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INDEPENDENT COMMISSION AGAINST CORRUPTION

PATRICIA McDONALD SC
COMMISSIONER

PUBLIC HEARING

OPERATION DASHA

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY 12 DECEMBER, 2018

AT 10.00AM

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

MR BUCHANAN: Administrative matter first.

THE COMMISSIONER: Yes.

MR BUCHANAN: Commissioner, there's a suggestion we have for a correction to the transcript. We're exceedingly well served by those who provide us with the transcript. From time to time, though, there are gremlins that creep in. In yesterday's transcript, page 5178, line 18, the suggestion is that the word at the end of that line should be "could" instead of "couldn't".

THE COMMISSIONER: "Could go against."

MR BUCHANAN: Yes.

THE COMMISSIONER: Yes. Mr Andronos, do you agree with that?

MR ANDRONOS: That accords with my note, Commissioner.

20 THE COMMISSIONER: All right. Okay. We'll make that amendment to, as you said, page 5178, line 18, the last word instead of being "couldn't" should be "could."

MR BUCHANAN: Thank you, Commissioner. And I think we're ready to resume with Mr Montague.

THE COMMISSIONER: Right. Mr Montague.

MR BUCHANAN: Mr Montague, we'll show you on the screen an email of yours to Bryan Belling of 2 February, 2015, which I showed you yesterday, and you'll recall that a little over halfway down the email I think I might have asked you a question about the words "as discussed" in your email of 2 February at 12.19pm to Mr Belling. Do you see that?---Yes. Pardon me, yes.

10

Volume 5, page 12. Sorry, did I not give the reference? Volume 5, page 12, I apologise. If I could take you back, please, to a few days before 2 February and show you another email.--It's on the screen, could you just enlarge it for – there it is, it's fine, thank you.

20

Yes. So, there are two emails on this page that I have shown you. If we could have a look at the one at the bottom, that is from Mr Belling to you on 13 January at 8.50am and that's already in evidence. It's in volume 4 at page 185 and it informed you that the letter that was expected from Mr Stavis's solicitors, making claims on his behalf in respect of the contract of employment, had arrived and Mr Belling told you, "It correctly asserts there is a contract formed, even if not executed, as we discussed." This page, however, has another email at the top which suggests that it was forwarding to you, Mr Belling was forwarding to you his 13 January email and giving you a new message on 15 January at 10.09am. Do you follow?---Yes.

30

And so the fresh material that I'm taking you to is this email of 15 January in which Mr Belling referred to the fact that he'd got your phone message. He sent a neutral response as instructed, that he's established a line of communication with Mr Stavis's lawyer and he went on ultimately to say, "Assuming, as we must, that the contract of employment subsists (I think there is no doubt about that), the options are", and then he provided three options, "1, Stavis either starts Monday or, 2, he is directed to stay at home but is on the payroll or, 3, he is sacked (without a cause) i.e. 38 weeks' pay is tendered." Mr Belling went on to say, "Option 3 might still be controversial. Mr Boatswain isn't adverse to option 2 'while we sort it out.'" Mr Belling went on to say, "My apprehension is, if we agree to option 2, that will keep the peace until you are in a position to otherwise deal with the matter." And you accepted that advice or you agreed with the option that he suggests was the preferable one?---Yes.

40

And implemented it?---Yes.

Commissioner, I tender the page that I have shown the witness, comprising a copy of the email from Mr Belling to Mr Montague of 13 January, 2015 at 8.50am, which is already in evidence, volume 4, page 105, but with the addition of the email from Mr Belling to Mr Montague of 15 January, 2015 at 10.09am.

THE COMMISSIONER: A copy of the two emails from Mr Belling to Mr Montague, the first being dated 13 January, 2015 at 8.50am and the second, 15 January, 2015 at 10.09am will be exhibit 240.

**#EXH-240 – EMAIL CHAIN BETWEEN BRYAN BELLING AND
JIM MONTAGUE DATED 13 AND 15 JANUARY 2015 RE: STAVIS
[MID-MIDDOCS.FID69535]**

10

THE COMMISSIONER: Mr Montague, the email of 15 January has the three options. The second option, that Mr Stavis was directed to stay at home but is on the payroll, was that actually implemented? The impression I got was that Mr Stavis was in a bit of a limbo for January, that he wasn't on the payroll but he hadn't in legal terms accepted what could be seen as a repudiation of the contract by you. So the contract's continued but he actually wasn't on the payroll and wasn't directed to stay at home.---I think that's a more accurate description of the position, yeah.

20

Being in limbo?---Yes.

MR BUCHANAN: Thank you, Commissioner. I apologise if I misled you with my question, Mr Montague. So if I can take you back then to 2 February, your email to Mr Belling, this is volume 5, page 12, said, sorry, "Ultimately based on your advice I am seriously considering honouring the original offer of employment."---Yes.

30

Now, that was at 12.19pm. If we could have a look at Exhibit 233, please, at page 1. This page covers 2 February at the bottom of the page.---Yes.

I think we could enlarge it a little to take in the bottom of the page. Thank you. And can you see that at item 35 at 1.52pm Mr Khouri sent you a text message?---Yes.

And that at item 38 you responded to Mr Khouri at 1.51pm, again with a text message?---Yes.

40

Was the subject of those text messages anything to do with the employment of Mr Stavis?---It's possible but I can't be certain.

And then as we saw yesterday, if we can go again if you wouldn't mind, please, to volume 5, page 13, at 5.40pm on 2 February Mr Belling sent you the legal opinion in writing, which was attached to that email.---Right.

And that legal opinion is set out at pages 14 to 16 and it confirmed but provided details and reason for the opinion that he had previously conveyed to you, both orally and in writing in email form.---Yes, yes.

Can I take you, please, to volume 5, page 11. This is a short memo by you to the mayor. It's dated 2 February, 2015. The subject is the appointment of Mr Spiro Stavis to the role of director (city planning.) And it read, "Further to our discussions today I confirm that following receipt of legal advice (copy attached) it is my intention to proceed with the appointment of Mr Spiro Stavis to the role of director (city planning) pursuant to my letter of offer dated 8 December, 2014." And if I can just indicate to you on the next page is the attachment and it is the email from Mr Belling to you sent at or received at 12.21pm that day.---Yes, yes.

Going back if we can then to page 11, the memo that you sent to Mr Robson, "I make this offer for the following reasons," and then you gave three reasons, "1. The events of the extraordinary council meeting of 27," and it says February but you meant January 2015.---Yes.

"Demonstrated clearly that the majority of councillors are in favour of this appointment. 2. His appointment will avoid potentially costly legal proceedings on his part pursuant to my letter of 17 December, 2014 withdrawing my previous offer of employment. And 3, his appointment is in the best interests of the community and of council as a whole." And then you went on to say, "This appointment will hopefully stem any further unhelpful publicity surrounding this appointment and the consequent negative impact on staff morale and the overall efficiency of council. Your endorsement to this proposed course of action is sought." And did you receive that endorsement?---Yes, Mr Robson signed it on the bottom there.

Thank you. Can I ask you though now, looking at that letter – sorry, I apologise – that memo, what was it that you actually meant by your intention was to proceed with the appointment to the role of director (city planning)?---Well, what I was saying was I was going to honour the offer of 8 December.

Honour it in the sense of having Mr Stavis actually start work?---Yes, yes.

Can I just take you to a couple of other documents?---Certainly.

First of all, you remember that you entered into some short correspondence, short in time, with Mr Stavis's union representative, a Mr Robertson I think?---Robertson, that's right.

If I could take you, please, to volume 5, page 21. Towards the bottom of that page there is an email from you to Mr Robertson dated 6 February, 2015, so four days later.---Yes.

And what you said, if I can just go down to the question of whether you would be honouring the offer of employment by having Mr Stavis start work was, "I realise that the offer and acceptance of employment constitutes

a contract, and that should the appointment not go ahead, Mr Stavis would be entitled to monetary compensation in accordance with the standard contract of employment for local government senior officers. My main concern is that this matter be resolved as soon as possible and that the city planning division can get back to normal.” And just for completeness, in the middle of that page Mr Robertson’s reply the same day, included towards the end of his email, “As he is an employee,” referring to Mr Stavis, “As he is an employee the council needs to pay him until such time as a decision is taken to terminate him under the senior staff standard contract or, as I inquire above, get him working in the job,” to which you responded at 10 3.49pm on 6 February, “Unfortunately Spiro is a pawn,” p-a-w-n, “in a very messy political power play. I have nothing against him personally and will ensure our obligations to him are upheld. I will take steps to pay him since his notional commencement date of 19 January.”---Yes, yes.

You didn’t convey to Mr Robertson there a decision that you tell us you made on 2 February to have Mr Stavis start work.---No, apparently not, and I need to correct something I said earlier. I may have misled the Commission. It would seem from that that maybe he was being paid from 20 that notional date of 19 January, but I can’t be certain of that, I’d have to check the council and have the records checked, but he may have actually been paid gardening leave.

Well, I just wanted to clarify because there are more than one possibility, I would suggest to you. It could be that because Mr Robertson was acting for a person opposed to you in a dispute you were having with him, namely Mr Stavis, that you weren’t taking him fully into your confidence until such time as it was advisable to do so in the interests of you and council, but you were reassuring him that there was no intention of doing Mr Stavis down in 30 any way in terms of his entitlements.---No, of course not.

So, do you see that I mean?---Oh, yes, yes.

That it’s not necessarily inconsistent with you having decided on 2 February to not only proceed with the appointment but have him start work for that reason. So I don’t want to push you into a position of questioning what the significance was of your words to the mayor on 2 February, “It’s my intention to proceed with the appointment of Mr Spiro Stavis.”---Yes, look, I told Mr Robertson – who I’d had dealings with for many years and he’s 40 very assiduous in his job – what I thought he needed to know at that point in time, and that’s, there wasn’t any intention, as far as I can recall, to withhold vital information or anything of that nature. He, he and I had a very good relationship and I didn’t see any problem with that.

Something else that I need to give you an opportunity to respond to. If we could have a look at the statement of Mr Robson, the third statement he made. This will be in Exhibit 53. It’s dated 9 May, 2017 and - - -?---2017?

2017.---9 May, 2017?

Correct. Statement of evidence to the Commission.---Oh, I see, sorry, sorry.

10 What I might be able to do is put enough of it to you for you to be able to respond. At paragraph 68 of that statement, Mr Robson suggested that discussions between you and him in relation to Mr Stavis and your seeking of legal advice in relation to Stavis didn't happen until sometime following the extraordinary council meeting of 13 February, 2015. 14 February, 2015, which had been called by Councillors Azzi, Adler and Kebbe.---Yeah. Well, that's not consistent with the dates that were on those earlier exhibits and I, I don't understand that. I, I, I can't explain that.

Thank you. Whilst on the subject, though, of the extraordinary council meeting of 13 February, 2015, if we could go to page 88 of volume 5.

THE COMMISSIONER: I'm sorry. I might have - - -

20 MR BUCHANAN: I'm sorry, Commissioner.

THE COMMISSIONER: - - - written this down incorrectly, but this is the mayor, Mr Robson's statement, not Mr Robertson from the union?

MR BUCHANAN: Correct.

THE COMMISSIONER: Right. Okay, thank you.

30 MR BUCHANAN: Can I just, whilst I've mentioned it, the extraordinary council meeting of 13 February, 2015, called by Councillors Azzi, Adler and Kebbe, the business papers start at page 88 of volume 5.---Yes.

40 And on page 93 there's motions on notice and there is this multipart motion by Councillors Kebbe, Alder and Azzi to move that, firstly, a selection panel be formed for the purpose of interviewing and recommending to council a person to fill the position of general manager. Do you remember this? ---Vaguely, vaguely. I, to be truthful, that 13 February meeting to me is a bit of a, bit of a haze now. I, I don't actually remember walking into the council chamber. I think I was still, you know, in a, in a fairly shocked state about the whole thing but I know the meeting took place of course but, no, I don't remember in detail what transpired.

When would you have been first aware of that EGM having been sought, and for the purpose of considering that motion?---When that motion would have been, would have been lodged, that would have been submitted in writing.

How soon before 13 February, the date on which the meeting - - -?---I think they're required to give a minimum of seven days' notice under the Act.

Now, there are exceptions to that rule, I can't recall them right now, I've been out of the game for a while, but it would require notice.

And as soon as it had been lodged you are likely to have been informed because it had to be lodged with the mayor?---Well, either the mayor or myself, but it means the same thing.

10 And so - - -?---It's possible – sorry, Mr Buchanan – it's possible that when they arrived at the meeting they, they produced this. I, I just can't recall. And that's not out of order either, depending on the circumstances and whether the mayor or the chair of the meeting is accommodating. So it's possible that they just dropped it on the table when they arrived or they sent it in earlier. I, I honestly can't recall.

Can I suggest that's unlikely to have been the case because firstly it was an extraordinary meeting of council - - -?---Yes, yes.

20 - - - and secondly the motion, only motion on notice, according to these business papers, was the motion, the ten-part motion that is set out at volume 5, page 93.---Yeah, that's true, but I'm mindful not to mislead the Commission, my memory - - -

Yes, I understand, but we're just talking about likelihood. If your memory isn't - - -?---I think it's more likely it was submitted earlier and it would probably be a matter of days before the extraordinary meeting. But for the life of me I can't remember.

So perhaps around 6, 7, 8 February?---Yes, possibly.

30 Something like that?---Possibly, yeah.

I'm sorry, can I, I can take you to a piece of evidence I overlooked on this question. If I can take you to page 23 in volume 5. This is a letter to the Minister by the mayor. It goes for four pages and had attachments, and if we go to page 26 you can see that it's dated 9 February, 2015.---Yes.

40 On page 25 there's a subheading, "Call for Further Extraordinary Council Meeting." And it says, "I have received a call for a further extraordinary council meeting on 30 January, 2015." He qualifies it, but ultimately the effective call for the meeting was apparently received on 30 January, 2015. ---So that clears that up.

So the likelihood is you would have known fairly soon after that.---Oh, of course.

Would that be right?---Yes.

THE COMMISSIONER: Who was the deputy mayor?---Oh - - -

MR BUCHANAN: Fadwa Kebbe?---I think it was Kebbe at that time, I'm not certain of that either. They changed deputy mayors every year.

THE COMMISSIONER: Kebbe, thanks.

MR BUCHANAN: She purported to chair the purported continuation of the 27 January meeting of council.---Yes. She stepped into the chair when the mayor left the room, that's right.

10

So can I take you back then if I can, please, to events on 2 February. Exhibit 233 again. Can I take you to the second page. This is the call charge records that we were looking at earlier, and on the second page, it's a continuation of the contacts for which there is data on 2 February, 2015, and item 46 is a contact by you, a telephone call by you to Spiro Stavis at 6.27pm on 2 February, where the line was open for 1 minute and 14 seconds. The chances are that you would have been conveying to Mr Stavis your decision in relation to his employment as at 2 February?---It's possible but I can't remember the conversation with him. As I said earlier, things were happening pretty rapidly.

20

Why would you have called him on 2 February at that time, at 6.27, having regard to the communications you'd been having as at that date with Mr Robson, with your solicitor, with council's solicitor, about the intention to honour the contract of employment, unless you were conveying the sense of that to Mr Stavis?---Oh, look, if I spoke with them, well, it would have been because I thought it was the right thing to do, to be fair to him because he was in, you know, he was in limbo. I, I really can't say but that's the best I can, I can offer, Mr Buchanan.

30

Can you tell us anything else you would have been saying to him other than that you had made a decision in relation to the offer of employment, namely to recognise that it was a contract and that you intended to honour it?
---Well, I don't have a - - -

What else would you say?---Well, I don't know that I would have actually told him that because now I'm trying to, trying to think, with the correspondence and the discussions I had with Ian Robertson, how does that, how does that fit into the timing here, because I'm sure Robertson would have told him. That's what his job is, is to keep his members informed.

40

But that was on the 6th, four days later.---Okay, well, yeah, okay, well in, in that case, I could have been telling him that I was waiting for further advice. I, I don't know. I was just trying to keep him up, up to date.

Well, if you kept him up to date, you would have told him that it was your intention to honour the offer of employment.---Look, I possibly did tell him

that, that that was my intention, but I wouldn't have said that, that, I, I'm sure I wouldn't have said in deference to the council, I wouldn't have said that you've got the job or you can start on such and such a date. I think that's very unlikely but I, I can't remember the conversation.

THE COMMISSIONER: Can I just ask you, your email to Mr Robertson on 6 February, which was at page 21, it commences, "Hi, Ian. I am advised that you may be acting for a fellow by the name of Spiro Stavis, who was the applicant for the role of director of city planning." That suggests that
10 Mr Robertson hadn't contacted you, that you were initiating the contact, and I'm just wondering in those circumstances why, on 6 February, you emailed Mr Robertson.---Well, he may have, I may have had a conversation with him on the phone, he, I, I, I don't recall, Commissioner.

It's just unusual wording to begin with, "I'm advised that you may be acting for a fellow by the name of Mr Stavis."---That may have come from another source internally. It may have come through from the union itself. I, I don't know. I, I expected Spiro to approach the union. I mean, that's what I would have done and I know how, how energetic Mr Robertson is.

20 You'd obviously had dealings with Mr Robertson in the past.---Oh, yes, many times, yes.

If you heard indirectly that Mr Stavis had approached the union, is it the type of thing that you would take the initiative and contact Mr Robertson?
---Yeah, it, it would, because my dealings with Ian Robertson were such that I knew he wouldn't, he, he wouldn't let it drop. He, he'd pursue it very vigorously, as he does. He's quite an unusual individual in that sense but he represents his members very well. So, he would have gone on with it
30 anyway, so maybe I was just trying to head him off at the pass.

MR BUCHANAN: Seeing as you can in the call charge records the call you made to Mr Stavis at 6.27pm on 2 February, did you talk to Bechara Khouri or George Vasil before you called Stavis?---No, I don't believe so. There would have been no reason to. I mean, it was in my hands now, clearly. There's nothing either of them could do. Or would, would they want to do anything? Was there anything for them to do? It was in my hands now. It was in the hands of the council.

40 Yes, but I'm not suggesting that you were contacting them with a view to them conveying a message, but rather that you simply – you know, because they were people who appeared to have an interest in the matter for one reason or another – told them of this development, that you intended to honour the contract of employment.---That's, that's possible too. I mean, I, I had numerous calls from Mr Khouri, as you can see. That's not uncommon and not unusual. Maybe I told him during the course of one of those conversations that I'd, what had happened, and that I, that I'd decided to press on with the, with the original appointment.

And certainly there was opportunity for you to do so because you texted Mr Khouri at 1.51pm that afternoon, if we can go to page 1 of the call charge records, Exhibit 233, item 38.---Yeah. Yeah, look, that's, that doesn't surprise me. There's, you know, any number of opportunities to speak to Mr Khouri. But, you know, I don't see - - -

Were you aware that Stavis was in regular contact with George Vasil in this period?---Not to the extent that I subsequently found that he was, no.

10

Now, if I can just take you to page, just for completeness, Exhibit, sorry, volume 5, page 36. The question of having Mr Stavis put on gardening leave is, at least in part, answered, I think you'd agree, by this email from Mr Belling to Mr Boatswain of 6 February, 2015, at 4.08pm.---Yes.

Now, did you have any discussions with Mr Robson about how to handle the extraordinary general meeting and the motion on notice to fill the vacancy in your position?---Well, I, again, when that, when that motion turned - - -

20

13 February.---Yeah, when that motion turned up, that obviously distressed me as well so, but of course the mayor and I were in regular discussion with each other about issues affecting the council's operations, and it's a pretty serious step for the councillors to do what they were doing, so, yes, of course I would have confided in him.

THE COMMISSIONER: Sorry, that last email that Mr Belling sent Mr Boatswain, can you see the last line, Mr Belling says, "I'm not yet able to advise you further with respect to the direction given to Mr Stavis not to attend work." So that would suggest some discussion or direction that he be on gardening leave, as it's known. Is that a direction that you gave Mr Stavis on the 2nd or at any time?---Oh, look, I can't recall, but that's possible too. I mean, I guess I was trying to take the heat out of the issue. He, he was really, at that stage Mr Stavis I think was just a passenger.

30

But you may have given that direction to him?---I could have. I could have, yes.

You'd be the - - -?---I tried, I tried to do what was, what was right and fair by him.

40

And you would have been the only person who could give that direction to him?---Yes, yes.

MR BUCHANAN: Can I ask you a couple of questions about the decision you were making, starting on about 2 February, to honour what you had been advised was the contract of employment that was subsisting. An option of course was not to honour it and to accept the legal consequences,

including the possibility of damages or simply paying him out beforehand and not having court proceedings.---Yes.

You had on a number of occasions expressed the view that Mr Stavis was not your preferred candidate - - -?---That's right.

10 - - - before 2 February, and indeed if one analyses it objectively, it was certainly not an appointment that was made applying the principles of appointing according to merit.---Well, I've said before, I don't, I don't necessarily share that view.

But if he was not your preferred candidate, if he didn't, as you've accepted, meet your selection criteria, notwithstanding the fact that other candidates did, then why did you proceed to honour the contract of employment?
---The reasons are stated in that memo I sent through to the mayor. I mean the place was in chaos. It was a short-term appointment. I knew I could review the contract further down the track. I wanted to assess his performance during that period. I saw no reason not to proceed, given what we'd been through with this, the likely cost to terminate his employment,
20 that was a major driving factor, and Councillor Hawatt in particular impressed that and stressed that very vigorously. I was trying to get the council to return to some level of normality. The staff didn't know what was going on, it was in freefall, so I thought the best thing to do here is to honour that original appointment and see how he goes, and in 12 months' time when we look at the contract renewals or performance agreements, would he, would he be eligible for reappointment, I don't know this.

30 Were you also taking into account your own interests?---Yes, to some extent, because by that point I was pretty, pretty battered and bruised, of course, and I, and I think anyone in this room in the same circumstances would have done the same thing. Yes, I was trying to save my, my career or at least my reputation, even though I knew that my career had a very short shelf life, given my age, so I was looking, I was looking to retirement anyway so I thought, you know, why not, give it a go. Some of the things about Spiro Stavis that impressed me at the interview still applied and I thought he was worth a shot.

40 You were very distressed by the notice of motion to fill the vacancy as it was described in your office?---Yes.

To flag that you were going to honour the contract of employment would have pulled the rug out from underneath your opponents, those who sought to terminate your position, because you knew that the appointment of Stavis was the fulcrum on which all of this disputation turned.---What I know, what I knew was that the, my decision to terminate the contract or the offer or to withdraw the offer led to that motion on 24 December and from then it was just completely in freefall. Now, there were other issues that they raised, not the least of which was, concerned the use of executive credit

cards, things of that nature, and what that motion that they put in on, for 13 February was a grab bag of all of the things I think that they'd probably been harbouring for some time and thought we'll get them all out of the way at once. There were issues between the councillors and the mayor in relation to the type of vehicle he drove, all that sort of stuff, so they thought here we go, we'll just clean this out. And of course it distressed me because I, you know, I, I didn't see it coming, the original motion on 24 December just knocked me for six and I could see by that other motion that things weren't back to normal at all, they were still determined to remove me from
10 the role, so of course my own survival was a factor in it.

And would it be fair to say that you allowed consideration of your own survival to unduly influence you in your decision as to how to approach the contract of employment you'd been advised was on foot?---No, it wouldn't be fair to say that at all.

Why not?---Look, I've said in my view the major issue and the one that the councillors were very concerned about was the cost and the damage to the reputation of the council, and I, to be honest I didn't really consider the cost.
20 I saw that as a, as a cost of doing business. Even today I think that, that it was a relatively minor amount, a lot of money in most people's terms, but it was a relatively minor amount for an organisation of this size with a budget the size it had, and I thought it was, I could have explained that away to the council how I had the opportunity. So by that stage I thought we're not going to incur all that additional cost, run the gauntlet. They wouldn't have, they wouldn't have dropped off. They would have kept at it, kept at it, sending emails and things to various people about it, and that would have damaged the council's reputation, possibly irreparably. So I thought it's, it's easier to just honour the original offer of employment.

30 Notwithstanding the fact that the requirement of the Local Government Act that appointments be made on merit was being at least undermined, if not breached, by doing so?---I don't, well, I don't believe that, I've said that before. But it would, look, it was the same set of circumstances. I mean, Stavis, had this not happened the way it did, Stavis probably would have started had, had I not done what I did in, in withdrawing the offer of employment. That was the, that was the match that lit the, lit the fire under the councillors.

40 If we could turn, please, to volume 5, page 94. This is the first page of the minutes of the extraordinary meeting of council of 13 February, 2015. You would have read them at some stage.---Yes.

And they go through to page 100, but basically it was chaired by the mayor and he deployed all the, he deployed a deep knowledge of rules of meeting procedure and batted away every single one of the motions. None of them were passed.---That's what the minutes say.

Yes. No discussion occurred between you and the mayor as to how to deal with that motion and its various parts?---The mayor was quite capable of thinking for himself, and he, he saw the issues here. No, I certainly didn't prompt him or write a script for him. That, that wasn't my role.

But did you canvass with him how he might be able to get rid of the various parts of the motion on notice?---I can't, no, not, not in, the use of the word canvass is wrong. Obviously we, we, our offices were contiguous. We spoke all the time, as you'd expect any CEO and mayor to do, and this
10 would have been a topic of conversation but only in very general terms. I didn't know what to expect on the 13th. I don't know that Brian did.

And I just want to check, did I hear you say earlier you're not sure that you attended it?---Oh, no, I, I would have been there. I'm pretty, look, I, I'd be very, it'd be very unusual if I hadn't been there unless I was sick or something, and I don't remember not being there.

Can I take you, please, to Exhibit 233, the call charge records again, this
20 time page 7. Thank you. And you can see that you're looking at a page that starts on 15 February, looking at the start date column?---Yes.

And goes into the 16th and then 17 February. Can you see, looking at item number 267 and following that late on 16 February at 8.22pm, there was an SMS to you from Mr Khouri?---Ah hmm.

And that at 10.40pm, you SMS'd Mr Khouri, and then on the Tuesday the 17th, there were, between 7.34am, item 270 and 8.27, item 300, going over to page 8, on my counting, 14 texts between the two of you.---Yes.

30 Are you able to tell us what those texts were about?---No. I don't know what the content was. There may, there may have been some reference to the appointment but it could have been any, any, any number of other matters that we were - - -

Well, to assist, and I suggest it does assist, on page 7 to 8, there is also a number of telephone calls between you and Mr Azzi and you and Mr Hawatt. If you have a look on page 8 at item 291, there's an SMS by Mr Azzi to you. If we skip over the communication then between Hawatt and Azzi, then there are texts between Khouri and you, initiated by Khouri and
40 responding on the 17th, item 298 through to 300. This is at night-time, you initiated texts to Mr Khouri and if I can go back, sorry, I skipped over contacts earlier that evening. At the bottom of page 7, after 6 o'clock, sorry, after 5 o'clock, there were contacts again or earlier, sorry, commencing between you and Mr Azzi and you and Mr Hawatt. So it's not a coincidence, is it, that Mr Khouri is talking to you and you to him in that multiplicity of text messages, and at the same time we have contact between you and Mr Azzi and you and Mr Hawatt, which hasn't appeared for a long time, weeks.---That's right.

What was happening that day to cause these contacts to occur?---Maybe they were trying to mend fences. I, I don't know.

How did fences get mended? How did that start?---It just went away in the end, after the, after Mr, Mr - - -

10 Stavis?---Stavis. But that, that meeting on the 13th didn't work so we were on a trajectory to have him start I think in March '15. So things settled, and they may have been just ringing me to reassure me or whatever. I, I, I don't know, Mr Buchanan. I can't recall the conversations.

You can't recall the first contacts you had with these men after a break of many weeks and terrible disputation between you and them? I'm talking about Hawatt and Azzi.---Yes. No, no, I can't but, I mean, it obviously happened. I was relieved, I guess, that to that extent, hostilities had, had, had reduced and that they were actually talking to me again.

20 But it seems that the contacts between you and Khouri on the 17th preceded the initiation of contacts by Azzi and Hawatt later that day.---It looks like that but I, I can't explain why. I mean, I don't know how much Mr Khouri knew. I don't know whether he'd been talking to Azzi and Hawatt otherwise or privately or whatever, and how much he knew, what they'd told me.

30 To the objective observer, knowing the history of the matter, it seems inevitable that the most likely explanation for the flurry of contact by Mr Khouri with you and you with him preceding the initiation of contact by Azzi and Hawatt with you on 17 February was that Khouri and you were talking about the fact that fences would be mended or that contacts might be resumed between you and Azzi and Hawatt.---Possibly.

It's the most likely explanation, isn't it?---I don't necessarily agree. It's, it's an explanation.

Is there any other explanation you can give?---No, not here and now.

40 Now, 17 February was the day before, obviously, Wednesday, 18 February, and if we have a look on page 8 of Exhibit 233 and item 303, there's a call by your office to Mr Stavis.---Yes.

The line's open for 1 minute and 12 seconds and this is at 10.04.---Yes.

If I ask you to accept that the meeting at the Bulldogs Club between you and Hawatt and Azzi was on that day, then can you assist us as to why there was a contact between your office and Mr Stavis at 10.04 in the morning that went for 1 minute and 12 seconds?---Well, as I said in previous evidence, I, I think, and I'm only speculating, I think Spiro's view would have been that

he, that he was going to get the job, he was going to start at some point. He was on gardening leave. He may have rang me to ask about the conditions of the position. He might have been on about the car again. I've got no idea.

Except that the contact was initiated from your office to him.---Yeah, but I might have been bringing him up to speed on, on, on what was happening in relation to the vehicle, because you've got to order these things in advance. He needed the car when he arrived. That's not, that's not unusual.

10

Would there have been any connection between that contact at 10.04am between your office and Mr Stavis on 18 February and the initiation of contacts or the resumption of contacts by Hawatt and Azzi with you the preceding day?---I, I don't think so. I, I don't think you can make that connection. I don't think it's, it's, it's a sound proposition. I don't know.

20

Now, that's at 10.04am, and then if we can go to volume 5, page 106, please. This is an email conversation, starting as they usually do at the bottom of the page, and it's what might be called a non-hostile email from Mr Hawatt to you on 18 February at 10.51am. Do you see that?---Yes.

“Hi, Jim. Can you include the above on the agenda for the next council meeting?” We don't know what the above was, but it's an ordinary, orthodox communication between a councillor and the general manager. ---Yes.

And that was a change from the communications you'd been having with Mr Hawatt - - -?---Oh, definitely, definitely.

30

- - - for the last three months.---Yes (not transcribable)

And you responded at 11.24am, “Michael, no worries. When are you free to chat today?” So you took the lack of hostility in his email – together with, I would suggest, the nature of the contact you'd had with Mr Hawatt the previous day – into account and decided you would try to advance the reconciliation a bit further by having a face-to-face talk?---Well, I was certainly interested in ensuring that the relations improved. It couldn't go on the way it was. It wasn't in the council's interest or anybody else's.

40

And two minutes later, Mr Hawatt responded, “Hi, Jim. I have a meeting in the city and should be okay at around 3.00pm. Let me know where you want to catch up with Pierre.” Do you see that?---Yes.

Then you responded that 5 o'clock would be better for you and asked Michael Hawatt where did he want to meet, that's at 2.16pm, and he responded at 3.34pm, “Is 5.30pm with Pierre at the Lantern Club, Roselands, okay? We all feel the same and need to move forward for the

sake and benefit of council. Let's have an open dialogue to help resolve the issue and get back to normality."---Yes.

And you responded at 3.59pm, "Bulldogs better. We might be seen at the Lantern Club." Do you see that?---Yes.

10 And I'll ask you a question about that at the moment. As you understood it, as at the morning of 18 February, or for that matter, as at the time that Mr Hawatt contacted you on 17 February, what was his understanding as to whether Mr Stavis's contract of employment would be honoured or not by you?---Sorry. Can you please - - -

What would he have understood - - -?---Who?

Mr Hawatt, about the situation with Stavis?---I think he would have known at that stage of my intention to honour the original employment offer.

20 Can you help us as to how he would have known? I'm not suggesting he shouldn't have. I'm just asking you to assist as to, as to how and maybe when, by what means he might have known.---Well, I would have spoken, I would have spoken to, to Stavis. He may have spoken to Michael. They were in regular contact.

A perhaps more likely mode of communication would have been Bechara Khouri.---Possibly, yes. It was, I mean, at that stage, the cat was out of the bag. I think everybody knew that, that, that the original offer was going to be honoured and that he would start at some stage. So, it wasn't, you know, a, a state secret.

30 Can I ask, though, going back to the last email in the conversation, your message at 3.59pm to Mr Hawatt, "Bulldogs better. We might be seen at the Lantern Club." Why were you concerned about being seen with Azzi and Hawatt at that stage?---Well, a lot of staff, or staff use the Lantern Club. It's, a, it's a waterhole for people and I didn't want to be seen, things to get out, so I thought it would be better at the Bulldogs Club, that's all. And I, I prefer the, the Bulldogs Club.

40 Could you just spell it out for us? Why did you prefer that, for example, staff not see you with Hawatt and Azzi at that stage?---Because of gossips. Because things get out, things get back. The other reason, and I'll be very honest about it, is that the mayor frequents the Lantern Club. It's close to his home. That may have been awkward when, if, if I showed up with Hawatt and Azzi. I'm not saying it would have been, but it could have been.

Excuse me. Now, did the meeting at the Bulldogs Club take place?---What date was that again? That's the - - -

Sorry, those emails had been arranging a meeting and you had suggested that the Bulldogs be better than the Lantern Club. This is on 18 February. ---Sorry? I don't, I don't see any reason why I wouldn't have, and I did say in earlier evidence that I believed, I recalled more than one meeting at the Bulldogs, so it possibly, well, it probably did take place.

And who was present?---Oh, the only ones I can be certain of would have been Azzi and Hawatt.

10 Obviously from the answer you gave earlier you would discard the suggestion that the mayor could have been there or anything like that? ---Oh, the mayor wasn't there, the mayor wasn't there. I don't think relations between the mayor and the two councillors had improved much by that stage.

Can I ask you this. Thinking about that meeting if you can, please, was Pierre Azzi there or was it just you and Hawatt?---No, it was, it was, I'm pretty certain it was the two of them.

20 The three of you, you mean?---The two of them.

Two of them.---With me, yes.

And what happened at that meeting? What was said?---Oh dear, I can't recall exactly. There probably would have been comments made between us about the fact that things had improved and that was good, that was positive. I think in, you know, those emails you can see that, that there was optimism that we could get back to normal. We had a drink, coffee I think, so it wouldn't have been anything more than that. There was certainly no
30 deep discussions about where we go from here. Knowing Michael, he probably reiterated that he was pleased that Spiro was coming on board and that he stressed or re-emphasised the need for reform in the planning division, the usual stuff he used to bang on about.

Was there any agreement between you and Hawatt and Azzi at that meeting?---No. Not that I recall, no.

THE COMMISSIONER: See, Mr Hawatt refers to, "Let's have an open dialogue to help resolve the issue and get back to normality."---Well - - -
40

What was your understanding of "the issue" that he raises or wants resolved?---I, I don't know. I mean Michael used words in a, in a way that, that other people perhaps wouldn't. I don't know what he meant by "the issue". I can only assume that it referred to Stavis, but by that point I think, you know, the dogs were barking about the fact that he was going to join the council staff, so I, I think it might have been something that was just, we were just going over the same old ground. I don't think anything new came out of that. There certainly wasn't any formal agreements reached, there

didn't need to be. There was nothing they could have done then to alter the chain of events that were unfolding, unless they wanted to retreat entirely from supporting Stavis and I'm sure that didn't happen.

MR BUCHANAN: What was the outcome of the meeting?---Nothing, really. It was a non-event as far as I can recall, and I don't recall precisely what we talked about. I think it might have been just a meet and greet. They wanted to get, get it off their chest. I think there may have been an apology here and there but, you know, I don't know.

10

Was the outcome that there was to be a cessation of hostilities?---Well, there already was, they wouldn't have been there if there hadn't been a cessation, as you put it, of hostilities already. I mean I, I, I was on the drop-dead list, so the fact that they showed up at that meeting was a, was a huge step forward, in a, in a congenial way, it wasn't hostile certainly 'cause I wouldn't have, I wouldn't have stayed. If they'd tried me on again or there had been any attack on me, I'd have, I'd have left the club. I didn't have to put up with that. So they, look, to be fair to them, if the meeting took place, and I'm pretty sure it did, from what I recall on that second or third meeting at the Bulldogs, and this is probably the one we're referring to, they were very polite, it was a remarkable turnaround from what had been happening in the previous weeks. And that was good, I was encouraged by that.

20

Did the meeting lead to any decision or change of mind at all by you as to what to do in relation to Mr Stavis's contract of employment?---No, no, not at all. I'd already decided what I was going to do.

And what was that at that stage?---That was, that was to honour the original letter of employment.

30

That he would start work?---Yes. And I think the date was 15 March.

2nd.---Or whatever it was, sorry.

That's okay. Can I just give you the opportunity of responding to something Mr Robson told the Commission in his third statement of 9 May, 2017, in Exhibit 53, paragraph 67. He said that the same day – this is 18 February, paragraph 67 – the same day you told him you'd received a call from Hawatt and that it appeared, or you believed, that there would be no further attempts by Hawatt to remove you.---Yeah. Yeah.

40

Is there anything you'd like to say in response to that?---Not really. I mean, these are Brian's words, not mine, but as I said, by that stage of the game, given what happened at the 13 February meeting and the obvious, or my decision to honour that original offer of employment, as far as I was concerned the war was over, so there was no need for any further hostility or rancour between myself and the two councillors, even though I still had my

views about their behaviour in, in other areas and, and the way they conducted themselves. I can't change that.

10 The fact was, though, Mr Robson doesn't identify the time of day on the 18th when this conversation between you and him occurred, but the preceding day you had received a call from Hawatt, and so I'm just wondering whether your statements to Mr Robson, whenever they were, might have been before the email contact or during the email contact you were having with Mr Hawatt, and certainly before the, possibly before the Bulldogs Club meeting, and were conveying to Mr Robson your understanding of what was going to happen as a result of Mr Hawatt's call to you the day before.---All that's possible. I mean, there's any number of, I suppose, scenarios you could think up. But there's no question that the relationship between the mayor and those two councillors and other councillors was not very satisfactory, and I was hopeful that we could resolve that and that things could get back to normal in the sense that the mayor would be returned to his pre-eminent position of running the council rather than self-appointed group of councillors who saw themselves as, one in particular saw himself as the mayor, which was not appropriate.

20

Can I take you to 19 February, 2015. If I can ask you to have a look again, please, at the call charge records that we've been looking at for February 2015, this time page 9. This is Exhibit 233, page 9. Item 343 on 19 February is a telephone contact between you and Mr Stavis, initiated by you at 6.04pm, and the line was open for a minute and 11 seconds. Can you assist us as to what that communication was about?---Again, could have been anything. At that stage I may have been negotiating arrangements as far as his commencement, which was only a matter of a couple of weeks later, 2 March as you pointed out, so there would have been various questions he probably had of me in relation to his employment, and I, and I was probably trying to help him in that respect. I mean, he, at this point, as I said, he was a passenger.

30

And then if I can just ask you to have a look further down the page, page 9 of Exhibit 233. You can see that there's a number of SMSs. Mr Stavis texts you – still the same day, 19 February – a couple of times. This is 344, 345. ---Yes.

40 And do you know what they were about?---Same answer, I'm sorry. I, I mean, I, at that point he was, he was a member of staff. He was going to start at that job and there were probably a lot of things that were exercising his mind about how he would, how he'd commence that role and when and what other issues he had in his mind.

On the same page, item 359 is on 20 February, 2015 and it's a text message from Mr Hawatt to you at 12.23pm.---Yeah.

And can you see below that there's then a series of text messages that you exchanged with Mr Hawatt down to 3.21pm on 20 February?---Yes.

Do you have a recollection of what they were about?---No. No.

Or what was likely to be happening at that stage?---Could have been anything. It could, it could have related and it probably did relate to what had been happening previously over the recent weeks, although it could have been something totally unrelated. As I said earlier, it wasn't
10 uncommon for councillors to contact me, and Councillor Azzi and Hawatt and others, particularly Kebbe, were very active in that space.

And if I can take you then to 3.35pm, item 372.---Over the next page, sorry. Yeah, okay, yeah.

There's a call by Mr Azzi to your office that lasted 7 minutes and 23 seconds, which from the duration one can reasonably infer was a contact with you.---Yes.

20 And that suggests that Mr Azzi was as involved as Mr Hawatt was in negotiating the rapprochement.---Well, as I said earlier in evidence, they were joined at the hip, so it doesn't surprise me.

And then after the last contact with Mr Hawatt that day, that's item 373, an SMS at 3.35, you had contacts with Khouri at 4.29 and 4.31. Do you see those telephone calls, item 375 and 376?---Yes.

30 Would that have been to keep them, sorry, keep him apprised of how the reconciliation was proceeding?---Possibly, I mean, I, what day of the week was that? Do we know?

20 February. Friday.---Yeah, well, it's a Friday. He's probably rung me to say we'll be catching up at Concord, because that was, Friday was the night we'd get together and have coffee. Not every night but on a reasonably regular basis. So he could have, he might have been at a loose end. I've got no idea. But he, he probably just would have said, "Look, Jim, can I catch up at Concord?"

40 On the Saturday the 21st there were further contacts. This is looking down page 10. And can you see starting at item 391 there's contacts initiated, contacts with you initiated by Mr Azzi?---Yes.

You respond with SMSs.---Yes.

And Mr Azzi also responded with SMSs and a telephone call at 1.37pm. ---Yeah.

You see that?---Yes.

Mr Stavis then contacted you at 5.01pm and the line was open for 2 minutes and 25 seconds. Can you see item 402?---Yes. That was on Saturday, you said?

Yes.---That's unusual. I don't know why they would be calling me on a weekend.

10 And then on the Sunday, the 22nd, you had contacts with Stavis, looking on page 11, item 415, 416, 417, 418. SMSs that you initiated, starting at 10.53am and concluding at 11.37am.---On a Sunday?

20 Yes.---Oh, that's even more unusual. But again, we're only a matter of days almost then, away from his appointment. I do recall in the recesses of my mind there were some issues. Again, I don't want to hark on it, harp on it I should say, but there were issues about the type of vehicle he wanted. He was very specific. He may have been out shopping around for cars and rang me and said, "Look, I found this nice RAV4, that's what I want." I, I don't know but it's unusual for particularly councillors to have contact with me on a weekend.

Sorry, the 22nd was a Sunday. I've misled you. Thank you. I stand corrected, the 23rd is Monday.---Okay, well, the 22nd, the comments I just made refer to the 22nd. 23rd, that's an office day. Who knows, it, it could have been more of the same. With Stavis anyway, I'm not talking about the councillors. With Stavis, it could have been more of the same, that we were just confirming the colour of the vehicle. I, I know there was discussions about that time about the job itself and what conditions he was entitled to.

30 Apart from conditions like a car, were there any discussions around this time with Mr Stavis about how he would do his job or any particular task you wanted him to perform?---No, not that I recall. I'd already made that very clear to him over numerous meetings we'd had, including that meeting at Giorgios. There was no doubt in his mind, or certainly in mine, that my expectations were very clear in his mind.

40 So there were quite a few contacts with Mr Stavis, between you and Mr Stavis thereafter, but you say they would have all been machinery, of a machinery nature?---In all probability, yes.

Can I ask you about some evidence that Ms Carpenter has given to the Commission in her statement of 1 November, 2016 in Exhibit 53. This is the last page of that statement. While that's being brought up, do you remember I asked you about the text message you sent to Ms Carpenter on what would have felt like Christmas Eve but was in fact by then Christmas Day, very early in the morning of Christmas Day, and on page 9 she speaks of that in paragraph 38 and then paragraph 39 she says this, "Later I found out through third party, who I cannot recall, that Stavis had been appointed.

I rang Montague, although I can't recall the date, and said words to the effect of, 'What is going on?' My recollection was that he said he had done a deal, as he said something to the effect of, 'A deal had been done.' He said words to the effect of, 'I've been able to resolve the situation by giving the councillor what they wanted, which was the appointment of Spiro Stavis to the role of director (planning).' Montague indicated that he felt that he could control the situation by managing Stavis closely." Did you say that to Ms Carpenter?---Well, I can't, I can't recall using those precise words but I, I would have told her that there had been some accommodation and that we were going ahead with Mr Stavis's appointment. I don't like to use the term a deal. I mean that's got an unfortunate connotation about it too. But again, they're her words. I, I can't vouch for their accuracy.

Well, a deal might or might not have connotations, but that in effect was what had happened, wasn't it? You were appointing a person who was not your preferred candidate and you were deciding to honour the offer of employment rather than obtain a better candidate, and you were doing that taking into account, at the very least, if not for the reason that you wanted to get the hostilities off your back.---Yes, of course, because the council was not functioning properly at that point and I felt an obligation to the council and the community to get the council back on track, and I still believe that Stavis, in the, in the short period I was with him, did a good job in the circumstances.

But another way of looking at it would be that a deal had been done to save your job.---You could, you could put that spin on it. I don't agree but you could put that spin on it if you like.

Why can't that spin be put on it?---Because there are three reasons, as I said, and I did say earlier in evidence that, yes, that was part of it, definitely. In the circumstances I was at the point of no return, I was at the end of my tether with them, I had to get it sorted out, and that was in the best interests of everybody concerned. I don't retreat from that, and I repeat, anyone in this room in the same circumstances probably would have done exactly the same thing. To suggest that you just give your job up and walk away so you can uphold some, some fanciful principle, I, I just think it's a nonsense, Mr Buchanan. I wasn't going to do that.

Well, it wasn't a fanciful principle, it was a requirement of the law.---No, that's not true.

The making of appointments on merit.---Yes, well, I believe he was a meritorious appointment.

But not in the context that there were better candidates and he didn't match your selection criteria.---I couldn't get the candidate I wanted. We've been over this and over this. I couldn't get Karen Jones. I would have appointed

her in a heartbeat. We know why I didn't and we know what transpired after that.

And you didn't in order to save yourself strife.---No, I did it to get the council back on track, to get things happening in the planning division again, to give the staff some certainty about what was happening in that space. We didn't have a director. It was a, it was a rudderless ship and councillors were concerned about that. It was obvious that the council wasn't functioning properly. That had to be resolved. That was my
10 responsibility and I did what I thought was the best thing to do at the time.

Commissioner, I note the time.

THE COMMISSIONER: Right, we'll adjourn for the morning tea and resume about 10 to 12.00.

SHORT ADJOURNMENT

[11.32am]

20

MR BUCHANAN: Mr Montague, can I ask you to mentally take a step back from the months of October/November/December 2014, January/February, to review it as a whole, w-h-o-l-e. That was the period in which the process of recruitment and selection of the director of planning took place. It is a given that something went wrong with that process?---I'd say it was a hole, h-o-l-e. One that I couldn't get out of.

What do you think went wrong with the process of recruiting and selecting a new director of planning at Canterbury in 2014?---The one that, pardon me,
30 the one that looms large in my mind is the appointment of the panel in the first place. That was a mistake. I did it for the right reasons, as I've said repeatedly, but it was a mistake.

Does it mean that you would not recommend that general managers convene an interview panel when they are recruiting senior staff?---Not necessarily. Obviously it depends on the council involved and the, and the sort of personalities involved. It varies, obviously, from council to council. I thought it was a good idea. I still think it has merit, to involve the councillors in the appointment of senior staff with whom they will have
40 regular contact, and it's desirable I think that the councils have ownership of those appointments.

So that's one thing that went wrong. Was there anything else, in your mind, that went wrong with the process of recruitment and selection?---Yeah. I think the interviews themselves didn't go as they should have. I don't think that part of the process was, was that satisfactory either. Again, mainly due to the fact that the councillors who were on the panel, my fault, didn't understand their role fully in, in fairness to them, and that's why I say I

regret forming the panel, but the panel, the panel was the thing that, that sparked all of the problems.

Was there anything after the panel had sat on 17 November that you think went wrong?---Well, I think it was, as, as time progressed, it was, it was this conflict between myself and, and the councillors, and I have to accept some of the blame for that too because I was just as obstinate as they were in, in a sense. I saw my role as having the authority to appoint senior staff in consultation with council. I took the view that that consultation in this
10 particular case should go further than the norm because of the sensitivity of the role and because the council had continuously expressed concerns about the planning controls and the performance of the planning division and, and I guess I, I should have been a bit smarter about that too.

THE COMMISSIONER: Can I suggest, accepting your evidence that you wanted the two councillors on the panel for the right reasons, do you think it was a bit naïve of you that they would just accept the most meritorious candidate and, in a sense, not capture the process that it appears that they did with the appointment?---Membership of the panel was open to other
20 councillors too, but for various reasons they couldn't participate. Most of them had full-time jobs so they couldn't come in during the day. Obviously the mayor was included but that's just a given. I think, I don't know about being naïve, but, but I expected more, I expected better from the two councillors and they disappointed me and it was embarrassing on the day of the interviews. That's when I realised that the panel was not a good idea. I couldn't control the two councillors either during the interview process or subsequently, and I underestimated the degree of animosity between the mayor and the two councillors, which played into that, that whole what I think is a toxic mix. So look, if I had to give one reason it would be the
30 panel, one thing that went wrong.

MR BUCHANAN: But even before November 2014 you hadn't been able to control Mr Azzi and Mr Hawatt, had you?---I suppose it depends what you mean by control. I mean it's not my role to control councillors. The council was performing very well administratively. Politically it was a disaster, basket case, but administratively, which is my responsibility, the council were performing very well indeed. All of the vital signs were good. Most of the staff never attended council meetings so they didn't see the underbelly, if you like. I had to attend council meetings, as did the senior
40 staff, the contracted staff. Politically, as I said, it was, it was all downhill. Administratively we were satisfying all of our obligations to the community, to other stakeholders, and importantly to government agencies. The council had a very good strong reputation and I was proud of that.

Can I ask you to have a look, please, at volume 5, page 178. And if I take you straight to the next page, page 179, you can see that it's signed by you, it's a letter dated 10 December, 2015, and if I can go back to the first page,

10 December, 2015, the first page it's addressed to the manager of investigations, Office of Local Government.---Yep.

You open the letter by saying you refer to her letter of 3 December, 2015, seeking a status report on the action we have taken in addressing the recommendations set out on the Office of Local Government's correspondence of 30 June, 2015 regarding the recruitment and selection of council's director (city planning) and your response to the recommendations was provided below.---Mmm.

10

And then you set out in bold, you reproduce the recommendation and then in not-bold what the response of council was to the recommendation. Do you see that?---Yes.

And do you recall this correspondence?---Oh, vaguely, vaguely.

Now, of course in that letter you were responding to three quite specific recommendations made by the Office of Local Government.---Yes.

20

But now taking a step back from that, the three measures you described in that letter were quite inadequate, weren't they, to address the problems which occurred in the process for the recruitment and selection of the new director of planning in 2014, late 2014?---No, I don't believe they were inadequate. The process had been very successful in relation to the appointment of all other senior staff. I submit to the Commission that there were very special circumstances surrounding, both political and practical circumstances, surrounding the appointment to this role, and we know what they are, it's no good traversing all that again. So the procedures were fine. The other thing that I guess if I'd stayed on, if I was younger and still had the job, one thing I would do is distance myself from the appointment of all staff. I had created - - -

30

Including senior staff?---Including senior staff, in the sense of interviews and arranging consultants and all that. Maybe I'd come in at the very end of the process. But that was my practice, that's how I did things, I was a very hands-on GM. As I said before, without wanting to deride myself, I was old school to some extent, I believed it was my responsibility to do it this way and I did it that way, without, without exception. Every senior staff appointment I made went through a similar process to this. So to answer the question, I think the processes were fine, but in this case that process was I think contaminated by other, other forces that were in the council, including, including decisions that I made that probably weren't the best decisions I could have.

40

So you said that if you had your time over, you might distance yourself from the mechanisms put in place to conduct the recruitment and proceed to selection.---Yes. Yes.

At what level in the organisation?---Manager of, the manager of human resources. We had a dedicated HR team which I established. It wasn't there some years ago. We centralised the recruitment of staff. Unfortunately one of the problems with it was that the HR team were located remotely from my building. They were in another location in the area. But I should have, I should have devolved more responsibility to them, particularly the manager.

10 What I want to suggest to you is that there were in fact notional structures in place designed to deal with what you've described as the special circumstances of late 2014, and if I can just put to you a proposition. It has a number of parts. How would you respond to the suggestion that what was required was, in the first place, for there to be formalised policies and procedures which applied to the selection of senior staff?---Yes, I accept that.

20 For full records to be kept of the process of recruitment and selection, and for a log to be kept of electronic records relating to the recruitment process?---I wouldn't go as far as to say that I, that I, it was necessary for me to keep contemporaneous notes about every casual contact I had in relation to any issue, and I didn't and I wouldn't. But, yes, I think our systems failed us a little bit, and that's, that's why the Office of Local Government took an interest, I guess, in the end. Those systems had been tried and proven over a long period of time. I, I didn't, I didn't see the system for recruitment as being completely inadequate but there were certainly inadequacies in it.

Well, there weren't really any systems, were there?---Of course there were.

30 There was a discretion vested by the Act in the general manager and it was for the general manager, if the general manager saw fit, to establish systems.---Well, the systems were there, maybe not as formal as they could have been, but they're – and I'm talking about senior staff now.

Yes. Yes.---As far as ordinary staff – well, I shouldn't use the word “ordinary”. As far as general staff were concerned, there were systems in place for recruitment and they were handled exclusively by the HR team. It was only when it came to the three contracted staff, excluding myself.

40 Well, yes, but you haven't really responded to my suggestion that there were no systems in place.---No, I don't accept that.

What were the systems that were in place?---These systems were systems that had been established over a long period of time. For example, the appointment of an external consultant to help in the recruitment process, to run the ads and to screen applicants and to give a shortlist over.

Where was it laid down that that was to be undertaken?---Oh, I, I, yeah, that, I don't know, I, probably it wasn't.

Yes. Anything else?---No, nothing else.

10 Would you accept that interviews conducted by the general manager of candidates should be the subject of record that they have in fact taken place and that there be records created by the general manager of what took place in the interview?---I was satisfied that the decisions that had been taken at the interview panel and right throughout the process of recruitment, at the key points, there was adequate record of what was happening. As far as notes, we had so-and-so (not transcribable), there was a list of interviewees, there was a list of suggested or recommended questions that was on the files. That's a practice we'd followed since Adam was a boy, and that's the system I followed this time. In my mind I knew exactly what was going on, and since I had the carriage of it I was in no doubt that I could explain to anyone, any external person/observer who wanted to know, what process we'd been through. They, were they documented in chapter and verse? No.

20 What about interviews, though, conducted by the general manager alone with candidates? Should they not be recorded, the fact of them occurring and the content of the exchanges?---Possibly but they weren't interviews in the strict sense of the term. They weren't interviews. They, they, they were just a, a – what I was trying to do, rightly or wrongly, was to find out more about these individuals who were putting themselves forward for appointment and tried to measure in my mind whether they would fit the organisation, knowing as I did intimately the organisation itself, the personalities involved, the nature of the council, the politics of the council. I took that on myself. Now, maybe I shouldn't have and as I said, I probably in a, in a future life, hand it over to the HR people and, and, and stand back from that, those early contacts.

30 THE COMMISSIONER: What about the circumstances here? You've spoken about, look there were records that the interviews took place and we had the questions on file. Your evidence was that with several of the candidates, the two councillors went off script.---Yes.

40 I understood that to mean, were asking questions that weren't anticipated or part of the questions that were going to be asked of all candidates. Now, in those circumstances, should have there been some record kept of what was asked of the various candidates?---Look, the answer to the question is yes. They did go off script and I didn't expect that. I think Judith Carpenter kept, kept some notes, and she must have because she was very able, she was able to document to me where she thought the weaknesses were. So there were records kept but not council records per se, and what I did and what my practice was, that I acted on decisions that had been made or outcomes that, that in this case, that had flowed from the, from the interview process. I didn't wait six months or anything, oh, gee what do we say there, who was I going to appoint, I got on with it and that's, that was my, that was my style.

MR BUCHANAN: Can I ask what your response would be to the suggestion that something else that was required was for the general manager to constitute the interview panel, if the interview panel was to be constituted by the general manager, or for the interview panel otherwise to be constituted in accordance with best practice when shortlisting candidates for senior staff positions, including shortlisting only candidates who, by reference to the selection criteria, could be appointed on their merits?
---Well, I suppose it depends how you define best practice. I mean, that's a
10 - - -

I've just given you a suggestion as to what the prime component of that best practice would be, shortlisting only candidates who, by reference to the selection criteria, could be appointed on their merits.---Well, that, that, I, I, well, and I still hold that, that Mr Stavis was worthy of an interview. I don't retreat from that. That's what I told Judith Carpenter and, and you might have, you might have a list of best practice, best practice terms if you like, but there are other factors at play and they have to be considered as well, and you're not going to try and document those in a best practice manual.
20

What then is the criteria for permitting a departure from best practice in this context?---Well, it depends on the circumstances of the individual case, obviously.

Well, that sounds as if best practice can be thrown out the window any time you like?

MR ANDRONOS: Well, I object to this. The only evidence as to what constitutes best practice is what my friend just put to the witness then. So
30 far as I'm aware, there is no evidence before the Commissioner demonstrating what best practice is, indeed even if such a concept exists in relation to assembling a shortlist of interviewees, and if it's put on the assumption, if it's put on the basis that what my friend said is best practice, is indeed best practice, the witness can answer on that basis. If it's put on the basis that this in fact is a recognised fact that the Commission should accept, that best practice means what my friend says it is, that question could mislead the Commission and certainly could mislead the witness in giving his answer. So I would invite my friend either to identify the basis
40 on which he says that best practice constitutes what he said about two or three questions ago or put it on the basis of an assumption that that is best practice.

THE COMMISSIONER: I thought it was a little bit of common sense that it would have involved best practice that you interview candidates that could be appointed. Mr Buchanan?

MR BUCHANAN: That's the matter that I'm putting to the witness. I'm happy for it to be an assumption that that is best practice because I can

foreshadow that that will be our submission. But I, just to make it perfectly clear to you, Mr Montague, need you to understand that there is evidence that suggests that Mr Stavis would never have been shortlisted had the recruitment consultant had her way, but that he was shortlisted because you insisted upon it, and that you insisted upon it because Mr Azzi and Mr Hawatt insisted upon it with you. And this is notwithstanding the fact that, on any view, Mr Stavis did not meet your selection criteria. So that's the opposing situation. So if we're not going to have a situation like that, what sort of situation will we have? And my suggestion is it is, having regard to the requirement for appointment to be made on merit, shortlisting candidates for interview who by reference to the selection criteria could be appointed on their merits.---And I still say that Mr Stavis was worthy of interview, and the circumstances or the events that followed after the interview I think couldn't have been foreseen. I, I, I, you know, I don't, I don't retreat from any of that. I don't, look, I know what, I don't know what best practice is. What's best practice at Canterbury might be worst practice somewhere else.

Can you just remind me, why did you tell Ms Carpenter after she said to you Mr Stavis doesn't qualify to be shortlisted?---Well, I don't know that she put it quite like that, but anyway.

Let's assume that that's the evidence, if you wouldn't mind.---Okay.

Why did you insist that Mr Stavis be shortlisted?---As I said way back at the beginning, in deference to Bechara Khouri to some extent, because I asked him to see if there's anyone out there that might be interested in the role. I saw no harm in doing that. It was just, it was, it was a matter of being, of, I suppose, courtesy, and so I asked Judith Carpenter, I asked Judith Carpenter to include him on the list and that's, that's what happened. Now, after that, of course, I made it clear that I didn't think he was the best candidate, that I thought Karen Jones was a better candidate. And the councillors too, Azzi in particular, said we're not having Karen Jones but we could wear Simon Manoski. Now, that, that's, that's how it unfolded and I, I knew I had no chance at all of getting Karen Jones up.

THE COMMISSIONER: I don't understand that, if it's your decision to appoint the candidate why you say you had no chance to get her up. I can understand you've given evidence that you had a concern that down the track her life might be made miserable, though she's an adult and she wasn't given a chance to respond to that, but I still have a difficulty with why, given your power under the Local Government Act, why you couldn't have said, "Karen Jones is the best candidate and she's going to be appointed." ---Yes, I could have done that, but that wasn't my previous practice. I always took the, the term consultation very seriously and I wanted to make sure, particularly in this case, that the person who got the job would be acceptable to the council. And that's what was motivating me. I did that without failure in relation to all the other directors that I appointed over the years and made sure that the council was comfortable. Now, I could have

put a report – which I intended to do, but of course events overtook us – I intended to report to council at some stage that it was my intention to confirm or to appoint Spiro Stavis, and I would have set out the reasons for that. Now, that never happened, and as I say, events got out of hand. But, look, you're right. I, I could have insisted but, you know, in, in the circumstances, the politics of Canterbury at the time and the ferocity of, of the behaviour of the two councillors, which subsequently was revealed, it would have been a disaster in my opinion to appoint her into an environment like that, and I, I didn't want to do that. I didn't want to subject her to that. I knew I could keep the contract short and I was doing that, 12 months, we'll have a look at him. Maybe he'll prove to the councillors himself that he isn't up to it and we won't, we won't renew his contract. That was always the safety blanket I had. But I wasn't going to stick my head in the fire unnecessarily and provoke them, given the dynamic, given the relationship between the mayor and the councillors, the complete decimation if you like of the caucus, it didn't exist, there was no overriding control other than by Councillor Michael Hawatt who, who was the longest-serving councillor at that time and had a lot of influence with the other councillors.

20

I'm sorry, when you refer to caucus are you talking about it was a majority of Labor Party - - -?---Yes.

- - - members and before 2012 if Labor had the majority their caucus would primarily determine - - -?---Yes.

- - - decisions or resolutions of council?---Well, not always. They can't get involved, as of some years ago they can't get involved in determining DAs, they can't caucus on DAs, although I'm sure some do, notwithstanding that, but on any other matter that's come into the council by way of a formal report from an officer, yes, the caucus is entitled to get together and come to a landing, as the Labor Party does in every sphere of government in this country, federal, state and local, Labor parties do it this way.

30

Why did the caucus post-2012, if I can describe it as that caucus process, why did it cease and why according to you, you used a term before morning tea that Mr Hawatt and Mr Azzi were "joined at the hip." Why did that emerge?---Well, I, I, I can't really answer that. I mean I've said before that the relationship with the mayor deteriorated, not immediately but after some time after the 2012 election, which was in September, then there was that terrible evening in October '13 when they voted down the recommendations of the IHAP and the officers, that, that demonstrated to me that they were on a path of, you know, on a path of complete destruction. And the mayor, to his credit, stood up for a position which didn't satisfy them, so effectively blacklisted the mayor. So then you've got a void created and Michael Hawatt filled that void, filled that vacuum, and he was the one, apart from Councillor Adler, he was the one that had the most experience on the

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council. So they formed together this group that I call the junta and they were all-powerful.

So you're putting it down to personality of Mr Hawatt, his experience?
---Yes, I am.

10 Just from an outsider who's used to the idea of members of the Labor Party or members of the Liberal Party, as you said, with a caucus all voting together, this seems to be just the opposite of what somebody used to observing politics normally would expect, and I'm still coming to – I can see the evidence of how it was functioning but I'm still perplexed as to why, and I don't know if you can help me with that.---Well, look, I've had a lot of experience in local government and I'm an observer of politics, and if you look, and the analogy I could use is if the cross-bench in the Federal Parliament decided to hook up with the Labor Party and knock over the government. You wouldn't expect that to happen but it is happening and it has happened. So in this case, the caucus, as I call it, of seven, seven councillors including the mayor, and this went on from - - -

20 Who were Labor?---Who were Labor.

Yeah.---Who, this practice went on since 1982 to my knowledge and well before that, I think it was a Labor council back in the 70s, Labor-dominated that is, they would, they would use a room in the office, in the building, and they would look at every report on the business paper and they would come to a landing on that report. Now, in a lot of cases they went with the officers' recommendations. This is pre the IHAP I might add, when they could caucus on DAs. But ignore the DAs for a moment, just in general terms, any report, regardless of what it is, if it was in the purview of the council's operations they'd caucus on that and they'd make a decision, and
30 nine times out of 10 in my experience what the Labor Party said, what the caucus said was carried. Now, after the thing collapsed in 2012 you had Michael Hawatt and Pierre Azzi who are in different parties, and the others joining up, teaming up and not including the mayor in any of that of course, to make decisions. So it was like an informal caucus if you like, but it didn't have the same, it didn't have the same rigour as the caucus.

I understand your description of it, but why? Why did you have that new informal caucus, consisting of such diverse political interests forming?
40 ---Well, the answer to that question is that, as I said, the relationship with the mayor collapsed for reasons that I don't want to go into, I mean, they're things that other people should explain to you, it's none of my business, but there was certainly hostility between the mayor and, and the councillors, particularly Azzi and Hawatt and Adler, and they just decided to go off and do their own thing. Now, there was also decisions made by the State Labor Party about what they could caucus on and what they could do and what redress the council had, which also opened it up, made it much easier for the renegade, and I use that term advisedly, renegade councillors to do their

own thing and not to respect the longstanding rules of the caucus system. You might agree or disagree with the caucus system. I've got no views about it but that's how it was, and the council ran very successfully all those years up until 2012 or 2013, really, when the mayor and the councillors fell out, and that impacted ever part of the council's operations at a political level.

MR BUCHANAN: Mr Robson has stood as a Labor candidate for the mayoral position?---Yes, of course.

10

Did the disintegration of the ALP caucus occur or was it in fact initiated by essentially the political relationship that Mr Azzi formed with Mr Hawatt? ---I think it's cause and effect. I, I, I, I, I think the, the deteriorating in the relationship came first and then it was convenient for Councillor Hawatt and Councillor Azzi to band together. I remember on one or two occasions Councillor Azzi came into my office and also to the mayor's office at the same time to, to offer support to Brian in whatever he wanted to achieve as mayor. Now, there may have been conditions attached, I don't know, Brian's the only one that can answer that, but there may have been conditions attached. Whatever happened, it didn't work out. It didn't, it's not how it happened. They certainly didn't become closer, in fact they, they shifted further apart.

20

You said in effect that you didn't want to have a situation where Ms Jones would be exposed to the ferocity of the behaviour and treatment by Hawatt and Azzi on council. Where do you draw the line in accommodating that sort of behaviour? Or don't you draw the line, you just give in to it?---No, I don't give in to it. I mean, I - - -

30

It's improper behaviour, isn't it?---No, I don't think so. I mean, it's what you're dealing with at the time.

I'm sorry. I was ambiguous in my question. The behaviour of those councillors in being ferocious and treating people badly, bullying them et cetera, is improper behaviour, isn't it?---Yes, yes.

40

Do you draw a line somewhere and say, "Well, that behaviour is not going to be tolerated. I'm not going to succumb to it"?---Yes. I do, personally and, and there, there, there are mechanisms now, I guess. There may not have been years ago but there, there are now, where that type of behaviour can, can be reported and can be acted on and councillors can be dismissed through the Office of Local Government, but it wasn't that overt, it wasn't that obvious. I mean, in the council meetings it was fairly civilised but there were times when you could, you could tell, you could feel it, it was palpable that there was hostility, and the ability to reign in councillors who aren't behaving is, is not easy to do. It's not an easy thing to do and most councils I think would seek to avoid having to do that. You haven't seen many, many examples of it unless there is something that's occurred, that has

given rise to intervention by the Office of Local Government, where there is, where there is corrupt conduct or improper conduct which is demonstrable and they can see it. This was more just an undercurrent, an underbelly of hostility between certain councillors and the mayor in particular, towards him, which I thought was very corrosive, and as time went by it got worse.

10 But you took this into account in deciding not to appoint the most meritorious candidate?---I had to because I knew that I didn't want to introduce her or any candidate to that type of, that type of environment, and I was able, I was trying to ensure that whoever was appointed was somebody that the councillors, that could, could actually build a relationship with the councillors and that's, that's extremely important that all of the senior staff have a good working relationship with the councillors and, and the mayor in particular. It's absolutely essential that that applies.

20 Now, passing to your selection of Mr Stavis in late November/early December 2014, you, looking back on it, and particularly having regard to the contact you had with Hawatt and Azzi shortly before, around 4 December, 2014, you agreed to appoint Stavis in response to their pressure on you to appoint him, didn't you?---Look, and I've said repeatedly I put him on in the end because it was the right thing to do in the circumstances given the costs involved of terminating that contract, given the disarray in the, in the planning division and, yes, given, given the, the attitude of the councillors.

And they pressured you to appoint him, didn't they?---No.

30 Well, if I'd ask you to assume that it is open for the Commission to conclude that they did and it might be open to the Commission to conclude that you succumbed to that pressure, that would be succumbing to improper behaviour, making a decision under the Local Government Act in response to improper behaviour, so if you discard the most meritorious candidate because of the risk of improper behaviour and agree to appoint a person who is not the most meritorious candidate because of pressure to appoint that candidate, do you think that what was required in the circumstances was for you to resist improper behaviour and pressure of that sort?---I reject that.

40 MR ANDRONOS: Commissioner, the witness has answered. I found that question probably had too many assumptions built into it and too many clauses for, well, the witness has answered it but my objection was that it was a very complicated question. I understand my friend is trying to build all those concepts in and draw it together but I think it really needed to be broken up.

THE COMMISSIONER: Mr Montague, you did answer it but - - -?---I did. I said I reject that thesis. I, I, I say that I still believe that Spiro Stavis on the day of the interviews – and I was, I was there so I know – the day of the

interview he acquitted himself very well and even though I would have preferred Karen Jones, for the reasons I've outlined already in this place, I realised that it wasn't the way to go and I, I thought I would reappoint him or honour the original offer of employment knowing that in 12 months' time I could review that appointment and if he wasn't satisfactory I could terminate his employment and I would probably then have had the support of the entire council.

10 MR BUCHANAN: So I'll strip the proposition down for you. I'm suggesting a fourth thing that was required in the circumstances was for you to resist improper pressure from individual councillors.---No, I don't accept that. I can only say that you had to understand, had to be there, understand the circumstances, what was going on at the time. I did what I thought was the right thing at the time.

20 The fifth thing I suggest to you that was required was for the candidate that was appointed to be selected for appointment as the most meritorious of the short-listed candidates.---No, I don't accept that either. I mean, you could, you could, you could get three candidates all of whom are very outstanding and meritorious as you put it, but may not be the right fit for the organisation. I mean, you can find somebody that doesn't have the same skillsets or background but would grow into the job very, very effectively and that's happened in my career. That happened in my own case when I was appointed general manager or town clerk at, at Canterbury back in '82. No, I don't accept that. If you don't give somebody an opportunity to show what they can do, how are they ever going to get the necessary experience to do the job.

30 THE COMMISSIONER: Can I just confirm, under the Local Government Act, your obligation is to appoint on merit?---Well, merit appointment, yeah.

40 What's your understanding of a merit appointment?---A good fit. Somebody that can fit in with the organisation and can deal with all of the, of the competing interests, not just a piece of paper that says he's a genius or he's got a TER of 100. I know people with TERs of 100 that you wouldn't feed. So you get, it's got to be somebody that will fit the organisation in every respect, personality, the way he conducts himself, his relationship with other people, his background of course, he had a planning background, all of those things need to be taken into that equation. You can't just compartmentalise it into this is a merit appointment. I'm not sure that I would assess somebody as being meritorious and Mr Buchanan might say, you know, he's a complete dill. I don't know. But my opinion was at the time that Spiro Stavis could do that job, and I don't retreat from that.

Even after Ms Carpenter obtained those subsequent damning, I'll describe them, references about Mr Stavis?---Yeah. Well, Commissioner, we know

what happened after that, I acted to terminate or withdraw the offer of, the letter of offer.

Which would seem to undermine your description now - - -?---Well, no, because he, if he'd just gone away and said, okay, I don't want the job after all, you know, I'm going, fine, but once we started to lawyer up I realised that I was in, I was in trouble and that this could cost the council a lot of money to have this fellow on the staff, it would also cause dislocation in the, in the planning division, it would also damage the council's reputation, more than it already had been, and that that was, that was something that should be avoided. That's in the end why I decided to honour the original offer of employment, and I was confident from my discussions with him privately, which weren't minuted, discussions I had privately with him that he could do the job, and I still think that.

MR BUCHANAN: How would you respond to the proposition that none of those factors are identified in the Local Government Act as being relevant to, let alone determinative of, who should be selected for appointment as senior staff?---Yeah. Well, okay, I'd accept that, but it doesn't change my position. The Act is to some extent, I mean I didn't draft the act, I don't know who did, but you know, that's in an ideal world, but on the ground, out there in practice in a council the size of Canterbury with all of the forces at work, it's not an ideal situation by any means.

So are you recommending that the Commission should look at recommending that the requirement that appointments be made on merit be revised or reviewed to see whether other factors should be taken into account as well?---I don't think that's a bad idea, and one of the important - - -

30 What are the other factors that you say should be considered that should be included in the Local Government Act - - -?---Well - - -
- - - for criteria for selection of senior staff?

MR ANDRONOS: Well, I object to this. I object to this. My friend is, is asking, and one can tell from the manner in which the question was put, asking the witness to express an opinion on possible changes to the legislation. Now, whether that's because it will be of assistance in the Commission making recommendations or the true forensic purpose is to see whether or not the witness has a proper understanding of what merit means, raises one issue, however the witness has not been given an opportunity to consider this. These are important and weighty matters which are in effect sprung on him in the witness box at quarter to 1.00 on the fifth day of his evidence. It's an unfair question and it should not be put and the answers will not assist the Commission.

MR BUCHANAN: I'm very happy to withdraw it. I was asking the question I thought in fairness to the witness, but I'm happy to withdraw it in fact of the objection that's been taken.

THE COMMISSIONER: Right.

MR BUCHANAN: Can I take you now to, if I can just return to the question of what was required, having regard to what occurred in the process of the selection of Mr Stavis and his appointment. Do you think
10 that a general manager in your position should, if threatened by councillors with removal in circumstances which are improper, to be prepared to provide a full report to the government, where appropriate also to the ICAC, and then to resign?---No, I don't think that's appropriate.

Why not?---Well, there are, at last count I think about 125 councils in New South Wales of varying sizes and complexity. That means there's 125 GM's jobs. They're not easy to get. You don't throw them away lightly. Not if your career - - -

20 Are there any other reasons why that wouldn't have been an appropriate response by you if the conclusion is drawn that you were threatened by councillors with removal in circumstances which were improper?---I did report it to ICAC?

But you didn't resign.---No. I had no intention of - I, I, I wrote out a resignation because I was frustrated but I didn't, I didn't do it because of the pressure from them. I wouldn't allow myself to succumb to that sort of pressure, but I repeat, I'm not going to throw my career down the drain when I know that we've got another election coming up, and in my
30 experience every four years you get a totally different council, whole new set of problems to deal with.

You didn't think that the Act provided for a regime for the State Government to deal with a situation like that?---I, I think the, I think the Act is inadequate in that respect.

But it does provide a regime, doesn't it?---It does, but it's - - -

40 And you knew that at the time?---Of course I did but it's ineffectual, it, it doesn't achieve much.

For the government perhaps to hold a public inquiry, suspend the council and appoint an administrator.---Of course you can do that but I don't know what that would have achieved. It would have put the council at a lot of expense. Again, the council was running perfectly well in every other respect except in planning.

Can I ask you respond to this proposition, that the problem you had was that you wanted to stay on being general manager, no matter what the cost to good governance, at Canterbury Council?---Absolutely not, just the opposite.

Can I take you to the week in which Mr Stavis started work.

THE COMMISSIONER: Just before you move there.

10 MR BUCHANAN: I'm sorry, yes, certainly.

THE COMMISSIONER: Can I just ask you, on the more mundane issue of the composition of the panel, you were asked some questions the other day about the absence of an independent person, maybe with expertise in planning. Now, looking back, is that a good idea? Because you really didn't have anybody on the committee with that expertise in planning. You could have brought a director of city planning, say, from another council to come in. Would have that - - -?---It could have, yes. I accept that. It probably would have been a - it has happened before. We've done that, we
20 actually did that at Canterbury in a couple of cases years go. Look, it, it can't hurt, that additional expertise couldn't have hurt, but it couldn't have counteracted the behaviour of the two councillors and what followed subsequently, because the person I put on as an independent would have been subject to the same embarrassment that the, the candidates were and I was during that interview process, and would not have been able to influence, in one, to, to any extent, what transpired afterwards.

MR BUCHANAN: Thinking of when Mr Stavis started work as director of planning, if I ask you to assume that that was on Monday, 2 March, 2015.
30 A meeting attended by a number of people, including yourself, was held on the night of 5 March, 2015, at Canterbury Leagues Club, and it was attended by Mr Stavis, some councillors, and as I say, yourself. Do you recall that? ---Oh, look, I said earlier that I believe there was at least two, possibly three meetings at the leagues club. I can't separate them, but that one being later -
- -

With Mr Stavis as director of planning?---Yes. Well, I think and I, I do remember that one, I do have a better memory of that one than the other, except the first one but I believe that was an opportunity for the councillors and I forget who was there other than Hawatt and Azzi. Could have been as
40 I said, Adler and Kebbe perhaps. I know the mayor wasn't there, again because of the awkwardness of the situation, and I think Councillor Hawatt just wanted to, in his own words and his own way, emphasise the importance of this of this appointment to the councillors and to the community. He had very strong views about which direction the council should be going in, in terms of development, in terms of open space, all those things that are part and parcel of good planning.

Sorry, why are you mentioning this now in relation to that meeting?---Well, he wanted to, I think, emphasise, he wanted, he wanted to give Spiro Stavis the benefit of his knowledge or his ideas.

And are you saying that as far as you're concerned that's why that meeting was held?---Well, I think so. I, I do, because the appointment had virtually been confirmed and I, I think Michael just wanted to make it abundantly clear to Spiro that this is what their agenda was for the council area.

10 THE COMMISSIONER: Why not do that within council premises with all the councillors there?---Well, I didn't convene the meeting. They did. But they obviously had their reasons for excluding other councillors, and obviously the ones that weren't sympathetic or weren't in their group.

MR BUCHANAN: So how did you find out about the meeting?---I was told.

By?---Oh, probably by Councillor Azzi or, I don't know now.

20 And were you invited?---Yes.

And you don't remember who invited you?---No, not really, no.

But you're satisfied it was one or other or both of Azzi or Hawatt?---Oh, I think that's a fair assumption.

And did you do anything in preparation for that meeting?---No, because I didn't know what the purpose of the meeting was myself.

30 Did you have any contact with Mr Stavis about the proposed meeting?---I don't believe so.

Do you remember going to the meeting?---Vaguely.

My next question is, did you go with Mr Stavis?---No, I went on my own.

And when you got there, was Mr Stavis already there or did he arrive later?
---I can't recall. I can't recall. He could have been. People (not transcribable)

40

Did Mr Stavis have anything with him?---I can't recall, sorry.

Did Mr Stavis talk during the meeting?---Can't recall that either. Possibly, I think he would have. He, you know, he, he, he was the star act. I mean, I don't think he would have sat there and said nothing. That's a reasonable assumption.

So was there anything said at the meeting by anyone about what was going to occur in the future?---Only that, if memory serves me, Councillor Hawatt was outlining what his plans for the rest of the term were and what he wanted to see achieved in Canterbury. Having been one of the longest-serving councillors there, he felt he was somewhat of an expert and he wanted to just impart his knowledge, I think, to Mr Stavis.

10 Did Mr Stavis at any stage indicate what he proposed to do in the future as director of planning?---I can't recall any of that now. It's all just a, a, a haze.

Do you know why it was held at the leagues club rather than council chambers?---No.

20 Was it a surprise to you that it was being convened?---Well, not really. Not a surprise. I was curious. But it was just, I suppose, par for the course. That's where we'd got to, that these meetings were being held at the behest of Councillor Adler and, sorry, Councillor Azzi and Councillor Hawatt. That, that, that's how it was happening. I would have been, I probably would have been more comfortable if I'd been in a meeting and the mayor was there, definitely, but that wasn't going to happen because of the hostility between the mayor and the two councillors.

Obviously you didn't respond to the invitation, if we use that word. That's to say, finding out about the meeting and that you hope to be there or request to be there or told to be there.---Oh, I couldn't, I couldn't have cared less, really, whether I was there or not.

30 Well, this is what I want to ask you. Why didn't you say to Mr Stavis, "Well, you're not going to that meeting and neither am I"?---It didn't occur to me. I didn't see any need to do that.

You saw yourself as essentially at the beck and call of Hawatt and Azzi?
---No.

Would that be fair to say?---No.

40 That's how you acted, though, wasn't it?---Well, you could say that but I don't believe so. They weren't disrespectful of me at any time.

THE COMMISSIONER: They were or weren't, sorry?---They weren't.

Other than threatening to sack you.---Well, they had their reasons for that, of course.

MR BUCHANAN: Why should the director of planning have attended that meeting?---I, I can't answer that. I mean, that, they, they did the inviting, not me, right, and they wanted to make it clear to him I guess what they,

what their expectations of him were and I don't see a great deal of harm in that.

You don't see any harm in an extramural meeting that is not of the council as a collegiate body where at last two councillors essentially lay down what they expect of a senior member of staff who has just come on board?---Not particularly in the circumstances of Canterbury at that time.

10 You don't recall anything in the code of conduct for the council - - -?---No.

- - - about councillors not directing staff - - -?---They can't direct staff.

- - - in the conduct of their work?---They can't direct staff and they didn't seek to do that. What he - - -

What was occurring then on this occasion?---Well, he was just outlining what his vision for the City of Canterbury was.

20 And why did Mr Stavis or you need to be there if it wasn't expected as far as you could tell on the part of Hawatt and Azzi that Stavis and, to the extent required, you as well would comply with this vision?---No. Look, I, I don't agree. I don't think it's, I don't think, you're painting it as being very sinister. I don't think it was. It was quite, as I recall other than, apart from, sorry, in contrast to some of the other meetings I had with them it was quite a convivial meeting.

30 Yes, but that's because there was nothing like a full quota of councillors attending, was there?---No, but I don't know why they weren't invited. Maybe they couldn't make it. Maybe it wasn't convenient.

You didn't check to find out whether other councillors had been made aware that this event was occurring?---No.

40 You didn't think that it was appropriate for you to ensure that other councillors had an opportunity to attend?---I don't think so. I mean, look, I had a pretty good understanding of the degree of interest of some of the councillors and I'm absolutely certain they wouldn't have showed up anyway, but that's just by the by. And this was on my own time I might add. This was after hours. I went down there because of the problems we've had and I wanted to demonstrate that I was still committed to trying to get the right person for the job.

Is that an appropriate way to run a local government council?---I don't know. Is it? I can't answer that question. I mean, I can only - - -

You can't answer it?---No. I can only tell you what I know about operations at Canterbury.

Well, you obviously thought it was appropriate for you and for Mr Stavis to attend.---I didn't invite him and I didn't, and I, and I didn't invite myself so
- - -

Did you ask Mr Stavis to attend?---No.

THE COMMISSIONER: Did you know he was - - -?---I can't - - -

10 Did you know beforehand that - - -?---Can't, can't recall, Commissioner.

MR BUCHANAN: Well, if I can ask that the witness be shown volume 5, page 137, please. This goes onto two pages so if I could just take you to the, it's an email conversation. If I can take you to the first email which starts halfway down page 137 and it commences, it's at 8.01pm on 4 March. I'd ask you to assume from evidence that the Commission has that this meeting took place on the evening of 5 March, Thursday, 5 March, 2015. ---Okay.

20 And the email is from Mr Hawatt to Spiro Stavis, and you can see that it's signed by Mr Hawatt at the end on page 138.---Yes.

If we could just flick to the top of page 138. Do you see that?---Yeah.

So just having a look at the email to Mr Stavis, can you see it commences, "Not sure if Jim Montague has told you that some of us would like to meet up with you to discuss issues of concern. The meeting is scheduled for tomorrow afternoon, however some of the issues we want to discuss are as follows."---Mmm.

30 And then there's a series of dot points. Can you see that?---Yes.

And then going over to page 138, after the last dot point the councillor said, "I know the above is a big ask and you only been in the job for a very short time. However, we need to start planning now for the future, we need to be consistent and to create and even playing field for everyone."---Yeah.

"PS. I want to congratulate you on your appointment et cetera, but I agree with Jim Montague's comment that you may surprise us all."---Yeah.

40 Now, I appreciate that you weren't party to that, but do you see that Mr Hawatt had the idea, this is from the middle of page 137, he had the idea in his head that you knew that this meeting was going to occur and you, and that Mr Hawatt thought that you might have told Mr Stavis that the meeting was going to occur. Do you see that?---Yes, of course.

Does that refresh your - - -?---Yes.

- - - recollection at all?---It's very helpful, thank you.

Do you remember Mr Hawatt talking to you about - - -?---No.

- - - in tending to convene the meeting or - - -?---No.

- - - anything about the meeting in advance?---No.

It suggests however that Mr Hawatt thought that you would have known?
---Yes.

10

And then if you go to the next email at the top of that page it's at 12.20 on Thursday, 5 March, from Mr Stavis to you, cc'd to, I'm sorry, to Michael Hawatt, cc'd to you. "Dear Michael. Thank you for your email below and your well wishes. I will be attending tonight's meeting with Jim and have noted the issues you would like to discuss." See that?---Yes.

How did Mr Stavis found out that he would be attending it with you?
---Michael must have told him.

20 Does any of this refresh your recollection as to - - -?---No.

- - - exchanges or contacts that occurred - - -?---No.

- - - between you and Hawatt on the one hand or you and Stavis on the other hand about preparing for this meeting - - -?---No.

- - - or attending it?---No.

30

I note the time, Commissioner.

THE COMMISSIONER: All right. We'll take the lunch break and resume at 2 o'clock.

LUNCHEON ADJOURNMENT

[1.02pm]