

DASHAPUB05570
18/12/2018

DASHA
pp 05570-05611

PUBLIC
HEARING

COPYRIGHT

INDEPENDENT COMMISSION AGAINST CORRUPTION

PATRICIA McDONALD SC
COMMISSIONER

PUBLIC HEARING

OPERATION DASHA

Reference: Operation E15/0078

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 18 DECEMBER, 2018

AT 2.00PM

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

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

THE COMMISSIONER: Right. First thing, any questions arising from those questions by Mr Buchanan just before lunch.

MR MOSES: No, Commissioner. No questions but we are just trying to track down the relevant delegations in relation to seeking advice from external lawyers, which, once we find those, we'll draw them to - - -

10

MR DREWETT: Sorry, Mr Moses, that wasn't heard at the back. Could we - - -

THE COMMISSIONER: Could you repeat that?

MR MOSES: That's fine. Sorry, I don't have the microphone in front of me. I usually turn it the other way in case I'm caught saying something I shouldn't be. In relation to the issue of legal advice, we're just trying to track down the relevant delegations that deal with that issue and we'll draw those to the attention of the Commission.

20

THE COMMISSIONER: And in particular, one of the issues Mr Buchanan raised was whether an individual councillor could approach one of the - - -

MR MOSES: Yes. Our understanding is, Commissioner, but we'll confirm this for the Commission, that the general manager is the officer who seeks the legal advice on behalf of the council. If it's a matter concerning the general manager, then it's the mayor who seeks that advice if it's a matter concerning the interests of the general manager. But we'll locate the basis of that and draw it to the attention of Mr Buchanan or Ms Mitchelmore.

30

THE COMMISSIONER: All right, thank you.

MR BUCHANAN: Thank you.

THE COMMISSIONER: All right. We're up to Mr Andronos.

MR ANDRONOS: I think we are.

40

THE COMMISSIONER: Great.

MR ANDRONOS: Mr Montague, first I'm going to ask you some questions about some evidence you've already given in relation to Mr Stavis having had access to the suggested interview questions prior to the interview panel on 17 November, 2014. Now, you have given evidence in the Commission already that, in your view, Mr Stavis performed well at the interview on 17 November, is that correct?---Yes.

And you took Mr Stavis's performance at the interview into account in assessing his relative merit as being suitable for appointment as director of planning at Canterbury Council?---Yes.

And when I say relative merit, I mean relative to the other candidates.
---Yes.

10 Now, you have learnt in this Commission that Mr Stavis had access to the suggested interview questions prior to the interview, is that correct?---Yes.

Did you know about that prior to the hearings in this Commission?---No.

Now, I'm going to ask you this hypothetical. If you had been aware at the time that Mr Stavis had had access to the suggested interview questions prior to the interviews, would that have affected your assessment of his merit?---Yes.

20 In what way would it have affected your assessment?---Well, to my mind, if he had those questions, he was, he was cheating and that would have certainly raised questions in my mind.

And what, if anything, would you have done about it?---I could have actually aborted the whole interview process.

30 I'm now going to ask you just some questions about the assessment of Mr Stavis's merit at the time you made the decision to appoint him as director of planning. Just as a general matter, is this an accurate statement, that in assessing a candidate's merit with respect to a particular position, you're assessing whether that person will do a good job in the role?---Yes.

And in making that assessment you are conducting an evaluation, aren't you?---Yes.

And you evaluate that person's merit on a number of different bases, is that right?---Yes.

One of those would be the person's CV, and by that I mean their experience and qualifications?---Yes.

40 One would be the performance of that person at the interview?---Yes.

Now, is it correct that your evidence is you don't place much store in references that a candidate submits or referees they identify?---I don't. I haven't.

And is it correct that none of these factors individually is conclusive in your mind as to the merit of a particular candidate?---That's right.

Now, you rely on the person's performance at interview, is that correct?
---Yes.

And you rely on any subsequent conversations you might have with them?
---Yes.

Now, just on the question of subsequent conversations, you met in this case with Ms Jones and Mr Stavis?---That's correct.

10 Are you sure you met with them after?---Yes.

And what was the purpose of those meetings?---Simply for me to get a, a better understanding of what sort of person they were away from the formal interview process, to find out whether I thought, having discussed some things with them informally like that, whether they would be a good fit.

Thank you. Now, the assessment of whether a person has merit, is this correct, it's essentially a prediction of how they'll perform in the role in the future if they get the job?---I think that's fair, yes.

20

And all those factors which we've identified in these last few questions, these are at best a guide as to how they're going to go?---Of course, yes, I think so.

And you have to include that person's ability to work with the team?---Oh, it's essential, yes.

And the team includes the people who report to the director?---Yes.

30 And the people who the director has to manage upwards to?---Definitely.

And that's yourself and the councillors?---Yes.

Now, where different candidates have different strong points in their résumés that's what you would expect in a normal spread of candidates, isn't it?---Yes.

And you have to evaluate which is the best candidate overall?---That's right.

40 And that's a judgement call?---Yes.

And you as the general manager are the person charged with the statutory obligation to make that judgement call?---Yes.

Now, when you made the decision to appoint Mr Stavis in early December 2014, did you have a view as to his merit as a potential director of city planning?---No. I think that view was formed at a later time through the interview process and what I was able to glean later.

The time I'm talking about is the decision to appoint him which was December, 2014.---Oh, sorry. Sorry, I misunderstood. Can you repeat the question, please.

That's all right. December 2014 is when you made the decision to appoint him. Is that correct?---Yes, that's right.

10 Now, at the time you made the decision to appoint him had you formed a view as to how meritorious or otherwise he was as a candidate?---I had.

And what was that view?---That he was, that he was a suitable candidate for appointment, that he had the necessary qualities to do the job well.

And can you just tell the Commission what factors you took into account?
---Well, again, his experience. His background. His experience particularly in the, in his own consultancy. Some local government experience. His general presentation. His presentation at the interview process itself was,
20 was very good and I thought that because he had a different set of skills, if you like, background, that he would be a good candidate rather than somebody who had spent his entire life in a council.

And if I can just take you to the interview process itself and the selection process. Now, you've been asked by a number of my friends about the conduct of Mr Hawatt and Mr Azzi in the interviews and in the period between 17 November and, say, 8 December. Now, firstly, this might seem trite, but they were obviously elected representatives on council?---Yes.

30 And they both had strong personalities?---Yes.

In different ways?---Yes.

Mr Azzi was the more combustible of the two?---Yes.

And you knew that the mayor, Mr Robson, had experienced difficulty in exerting any influence over the way they conducted themselves?---Yes.

Did you see it as your role to discipline elected councillors?---No.

40 Was it anyone's role?---Well, there are mechanisms available to, to bring councillors to heel if you like in the legislation.

Was there any individual to whom the councillors were answerable in terms of their conduct?---Well, to the, well, to the, to the mayor to some extent but certainly to the minister.

And ultimately to the electors?---Yes.

Now we turn to the question of Karen Jones and whether she was, and whether you turned your mind to the consequences of appointing her. You obviously were impressed with Ms Jones at interview?---Yes.

And you considered the possibility of appointing her at some stage, didn't you?---Yes.

10 At the time did you turn your mind – I withdraw that. At the time of making the decision as to whom to appoint, did you turn your mind to the question of the consequences for council if you were to appoint Karen Jones?---Yes.

Well, what did you think the consequences would be at the time? So I'm after your state of mind at the time. What did you think the consequences would be if you appointed Karen Jones to the role?---A possibility of continual or continuous dysfunction brought about by perhaps some antipathy towards her by certain councillors and what that, that, effect that would have on the morale of the organisation, the staff.

20 THE COMMISSIONER: How would the dysfunction arise?---Because the councillors, some of the councillors, I guess could make things extremely difficult for any applicant who they didn't necessarily approve of.

But how?---Well, just, just by the way they conduct themselves in meetings and all that sort of, council meetings, committee meetings.

30 What, they'd be rude to her?---Yes. That plus criticise openly in, in a public forum, which, you know, didn't happen at Canterbury normally. So there were various ways I think they could indicate or they could put pressure on a candidate that they didn't favour.

40 You were taken this morning to that provision of the code of conduct that said councillors were not to do that, and it was your role, in a sense, to protect.---Yes, and I endeavoured to do that, but in an open council meeting it's very, you can't do it. If they get up and say something to a director, which does happen from time to time, or they discuss things with the director privately – over the phone, for example – and that director doesn't come to me, I may not know it's happening. But how that, how that affects the, the director is another matter, how they, how it affects them mentally, whether they, they're prepared to withstand that sort of pressure over a prolonged period of time.

Did you raise that with Ms Jones?---I can't recall, Commissioner. I can't recall. But I know that she was a little bit concerned about, about the way the interview progressed.

MR ANDRONOS: Now, you were asked some questions this morning about things Mr Azzi had said about – sorry, I withdraw that. You were

asked some questions this morning about what Mr Azzi had indicated was his view about Ms Jones. I'll just take you back to that, where he described her variously as a leftie, greenie, greenie from Leichhardt or a leftie greenie woman. Are they all the sort of terms that you associate with his view as expressed by him at the time?---Yeah. Yes. Yes. Yes.

10 Now, did you understand that his complaint was Ms Jones's gender, her perceived ideological position with respect to development, some combination of the two or something else?---I think a combination of things.

Certainly those two factors you thought were part of it?---Yes.

Can I move on to your subsequent meeting with Mr Stavis, which I think we've dated at 26 November, 2014, at the café in Kingsgrove called Giorgios.---Giorgios, that's right.

Yes. Now, you've been asked some questions about the conversation you had with Mr Stavis about him showing loyalty.---Yes.

20 Firstly, can I ask you this, when you say loyalty and when you said loyalty at the time, what did you understand that to mean?---I understood that to mean that the directors, all of the directors in this, this position as well, would be loyal to the organisation, to the council, to the mayor, and to the team, the leadership team.

And what actually was the content of that duty of loyalty?---Well, not to undermine the operation of the council for their own benefit. Not, not to do or say anything that would undermine other staffers or the council for their own benefit.

30 Now, why did you feel the need to raise that?---It's something I've always, it's been my practice over many years to do that, to impress on the directors and the senior managers that they're part of a team and that I expect them to behave accordingly.

But why was that a particular issue that you needed to raise it with them? ---It's just that I always did raise it and, and I was concerned that there wouldn't be any breaking of rank, so to speak.

40 Had you had any particular experience at any time which evidenced to you an example of disloyalty?---Yes.

What was that?---In relation to another director years ago that we don't have, or we didn't have, that position was abolished altogether, but - - -

Well, what position was that?---It was the director of community services. It was a separate division.

And what year are we talking about?---Oh, probably about '98 or thereabouts, late nineties.

And what happened on that occasion?---Well, it became pretty apparent to me from what was happening that this particular employee had been meeting with councillors, or a particular councillor, that I didn't consider those meetings and I wasn't advised about it. I heard it through other sources. I don't think that was appropriate and I told her that.

10 What was going at these meetings, so far as you understood, that you thought was inappropriate?---Well, I, I, think there was a certain amount of judgements being made about the way I performed my role, what this particular councillor wanted to achieve - - -

Which was what?---Well, he, he was, his politics were a bit different and I think he wanted to – well, I, I've got to be candid about this, he and I didn't have a very good relationship. I don't know why, I never did find out, but he had, had it in his mind that he wanted to replace me, so my job was, she wanted my job.

20

She being the director of community services?---Yes, that's right.

She wanted your job?---Yes.

And was it your view at the time that she was conducting a campaign to white-ant you in effect?---Yes, yes.

And that in your mind was an example of disloyalty?---Yes.

30 The kind of disloyalty that you had in mind when you spoke to Mr Stavis? ---Yes.

THE COMMISSIONER: So it's really loyalty to you in that this other director had been trying to white-ant your position?---Yes, yes.

MR ANDRONOS: Now, Mr Montague, you've been asked some questions about the support that various individuals showed you during the war.

40 MR MOSES: He's going to force me to sing Cold Chisel, aren't you?

THE COMMISSIONER: You keep on threatening that, Mr Moses.

MR MOSES: I'll start.

MR ANDRONOS: Oh, look, I've got a note here that Mr Moses is standing on the outside looking in but I won't raise it.

MR MOSES: Okay, you win.

MR ANDRONOS: I've lost my place. Now, you've been asked some questions about various individuals showing you some support, and the individuals who've been identified are Mr Demian and Mr Alha, correct?
---Yes.

Both of whom are obviously property developers, correct?---Yes.

10 Yes. Now, in the events of 2015, to your recollection, was it generally known that you had had this, you were engaged in this dispute with the group of councillors who you've described as the junta?---Yes.

Had that been in local papers?---Yes.

And it wasn't a secret, it was widely known?---Yes.

Did you receive messages of support from people other than property developers at this time?---Yes. Yes. There were, well, of course there was -
- -

20

Who?---The mayor, for example. Previous mayors who were very supportive, members of parliament, both state and federal, the staff, some staff members of course, approached me and there were members of the community, people in our, in our community centres who I knew very well. That sort of thing.

30 Any Labor Party identities?---Yes. The former premier of New South Wales, a federal member, a former federal member in the Federal Parliament of course, expressed concern about the way things were being, what was happening. They couldn't believe it. Other councillors, like Councillor, I'm a bit loathe to name people but there's one in particular, Councillor Bill Kritharas, who was a, or is a, a, a lawyer.

THE COMMISSIONER: And how was that support shown? By contacting you or emailing or - - -?---Yeah. Just, yeah, just emailing me, phoning me popping into the office. Or if I was out at different things, they'd come across, I'd come across people and they'd say, look, jeez we're, you know, we're sorry about what's happening, is there anything we can do to help, that sort of thing.

40

MR ANDRONOS: Now, did you mention any relevant unions in that - - -?
---Oh, I beg your pardon. I'm remiss there, yes. The Municipal Employees, sorry, the United Services Union now, they actually showed up at the meeting in 27 January - - -

Now, that's what I was going to ask you. What did they do to manifest their support for you?---Well, they were talking about strike action, they, they did show up at the 27 January, en masse. I've never seen so many trucks in

Beamish Street in my life. Then they had activities in the Lost Gardens area, adjacent to the building, turned up in their high vis gear. There, there was certainly a massive show of support by the (not transcribable).

And what did you understand they were seeking to achieve by that?---They wanted to ensure that my position wasn't terminated.

THE COMMISSIONER: Can I just ask you, you mentioned Bill Kritharas. ---Kritharas. Kritharas.

10

What was his role?---He was a former deputy mayor of Canterbury.

And was there a George Giannaros?---Yes, George is a local business leader. He's involved, he has his own electrical company. Does all sorts of electrical installations and the like. I knew George through Sydney Olympic.

20

MR ANDRONOS: Thank you, Mr Montague. Now, you were asked some questions about the meeting that took place with Mr Hawatt and Mr Demian in Mr Hawatt's office on about 13 January, 2015.---Yes.

Now, that meeting did not resolve the war, did it?---No.

What was the outcome of that meeting?---I think it was just Councillor Hawatt repeating what he'd offered before or what he was saying to me at the leagues club.

Did it achieve a cessation of hostilities?---No.

30

Did Mr Demian's presence at that meeting alter the outcome at all?---No.

Can I ask you about the nature of the relationship between you and Mr Demian. You've been asked a number of questions about your relationship with him and you've variously described it as a friendship or a business friendship. You recall that?---Yes. Yes.

Firstly, when you use the term business in this context, what do you mean? ---I mean occupational, my role vis-à-vis his role.

40

So you not being a businessman, is this a correct understanding? Occupational means you came to know him through your work?---Yes.

Your work is general manager of Canterbury Council.---That's right.

And when you say friend of friendship in this context, what's the relationship that you're referring to there?---Well, it's just a, I, I'd characterise it more as an acquaintance than a, than a, than a friend, as people would, people would define that.

Well, how do you think people define it and how is this different?---Well, you can have a strong friendship with somebody. You can have a close friendship. My relationship with Charlie Demian was not a close relationship.

10 The relationship that you had with him, was that unique or not unique in your experience with other people you dealt with through your role as general manager?---No. No, there were all sorts of people over that 34-year period that I, that came to my office that I knew well, as you'd expect, having been there that long, and they approached me about all sorts of issues, some fairly important, others not so important, but important to them nevertheless.

Did you regard it as important to have friendly relations with people you dealt with in your role as general manager?---I, I think it's essential.

20 Why?---Well, you can't do the job unless you know the people you're dealing with, and I think it helps to resolve issues if you want to put it that way. If somebody comes into the office, they've got a problem, you can relate to them, and that, that was what I did. I made myself available to people.

And that was a matter of general practice, was it?---For me it was, yes.

Now, did you ever have reason to have run-ins with Mr Demian?---Yes, on one occasion or a couple of occasions. One I remember in particular.

30 Tell us about that occasion.---He came into my office. I can't recall what the subject matter was now but no doubt it was probably one of his matters, and Spiro Stavis was there at the time. I think it was in my office. Could have been the conference room. And, anyway, he, he what I thought verbally abused Mr Stavis, and I told Charlie to pull his head in and he wasn't going to come in here and abuse my staff.

THE COMMISSIONER: What did he say?---He backed off. He apologised and backed off.

40 No, but when you said he verbally abused Mr Stavis.---Oh, it was just the way he, he addressed, he said, "Oh, that's nonsense," or "That's not true," or , you know, "You don't know what you're talking about," you know, "You're incompetent," something along those lines. It was, it was, it wasn't very nice.

MR ANDRONOS: And what did you do?---I told him to pull his head in and not to do that, and he apologised to Spiro and I said we're not, you're not coming in here. We're not having the tail wagging the dog.

Was there ever an occasion in which Mr Demian abused Mr Stavis in your presence and you did not defend Mr Stavis?---No. No.

Now, moving on now. You've described Bechara Khouri as a friend of yours in the period 2014-2016.---Yes. Yes.

Was the nature of that relationship the same or different to the relationship you had with Mr Demian?---Similar, but I saw more of Bechara, but I wouldn't say it was a close personal relationship.

10

Now, you've said that you often caught up with him for coffee?---Yes.

And you discussed all kinds of issues with him?---Yes.

And you had many conversations with him which did not involve council business?---Yes.

And what – I withdraw that. The relationship you had with Mr Khouri, we'll call it the friendship you had with Mr Khouri, was that something that you kept secret?---No.

20

Did the councillors know about it?---Yes.

Did the mayor know about it?---Yes.

How would the mayor have come to know about it?---Well, often the mayor was in our, in our company when I met with Bechara. Whether it was coffee or whatever, lunch or something, Brian would often be there.

Now, you've been asked a number of questions on different occasions about Marcelo Occhiuzzi and about the circumstances of his departure from council?---Yes.

30

And about your knowledge of certain features of that departure?---Yes.

Now, you recall you were asked if you knew why Mr Occhiuzzi left council in 2014?---Yes.

And we'll pull this up if you, this was in a record of interview, not in this hearing room?---Mmm.

40

And you answered to the effect you didn't know why he left?---That's right.

Now, when Mr Occhiuzzi left do you recall if he discussed his reasons for leaving with you?---No, I don't recall it.

Do you believe he did?---No.

Did you conduct an exit interview with him?---No.

Was it the practice of council to conduct exit interviews with directors?
---No.

Are you aware if anybody at council did conduct such an interview?---No.

And does it follow that if such an interview was conducted you never saw the results of it?---Yes.

10

Now, the question whether or not you knew why he left, is your understanding of that question directed to whether you knew what was in his mind at the time?---I think so.

And had you had any reason to consider that question at any time since 2014?---No.

Did you know what was in his mind at the time?---No.

20 If you were asked to speculate as to why, you would have been able to do so, wouldn't you?---Yes.

And you have been asked to speculate and you have done so, haven't you?
---Yes.

But that's different to a question of knowledge, isn't it?---Yes.

30 So when you were asked questions about whether you knew why Mr Occhiuzzi had left, were you answering that question honestly to the best of your ability?---Yes.

If I can ask you some questions about your practice in dealing with reports and memoranda from staff. As general manager obviously you have overall responsibility for all of council business?---The operations of the council, yes.

Operation, yes. And Canterbury Council was a large council in its day?
---Yes.

40 How many direct reports did you have excluding support staff?---Three.

Three. And they were all the directors?---All the directors. That's right.

Now, you were required to participate in or attend a large number of meetings every month. Is that correct?---Yes.

The council met monthly?---Yes.

You attended those meetings?---Yes.

The CDC met monthly?---Yes.

And that was on the alternating fortnight - - -?---That's right.

- - - from the council meetings?---That's right.

You attended those meetings?---Yes.

10

There was a Coordination Committee?---Yes.

And that was you and the directors?---Yes.

And maybe somebody else was there as well?---Maybe some managers if it was necessary, yeah.

There was the Mayor Ex Committee?---Yes.

20

Were there other regular meetings that you attended?---Not regular meetings, no. That, internally that was about it.

Now, at the coordination meetings did you see the business papers that were to go up to council and the CDC at the coordination meetings?---Yes.

And there was a coordination meeting twice a month, once before the council meeting and once before the CDC?---That's right.

30

How long did those meetings go for?---Oh, variously dependent on the business, but up to an hour.

And in that time what did you and the other participants in the meeting do? ---Virtually just checked, checked the reports going up. Not reading them in depth but just looking at what they were recommending and taking points from other directors that might have had an issue with some of the recommendations. We didn't read through the reports in depth. You couldn't do it in that time.

40

Did directors give any sort of presentation on their report?---They would. No, they, they would just say what the purpose of the report is so that the rest of us knew what was happening, that sort of thing. Very brief explanation.

Did you ever drill down into the detail of the contents of these reports? ---No.

If you wanted to, was there time to do so?---Oh, there could have been. It might have meant deferring the meeting or coming back or going longer. It could have. Didn't see the need to, though.

The content of these reports were often matters of some technical sophistication, weren't they?---Very much so.

And you've said more than once that you weren't a planner.---No, that's right.

10

So when reviewing the reports, were you able to have any input into the content of, say, the planning reports?---No.

Now, on meetings, not being the regular meetings with staff or the council, did you meet frequently with residents and ratepayers?---Yes.

What about?---Whatever they wanted to talk to me about.

20

Were there some matters which you regarded as too small to take a meeting on?---Oh, there might have been one or two, but not many. I mean, if they, if it got to me, it was important to them and that's what concerned me.

Well, did you ever take meetings on rating issues?---Yes.

Did you ever take meetings on speed bumps?---Yes.

Now, you obviously don't have access to your electronic diary now, but can you estimate how many meetings you would have had in a week?---Dozens.

30

Dozens. You obviously had a heavy workload, that's correct?---Yes.

You frequently made and received calls until late into the evening?---Yes.

How did you manage that workload?---Just kept grinding away.

Did you rely on senior staff?---Yes, of course.

40

How did you rely on them?---Well, I expected them to do their jobs and to keep me informed on things that may be injurious to the council's reputation.

Were you in the habit of closely reviewing their work?---No.

Why not?---I didn't think it was necessary. They're highly paid senior professionals. They should know what to include in the reports and what to advise council.

Now, if senior staff wanted to communicate or report to the whole of council – as in all the councillors, not individuals on council – was there a practice as to how that was done?---Well, apart from the reporting, which went to the statutory committees and the council meeting, if they wanted to send urgent information out to the council as a whole, that’s all of the 10 councillors, they could prepare a memo, which would go through my office.

10 And did you have a practice about reviewing those communications in any detail?---No, I read them but I didn't, I, I didn't review them or alter them in any significant way, no.

Why not?---I didn't see the need for it. Again, it would have been a technical issue. They just wanted to let the councillors know.

Can I take you to a specific period and a specific event. The decision to put up – I'll just use the kind of colloquial names, the Doorsmart and the Harrison’s projects.---Yes.

20 The decision to put those up as late items to CDC, for a meeting of the CDC on 3 December, 2015. You recall that?---Yes.

You've been asked some questions about that already.---Yes.

Now, it’s been suggested to you that these matters going up to council, or to the CDC, on 3 December, it’s suggested that was contrary to the council’s policy in relation to IHAP. Do you recall that?---Yes.

30 Now, I'm not going to ask you to express a view on whether that’s correct or not, but just assume that that is correct. And a consequence of the breach of the IHAP policy has the consequence that it’s also a breach of the code. ---Yes, I understand.

Yes. Okay. Just make that assumption. You've already given some evidence as to why you put them up as a late item. You recall that?---Yes.

40 Do you recall what your evidence was?---That it was, well, I put it up because it was right on Christmas. We were running out of time. They were major DAs and I wanted to get them up to the committee as soon as possible.

Now, when you said they were major DAs, what difference does that make?---Well, I don’t suppose it does make any difference if those DAs – there may have been other DAs that were not being reported up to the council at that time but I think those particular ones had been on foot for some time and they needed to be cleared, at least presented to the committee.

Now, it's been suggested to you that the identity of the proponents had something to do with your willingness to put them up. Do you recall that suggestion?---Yes.

That if the applicant was someone other than the Chanines or Demian – sorry, I withdraw that. I'll ask you this question. If the applicant in respect of a major development in those circumstances was someone other than the Chanines or Mr Demian, would that have had any, would you have made that decision any differently?---Not necessarily, no.

10

When you say not necessarily, what - - -?---Well, it may have, I, I, may have done exactly the same thing.

What was the critical reason that you made that decision?---Time, time.

Time. What about the size of the project, does that have a - - -?---Yeah, and that too.

20 THE COMMISSIONER: Sorry, when you say time, is that as you said, it was the lead-up to Christmas - - -?---Yes. The council goes into recess until, I don't know what year we're talking here, but sometimes up until towards the end of February.

All right. So, if it's not dealt with in December, it would have to be maybe late January or something like that.---Yes, at the very earliest, that's right.

MR ANDRONOS: Now, when you put those matters up as a late item, did you believe that that was a lawful exercise of your powers?---Yes.

30 Now, if I can take you back to a different event, being August 2015, and a decision you made to put up 570-580 Canterbury Road as a late item to CDC. Do you recall that?---Yes.

Did you believe that that was a lawful exercise of your power?---Yes, I do. I did then and I still do.

40 Now, I'll take you to a different issue in relation to the Doorsmart project and this is a question of the letter of advice from Sparke Helmore and the memorandum, which you signed.---Yes.

Do you recall reading that letter of advice at the time?---No.

Do you know if you did?---Having read it now, it's possible I didn't read it, I just signed it.

Did you appreciate at the time – well, firstly, this is the effect of the advice and then I'll ask you if you appreciated this at the time, that if council wanted to develop the adjacent bowling club site, it may be required to build

no closer than 18 metres from - - -?---No, I wasn't aware of that setback requirement, not 18 metres.

Did you appreciate that?---No.

Why didn't you appreciate that?---Well, I just, it had no, it just wasn't on my radar. It wasn't an issue for me. I looked at it as two separate DAs, the Doorsmart and the bowling club, if it ever got developed.

- 10 Do you now understand that a nil setback on the Canterbury Road properties could mean that there would have to be an 18-metre setback on the bowling club site?---Yes, that's possible.

And when did you first reach that understanding?---I can't recall, I'm sorry.

Well, had it been in the context of these hearings or somewhere else?---In these hearings, of course, but before that, no. The 18 metres was a revelation.

- 20 Now, council received both the memo and the letter of advice, correct?---I believe so.

All councillors received it?---Yes.

And that was to be considered at the CDC on 3 December?---Yes.

Do you recall any member of council raising the question of the setback with you?---No.

- 30 Do you remember any member of council raising the legal advice with you?---No.

Did anybody say, Jim, shouldn't we get our own advice on this?---No.

Did Mr McPherson or Mr Sammut say to you, Jim, we should get our own advice on this?---Not that I recall, no.

Do you know if the members of council even read the memo and the letter?
---No, I don't.

- 40 If they had, they had a forum to discuss it at the CDC?---Exactly right.

Were you all right that meeting?---Yes.

Do you recall if anyone asked a question about the memo or the letter?
---No, I don't recall that.

Do you recall any discussion about it?---No.

Do you recall any discussion about IHAP's recommendation?---No.

Did anyone say at the time they'd read the letter?---No.

Now, council is, of course, the deliberative body charged with responsibility to grant consent or withhold consent.---Yes.

10 You didn't have any decision-making role in deciding whether consent would be granted, did you?---No.

Your role in relation to the DAs, it would be fair to say, was administrative. ---That's right.

What was the administrative task that fell to you?---To, to, to the extent that I could, ensure that the DAs were, or the applications were processed in a timely manner and presented to the relevant committee or the IHAP if it had to go to IHAP.

20 And it would be a matter for the relevant decision-making body to make the decision.---That's right.

Now, at about the same time, December 2015, there was this question about whether or not there could be a delegation of power to consent to you. ---Yes.

In relation to both of them.---Mmm.

30 Did anyone ever tell you that that proposal was unlawful?---No.

Not Mr Sammut?---I'm trying to cast my memory back on that evidence I gave before.

THE COMMISSIONER: I'm sorry, what was your question?

MR ANDRONOS: Well, whether anyone – I think the witness has said in answer to the question that - - -

40 THE COMMISSIONER: No, what was your question?

MR ANDRONOS: The second question was, "Not Mr Sammut?" in relation to whether or not anybody had told him that proposal was unlawful.

THE WITNESS: I'm confused a bit now because I know there was something somewhere through this process that there was a letter where I was advised or there was a memo or something.

MR ANDRONOS: Well, no, we're talking about consent.---No, I know. No.

About whether you could be the delegate.---Oh, no, no, no. Sorry. I misunderstood you. No. No, no advice on that score.

Neither Mr Sammut nor Mr McPherson told you?---No, no.

10 If anyone had told you that it was unlawful, what would you have done?
---I'd have asked them to get, I'd have discussed it with them to understand their, their, their reasoning and, in all probability, asked for confirmatory legal advice for our own legal team, if not internally, external.

THE COMMISSIONER: What were you thinking about? Some letter about something being unlawful?---Oh, there was something in the evidence given somewhere else about - - -

MR ANDRONOS: This is the exchange in August 2015 about IHAP?
20 ---Yeah, I can't remember now, Commissioner.

THE COMMISSIONER: Okay.---Yeah.

MR ANDRONOS: Now, finally come to the question of strategising about the amalgamations, and you were asked some questions about strategising with Mr Hawatt and Mr Azzi and whether you thought that was appropriate. Did you strategise with anyone else?---Yes, the mayor of course and, and the, and the staff internally, the senior staff.

30 And when you were strategising with the mayor, what form did that strategising take?---Well, just looking at the various options that might be available to, because reports were presented to council and because the council finally made the decision to, to go down a certain path.

And strategising implies establishing a strategy to achieve a certain outcome.---Yes.

40 What were you strategising with Mr Robson to achieve?---We had agreed that the best course of action for Canterbury was to enter into a voluntary merger with Bankstown. That's what we were talking about.

And what - - -?---Or, or other - - -

THE COMMISSIONER: But that was a while - - -?---Oh, I can't really put a timeline on it, Commissioner, I'm sorry.

I thought you gave evidence that the voluntary amalgamation you were discussing in 2015.---Yes. Right through.

And then I thought the strategising, particularly with Mr Hawatt and Mr Azzi, was more where things started becoming, can I say, more crucial in that it appeared that the government was going to act.---Yes. That's right. You're correct. Once we realised that perhaps the voluntary merger was off the table as far as the government was concerned, that they were going to press on with their, their forced mergers, then, yes, we, we obviously started to think about what does that mean for Canterbury and Bankstown and all that sort of thing.

10

And once it appeared that the voluntary amalgamation wasn't possible, were you strategising with the mayor and also Mr Azzi and Mr Hawatt or just - - - ?---Well, I kept the mayor informed and we talked about it, of course we did, and, and talked to – this is what we discussed at some of those social functions at Councillor Azzi's home.

But the mayor wouldn't have been at those, would he?---No. No, no, but I'd discuss it with the mayor separately in his office or over dinner perhaps at a meeting.

20

MR ANDRONOS: When you were strategising with the mayor, was that at the same time but on separate occasions that you were strategising with Councillors Azzi and Hawatt?---I'd say, I'd say separate occasions the same, roughly the same time.

Over the same period?---Yes.

What about Mr Stewart and Mr Asfour? Did you have any conversations with them?---Yes, I certainly had conversations with Mr Stewart and there was that one occasion where we all got together and discussed it.

30

And what was the outcome you were seeking to achieve in these, just globally?---Well, to get - - -

In all these strategy sessions was there a single outcome you were seeking to achieve?---Yes. I think everyone accepted the amalgamations were going to happen and we wanted to try and get the best results out of the, the merger for both councils and for our communities. But I didn't, yeah, but it wasn't, it wasn't about me getting the top job or anything. That wasn't - - -

40

Thank you, Mr Montague. They're my questions. Thank you, Commissioner.

THE COMMISSIONER: Thank you. Mr Buchanan?

MR BUCHANAN: Thank you, Commissioner. Before I ask Mr Montague some additional questions I should, Commissioner, take the opportunity of referring back to a statement I made to you, but with the intention that it be

understood by all the parties, and it was to the effect yesterday that there is no evidence before the Commission that the code of conduct complaint was sent to the addressees. My attention has been drawn to the fact that there is some evidence. At volume 5, page 80 there is correspondence from Mr Hawatt to Mr Orr – who was the, as it were, the office head for the Office of Local Government – and in it Mr Hawatt indicated that, “We’ve sent” - - -

10 THE COMMISSIONER: “A number of correspondence, including an official code of conduct complaint against both the GM and mayor.”

MR BUCHANAN: Thank you, Commissioner. “And we have not received a reply.”

THE COMMISSIONER: Thank you.

MR BUCHANAN: Excuse me a moment.

20 THE WITNESS: Could we have that one back up? Because I was just reading it. Sorry.

THE COMMISSIONER: Oh, volume 5, page 80?---Yes. I was just reading that letter. I hadn’t seen it before.

That was the one to Mr Orr?---Yes. Yeah, okay. Thank you, Commissioner.

30 MR BUCHANAN: Now, the bottom of page 5523 going over to page 5524 of the transcript of yesterday’s examination, questions by Mr Neil. He was asking you about the motions that were on the business paper for the EGM for 13 February, 2015 and I wonder if we could have a look at that, please. I think it’s – just excuse me a moment.

THE COMMISSIONER: These are the 10 motions by - - -

MR BUCHANAN: Volume 5.

THE COMMISSIONER: Page 93.

40 MR BUCHANAN: Yes. Thank you. You were asked questions about this omnibus set of 10 motions by Councillors Kebbe, Adler and Azzi. Do you see that?---Yes.

And you were asked – I withdraw that. It was suggested to you that, by reason of the fact that there’s no reference to Stavis in these motions, that the Stavis component of the war between you and Hawatt and Azzi was over by the time that these motions were put forward, which was suggested was early February. Can I just invite you to, first of all, just note that the

motions on notice, moved Kebbe, Adler, Azzi, and then if I could take you to volume 5, page 2. You would have seen at some stage the purported minutes of the continuation of the 27 January, 2015 extraordinary general meeting of council?---Yes.

And they start on page 2 of volume 5. You can see that, and then can you see that a bit over halfway down the page, after the mayor had left, deputy mayor, Councillor Fadwa Kebbe, assumed the chair, presided until the meeting was later closed?---That's right.

10

And can I ask you then to have a look at page 4 if we could, and if we just enlarge that a little bit, can you see in the middle of the page Councillor Adler then handed to the deputy mayor a call for another extraordinary meeting to consider a number of motions?---Yes,

And what I – excuse me a moment.

THE COMMISSIONER: You were at the meeting of 13 February?---Yes.

20 MR BUCHANAN: And if I could take you, please, to page 236 of volume 4.

THE COMMISSIONER: Sorry, which page?

MR BUCHANAN: 236 of volume 4. Can you see that this appears to be the call for the further EGM, which was handed to Councillor Kebbe towards the end or at the end of the 27 January meeting? And we can see that because the signatories are Adler, Azzi and Kebbe and the date of the signatures is 27 January, 2015.---Yes.

30

And just casting your eye over the motions, just looking at the first one, for example, you can see it's identical to the first motion that was on the business paper for the meeting on 13 February, 2015. Then if I – there's no need to go to it, but at volume 5, page 25, there's a letter that was sent by the mayor to the minister, dated 9 February, 2015, commencing at page 23 in volume 5, and in the middle of page 25 Mr Robson said, under the heading Call for Further Extraordinary Council Meeting, "I have received a call for a further extraordinary council meeting on 30 January, 2015. This call was originally handed to the deputy mayor following the chaotic events of the 'meeting' held on 27 January. Subsequently, the council has realised this needed to be handed to me to be effective." So that was what Mr Robson said on 9 February, 2015. And from the fact the first of those motions read that steps be taken to fill the vacancy in the office of general manager, it would be reasonable to read them as following upon the motions that had been passed at the purported continuation of 27 January, 2015 extraordinary general meeting?---Yes, yes.

40

Now, of course at that particular meeting, the purported continuation of the 27 January meeting, the motions that had been passed – if I can ask we go to volume 5, page 3 – address the question of Mr Stavis at about a bit over, about three-quarters of the way down the page.---Yes.

10 Where you can see “Councillor Adler moved an amendment, seconded by Councillor Nam, that the acting general manager seek legal advice as soon as possible concerning the validity of the contract of Mr Stavis and act accordingly.” And that amendment was accepted by the movers and carried according to this document.---Yes.

So my suggestion is that the absence of a reference to Mr Stavis in the motions that were considered at the 13 February, 2015 EGM is not necessarily an indication that the Stavis component of the war was over by then.---No, I agree. Could have just been an omission. I don't know.

20 And in a sense it had been dealt with, but there was a whole other agenda. It hadn't been reached on 27 January and it was put on the agenda for a subsequent meeting which ended up being held on 13 February.---I think so, I think that's, yeah, that's fair, fair to say.

MR NEIL: Commissioner, could I ask if we could be taken to the reference of that being dealt with on 13 February?

THE COMMISSIONER: Sorry, could you - - -

30 MR NEIL: I'm sorry. Could I ask if we could just be taken to the reference of that being dealt with on 13 February because, subject to correction, we haven't been able to find it. I may be wrong.

MR BUCHANAN: When my friend says “that”, could I ask what he means?

MR NEIL: Well, as I understood what was being put was that, in some way or another, on 13 February an issue relating to Mr Stavis was dealt with.

40 MR BUCHANAN: No, no. No, what we're trying – part of your examination was the absence of a reference to Stavis in the papers for the meeting of the council held on 13 February was some indication that the Stavis component of the war with Hawatt and Azzi was over, and my proposal – and the witness has agreed with this – that having regard to the history of those motions in the context of the meeting of 27 January and what occurred there, that isn't a conclusion that necessarily follows.

MR NEIL: Well, this is probably for later, Commissioner. My questions were directed to including that matter, by no means exclusively, and I do note that I drew the witness's attention at page 5523T, line 42 - - -

THE COMMISSIONER: Sorry, which page?

MR NEIL: Page 5523 of the transcript.

THE COMMISSIONER: Yes.

MR NEIL: At line 40 or thereabouts, 38 to 40. In my question I included, so as to be clear about it, that the motion was produced by three councillors dated 27th of January, and I quoted Councillor Robson's reference to having received it on 30 January.

MR BUCHANAN: I'm not suggesting that my friend was trying to mislead the witness.

MR NEIL: Well, then I need say nothing further.

THE COMMISSIONER: I think, Mr Neil, it's ultimately going to be a matter for submissions.

MR NEIL: Yes.

THE COMMISSIONER: I understand from your cross-examination what your submission will be and from Mr Buchanan's examination what his submission, I anticipate what his submission will be.

MR NEIL: Yes, yes (not transcribable) a number of different factors.

THE COMMISSIONER: Yes.

MR BUCHANAN: Excuse me a moment. Now, in Mr Drewett's questions of you, Mr Montague – I'm looking at the bottom of page 5527 of the transcript – it was essentially put to you that you had, this is halfway down the page, 13 applicants that were whittled down to five.---

And then five applicants that were whittled down to three.---

The process of shortlisting the candidates to be interviewed was a process that was undertaken by Ms Carpenter.---

And you'll recall that I've already asked you questions as to the contribution that you made to that by asking that Mr Stavis be included in those who would be whittled down to five and then, however, the process of whittling them down from five to three was the interview panel process, wasn't it? ---There were five people interviewed. That's right.

And at the end of that day there were three candidates?---But two dropped, two dropped off. That's right, yeah.

Now, when you told Mr Drewett that Mr Hawatt had not had anything to do with the whittling down from five to three, you weren't thinking of the role that Mr Hawatt played in the interview panel?---No. No, I was thinking because I don't, whether, maybe I thought that just happened by some sort of osmosis but there were five interviews and I think there was agreement amongst the panel including the mayor that there were only three that could be considered.

And that was Mr Hawatt included?---Yes. Yes, I think so.

10

And Mr Hawatt agreed with those three? Or would it be more accurate to say according to the best of your recollection he didn't disagree - - -?---He didn't disagree.

- - - with the elimination of the two who were eliminated?---No, there was, at that point there was agreement that there was only three that really were in the running. I think that's fair to say.

20

Now, in questions that you were asked today you were asked questions by Mr Drewett about the file note that Mr Murphy made of his interview of you on I think 15 January, 2015 or thereabouts. March. Thank you very much. I stand corrected. And it was, if I could just, if I could take - I withdraw that. Can I take you to volume 5, page 242. Excuse me a moment. This is the third page of Mr Murphy's file note.---Yes.

30

Excuse me a moment. You agreed with the last paragraph that appears on page 242. "He," being you, "indicated that the panel ultimately failed to reach a decision. Jim said that he wanted to offer it to Simon. Azzi and Hawatt said they were happy for him to do so but a job needed to be found for Spiro. Jim said that he told them that that was not going to happen as we are not going to create jobs for people, so no decision was made. The GM indicated that the matter was left unsolved on the day of the interview." My first question is, is it possible that this paragraph as it is written there conflates multiple events? That is to say, what the position was at the conclusion of the panel having convened and subsequent communications you had from Mr Azzi and Mr Hawatt or particularly Mr Azzi?---No, I don't think it is conflated. I think that describes pretty much what happened immediately after the interviews.

40

That Azzi and Hawatt said they were happy for you to appoint, sorry, to offer the job to Manoski but that a job needed to be found for Spiro?---Yes, well, they each had different things to say, but it was Councillor Azzi who said that we needed to find a job for Spiro, and he repeated that.

When you say he repeated that, on another occasion?---On another occasion, yes.

Can I just ask you as to whether that paragraph could be entirely accurate? If I can ask you to have a look at, in particular, the “Jim said that he wanted to offer it to Simon.”---Yeah.

If I could take you to volume 3, page 218. This is an email by you to Ms Carpenter at 7.02 that evening.---Yes.

And in it you say, “Off the record my choice is Karen,” et cetera, et cetera. “By the way, my second choice would be Simon.”---Yes, that’s true.

10

So would that have been your view from the moment Mr Stavis had finished being interviewed, he being the last interviewee until at least the time you wrote that email?---Yes, I think so.

So it wouldn’t be right to read that last paragraph as being correct if you read it as you saying at the end of the interviews that you said you wanted to offer the job to Simon?---No, that’s, you’re right, you’re right, Mr Buchanan. That certainly clarifies it. The point is, there was no decision made at the end of the interviews in favour of any one of the three really.

20

Certainly, but I’m – your state of mind as to the preference for a candidate is a matter of interest in the enquiry, and so it is useful to have a clear understanding, to the extent we can achieve one, as to what your preference was at various times in this process.---I understand.

And you would accept that the email you sent at 7.02pm represented your state of mind as to your preferred candidate order?---Yes.

30

Jones and then Manoski, and that would have been your state of mind from the end of the interviews.---Yes.

And then therefore the time you were talking with Hawatt and Azzi at the end of the interviews - - -?---Yes.

- - - until you sent that email to Ms Carpenter?---All I can recall, Mr Buchanan, is that things went a bit quiet, there wasn’t much discussion - - -

40

I’m sorry, I missed what you just said there.---It was pretty quiet immediately after the interviews. Things just sort of fizzled out. But Councillor Azzi right through the process made it very clear they didn’t want a woman in the job, so that left Spiro and Manoski and, yes, in those circumstances Manoski would have been my choice.

But the difficulty is, that’s not what you said that night.---No. No, look, I, I must have misspoke. I, I can't recall. I, I don't believe a, a firm decision was made on the day of the interviews.

I'm not suggesting it was. Again, all I'm trying to establish, to the extent that we can, is what your state of mind was as to your preferred candidate at the end of the interviews on that day?

THE COMMISSIONER: See, indeed, page 218, the choice of words suggests that it wasn't a formal decision because you say to Judith Carpenter off the record, "My choice is Karen," which would suggest it's what's in your mind at that - - -?---Yes, I think that's fair. And then I do mention Simon as well.

10

Yes, he's second choice.---I think that's how it was.

Can I ask with Simon, he was your second choice. You've said there was a bit of frustration because you wanted to have that post-interview meeting with the three of them and Mr Manoski went overseas and couldn't be contacted. You also gave some evidence at one stage about, was it some scuttlebutt you heard about him?---In, in the office and, yes, in the office.

20

So was that from employees of your planning department?---Yes. Senior people that knew him, knew of his work at other places and, in particular, in the department.

All right. But in respect of that scuttlebutt, you didn't follow through the formal process you did with Judith Carpenter, where she subsequently obtained written references from people who had worked with Mr Stavis at Botany or Strathfield.---Yeah, that's right, that's true, but I wanted to talk to Simon myself and, and failed in that endeavour to get him.

30

MR BUCHANAN: Is it right then that you didn't ever proceed to try to obtain reference checks for Mr Manoski?---I think that's correct, yes.

Would that suggest that at no stage had you reached the state of mind that the time had been reached where you needed to proceed to reference checks for Mr Manoski?---(not transcribable)

Sorry, I'll ask it another way. It suggests, I suggest to you, that you hadn't at any stage decided that Mr Manoski was your preferred candidate?---No, my preferred candidate was Karen Jones.

40

And if you had ever reached the stage of thinking your preferred candidate was Mr Manoski, you would have been turning around to Judith Carpenter and saying, I need some reference checks for Mr Manoski?---Yes, yes. I think that would be right,

And because that appears not to have happened, is that the best way of putting it?---Yes.

It appears not to have happened. It suggests that you didn't ever hold the view that Mr Manoski was your preferred candidate?---I think that's - - -

The top of the three.---No, no. Karen Jones was my preferred candidate, the top of the three.

And at no stage was Mr Manoski your preferred candidate?---No. Not at the top of the three, no.

10 Can I take you back to volume 5, page 242 please. This is again, Mr Murphy's final note. We're still on the third page of it, but can I take you back to the fourth last paragraph, commencing, "He indicated that Karen Jones", can you see that?---Yes.

20 "He indicated that Karen Jones was his preferred candidate. The mayor indicated that he would go with his (Jim's) assessment." Can I just ask whether that can be right because if I ask you to have a look at page 239 – I'll cast my question a different way, Mr Montague. Could it be that that's not the whole story is really what I should be asking you. And before you answer, I'll just give you the opportunity if you wouldn't mind – do you remember that there was an email from Mr Montague, sorry, from Mr Robson to you on Wednesday 26 November, 2014 in which he said, "With regard to the appointment of the new director of city planning, my thoughts are, Karen Jones," and then he gave his reasons why, "Simon Manoski," gave his reasons why, "Spiro Stavis," gave his reasons why he put Mr Stavis at the bottom?---I do recall that memo, yes.

30 So it's not right, really, to say that you conveyed to the investigators that the mayor was blindly following you. The mayor had provided his opinion as to who he thought were the preferred candidates.---Yes. But he did say, "I'll leave it up to Jim." He did say that at some stage.

Certainly. Thank you.

THE COMMISSIONER: I think that was volume 3, page 239. He says, "Ultimately it's your responsibility, taking advice from councillors when necessary."---That's right. That's how - - -

40 MR ANDRONOS: The next line too, Commissioner.

THE COMMISSIONER: "Prepared to discuss. However, it is ultimately your call."---Yeah, that's right.

"Happy to support whatever decision."

MR BUCHANAN: I need to go back to the Manoski question and your, and the significance, if any, of the lack of reference checks because I'm reminded that there is evidence that at least perhaps a couple of reference

checks were done for Mr Manoski, and that's at volume 3, page 225. It's an email to you by Ms Carpenter on 25 November in which she says – and this is indicating it's just after you've come back from your break.---That's right.

10 “I'm attaching referee reports for Karen Jones. I've now conducted all referee reports for Spiro Stavis and all but one for Simon Manoski.” So can you recall what the circumstances were in which Ms Carpenter was providing these or carrying out this activity? Was it just part of what she normally did or had you asked her to do it or - - -?---It's part, it's part of what she normally did, to conduct reference checks. That was just part and parcel of her assignment. I don't know what, who the other person was she was trying to get a reference from in relation to Simon, though.

If you just look at the next sentence, the sentence reads, “I should have them,” being Mr Manoski's references, “to you by close of business today or early tomorrow depending on Sam Haddad.”---Mmm.

20 And he was director general of the department?---He was, yes. He might have been who she was trying to get a reference from.

Yes.---That's what I can assume from that.

I'd just like you to think if you could about your evidence that Mr Azzi said to you words to the effect that a job, amongst other things, a job needed to be found for Mr Stavis.---Yes.

And is it your evidence that you heard him say that on more than one occasion?---Yes.

30 THE COMMISSIONER: And also in two different ways. My record, or my note was one time he said to you, “Put him on or it's your job.”---Sorry, Commissioner, I think they were, they were separate statements he made.

And then “If you can't put him on, find another job for him.”---Yes, that's right.

MR BUCHANAN: And which of those, or was it both of them, that you heard him say on more than one occasion?---Both.

40 And what were the means by which this was communicated to you? Is it face-to-face or - - -?---Phone. I think it was a phone call.

On both occasions?---I can't say that with any certainty, but certainly the first occasion because I remember that he hung up the phone, just hung it up in my ear, he was that angry.

You recall that just before you decided to appoint Mr Stavis there was a meeting that Mr Hawatt and Mr Azzi had with you?---In my office, was it?

I don't know whether it was in your office, but they had a meeting with you.---They could have done. I, I can't recall.

No. Excuse me a moment. You were asked in the examination of you by Mr Andronos about your relationship with Mr Demian and the fact that Mr Demian and Mr Alha had made representations on your behalf during the war - - -?---Yes.

10 - - - to Michael Hawatt, as you understand it.---Principally to Michael, yes.

And you gave evidence that a lot of people provided you with support and indicated that they were providing you with support and did support you in that dispute.---Yes. Yes.

The difference between your relationship with property developers and your relationship with others, though, surely, was that in the case of property developers your relationship with people who were seeking to gain a financial benefit from an exercise of power by council.---From an exercise of their statutory duties.

20

Yes.---Yes.

Whereas the other people were not. You know, an MP, a friend.---But they could. They could be in a similar situation if they submitted some sort of application.

But typically, of course, the property developers were. They were in the market for council's consent to development applications that they either had before council at the time or were in respect of projects that they had in the Canterbury local government area, weren't they?---Yeah, I think that's fair to say. I think that's fair to say.

30

And so the nature of your relationship with those two men in particular – having regard to their involvement, it seems, in trying to bring about some reconciliation – was significant in at least this extent, that quite apart from what you might think about it, they might see themselves as putting themselves in a better position or a favourable position to obtain a favourable exercise of council power in respect of their applications as a result of them helping you.---Yes, although they'd have done a lot better if they'd cultivated relationships with the councillors because they're the ones who made the decisions.

40

Now, I just need to ask you, though, about your answers to questions Mr Andronos asked you about your understanding about why Mr Occhiuzzi left. You didn't really mean to convey to the Commission, did you, that you were naïve as to what impelled Mr Occhiuzzi to leave, did you?---No, I, I sensed that there'd been some issues and that he was a little bit distressed

about the way Canterbury Council was conducting itself at that time after his appointment.

And you knew that, to your knowledge, he had been the subject of activities that would cause him stress by Councillors Azzi and Hawatt.---Yes.

10 And you knew that you had been putting him under pressure in relation to the work that he did in his job.---No, I, I said the same thing to him that I did to his predecessor and to his successor, and all I was interested in was getting the processes of the planning division in order so that we could expedite applications and improve our processing times. That's the only pressure I put on Mr Occhiuzzi unless there was a particular application, in which case I, I'd inquire as to why there were delays.

20 So you knew why he left, didn't you?---Well, I could have assumed that, but I didn't, he didn't come into my office and say, "I'm going because I can't put up with these people anymore." He never said anything like that. But I sensed he was, he was a very sensitive individual and I think he was under pressure, yes.

And he provided you with a notice of a few days before he left.---Yes, yeah.

You didn't take an opportunity of saying, "Do you want to come and have a chat about this?" or "Do you want to tell me about it?" or "What's this about?"---I, I think I may but, I think I may have, but he, he declined. He'd made up his mind at that stage.

30 When you say you may have, what are you telling us?---I'm saying that could have happened. I did get a resignation letter from him, as is required, and I read it. From memory it was fairly, fairly short, it didn't go into a lot of depth, and I may have said to him, look, come on, we'll chat. But he didn't do that. I think he'd already decided he was going.

Yes. Those are my additional questions of Mr Montague, Commissioner.

THE COMMISSIONER: All right. Before I excuse you, Mr Moses, you were going to make some enquiries about that issue of the legal advice and who could obtain legal advice?

40 MR MOSES: Yes, Commissioner, sorry. The instructions that we have, just bear with me for a moment. So the instructions we received are that a mayor or councillor may obtain legal advice upon resolution to that effect of the elected council. We're instructed that this did not occur in relation to the advice which was sought from the solicitor by Mr Hawatt, that is, Mr Belling. When a mayor wants to obtain legal advice in relation to a matter concerning the general manager which is urgent, they can do this but would then need to have that ratified at the next council meeting by way of a resolution, and this was not something which occurred in relation to the

matter involving Mr Montague. That's basically the effect of the instructions we received. We're told that there is no documentation that deals with this, but that was the process which was followed up in council.

THE COMMISSIONER: That was the practice - - -

MR MOSES: That's what we're told.

THE COMMISSIONER: - - - in the relevant period.

10

MR MOSES: And if the Commission would like us to undertake this we could have one of the corporate governance employees of the council provide a statement which sets out the procedure and how that was communicated to councillors at relevant times if that would be useful.

MR BUCHANAN: On my part, Commissioner, that wouldn't be necessary.

MR MOSES: Thank you.

20

THE COMMISSIONER: Now, just before I excuse Mr Montague, does anybody have a, sorry, have any questions arising from that? And Mr Drewett?

30

MR DREWETT: I was just trying to understand, respectfully, what was just said by my learned friend Mr Moses in relation to the legal advice. I understood it as being put forward as a positive proposition that my client, Mr Hawatt, had sought legal advice from Mr Belling. I presume that was in relation to that last document that was shown where he'd been invited to get some instructions from. I understand that Mr Belling hasn't given evidence in this Commission - - -

MR BUCHANAN: Mr Moses didn't make that positive assertion.

MR DREWETT: I understood that that was, and if I misunderstood that, I apologise, but I understood that Mr Moses was saying in relation to the advice that Mr Hawatt had sought from Mr Belling, but I might have misunderstood.

40

MR BUCHANAN: So far as I am concerned, Commissioner, it's simply inferences from the document, that's all.

MR DREWETT: Well, it's an (not transcribable) inference in my respectful submission.

THE COMMISSIONER: Well, hold on for a sec.

MR MOSES: Commissioner, just to avail the concerns of my learned friend, when I was putting the proposition or providing you with the

information, what I said – and if I didn't come out this way, then that's my fault – was that we are not aware of any resolution by council that would have authorised Mr Hawatt to have obtained advice directly from Mr Belling. I'm not suggesting that Mr Hawatt did seek that legal advice from Mr Belling, but if that's what occurred it certainly didn't occur with a resolution passing.

THE COMMISSIONER: All right.

10 MR MOSES: That's the position.

THE COMMISSIONER: Mr Drewett, it arose from the document at volume 3, page 242, which on its face appears because of the footer to be some kind of, I'll say advice or legal work done by Mr Belling. I think at the moment we just have that document on its face. Whether we can take, whether it's taken any further in subsequent evidence, I don't know.

MR DREWETT: Yes, I agree, Commissioner, and I'm grateful to my learned friend for that clarification.

20

THE COMMISSIONER: Now, Mr Andronos?

MR ANDRONOS: No, I was just going to make the application.

THE COMMISSIONER: The application. Mr Montague, thank you very much for coming to give evidence. You're excused.---Thank you very much.

30 **THE WITNESS EXCUSED**

[3.40pm]

THE COMMISSIONER: Now, we've got Mr Jackson here, do we? And we can fit Mr Jackson in?

MR BUCHANAN: Ms Mitchelmore will be taking this witness.

THE COMMISSIONER: Oh, Ms Mitchelmore. Mr Jackson, you're not represented, are you?

40

MR JACKSON: No, Commissioner, I'm not.

THE COMMISSIONER: Mr Andronos, can you sprint or remain where you are.

MR ANDRONOS: I'm staying out of his way. I'm clearing a path, Commissioner.

THE COMMISSIONER: We'll just allow Mr Andronos to – now, Mr Jackson, oath or affirmation?

MR JACKSON: Oh, the oath, Commissioner.

THE COMMISSIONER: Thank you, Mr Jackson.

MS MITCHELMORE: Commissioner, section 38 of the Independent Commission Against Corruption Act might need to be raised with Mr Jackson.

10 THE COMMISSIONER: Yes, I was going to ask about that. Mr Jackson, do you know about section 38 of the ICAC Act?---Yes, I do, Commissioner, and if the declaration could be made, but I'm certainly aware of the exemptions, absolutely.

I do this with every witness.---Yes.

Can I emphasise the exception is if you give false or misleading evidence to this Commission that is a criminal offence under the Act. You can be prosecuted. It's an offence in the form of perjury. It brings with it a
20 maximum penalty of a term of imprisonment.---Thank you, Commissioner.

Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by this witness and all documents and things produced by this witness during the course of the witness's evidence at this public inquiry are to be regarded as having been given or produced on objection and there is no need for the witness to make objection in respect of any particular answer given or document or thing produced.

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

40

THE WITNESS: Thank you, Commissioner.

THE COMMISSIONER: Ms Mitchelmore.

MS MITCHELMORE: Yes, thank you, Commissioner. Mr Jackson, can you state your full name, please.---Yes. My full name is Peter Millard Jackson.

And, Mr Jackson, what's your occupation?---I'm a solicitor.

And your place of employment?---Level 2, 50 King Street, Sydney and I'm a partner with Pikes & Verekers Lawyers at that location.

And for how long have you been a partner at that firm?---A partner at the firm for over 20 years. Admitted on 10 July, 1981, 37 years ago.

10 Thank you. Mr Jackson, I wanted to take you back to 2015. In your capacity as a partner of Pikes & Verekers, I might call it Pikes for short if that's convenient?---Yes.

Were you engaged by Canterbury City Council to provide advice from time to time in respect of planning matters in the local government area?---Yes, I was, and the firm was indeed retained as well, yes.

20 And did the provision of that advice, or did that include provision of advice in relation to development applications for particular sites?---It did, yes.

And in relation to such matters in 2015, who were you regularly dealing with at the council in relation to provision of that advice?---A number of people but regularly Mr Stavis, Mr Andrew Hargreaves and Mr George Gouvatsos.

Thank you. Now, Mr Jackson, was the firm engaged to provide advice in relation to a development application for a site at 548-568 Canterbury Road?---Is that the Harrison's Timber site?

30 Sorry, yes. Otherwise known as the Harrison's Timber site.---Yes, yes, indeed, yes.

Did you personally act on that matter?---I did.

Can you recall who from the council engaged the firm in that regard?
---Spiro Stavis contacted me toward the end of June in 2015 and asked me to attend a council meeting which I did – with him, not a council meeting, a meeting with him the following day and I attended that meeting.

40 And sorry, that was a meeting, not a council meeting but a meeting at the council. Is that right?---A meeting at the council chambers, yes.

And that was with Mr Stavis, is that right?---Yes.

Was it with anybody else?---I recall it, it may well have been with Mr Gouvatsos as well.

But for intents and purposes, an internal council meeting with you, is that right?---Yes, at Campsie, at the council chambers at Campsie.

And can you recall what the purpose of having you at that meeting was?

---Yes. Council was seeking some urgent legal advice in respect of the Harrison's Timber site, that is the development application that was lodged for which council was assessing, it involved an additional, or an exceedance of the development standard relating to height, and that exceedance was a, a considerable exceedance of two storeys above the development standard.
10 The developer had lodged a submission under clause 4.6 of the Local Environmental Plan, seeking a relaxation of the standard, a variation of that development standard. The council wanted advice as to whether, as I understood it, the collegiate body, the council, could grant approval, having regard to the exceedance of that standard as set out in a submission pursuant to clause 4.6.

And that was the subject of the meeting on 30 June, 2015?---Yes, it was, and I was provided with documentation that was lodged in support of the application and, in particular, the clause 4.6 submission itself, which was
20 provided to me by way of email the day before, so I'd actually read it by the time that I got to the meeting, to make the meeting a little bit more meaningful, and that advice was also supported by a barrister's opinion, a written opinion.

I'm sorry, was that the advice you gave or the advice coming from the applicant?---No. It was, it was a barrister's opinion that came forward or engaged by the applicant's representative.

All right. And did you provide advice in the meeting, the course of the meeting that day?---I, I provided some advice in conference, orally, but not
30 in writing. Yes, I did.

And did you follow that up with a written advice?---Yes. My recollection is yes, but I was engaged to instruct senior counsel.

To obtain advice?---To give written advice on whether it was open to the council in the circumstances of that matter, having regard to the 4.6 submission, whether it was open to council to grant consent to the development, having regard to the extent of the exceedance and, and being
40 supported on the basis of that 4.6 submission that had come forward by the developer.

All right. Do you have any recollection of what, if anything, Mr Stavis or Mr Gouvatsos said to you in the conference about the development application or the circumstances surrounding it?---It was – yes. It was made known to me that it was quite contentious. It was a very large development site. I had that from the documentation that had been emailed to me the day before and there was some urgency to get the advice as soon as possible.

Now, are you able to indicate, following that meeting and the issues arising in relation to clause 4.6, are you able to indicate the extent of your ongoing involvement in relation to this development application following that request for advice?---Yes. I met with Spiro Stavis and George Gouvatsos on that, toward the end of June. I had had the benefit of looking, of course, at my documentation in my file, or copies of the documents, and I worked on that matter or it was an active file for a period of about four weeks. So the firm's involvement and, but me as a solicitor and a partner responsible, ended really in I think about the 29th or thereabouts of July that year. After that period of time, that file remained open and was close in around about November that year but no work was performed on that matter after around about 29 July, 2015.

I see. All right. Mr Jackson, were you aware in or about early December of 2015 that the development application for the Harrison's site was being submitted to a meeting of the council City Development Committee?---No.

Are you aware of that now?---I certainly am from, and I have had the benefit, I've not read all of the transcript but I have had the benefit, when I've had time, to read some of it, so I am aware on reading the transcript of what had, what was taking place within council, having regard to the evidence that's been given, in December of that year. But I was certainly, after 29 July or thereabouts of that year I had no further involvement, nor did the firm, in respect of that matter, and did not know how the application had been progressing.

I see. Just thinking about the time around 3 December, 2015 and the weeks leading up to that date, were you in the office at that time?---No. I, I was on leave from around about – can I, can I just refer to my notes? I, I know that I was on leave and I've provided some information. From 24 November, 2015 to 6 December, 2015 I was in Western Australia on annual leave, yes.

On annual leave.---Yes.

THE COMMISSIONER: You just referred to notes. Have you checked some kind of diary back at work or something like that?---Yes, yes, Commissioner. On reading some of the transcript and in respect of some of the evidence that's previously been given by witnesses, I felt it necessary to check my own records to see where I was at towards the end of 2015. I made inquiries of my office manager, who is very diligent, and she informed me that, yes, I was on leave. And then to make sure that those dates were correct, I discussed the matter with my partner, and she is a stickler, and she reminded me that we were in Perth on those dates.

MS MITCHELMORE: Thank you, Mr Jackson. I just wanted to show you a document which is volume 22, page 124. This is not a document that you had any involvement in preparing but I just want to show it to you for the

purposes of its content. And I just wanted to draw your attention, Mr Jackson, to a reference about halfway down the page. There's an email, this is an email from Mr Sammut of the council to the general manager, which indicated that, pointing out to Mr Montague that a Mr Hudson, who was within the IHAP part of the council, was of the opinion that this particular development application couldn't be determined without referral to the RMS. Is it the case that you were not informed at or around this time about issues regarding the absence of RMS concurrence in relation to this site?

10 ---No, I was not informed at all, and as I indicated just a short while ago, my involvement, the firm's involvement and my involvement as the partner responsible for this matter concluded on or about 29 July, so I certainly was not aware of what had been transpiring with this application at that period of time.

All right. So then just looking at the top email on this document, just scrolling up, you'll see that this is an email from Mr Stavis to Mr Montague of 30 November in which Mr Stavis puts a proposal to Mr Montague that a motion could be moved off the floor, recommending the following,
20 "Council is generally in support of the proposed development and delegates the determination of the development application to the general manager once concurrence is obtained from the RMS." Do you see that?---Yes.

Do you recall any conversation with Mr Stavis either at or around 30 November, 2015, or indeed previously, in which he asked for your views on a proposal of that nature?---I don't recall and I certainly did not have a telephone conversation with Mr Stavis in respect of legal matters arising from the powers to delegate functions to a general manager. That conversation never took place - - -

30 I see.--- - - - not only on 30 November, but it is quite an esoteric area of the law and I can say I, I do not recall ever – maybe it was fortunate for me – ever giving oral or written advice in respect of whether a collegiate body could delegate its functions in respect of the determination of a development application. I don't believe I've ever given that advice in my career. Had I been asked, I wouldn't have even known the answer, quite frankly. I would have had to have gone to the legislation.

40 THE COMMISSIONER: And when you describe it as an esoteric question or area, does that mean it's complex or unusual or - - -?---Commissioner, it is quite unusual. It's not a usual matter for a collegiate body, in my experience, to delegate a function in respect of the determination of a development application to a general manager. It's, it's, yes, it's, it's quite unusual. So, if I had have been asked, which I wasn't, I would have certainly recalled a conversation in respect of that issue.

And from what you're saying, it's something that you couldn't just answer, relying on your experience and knowledge of planning law?---No.

It suggests something that you'd have to researched et cetera?---Indeed, Commissioner. I, I've been practicing for over 37 years and a student at law five years before that, I, I know a lot of really good solicitors in my jurisdiction and I'd be scratching to find a, a lawyer who could answer that on the spot over the telephone. There would definitely be a need, putting aside context, but just the raw question of delegation, most practitioners experienced in the jurisdiction would be aware of a power to delegate but certainly would need to go to the legislation because not all functions can be delegated, so you'd need to go to that legislation to be quite clear as to what
10 could in fact be delegated if anything.

MS MITCHELMORE: Commissioner, I have no further questions for Mr Jackson.

THE COMMISSIONER: Thank you. Right, very quickly, Mr Moses?

MR MOSES: No questions.

THE COMMISSIONER: Mr Neil?
20

MR NEIL: No.

THE COMMISSIONER: Mr Andronos?

MR ANDRONOS: No.

THE COMMISSIONER: Mr O'Gorman-Hughes?

MR O'GORMAN-HUGHES: No questions.
30

THE COMMISSIONER: Mr Drewett?

MR DREWETT: Nothing.

THE COMMISSIONER: Mr Pararajasingham?

MR PARARAJASINGHAM: Commissioner, I don't have any questions but I just note for the record, and I've raised this with Counsel Assisting, my view is, and Mr Stavis obviously gave an account of these interactions,
40 Browne v Dunn, as it applies in this Commission, does not require me to put that version and I understand Counsel Assisting agrees with my view on that. So on that basis I don't propose to ask any questions.

THE COMMISSIONER: Mr Pullinger?

MR PULLINGER: No, Commissioner, thank you.

THE COMMISSIONER: All right.

MS MITCHELMORE: Could Mr Jackson be excused, Commissioner?

THE COMMISSIONER: Yes. Thank you very much, Mr Jackson.---Thank you, Commissioner. Thank you.

THE WITNESS EXCUSED

[3.57pm]

10

THE COMMISSIONER: All right. Can I now discuss further progression. We're about to pull up stumps because this room is needed shortly. Ms Mitchelmore, are we commencing with you tomorrow?

MS MITCHELMORE: Yes, with Mr George Vasil.

THE COMMISSIONER: And then we're going to move to - - -?

MS MITCHELMORE: Mr Azzi, which is back to Mr Buchanan.

20

THE COMMISSIONER: Thank you. Any other issues or questions, matters, administrative matters? All right, then, we'll stand adjourned until tomorrow morning at 10 o'clock.

AT 3.58PM THE MATTER WAS ADJOURNED ACCORDINGLY

[3.58pm]