

MR BUCHANAN: And he intervened as well, did he, to try to suggest that termination of the general manager was perhaps an excessive response?

---Well, originally, he wanted him out. Sorry, before he, before he left as the, the last mayor before Brian Robson, he made the suggestion and he spoke to Jim and Jim told us that Robert wanted him to go and then he became the MP for the area and then Brian took over and the things just continued. So, I don't know why he, there was a change of heart from Robert Furolo but, I mean, everybody were, were getting involved and that's all I can say.

10 And people who got involved included George Vasil?---Everybody got involved, yes.

Charles Demian, Charlie Demian?---Yes.

Joe Alha, A-l-h-a?---Yes.

At the time - - -?---And others.

20 At the time of – I withdraw that. Charlie Demian called you about Jim Montague during this period, is that right?---I think so, yes. Just from memory.

What was the nature of your relationship with Charlie Demian at that time? ---I wasn't, wasn't that solid.

And what do you mean by that?---Like, I didn't know him that well at the time.

30 What did you know him as or to be?---He was a developer who has a friendly relationship with Mr Montague and, and he wanted to say, look, it's, he's a good guy, he should stay on. Something like that.

And what was your relationship with Joe Alha at the time?---He, he was the same because he was calling me for issues and problems he had and then he's, again, another friendly guy who, who wanted to get involved and try and resolve issues between the two and then he called to do that as well.

Exhibit 123, please.

40 THE COMMISSIONER: Can I just ask, before we leave this, you send this text message commencing, "Do you want to still want to support him," and him is Mr Montague, what prompted you to send it? It suggests that something has occurred that - - -?---We had a, he came to my house.

Mr Montague?---No, no. Saleh, the councillor, and, to try and, and discuss it and I felt there was a politics being played as well and we discussed it with the other, I think the other, some of the councillors were there, I can't remember, but we, when we discussed it we thought there's a politics being played here.

Yes but starting this off, "Do you still want to support him," it suggests something occurred that Mr Montague might have done something that allows you to go back to Mr Saleh and say, "Do you still want to support him?" Was there anything - - -?---No, no, it was because, because we didn't want to move with his motion, that's all.

Sorry, which exhibit are we moving to? Sorry.

10 MR BUCHANAN: Just arising from your questions, Commissioner. Mr Saleh was affiliated with which party?---Labor. Can I have a break, Commissioner? Could we take just a five minutes break?

THE COMMISSIONER: All right. Okay, we'll adjourn for five minutes.

SHORT ADJOURNMENT

[11.05am]

20 MR BUCHANAN: If we could look, please, at Exhibit 123, page 1. Mr Hawatt, we looked at this briefly a couple of days ago and it is call charge records for contacts between the phone numbers in the phone service columns, phone service 1 and phone service 2, and in the case of phone user 1, just looking at the data in that column, you can see that there's a number of different phones, well, at least a couple that are identified for Charbel Demian there.---Yeah.

Did you have different numbers for Charlie Demian?---Yes.

30 How many numbers did you have for him?---Only just, he keeps changing numbers and, and sometimes he give it to us.

You had at least three numbers for him, didn't you?---Could be, yeah.

Why did you need three numbers for Charlie Demian?---There was, there was an incident where there's two guys named John and Laki and they kept on - - -

40 L-a-k-i, yes.---Yeah. They kept on pressuring us to make contacts with Demian.

Yes.---And that's when he gave me another number in order to, to contact him with.

Well, we can see that he'd given you two numbers at least by September 2014, because two different numbers are identified as being numbers that you called in 2014 in order to get hold of Charlie Demian. Do you see that? ---Yeah.

What was the reason that you had more than one number for Charlie Demian in 2014?---Because he said, “If you need to get a hold of me, these are the numbers I’ve got, sometimes I don’t answer one number but I answer another.” It’s up to him.

You can see that there’s extensive, by which I mean numerous contacts or attempted contacts recorded on page 1 in the years 2013 down to September 2014?---Yeah.

10

And with the exception of six, they’re all of yours, all of them are initiated by you.---Yeah.

Why were you initiating as many contacts as that with Mr Demian just as recorded on page 1 down to towards the end of September 2014?---Because he has a lot of issues and complaints and, and just passing on the responses I’ve been getting.

20

Well, I’m not suggesting he didn’t contact you, but I’m just wanting to ask, particularly if we can go over to page 2, again we can see that there are numerous contacts initiated by your, or attempted contacts of Mr Demian. Do you see that?---Yeah.

And a number as well of Matt Daniels who worked you understood for Mr Demian?---Yes.

30

These are all are they in respect of Mr Demian’s properties?---No, they’re not. Matt, Matt Daniel had his own, his own thing and also we discussed politics with him because he’s a member of the Liberal Party as well.

And so your contacts with Mr Demian, were they in the period 2013-2014 all in relation to his properties or projects that he had before council?

---Well, I started, he started contacting me when his Harrison, Harrison - - -

That’s not an answer to my question. Were all these contacts, contacts in relation to his properties or projects he had before council?---Regarding his properties, council, regarding, sorry, proposal he had council - - -

40

Why were you initiating all these calls?---Because he must have had a complaint, he must have gave, gave us complaints or, or called me or sent me messages or something in that nature. It’s, that’s the only reason I would be calling him, to pass on information that he needed.

If you could have a look, please, at the one at the bottom of page 2, it’s contact number 91. It’s the first call that’s recorded here that is made between you and Mr Demian in 2015. Do you see that?---So that’s 2015, yep.

And again I emphasise that it's recorded, as recorded here but as recorded there hadn't been a contact between the two of you since mid-November 2014, item 74 - - -?---Yeah.

- - - until Mr Demian contacted you on 12 January, 2015 and it was a telephone call and the line was open for about a minute. Do you see that? ---Yeah.

10 Now, 12 January, 2015 is during the time that you were in dispute with Mr Montague, to put it mildly?---Sounds like it, yeah.

What was it that Mr Demian called you about on that occasion?---Probably supporting Mr Montague, Jim Montague.

What happened between Mr Demian and you in relation to Mr Montague during this period?--- Nothing. We just had a, he called me regarding his sites and his issues.

20 Well, going over to page 3 there are further contacts that Mr Demian had with you. The one that is number 93 is only for 5 seconds and so it could have been a message being left for you. Number 94 is a text message. Do you see that?---Yeah.

And then you rang Mr Demian back, it would be reasonable to infer, and the line was open for 43 seconds. Do you see that?---Ah hmm.

30 And what we can see also is, and you can see now, is that Mr Demian was in contact with Mr Montague during this period that he was talking to you. ---Yeah.

Does that come to you as a surprise?---Oh, he was, he was representing him, you know, I don't know, so I don't know what - - -

And in what way was he representing him to you, as far as you were listening to him?---Oh, he, he's a good guy, yeah, he's saying, "Look, that's not right, he's a good person, he's a good general manager, you should compromise and talk to him and solve the problem."

40 And what was your response?---My response has always been I have a lot of respect for, for Jim Montague and he, he didn't want to, he didn't want to compromise on anything, it's just he wanted to go ahead and just, because he thought at the time he had the numbers and he didn't care and he took a very strong stand against the council's position because he was being fed during that period with a lot of information from different people saying, don't worry about it, Jim, stay with the cause, you've got the support of the majority of the councillors. So he took that attitude and he took a sort of, a blasé attitude of - - -

But I'm asking you about Mr Demian's contacts with you, and I'm just inviting you to have a look at the calls recorded or the text messages recorded. 12 January, then 13 January there's a series of contacts, including two at number 99 and 100 where you contacted Mr Demian. Do you see those?---Yeah.

10 And then Mr Demian contacted you back, through to number 108 which is the first contact for 14 January. So there's a large number of contacts exchanged between the two of you on 13 January, 2015.---Probably relaying messages between Montague and myself. I don't know.

But what was it – I withdraw that. It doesn't seem probable that Mr Montague was simply saying to you, give Jim a break, he's a good guy, it seems more probable that he was mounting a particular proposal to you, a solution.---Who, Mr Demian you mean?

Yes.---His solution is not to sack him.

20 Was that what you heard Mr Demian to say?---Well, that's generally, I, I, I don't recall exactly what he said.

Was there any - - ?---But generally.

- - - anything he said in terms of the way the dispute could be solved?
---Look, I honest, I don't recall this. There's too many calls at that time. Too many from everybody. I just can't recall (not transcribable)

30 Why did you listen to him?---I listen to everybody. A lot of people call me, and I, I, I met with people like Bill Kritharas who also was supporting Mr Montague, Robert Furolo, who was also doing that – it's just general. I was listening to everybody. I respect people and I answer their calls.

And can I ask you what your understanding was as to what Mr Demian's interest was? What did he have at stake?---All he can, all I understood that he likes Jim and he, he supported him, that's it.

You knew that Mr Demian had projects before council?---I never took that into consideration.

40 You knew that he had projects before council previously, and that he had projects before council at the time?---I can't recall, the only time, and I'll, I'll have to repeat it, that the only time I met him officially was when he put the application, DA application for the Harrison site. So I don't – oh, it depends on the date. From that date, I would say yes, depends.

Did you think that, well, Mr Demian has an interest in Jim Montague being retained as general manager?---Oh, everyone has some interests - - -

A commercial interest in Mr Montague being retained.---Look, I, it's not up to me to, to make the decision on his behalf. How he thinks – from my understanding at the time was to do with Jim Montague, nothing to do with his, he never mentioned his site or his development. He's talking about Jim Montague. That's it.

10 But you knew, didn't you, that Mr Demian was, had a relationship of some friendship with Mr Montague, at the same time as having projects that were going through council?---At that time I treated him like Robert Furolo, like Bill Kritharas, like any other person who called.

I'm not asking you about what you thought about why they were interceding, or trying to intercede. I'm asking you about what you thought about why Mr Demian was trying to intercede.---Well, I couldn't, I can't judge that on what, what he was trying to, it's all I can tell that he liked Jim and he wanted support, he was giving support to Jim.

Was Mr Demian trying to broker any specific deal?---I don't recall.

20 Well, first – I'm not at the moment asking you what deal, I'm just simply asking you, was Mr Demian trying to broker a deal?---I don't recall, I don't really recall.

On 13 January, 2015, did Mr Demian and Mr Montague come to your office in Haldon Street, Lakemba?---I don't recall, but they, they could have, but I don't recall. They could have.

30 Well, leave aside the date, then. Did you see Mr Demian ever in your office?---Again, I, I don't, I hardly seen him, I, I don't recall him coming to my office.

Did you see Mr Montague ever in your office?---He might have come once or twice, I can't, I can't recall again.

Did you see the two of them together ever in your office?---I don't recall.

That's not an honest answer, is it, Mr Hawatt?---That is an honest answer. I don't recall. Man, I see, every day I see people in my office. I don't know.

40 But it's not often, is it, that you see the general manager out of his office other than at Pierre Azzi's place, or such meetings as you had called him to in Earlwood?---The, the, the, the GM goes everywhere. The GM meets at coffee shops, in people's offices – he meets everywhere. I can't (not transcribable)

But it's unusual, isn't it, for the GM to meet with you, a councillor, and a property developer in your office, isn't it?---I don't recall.

How could you conceivably not recall that meeting?---I don't recall.

Did Mr Demian discuss with you on the phone around the 12th and the 13th of January with a view to arranging for him and Mr Montague to meet you at your office on 13 January, shortly after 1 o'clock that day?---I don't recall.

10 Did you, during the time of the dispute with Mr Montague, meet with Mr Demian at all anywhere?---I might have but I can't, it could have been phone calls but I don't recall meeting him but I, I recall talking to him on the phone.

Did you meet with Mr Demian in a coffee shop before meeting with Mr Demian and Mr Montague at your office?---I can't be a hundred per cent sure. I can't recall it.

20 Did Mr Demian ever persuade you that something should be done to modify the stance that you were taking in respect of Mr Montague?---I make my own decisions.

Yes, but you're obviously influenced by what people tell you from time to time.---I, I listened, I respect and listen to everybody but at the end of the day, I make my own mind up. No one can, no one could play with my mind and, and tell me what to do if I'm not happy with something. Could, could have been, as I said, my mother, my, my, my wife, my sister, anyone. I would make my own mind up at the end of the day. They can't influence me if I'm unhappy with something.

30 But if someone provides you with information that you think, oh that sounds reasonable, I will adopt that position, what's wrong with that?---If it's good, I will adopt it. If it's no good, I won't, it's up to me.

Did Mr Demian ever influence you to do anything in the dispute that you had with Mr Montague?---No, one influences me to make those decisions.

No, no, no. Did he ever - - -?---He did not because no one can influence me.

40 Now, do you remember whether there was anything that was ever said between you and Mr Demian about the article in the Sydney Morning Herald on 12 January?---I don't recall.

About Mr Montague and the restaurant in Enfield?---I don't recall.

Can we have a look please in volume 5, page 237. Excuse me a moment. When you look at this document, don't worry about the words, "Attachment 03." Can you see that it's a print of an email or rather a conversation where someone, yourself is identified, Councillor Michael Hawatt on behalf of a

number of councillors, sent an email to Jim, without prejudice, on 13 January, 2015, at 6.38pm. Do you remember I suggested there had been a meeting between you and Mr Montague and Mr Demian at your office around 1.00pm that day, 13 January?---I don't recall that.

You've seen this email here.---Just like the one in the notes.

Well, can I just ask you. First of all, did you send that email to Jim Montague on 13 January, 2015?---Well, I must have if that's from me.

10

And can I just ask you – I note the time now, Commissioner. I wonder if I can perhaps have the morning tea adjournment.

THE COMMISSIONER: Is it an appropriate time for you?

MR BUCHANAN: Yes, it would be.

THE COMMISSIONER: All right. We'll adjourn and resume at 10 to 12.00.

20

SHORT ADJOURNMENT

[11.30am]

THE COMMISSIONER: Thank you.

MR BUCHANAN: Mr Hawatt, have you still got the paper version of volume 4 in front of you?---This one?

30 If that says volume 4.---Yes, sorry, volume - - -

Could you turn to page 77, please, in that, and we'll just show people what we're asking you to look at, and that's this two-page handwritten document addressed to Jim, headed Without Prejudice, with a series of dot points, including the first three being numbered 1, 2, 3.---Yeah.

Is that what you were referring to just before the morning adjournment when you were saying there was - - -?---No, the - - -

40 - - - this draft - - -?---Correct.

- - - for the email? And if we could now on the screen go to volume 5, page 237, please. So this is the email that you sent to Mr Montague on 13 January, 015 at 6.38pm. And for what it's worth, I can tell you that a perusal of the two shows a very close coincidence between them.---Yes, yes.

Down to the gratuity payout of 20 weeks for 32 years of service at Canterbury in condition 2 or term 2, but numerous of the others bear a close resemblance to each other.---Yeah.

So now that we can see that, my question to you is, what were the circumstances in which you wrote this document that is in volume 4, pages 77 to 78, addressed to Jim, headed Without Prejudice?---I think it would have been a decision by the councillors that met at Con Vasil's office in Earlwood.

10

Well, but first of all if I could just ask you to assist us. When was it, now that you can see these two documents together and see that there appears to be a relationship between the two of them, when was it that you created the handwritten document in volume 4, pages 77 to 78?---That's when I was taking notes at that meeting. I can't remember the date.

And when was that meeting?---I can't recall the date.

20

Well, what we can see though is that the email of 13 January, 2015, volume 5, page 237, says in the first sentence, "See the following points as discussed." And so what that means is that you expected the reader, Jim Montague, to understand that what followed was your recitation of what had been discussed between you and him.---Yeah, could be.

And the evidence before the Commission certainly suggests that around 13 January, 2015 you had had a discussion with Mr Montague with Mr Demian being present at your office at Haldon Street, Lakemba.---No, I don't think we'd have discussed these points.

30

What did you mean then when you said, "See the following points as discussed," in your email of 13 January at 6.38pm?---Could be we discussed with the councillors. I'm not clear on that.

Why does it not say as discussed with the councillors instead of just leaving it as if it was discussed between you and the person to whom you're writing this?---Demian would never have got involved in this.

That's not - - ?---That doesn't make sense.

40

That's not what I'm asking you at this stage. At the moment I'm just asking you to explain how it could be that discussed would refer to with the councillors when it doesn't say that, and instead reads to the person to whom you sent it as if it was a discussion between you and that person, namely Mr Montague?---Could have been I told him we're going to send him an email, as discussed. I mean as discussed could be yes, I'm going to send you an email after the meeting I had with him. I mean that's, that's how I can interpret it.

And what was the meeting you had with him?---At the Bulldogs. I'm not sure whether this is the one before the Bulldogs or after, I can't recall.

Was the handwritten document, the handwritten version, volume 5, page 77, an agenda that you wrote for your meeting that you understood you were going to be having with Mr Demian and Mr Montague, because Mr Demian had arranged it on 13 January, 2015?---Just the dates are coincident but Mr Demian had absolutely nothing to do with this discussion.

10 Well, wasn't Mr Demian present when you had a discussion like this with Mr Montague?---Mr Demian's always interested just to support Jim Montague, that's basically it.

Yes. And was one of the ways that he supported Mr Montague, that he went with Mr Montague when you had a meeting with him in your office on about 13 January, 2015?---Yeah, but we didn't discuss, this one has got nothing to do with him, absolutely, so it doesn't make sense for me to discuss this draft information in there with him, it just, he has nothing, it's none of his business.

20

It's not uncommon for someone to bring someone along with him, just as a dueller had a second in times long gone past, when there's a dispute one party might bring a witness with them. That's not something that's unheard of.---I have to repeat, there's no way in the world I would discuss this with anyone else except Jim Montague.

Except that Mr Demian was a confidant of yours, wasn't he?---At the time, no, he wasn't.

30 Well, the evidence tends to suggest that you and he had an awful lot of contact with each other before 13 January, extending back to 2013.---Well that's the, I had a look, the, the transcript you showed me with the phone number and I truly believe they were unrecognised numbers that people called me on and these would have been numbers that I did not have registered on my phone and they would have called me and I wouldn't have a clue who was behind that, that call. You show me where that was registered on my phone, it was it's an unrecognisable number and that's the only reason because I did not know him until Harrison's. So, I don't know what came up with those recording. You must have put the name next to
40 the phone number, not knowing it's an unrecognisable number. That's my, that's my only suggestions on that.

THE COMMISSIONER: But you keep on calling and messaging him. ---Yeah, only now, this is different timing. This is before, we're talking about 2013, Commissioner.

MR BUCHANAN: Yes, sorry. I just need to clear this up, then. Can we just go back, then, please, to Exhibit 123. Can you just explain to me again,

please, what it is you're saying about the data on, say, page 1? What are you saying about that?---Yesterday, just to clear something, yesterday there was another data sheet when, after the planning proposal were submitted to, to council and there was a suggestion that I made calls, spoke to Mr Demian and I said, look, I don't, I didn't know him at that time and, and you came up with a, a record of communications that we had.

That's this document.---No, it was yesterday, it was a different one. It had -
--

10

Sorry, I just want to know, are you saying to the Commission that this data is unreliable in some way?---No, I'm not saying that. All I'm saying is, the one I saw yesterday, not his one, I don't think.

Well, in that case, don't worry about it because I'm only asking you about this call charge record.

THE COMMISSIONER: Could I just – you didn't show Mr Hawatt at one stage Exhibit 122, which is the non-coloured-in version?

20

MR BUCHANAN: Oh, I did. I was reminded of that earlier. That's quite correct. We did look at a version, which we'll bring up on the screen now, which is exactly the same data, it's just that it hasn't been coloured in, and that might have been the version that you were shown initially.---Could have been.

And it's, for the purposes of demonstrating to you that there's a pattern of contacts that we went to Exhibit 123, which is the same data but with particular colours assigned to particular parties. Do you understand that?

30

---Yeah. I just, looks like a different document but anyway, I might be wrong.

THE COMMISSIONER: But just looking at that document, can you see items 2 and 3, you're, on 16 November, 2013, you're sending consecutive text messages to Mr Demian. Can you see that?---Yep.

Now, that suggests some familiarity with him, in that you're sending text messages. It can't be the case that you're getting unknown call, sorry, calls from an unknown number that you don't have a clue it is because you're initiating the contact by actually sending two text messages in succession to him.---Yeah, but I always respond to, even if people call me for issues in council, but I don't know, it's like an unknown number, someone calling me, I always respond to them but I don't register their, their name until, unless somebody calls me more and more often.

40

But surely we're moving into the more often stage with the amount of contact you're having with him.---Look, the dates, I'm not sure when that Harrison's – to me, I always remember getting to know him from the

application he made during Harrison's development. I can't recall the dates, if that corresponds to that or not.

MR BUCHANAN: Well, can I also point out that you, by September 2014, were using at least two of Mr Demian's telephone numbers, not just one, which tends to indicate some degree of closeness to the person that you're contacting, because you have more than one of their telephone numbers that you're using.---Maybe I tried to respond back to him, he doesn't answer, and he said, "Call me on these numbers, you can, you, if I don't answer this
10 number, call me on that number," I, I don't recall.

Mr Hawatt, whilst we stay with this, because you've raised it, I need to tell you that the DA, Mr Demian's DA for the construction of an eight-storey mixed-use development on the Harrison's site was lodged with council on 26 November, 2013.---Okay, that's, that's when I met him.

You were talking to Mr Demian about that application back in 2013, weren't you?---Well, that's when the, that's when I met him.

20 Now, can we go back please to volume 4, page 77? I want to give you the chance of answering directly this question – I want to suggest to you that those handwritten notes were your agenda that you had written out in advance for the meeting that the Commission knows occurred between you and Mr Montague and Mr Demian at your office on 13 January, 2015. What do you say?---I, I, I can't recall, but it doesn't make sense.

And if you can just explain to it again why it wouldn't make sense?
---Because as I said before, the, the wording in there, and the 20 weeks is something that I would not have come up with.

30 Why not?---Oh, because the wording, it's just something I would not type up. I know myself.

Now, going back then to the email, there's – this is the email of 13 January, 2015, at 6.38pm – you can see, don't you, that you – I withdraw that. The items that you included in that email were all conditions or terms of an agreement that you were proposing to Mr Montague, weren't they?---This is what the, this is what the councillors discussed, and when I put "without prejudice", saying this is not a commitment. It's unbinding, unless, and, and
40 just a general discussion, to see what his position is on this.

Well, these are very specific conditions for an agreement with Mr Montague, aren't they?---Well, this is what the councillors would have come up with, and maybe some of the points of views of the general manager after our meeting with him at the club. I mean, I can't recall a hundred per cent how all this became about.

Don't you think it's possible that you are the person, in conjunction with Mr Azzi, who put together these terms and conditions?---No, no way. It's not all mine.

Do you think you had a contribution to make to them?---Everybody had a contribution to make.

Or what was your contribution?---Oh, we all, we all discussed every point that's on there.

10

What was your contribution to these terms and conditions that you set out in your email to Mr Montague of 13 January?---I would have made comment on each one of them, like the rest of the councillors.

But were any of them your idea in the first place?---Oh, I don't, I can't see, oh, there could have been some in there. I, I don't, I just can't recall which one.

20

What about the last dot point, "Honour the employment contract of Mr Stavits to avoid any legal action against this council"? That sounds like you, doesn't it?---Well, it sounds like, all the councillors agreed with me on this one.

And can I ask you to look at the second dot point, so it's the second dot point after condition 3. It reads, "Council to take appropriate steps to streamline the planning process to include a panel consisting of the director of planning and councillors to look at the major DA submissions for comments." That was you too, wasn't it?---This is an idea that was put forward by, from other councils, that's what other councils do.

30

But it was your idea, wasn't it?---It could have been, could have not been, because that's something that other councils do. Might have picked it up from other councils.

I'm not suggesting that you didn't, but it was your idea, wasn't it?---It's my idea based on knowledge of other councils, maybe, I can't, I can't be 100 per cent but it's something that I would support, put it that way.

40

And what we also know is that there's quite a large degree of overlap between the terms and conditions in this email that you sent on 13 January, 2015 and Mr Montague's first account that he had given, that he recorded, of what it was that you and Mr Azzi proposed to him at the meeting at Canterbury Leagues Club on 27 December, 2015. And so what that suggests, I'm suggesting to you, is that this was your proposal.---Which one?

Together with Mr Azzi's.---What, all this?

Yes.---That's incorrect. I'll give you an example. In there where it says, "Council conduct a full audit," that, that is Councillor Adler's, something that he would have come up with, so therefore these things would have been discussed with all the councillors at that meeting we had in, in Earlwood.

When?---I don't, I don't recall the date, that's what I'm saying, I - - -

When was it in relation to the events that we've been discussing?---I don't recall the dates.

10

But when was it in relation to the events that we've been discussing?
---Well, it's during the period of the issue that we, when we ah, gave Mr Montague the motion to terminate his employment.

Well, I just point out to you that the second-last dot point, "Close Il Buco account," - - -?---That's all Councillor Adler's.

When did you first know that there was an Il Buco account?---After the newspaper article.

20

That was on 12 January.---This is after.

Yes, two days later.---Two days later.

Do you think that that condition might have been put in by you after you'd read The Sydney Morning Herald article?---This would have been after the article but this is all of Councillor Mark Adler's type of point of view.

30

So are you saying that between a meeting that you had with Mr Montague and you sending this email of 13 January, you had a meeting with councillors at Ray White Real Estate Earlwood in which this list of conditions was generated?---I recall a meeting where we discussed all these issues.

I'm not, that's not, that's not an answer to my question.---I don't recall, yeah.

40

You see, what I'm trying to establish is timing, and when the handwritten document was created, you say that the source for this was a meeting with councillors, yet we know that on 13 January there had been a meeting between you and Mr Demian and Mr Montague at your office, and we also know that on 12 January, it's a matter of public record, The Sydney Morning Herald published the article about Mr Montague and the Il Buco account, and in this email it has information that wasn't in the public arena until 12 January. Do you see what I mean?---Yeah, I understand what you're saying but there could have been after the, the, the discussion with Mr Montague after the photographer took that, his photo and, and he started talking to the other councillors, that could have been an issue where we

needed to close off to stop the, the mayor from going to the Il Buco, that's, could be one way of assisting Mr Montague at the time because we had concerns - - -

10 So are you saying to us that there had been a political agitation against Mr Montague before 12 January about him having an account in which he put his lunches each Friday at this restaurant in Enfield?---No, it's against the mayor. We were supporting the, the general manager at that time because he was pressured from the mayor to go to these restaurants and that's why we, we thought it's important that the council make the decision to close that account to stop him from going. That, that's the only, that's the only reason, that's the only common, that's the only, that's the only thing that could have happened for that reason for it.

20 And I'll stand corrected if I am wrong, but there isn't a suggestion in the evidence before the Commissioner that there had been a political concern about the mayor or the general manager having lunches at a restaurant or the restaurant called Il Buco until the article was published on 12 January.---No, but the general manager, we knew about it after the photographer took photos of him and, and Jim Montague was very concerned, very concerned and he rang a number of councillors to relay his concern about the article because this affected him mentally and we, we discussed this and I think he knew there was pressures on him from the mayor and we tried to assist him. That would make more sense. That's why this is there, probably.

THE COMMISSIONER: What, the mayor forced him to go and have lunch?---On Fridays, yes. Every Friday.

30 Even though the article claimed or said that the mayor only attended occasionally?---He used to go every Friday.

So it was all the mayor's fault, was it, the restaurant?---Well, ask Mr Montague. He complained about it to us.

So when did he complain?---After the, after the photographer took photos on him.

40 And what action did you take at that point?---Well, we, we, we sympathised with - - -

So you sympathised with Mr Montague?---We just sympathised with him.

MR BUCHANAN: Could we look please at volume 4, page 180. This is the first page, if we could just flick over to the second page, so that you can see it, page 181. These are two pages that were located at your residence when the search warrant was excused. They bear your handwriting, you'd agree?---Yeah (not transcribable)

It appears to be written on possibly more than one occasion because there are different-coloured inks used, if you have a look at the top of the first page. Can you see that? And then going over to the second page, again, different-coloured inks. The top of the page is a light blue and then the rest of the page is a dark colour. Do you accept that it appears to have been written on two different occasions?---Yeah, it's - - -

10 Why did you prepare this document?---Oh, look, I've got a, I've got a habit of just writing things down. Sometimes I think of something and write it down, but that doesn't mean I've got to move, move on with it. I, I, I, I do a lot of, if you see notes, I have figures and, and points and I used to have thousands of pieces of paper that I just scribble on. It doesn't mean, to me, like, it's, this is what sometimes goes through my mind, I put it on paper. Doesn't mean I'm going to go ahead with it or, or not. It just, it's the way I am.

20 And so this was the product of your thinking, not notes taken at a meeting of councillors in Earlwood?---Well, that could have been from the, the meeting. I, I don't recall. All I can recall is I, I scribble on things when, when I heard it. Sometimes in my mind, I, I scribble on things. Sometimes I'm scribbling on discussions we've had. It's, it, it could be anything. I, I can't, I can't say specifically it's on that particular day or that particular day.

Why did you write at the top of it, "Confidential"?---Because it's probably in my mind. That's what I'm thinking of.

30 Yes, but why would it have been in your mind at the time that you wanted the contents of this document to be confidential?---Because I believe anything like that, it has to be confidential.

Why?---Because it's discussions regarding the GM. It's private.

Well, if you discuss thing with councillors, that wasn't confidential, was it? ---No, it's my scribbling. It's my own scribbling in my own mind. It doesn't you mean that's, that's, that's how I, I'm thinking how to, maybe thinking how to send him the email after the discussion. It's just writing it down, it's not - - -

40 The use of the word confidential suggests that at the time you wrote this document you wanted the only other person to know about it to be Mr Montague.---No, that's not correct.

When he had these conditions conveyed to him.---This paper is, is, I have to say it's, as far as I'm concerned it's, it could be any, anything during a period of a meeting with the councillors, could be me just thinking my mind, could be thinking about how I'm going to send the email across to the GM from our discussions, there's many reasons where that could happen. I don't recall specifically why. I do this quite often, scribble on things.

Again there is words suggesting that you wanted a legally binding agreement with Mr Montague, deed of agreement to resign. Do you see that?---Could be what, what I'm thinking.

Yes. Well, you obviously were thinking it at the time you wrote it, you wouldn't have written it otherwise.---Of course. I mean that's my mind is active.

- 10 You wanted to have a legally binding agreement for the departure of the general manager without him being sacked so that you could achieve your goal without having to go ahead with the extraordinary general meeting.
---No.

Is that fair to say?---That's, that's not up to me to make that decision, it's up to the council. I can't - - -

Well, that's why I'm focusing - - -?---I can't legally make it.

- 20 Yes. Why then were you after a deed of agreement? Or in the words of the other draft, "legally binding agreement." Volume 4, page 77.---I might want a lot of things, it doesn't mean it's legally correct. It's up to the council to make those decisions. I can think about a million things but at the end of the day there has to be a legal motion to go to council and approve anything that I want to do or anybody else wants to do. I can't make that, those decisions, no matter what I write. It's up to the council to make the decision, not myself. I can't just go ahead and write a contract and get Mr Montague to be binding, it's council's role, not mine.

- 30 Well, it actually wasn't, was it. If you got Mr Montague to agree to do all the things that you wrote out on these pieces of paper you would have achieved all of your goals without anything going to the floor of council.
---It's up to the council to make a decision.

Why?---Because it's legally, could be legally binding by the council to make decisions up to them.

No, no, no.---Not me.

- 40 You don't understand. You thought that if you got an agreement with Mr Montague for him to do the things that are set out in these documents that you'd written, you would have achieved all of your goals in relation to Mr Montague and Mr Stavis, wouldn't you?---It's all up to the council to make those decisions.

Sir, please answer my question.---That's my answer. I can't, I'm not a legal expert and control the council, it's up to the, goes to the council to make those legal, legal decisions, it's not up to me.

There was no need for a legally, an agreement which – I withdraw that. There was no need for an agreement to which Mr Montague was party which would legally bind him, unless it was separate from something that went to the floor of council, a side agreement, as it's sometimes called. ---All I can say is I cannot make any decisions unless it's all done through council and I can move motions - - -

10 But if Mr Montague made the decision, that would, that would - - -?---It has to come to council.

Why does it have to go to council? Mr Montague can decide to resign. ---Yeah, but we have to at least, we've still got to look at it as, as, under the Act, any changes to senior management, whether they employ them or sack them, it has to come through council.

How do you stop Mr Montague resigning?---He can resign if he like.

20 Yes.---But it's still got to be discussed at council meeting and it's up to the council to support it, even if he wants to go or not.

But the benefit of - - -

THE COMMISSIONER: What's the point? If Mr Montague said I'm retiring, it's not up to the council to support - - -?---Yeah, but, but - - -

30 Let me finish, please. It's not up to the council to support or they can't stop that, it's up to Mr Montague.---That's correct, but we've still got to make a decision based on what's going to happen next, we can say, thank him for his work, we can say we support his decision, we wish him the future, we, we need to go through the process with him in how we're going to find a new general manager, there's a lot of things that needs to be looked at.

MR BUCHANAN: And you thought, didn't you, that because you and Mr Azzi controlled the numbers on council that you could persuade council to give Mr Montague more money than he was entitled to if he departed by way of resignation, effective August, 2015, didn't you?---I can only give my only input, and it's up to the council to support it or not.

40 But on your version, these documents emerged from a council, a meeting of a majority of councillors. That's your version, isn't it?---It's, it's, no, from discussions that we had, and maybe feedback we got from the GM, in order to, to work something out, and to go forward with it, so that's, that's all - - -

So your version is that you already knew you had the support of a majority of council for giving Mr Montague a gratuity on top of his entitlements of 20 weeks' salary, plus a car?---It's, it's, it's, again, it's discussed by the councillors, it's not up to me to make decision.

Sorry, is that what happened?---I don't recall exactly what's, we, we were, where, where, what, when we met, what time we met. All I can say is some of the wording in there, it's not coming from me. Some of the wording in there, it's, it, it looks like other, other councillors or other people putting their input.

10 I'm just asking you to explain to us your version. You tell us, don't you, on your oath, that these documents emerged from a meeting of the majority of councillors held at Ray White Real Estate Earlwood at some stage during the dispute with Mr Montague, correct?---That's what it, that's what it seems like.

And therefore, this is a record of what you understood the majority of council would support, because this document was what was agreed to by that meeting.---During the discussions, and I made note on that.

20 So you believed – this is your version – that you had a majority of council to support the payment of a gratuity to Mr Montague of 20 weeks' salary plus a car in exchange for him giving a binding agreement to resign at the end of August, 2015?---Not really, because not, not every councillor was present. It's up to the rest of them to, to be present as well, to make the decision. Not all the councillors were at that meeting.

Excuse me a moment. Now, can I just go back to that email that you sent to Mr Montague on 13 January, 2015, at 6.38pm, volume 5, page 237? Why did you send it to Mr Montague?---Oh, just to start the discussion points with him in regards to what's happening in, in, with, with the motion.

30 What did you hope for, that he would respond and say, "Yes, I agree"? Was that a best-case response - - -?---Mmm, it's a - - -

- - - as far as you were concerned?---No, no, it's a, it's a two-way discussion. We were, he, we want to hear what he have to say, and it goes back to the councillors to make decisions, and it's goes back and forward, and then it goes to a meeting.

40 But wasn't a best-case scenario, as far as you were concerned, to have an email back later that evening saying, "Thank you for your email, Michael. I agree to all of those conditions"? Wouldn't that have been a good result for you?---Oh, I, I wasn't looking for good results. All I wanted to do is sort out the, the, the situation that happened in council with, with the general manager.

Well, that would have sorted out the situation which happened with council, wouldn't it?---If, if, if the general manager was happy and to move on with it, then when it goes back to the council to discuss and say, yes, he's happy

with this or he's not happy with it. It's, it's not up to me. You're making out as if I'm the, the dictator of this council. I'm not.

THE COMMISSIONER: So your answer to Mr Buchanan's question is, if Mr Montague responded with, "Yes, I'm happy with all that," that would have been a good result for council?---For council, yes. Not for, absolutely, ma'am, Commissioner.

10 MR BUCHANAN: And what it would have achieved notably would have been the employment of Mr Stavis as director of planning, because that's what you asked for in the last dot point.---No, it means that we got to get an acting general manager - - -

No, sir, please.---No, but that's what it means.

Please. No, no, no, no. Mr Montague was going to stay on deck until August, 2015, a number of months.---Okay, sorry. Okay, sorry.

20 You wanted a number of things done.---Yeah, yeah, yeah, that's fine. Yeah, sorry.

And one of those things was he would honour the employment contract, indeed, you wanted a binding agreement from Mr Montague that he would honour the employment contract of Mr Stavis.---Because there was a contract in place for him, yes. Financial issue, yes.

30 And so as far as you were concerned, you were making an offer to Mr Montague that in exchange for him honouring the employment contract of Mr Stavis, he, Mr Montague, would get on top of his entitlements a gratuity payout of 20 weeks for 32 years of service to Canterbury. That's the case, isn't it?---It's not me making the offer, it's the council - - -

Sir, you sent this.---Yeah, I sent it on behalf of these people.

You sent it yourself.---Yes, on behalf of the councillors.

40 You would have achieved the result that Mr Stavis would have been appointed and start work as director of planning in exchange for, on top of his entitlements, council giving Mr Montague a gratuity payout of 20 weeks' salary.---Would have, would have saved council a lot of money from doing this.

You would have gained the benefit of Mr Stavis being appointed, he would have gained the benefit of achieving a payment that he wouldn't otherwise be entitled to.---I have no benefits for him to be employed. As I said, it could have Donald Duck in there. I mean - - -

And you got a reply which is at volume 5, page 239, is that right?---That's correct, I can see it.

In essence, in sending that email you were trying to entice Mr Montague, with an offer of money to which he was not otherwise entitled, into appointing Mr Stavis as director of planning?---That's incorrect.

What's incorrect about it?---I have not been placing, this is a very, very critical word, enticing. What do you mean by enticing?

10

Offering.---Offering what? I don't offer anything. It's up to the decision that was made and you can see that the mayor's response had to be a formal resolution from council and that's what I've been telling you all along. Enticing him, why should I entice him? It's not my money.

20

Excuse me, please. You sent your email to Mr Montague at 6.38pm on 13 January, 2015, in which you opened it by saying, "Hi Jim, see the following points as discussed." And you've denied that that was a reference to a discussion earlier that day in the presence of Mr Demian.---I didn't deny anything. I'm saying I can't recall what I discussed.

Let's go back to it, then. When you said, "See the following points as discussed," was that a reference to those points having been discussed at a meeting with Mr Montague at your office at which Mr Demian had been present?---No. I wouldn't have discussed with Mr Demian. It doesn't make sense to me.

30

Can I just ask you, if 6.38 was the time that you sent that email, if we look at Exhibit 123. Can you see that at item 107 on page 3 at 7.55 you rang Mr Demian? The line was open for 22 seconds.---Yeah.

Why did you ring Mr Demian so shortly after sending this email at 6.38pm to Mr Montague, if Mr Demian hadn't been present at a meeting earlier that day that you had had with Mr Montague at which these items had been discussed?---I might have been returning his call. I, I don't recall this. It's got nothing to do with that piece of paper. I mean if I would have sent this or discussed this with Demian I would have been the most stupidest person on this planet. I can't recall doing this. It's impossible.

40

And can you just remind me, why would that be stupid?---Because this is confidential things, it's not, it's between myself and Mr Montague.

But Mr Demian was a person who owed you favours - - -?---He didn't owe me, he - - -

- - - in the assistance you'd given him in relation to the Harrison's site. ---I help everybody. There's no favours with anyone. I help people.

Mr Demian was a close friend of Mr Montague's, to your knowledge.
---He, he knew him, I don't know how close he was but he knew him.

And I want to suggest to you Mr Demian organised the meeting that Mr Montague had with you in Mr Demian's presence in your office on 13 January.---He, he may have, I don't recall.

10 Well, all of that then suggests that it's hardly surprising or stupid that you would keep Mr Demian apprised of where things were at, namely that you had sent to Mr Montague an email confirming the terms and conditions that you had offered to Mr Montague earlier that day in Mr Demian's presence.
---Mr Demian does not want Montague, Mr Montague to leave, he wanted him to stay. It's the opposite. He wants him to stay, not to leave.

Excuse me a moment. And if I can just take you back to page 3 of Exhibit 123, please, you, having called Mr Demian, this is item 107, shortly after sending that email to Mr Montague, Mr Montague you can see at item 108
20 texted Mr Demian on 14 January at 2.32pm. Can you see that?---Yeah.

And then item 109, Mr Demian contacted Mr Montague at 3.01pm. The line was up for 58 seconds. Do you see that?---Ah hmm.

And then at 3.44 the same day, 14 January, Mr Demian contacted you. Can you see that?---Yeah.

And the line was open for 4 minutes and 19 seconds.---Ah hmm.

30 Can't you see how obvious it is that Mr Demian was involved in trying to broker a deal between you and Mr Montague?---He's, he's always been, he's been trying to, to solve the problem between Montague and ourselves, yes, everybody, a lot of people done that.

And then if I can take you to 20 January, you rang Mr Demian, this is item 112. The line was open for 2 minutes and 7 seconds.---Yeah.

40 Why are you contacting Mr Demian in these circumstances?---Probably responding to his call, I, I can't, I can't recall. I mean there's been a lot of communications between lots of people at that time.

Well, we can see that Mr Montague had contacts with Mr Demian on 20 January, that's items 113 to 115. Do you see those?---Yeah.

Mr Demian contacts Mr Montague, item 116, the line is open for 8 minutes and 56 seconds. Can you see that?---Yep.

And that very shortly after that contact between Demian and Montague of that length, Demian calls you. This is item 117.---It looks like 59 seconds, could have left me a message. I don't, I don't recall.

Now, can I ask you to have a look, please, at volume 4, page 209. Excuse me a moment. Yes, I apologise, I've overlooked something. Before we go to that document, can I take you instead please to volume 4, page 189. I overlooked taking you to this email conversation that's reproduced on at least pages 189 and 190. Can you see that it's a print of an email?---Yep.

10

It was found at your residence. It's your handwriting?---Ah hmm.

And the original email was from Mr Montague to you on 14 January at 1.52, responding to your email. You see that?---Yep.

Then you responded in typing at least, "Hi Jim, the meeting held yesterday with your third-party contact was only based on general discussions without commitments. I had not made any offers and cannot without due process. The points of discussion were relayed to you for consideration, only before any formal resolution is put forward, as stated in your email of today." And then you'd crossed this out but you did type, "All points of discussions made are no longer on the table." Do you see those words?---Yep.

20

So you typed that but you've then written, "Not sent," against the content of that email as printed.---Yep.

30

That tends to suggest, doesn't it, that there was indeed a meeting that you had with Mr Montague on 13 January, 2015, with Mr Montague's third-party contact?---I, I just don't recall.

Well, you'd accept, though, that you obviously at this time thought that there had been a meeting the previous day with Mr Montague and Mr Montague's third-party contact?---I, I don't know who, who's the third-party we're talking about, Demian?

40

Well, that's the next question but the first question is, you thought at the time you typed this email, even though you didn't send it, that there had been a meeting the day before with Mr Montague and his third-party contact, didn't you?---I, I don't recall this but the advice could have been not to send it. I don't recall. I could have received advice from other councillors saying don't, don't bother sending it.

Well, it's signed, "Michael Hawatt."---Yeah, but I - - -

"Hi Jim," signed, "Mr Hawatt."---Yeah, but I've got a note here, "Not sent," so maybe someone (not transcribable)

THE COMMISSIONER: I don't think we're concerned about whether it was sent or not.---Yeah.

It's more the content.---Oh.

And whether the content assists you in recalling what happened on 13 January.---It, it, it doesn't, I swear.

10 MR BUCHANAN: So at the moment, we're just going to the fact that you typed this.---Yep.

You wouldn't have typed it unless it was true, would you?---That's correct. Yeah.

So at this time you thought there had been a meeting the previous day with Mr Montague and his third-party contact.---Mmm, it could be. I can't recall.

20 And in the third line, you said, "The points of discussion were relayed to you." So that means the contents of your email were relayed to him. ---I don't recall this.

No, that's what you typed, isn't it?---I know, but I, maybe - - -

30 And if it was typed by you, it would have been true, wouldn't it?---If I typed it, and not sent, I don't know what the discussions we had with Demian and Montague. There's nothing to do with that other email, or that other, the other document you showed me. It, it's completely, could be verbal discussions we've had with Charlie Demian, trying to resolve the issue with Jim Montague. That's, that's the only thing I can think of that, that would make sense.

40 Can I also suggest to you that the reason you drafted that email was because you were alarmed when you received Mr Montague's email, because it had a tone suggesting that he was prepared to publish or make public the contents of your correspondence with him.---No, that's, that's not it, because Jim Montague was really stressed out, and, and I did feel, I feel sorry for him. I didn't realise he'll, he'll take it so, so badly. And there was no animosity except just to trying to resolve the issue with him, that's it. There's no scaring of anything. It just the normal general thing that normally happens.

On page 191 of volume 4, we have a print of an email you sent to Mr Montague on 14 January, 2015, at 7.58pm, don't we?---Oh, yep.

And this print has writing on it, it's your handwriting, isn't it?---Yep.

And it shows that you did in fact send that draft email to Mr Montague, doesn't it?---I might have, I, oh, it's, sorry.

Well, you printed off - - -?---Well, it's got here, "Discussions." It didn't say anything, discussions were only held (not transcribable) without a commitment. The points of discussions, there's nothing about writing, in writing. It's discussions.

10 Mr Hawatt, this is you sending that email, a draft of which is on page 189 of volume 4, and if you, you've still got volume 4 in front of. You can turn to page 189. Compare the terms of the email as sent with your draft, and you'll see remarkable similarity in their content.---I, I don't recall what the point of discussions were, I have to say.

Well, you don't have to, do you, because we know what they were, because you set them out in the email that you had sent to Mr Montague.---It could have been, it could have been a verbal discussion, I don't recall.

20 Indeed, we can see on page 188, if you go to page 188, there's a copy that you printed out of an email that is recorded as being sent from your mobile phone. And you have annotated it, "Email to Montague on 13/01/15, 6.38pm."---Mmm, I, I just, I can't recall some of this. I, I, look, well, whatever I discussed, and I spoke you about, it's, it's what I believe and I, I don't know what this is as well, so, it could have been, could not be, but that's the discussions (not transcribable)

30 Excuse me. I overlooked some wording at the top of the email as printed by you, page 191 of volume 4. Do you see the first, the opening words area, "Dear Jim, re discussions further to the meeting held in my office on 13 January, 2015."---"Further to the meeting held in my office, yeah, with your third party contact."

Yes. So you'd made a change in that respect by adding in, in case Jim had forgotten, that the meeting happened "in your office."---"The discussion was only held on a general basis and" - - -

No, no, no, just, if you could just focus, please - - -?---I'm just reading it, yeah.

40 - - - on the first two lines.---Yeah, yeah, yeah.

"Further to the meeting held in my office on 13 January 2015 with your third party contact, I confirm the following."---Yep, yep.

So obviously there was a meeting at your office with Mr Montague with Mr Demian on 13 January, 2015, wasn't there?---Most likely.

And you say, do you, that you have no memory of any such thing?---I don't recall it, no.

Excuse me a moment, please. So by 14 January it looked as if the negotiations that Mr Demian had initiated weren't going anywhere. That's right, isn't it?---That's correct.

10 And can I take you, please, to the same volume, page 51. Item 12 from this schedule of text messages extracted from your mobile phone shows that on 16 January at 2.07pm, you texted Ms McClymont and provided her with more dirt, didn't you?---No, this is just information she probably asked for regarding the Il Buco and I think just based on probably the information that we received we just let her know that it wasn't authorised.

20 We know what the previous text said because it's recorded immediately above. It's not, your text of 16 January was not responding to her text of 11 January at all, instead you were providing her with additional information adverse to Mr Montague and you threw Mr Robson in as well. "Hi, Kate. Not sure if you are aware or not, but I am told," and then you proceeded to provide more information to Ms McClymont.---Which is they weren't authorised, yeah.

That's what you did, isn't it?---Well, we all know they weren't authorised and she wanted to know if they weren't authorised and wanted to check on this and we found out it wasn't authorised.

30 How do you know that she wanted to find out if it wasn't authorised?
---Because we met her, I mentioned yesterday, we met her once and we just, we, she might have asked for that.

Was that between 11 and 16 January, 2015?---I don't recall the dates. I remember we met her once.

That was back in 2014, wasn't it?---I don't, I don't recall, I don't recall the times and dates.

40 You see the negotiations with Mr Montague that occurred on the 13th and which by the end of the 14th appeared not to be bearing any fruit as far as you were concerned, you decided, didn't you, to up the pressure on Mr Montague by providing information that you believed would be published in the media and that might cause Mr Montague sufficient distress to think that he needed to back down and perhaps accept your terms.---It's more to do with Brian Robson than Montague, if you read it properly. I'm told by Jim Montague that Brian Robson is the one, not - - -

So why did you, why did you provide this information to Ms McClymont, this particular information?---Because, because I believed that Brian Robson

sent to the media about my iPad, so there became a bit of animosity between him and I.

When did Mr Montague tell you that Mr Robson went to Il Buco without the GM on a number of occasions?---Again, after that photographer told him, he was complaining that he wasn't, he didn't want to do and Brian Robson forced him.

10 And so you wanted until 16 January before providing it to Ms McClymont with a view to it being published?---Because of the iPad maybe, there's a personal animosity between myself and Brian Robson. So it's to do with Brian Robson and the iPad.

But then you went on to say – I note the time, Commissioner, if I can just - - -

THE COMMISSIONER: No, that's fine.

20 MR BUCHANAN: On 16 January, this is item 14, you went on to say at 2.12pm, "Sorry, hasn't finished typing. The GM have permission for a council truck to be used by the USU at a May Day rally last year."

THE COMMISSIONER: I think that's coming from Kate McClymont, isn't it?

30 MR BUCHANAN: Oh, I do apologise. Thank you. I very much apologise, I read that wrong. It's message number 15 to Ms McClymont that you sent, where you responded, "Amazing. God knows what else he has done. Once he goes, I will call for a forensic audit into the financial affairs of this council." Which pretty well indicates what it was you were trying to achieve, doesn't it?---I want to protect the financial interests of council. Yes, correct.

40 Then on 23 January, another text message to Ms McClymont, number 16. A fairly lengthy one, in which you said in the middle of it, "This is a blatant attempt by our GM to drag this on and on to help the dogs with further financial help to a private and rich club," et cetera, et cetera. That's dirt on Mr Montague that you were hoping would be published to - - -?---There was, no, no, there were some issues with the, there was the, the Olympic soccer team.

It's adverse to Mr Montague and you were providing it with a view to it being published, weren't you?---This one has a, an implication - - -

Please, sir. Is it or is it not correct that it is adverse to Mr Montague?---But it's an adverse to Mr Montague but it's in the interest of council.

And you were providing it with a view to it being put out in the public arena?---No, this is a council matter and it's a financial council matter that needs to be raised.

At a time when you were in dispute with the general manager and you were trying to get rid of him.---I would have raised it at any time if there was issues in regard to the financial aspect of council. It could have been that time, could have been any other time.

10 Thank you, Commissioner. This will be a convenient time.

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

LUNCHEON ADJOURNMENT

[1.03pm]