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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 TUESDAY 18 DECEMBER, 2018

AT 11.00AM

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

THE COMMISSIONER: Any administration, Mr Buchannan?

MR BUCHANAN: No, not that I'm aware of, Commissioner.

THE COMMISSIONER: Mr Montague.

THE COMMISSIONER: Now, Mr Drewett.

MR DREWETT: Yes. Thank you, Commissioner. I wonder if we could hand up volume 5, page 240 in front of Mr Montague again and perhaps on the screen to assist Mr Montague. Mr Montague, yesterday afternoon I was asking you some questions about the interview panel and I was putting
10 certain propositions to you, and you agreed with some of the propositions I put to you in relation to the meeting that you had had on, excuse me, 17 March, 2015 with investigator Richard Murphy and one other, and you would recall those questions, yesterday?---Yes. Yes, sorry.

No, that's fine. I'm going to ask you some more questions in relation to that meeting you had with those two investigators and I'll be drawing your attention to certain things that were said in the report, or this memo, by Richard Murphy, and asking you to comment in relation to those. If you
20 need time at any stage just to have a look on the screen or you need some more information, I'm happy to give that to you. But you would agree yesterday that we talked about the interview numbers going from 13 down to five and that Mr Hawatt had no involvement in relation to that process. Do you agree with that?---Yes, yes.

And then at some stage the candidates went from five to three, is that right?
---That's right.

And Mr Hawatt didn't have any involvement in that culling from the five to the three. That's fair to say, isn't it?---That's right.

30 If you have a look at page 3 of that document. Excuse me.

THE COMMISSIONER: So that's page 242?

MR DREWETT: That will be page 242, yes. Yes, 242. If you have a look about halfway down, probably just below halfway, you see the words, "He said that they didn't push hard for Spiro." Can you see that?---Yes.

40 "He" of course is you, and "they" presumably refers to Mr Hawatt and Mr Azzi and maybe Mr Robson. Or who is "they"?---Well, I was referring, I believe I was referring then to Councillor, ex-councillor Hawatt and Azzi.

All right. And you recall and you agree that this is what you told Investigator Murphy some few months, I think four months we worked out, after the interview.---Well, that's the best of my recollection, yes.

And that's the truth of the matter, isn't it? That they, as in certainly my client, didn't push hard for Spiro. Do you agree with that?---No, I agree with that.

If you have a look a bit further down that same page, the last paragraph, it says, "He indicated that the panel ultimately failed to reach a decision. Jim said that he wanted to offer it to Simon," and that's Simon Manoski. Do you agree with that?---Yes.

10 "Azzi and Hawatt said that they were happy for him to do so." You've read that. Do you agree that that's what you told Investigator Murphy?---To the best of my recollection, yes.

And at the risk of sounding like a broken record, that's the truth of the matter as well, isn't it?---Well, as I said, to the best of my recollection that's what I told Mr Murphy.

Excuse me one minute. You told Investigator Murphy that the mayor had indicated to you that he would go with your assessment. Do you agree that
20 you said that to the investigator, Murphy?---Yes, that's correct.

Do I take it from that, that what you were conveying to the investigators was that the mayor had blindly given you his support? That is to say it didn't matter, as far as you were aware, who the candidate was. From Mayor Robson's point of view, he would give you his support. Is that what you were conveying to the investigators there? That was probably a clumsily worded question, but do you understand what I'm putting to you?---Yes.

30 THE COMMISSIONER: Are you looking at, on page 242, the paragraph starting, "He indicated that Karen Jones was his preferred candidate. The mayor indicated that he would go with his, Jim's, assessment"?

MR DREWETT: Yes. That's so. I was trying to find it, Commissioner, and I couldn't quite see it. Do you see that on page 242?---Yes.

Do you want me to ask the question again? Because it was a rather clumsily worded question.---Please.

40 You were conveying to the investigators, weren't you, that Mayor Robson had given you his vote, basically?---Yes.

Now, you've been taken to this code of conduct as applies to council staff and councillors, and you're aware that, of course, the mayor is an elected councillor. Is that right?---That's right.

Doesn't the mayor therefore under a code of conduct have a duty under that code of conduct to properly examine and consider all the information that's

presented to him on council business? Isn't that part of the code of conduct as relates to all councillors, which would include the mayor?

MR BUCHANAN: I wonder if my friend could just indicate which part of the code of conduct he's referring to, please.

THE COMMISSIONER: Yes. Thank you, Mr Buchanan.

10 MR DREWETT: Item 7.6. I wonder if the code of conduct could be brought up. I have in front of me 7.6 but mine pre-dates the tender. I think it should be 7.6. If it could be brought up on the screen I would be grateful.

MR BUCHANAN: Volume 2, page 64.

20 MR DREWETT: If you have a look at 7.6 about halfway down that page, "Councillors and administrators must properly examine and consider all the information provided to them relating to matters that are dealing with, to enable them to make a decision on the matter in accordance with council's charter." Isn't it the duty of any councillor, including the mayor, to properly consider all of the information that is presented to them in relation to council business and to make an informed choice based on the merits of the information? Do you agree with that general proposition?---I agree with that in general terms.

Wasn't Mayor Robson, by blindly giving you his vote, acting in conflict with that general proposition?---I don't think so.

MR BUCHANAN: I object.

30 THE COMMISSIONER: Sorry.

MR BUCHANAN: It's not going to assist the Commission in my respectful submission.

THE COMMISSIONER: Yes, what's the relevance of it, Mr Drewett?

MR DREWETT: Well, I mean, it may have some relevance in relation to the circumstances of the selection of – I can move on but it's - - -

40 THE COMMISSIONER: I think move on.

MR DREWETT: I have further questions in relation to the selection process and how that selection process was ultimately arrived at.

THE COMMISSIONER: I've got no problem - - -

MR DREWETT: And there were only four people on the panel as I understand it.

THE COMMISSIONER: On the topic of the selection I've got no difficulty. Whether Mayor Robson was in breach of a code of conduct on this particular point is not assisting me so if you could move on that would be good.

MR DREWETT: Yes. Thank you. So there were four people on the panel who had presumably a vote, is that right, in terms of who the candidate would be? Because Judith Carpenter was there as a consultant. She didn't
10 have a vote as such, did she?---No.

THE COMMISSIONER: Is it strictly a vote?---No, it's not a vote. It's not a vote.

Because I thought it was your decision.---That's right.

MR DREWETT: So what was the purpose, therefore, in having people on the panel if ultimately they didn't have, if you like, a vote in relation to who would be selected as the director of planning? What was the purpose of
20 having people on the panel?---Well, as I've given in evidence before, the mayor would normally be involved ex officio and the purpose was to try to satisfy the councillors would have ownership of the process so that they were comfortable with the person ultimately appointed. But you're right, it is my decision in consultation with council.

Following the interview, as I understand it, a decision had not been reached by you as to who would be selected. That's the situation, isn't it?---My memory's vague about that, but I don't think so, no.

30 THE COMMISSIONER: Can I just ask, the usual process, as you said, you would make a decision but you'd have to consult the council. You've given some evidence before that on other occasions you would interview and then you would prepare a report to go to council.---Well, that was my intention here too but it never, we never got that far.

And the report to council, did that require some resolution by council or was it purely just to inform them, look, I've interviewed the best candidate and my view is Sue Smith and I intend to appoint her?---I would normally have included a recommendation, but it's a question of how you interpret
40 consultation, how far you go, and, and in my case in previous examples I always put a report up recommending a particular applicant.

And you would expect council to resolve to accept that recommendation?
---Yes, I would, yes, unless they had some very strong reasons, but it's never happened to my knowledge.

All right. Thanks, Mr Drewett.

MR DREWETT: Yes, thank you. In the post-interview meeting that you had with the people on the panel, it was decided, was it not, that there would be some follow-up investigations, if you like, by Ms Carpenter in relation to all three candidates. Do you agree with that?---Mmm, I can't recall. I, the, the, the discussions, which were very brief, after the interviews were inconclusive. I don't recall that, actually, Mr Drewett.

10 And I'm going to suggest to you that it was communicated – perhaps by you but I would suggest probably by you – in that post-interview meeting that if everything stacked up following further investigations in relation to all the candidates that the job would in fact be offered to Simon Manoski. Do you agree with that?---No, I can't agree with that either. I don't recall. I know there was certainly support for Simon Manoski.

Well, you supported Simon Manoski as well, didn't you?---He was my second choice, yes.

20 I'm going to suggest to you that it was communicated that Simon Manoski would in fact be offered the job of director of planning.

THE COMMISSIONER: Sorry, communicated by whom?

MR DREWETT: By yourself during – well, no, I withdraw that. It was communicated by yourself during that post-interview meeting that if everything checked out in relation to the candidates that Simon Manoski would be offered the job.---No, I don't think that's the case. I don't think that's the case. I don't recall.

30 Some efforts were made to contact Simon Manoski by yourself, as I understand it.---Yes. My office, yes.

And I think you were told something about him being overseas, is that right?---That's right.

Can you tell us something about the efforts that were made to contact Simon Manoski? Can you recall if it was by way of telephone call or by letter or - -?---I actually think it was Judith Carpenter who tried to contact him by phone.

40 So do you say that you yourself did not make any efforts to contact him but that was left to Judith Carpenter?---Other than asking Judith to follow up.

And you say that Judith Carpenter told you that she had tried to call him and couldn't get hold of him or something like that?---That's, that's what my recollection is, yes.

Going to suggest that some days after the interview you called up Michael Hawatt, my client, and said, "I found something on Simon Manoski. I can't

give him the job.” Can you recall having a conversation similar to that with my client a few days after the interview?---No, I, no, I don’t recall a conversation.

And that I'm going to further suggest to you that in that conversation you said words to the effect of, “So we go to number two.”---No, look, I, I can't recall the conversation. I do know there were some issues with Simon, yes, but I don't know at what point that happened.

10 And I'm going to suggest to you that when you had said those words, in effect “So we go to number 2,” my client had communicated to you the word, “Okay.”---Well, possibly. I don't know.

Excuse me a minute. Can we have a look at page 242 again of that memo, that file note, and I appreciate it’s not your document, Mr Montague. You have a look at that last paragraph, which says in part, “Jim said that he wanted to offer it to Simon. Azzi and Hawatt said they were happy for him to do so,” and then it says, “but a job needed to be found for”, and I'll ask you some questions about that last bit in a moment. Do you agree that you
20 told Investigator Murphy, some four months or so after the interview, that you had wanted to offer the job to Simon Manoski?---I don't recall that but I, I could have.

And do you recall telling Investigator Murphy in that meeting that Azzi and Hawatt said that they were happy for you to offer the job to Simon Manoski?---No, look, I, I don't recall any of that. I've said in evidence that there was no conclusion reached after, immediately post-interview.

Well, I'm going to suggest to you, if I haven't made it abundantly clear in
30 my manner of questions, Mr Montague, that a decision had been reached to offer the job to Mr Manoski and that my client, Mr Hawatt, was happy for that to happen and that is in fact what you communicated to the investigators when you spoke with them some four months later?

THE COMMISSIONER: There’s about three propositions there.

MR DREWETT: Well - - -

THE COMMISSIONER: So, Mr Montague, the first two I think we can
40 link together. It’s been put to you a version that at the end of the interviews, you indicated you were going to offer the job to Mr Manoski, and Mr Hawatt was happy with that and I think your evidence is you don’t agree with that.---No. I don't think that’s how it happened. You know, yeah, I don't know that’s what happened at all but certainly Manoski was in the mix at that stage.

And then I think the next component of Mr Drewett’s question was, and that particular version you relayed or told to Mr Murphy?---Well, I can't recall

my exact words to Mr Murphy. These are, these are his words, not mine. I've got no reason to necessarily disagree with it but maybe his memory failed him too. I, I don't know.

MR DREWETT: Now, just on that issue, the meeting you had with Mr Murphy, that wasn't just a one-on-one between you and Mr Murphy. There was a senior investigator as well, wasn't there, in the same meeting?---I, I, I think, when they came out, I think there was. He was accompanied by a woman who, I'm not sure whether she was a senior or not and they spoke to Mr Sammut first and then they came up to my office.

Sure. When you were being asked questions about the interview panel and who was the preferred choice of various people by Officer Murphy, can you recall whether or not this female investigator was in the presence of you and Mr Murphy at that particular time?---I can't recall that either. I, it's possible she was still with Mr Sammut.

In relation to the interview itself – and I'm happy for that to be taken off the screen, if it please the Commission. Were you present at the Commission when it was put, certainly by myself to Mr Stavis, that the sample interview questions were not given to Mr Stavis but that he took them without the consent of my client? Were you here and heard that evidence?---No, I wasn't. No, I wasn't.

In relation to the interview, there had been prepared a document headed Suggested Interview Questions.---Yes, that's right.

Was that your idea or was that the idea of Ms Carpenter to have such a document?---No, that was standard procedure at Canterbury.

And no doubt it will be suggested that Mr Stavis secured some advantage by having access to those questions prior to the interview.---Well - - -

Is it the situation, and I think you've given evidence in relation to this, is it the situation that during the interview itself my client, Mr Hawatt, did not restrict himself to that particular document and asked his own questions? ---That's true.

So he, just to be clear on that, he asked questions of Mr Stavis that were not the suggested interview questions but different questions.---He, they both went off script.

Yes.

THE COMMISSIONER: And when you say both, that's Mr Azzi and Mr Hawatt?---Mr Azzi and Mr Hawatt, yes.

MR DREWETT: Going to take you to a different subject now, if I may, Mr Montague, and the subject I want to take you to is the meeting that took place, we're told, on 27 December, 2014 at the Canterbury Leagues Club.
---Yes.

And you were asked a number of questions in relation to that particular meeting. It was a meeting attended by you and certainly by my client, Mr Hawatt.---Yes.

10 During that, and I think that meeting went for about an hour, is that right?
Or give or take a few minutes.---Give or take a few minutes, yes.

And that was in the coffee room area of the club, if I can describe it like that.---Yes, that's right.

I'm going to suggest to you that at that meeting my client, Mr Hawatt, did not have – certainly not visible in his hand or anything of that nature – a piece of paper which might have been an agenda or something like that variously described. He didn't have such a piece of paper in his hand during
20 that meeting.---I don't recall. I might be confusing it with a later meeting. I don't recall.

During that meeting, and no doubt – and I think you've given very clear evidence about this – a very stressful time of your life, those days leading up to that.---Extremely.

It was said perhaps somewhat unkindly by my client at some part of that meeting words to the effect of, "Jim, you've really messed up. Council's going to get sued." Can you recall perhaps not those exact words but words
30 of that like being said by my client?---I don't recall the exact words but that's, that's possible, yes.

Not suggesting that they would have been the first words that would have opened the meeting, but I'm suggesting words like that drawing your attention to the fact that council was exposed for a potential breach of the contract, the employment contract. You think it's possible?---Yes, there was certainly an exposure, yes.

40 During that same meeting you raised the subject with my client that you had your anniversary coming up in August in terms of your anniversary of how long you'd been at the council. Do you agree with that?---I could have raised that with him, yes.

And during that same meeting you used the words in effect, perhaps not these exact words but in effect, "I don't want to look bad."---No, I don't believe I said that.

I'm suggesting in that meeting you communicated to my client, Mr Hawatt, that you wanted to retire, you wanted to make it to the anniversary, but that you didn't want to look bad.---No, I don't recall using the term "look bad".

Perhaps not those exact words, but words to that effect. Do you agree with that?---No, I, I was concerned about not so much the anniversary – 50 years I think it was – but I was more concerned about the expiration of the contract, which would have been in April 2017.

10 I'm going to suggest to you that during that meeting, after the talk about your anniversary, retirement and things of that nature, my client said words to you in effect, not the exact words perhaps but in effect, "That's okay, Jim. No problem. If you want to go in August, that's fine."---I'm sorry, I can't recall the exact words that we used or what he said.

And then I'm going to further suggest to you, Mr Montague, that you raised the issue about your wanting – once again not exact words in fairness to you – wanting to go with the car, "I want to go with the car."---Yes, I could have done that. I can't, again, I can't recall (not transcribable)

20

And there was some discussion in relation to your entitlements if and when you did retire but that those discussions were initiated by you in that meeting and not by my client, Mr Hawatt.---That's possible.

THE COMMISSIONER: Did you want to go in August or when your contract was up?---I'd prefer the contract date of April '19, but – April 2017.

30 MR DREWETT: Just in relation to that question that the Commissioner has asked, having heard your answer I'll put the proposition to you again. I'm going to suggest that you had raised in that meeting the date of August as being a significant date and a date that you would be thinking of retiring on.---It was a significant date but I don't recall saying that that took precedence over the contract expiration date. It was just open discussion.

It was just open discussion?---That's all, yeah.

40 Mr Montague, can I suggest to you that the answer you've given, not being an emphatic no and that proposition wasn't put, leaves open perhaps the possibility that that was in fact raised by you. Do you agree that it's possible in your mind that that may have been so?---I agree it's a possibility, yes. That's as far as I'd go.

THE COMMISSIONER: And, sorry, it's a possibility that Mr Montague raised August as a significant date when he may retire?

MR DREWETT: Yes, that's so.

THE COMMISSIONER: Thank you.

MR DREWETT: Excuse me, Commissioner. Will you just give me a minute just to check my notes. Just in relation to, and I'm sorry I'm jumping back to that document that's offscreen now. Perhaps we could have that document, page 242 back on the screen. If you have a look at that last paragraph there, and I read the first part of it about your wanting to offer the job to Simon Manoski, and Azzi and Hawatt said they were happy for him to do so, but it goes on, "But a job needed to be found for Spiro." I'm going to ask you a question in relation to that, and I'm going to suggest to you that in the days and indeed the week or two following the interview it was never put to you by my client Mr Hawatt that a job needed to be found for Spiro.---That's true.

If there was any discussion – and I preface that with the word “if” – there was any discussion by my client about a job needed to be found for Spiro, it would have been said in the context of the financial exposure that the council was under in relation to the breach of contract for Mr Stavis?---That wasn't an issue. He didn't say a job had to be found for Spiro. Councillor Azzi did.

It was Mr Azzi, thank you. So, just to be clear in relation to that, and I understand you answered but just for the purpose of the transcript perhaps, it's never been suggested by Mr Hawatt to you that a job needed to be found for Mr Stavis?---Not that I recall, no.

Yes. Thank you. thank you, Commissioner. I have no further questions.

30 THE COMMISSIONER: All right. Mr Pararajasingham.

MR PARARAJASINGHAM: Thank you, Commissioner. Mr Montague, can you hear me all right?---Yes.

I appear for Mr Stavis. I just have three or four short topics to raise with you. So the evidence in the inquiry is that Mr Stavis submitted his application for the job on 25 October, 2014. The panel interview was on 11 November, 2014 and on 26 November - - -?---I think, sorry, I think it was 17 November.

40 Sorry, sorry, 17th. And on 26 November, 2014 there was a meeting between yourself and Mr Stavis at a café.---In Kingsgrove, that's right.

Kingsgrove. Giorgios?---Giorgios, yes.

And this was at a time before the war broke out?---Yes.

Now, I just want to ask you some questions about that meeting, and if you can just cast your mind back to it, it's the case that Mr Stavis presented as earnest for the job at that meeting?---Yes.

THE COMMISSIONER: Sorry, this is at Giorgios?

MR PARARAJASINGHAM: At Giorgios. Mr Stavis was keen to impress you at that meeting?---Yes.

10

Perhaps a little obsequious even?---I don't know about that. He was certainly keen to, to, to demonstrate his enthusiasm, yes.

And indeed that had been his disposition in all exchanges that you'd had with him certainly up until that point?---Yes.

20

And am I right in understanding that the purpose of this meeting was akin to a second-round interview?---No. I wouldn't go that far. It was, it was just an opportunity for me to get to know him a bit more, out of, out of the glare of an interview process, just one-on-one.

So an opportunity to get to know each other really in an environment away from council, away from council staff, away from councillors?---Yes.

And it was also an opportunity for you to apprise Mr Stavis of the realities of the job. Do you accept that?---Yes.

30

And amongst the topics that were discussed, can I suggest that you identified the dynamics within council?---We would have traversed that, yes.

You would have traversed concerns that perhaps you had about the processing time within the department of planning?---I can't recall raising that specifically but there, it was just, as I said, just a general chinwag, what, what, what, where the council was at, what my expectations were, that's all.

And it's likely, isn't it, that at this meeting you would have conveyed to Mr Stavis that the DCP role was one that had been historically volatile?---Yes.

40

And it's likely that you would have conveyed to Mr Stavis the types of concerns that councillors had with the former director, Mr Occhiuzzi? ---Yes.

And it is likely that you conveyed to Mr Stavis that there was a view – and not necessarily representing it as your own – but that there was a view that when it came to assessing development applications, for example, Mr Occhiuzzi had been too strict with the application of controls and the various planning instruments?---No. I don't recall raising that. No.

You have a definitive memory of not raising that?---No.

All right, so it's possible that that's a matter that you traversed?---It's possible.

THE COMMISSIONER: But you don't recall it?---I don't recall it, no.

10 MR PARARAJASINGHAM: But certainly there was a view to that effect, wasn't there?---You say on the day of the meeting at Giorgios there was a view to that effect?

Yes.---No. We didn't go into any great depth on any of these topics.

20 No, no, sorry. You misunderstood me. My question is, there was, as a fact, a view at council, perhaps amongst a couple of councillors, that Mr Occhiuzzi had been too strict with the application of controls in the various planning instruments?---I don't know about that. There was certainly concern amongst the councillors that the process, the development assessment process in particular, was too clunky. It didn't work. There were delays, inexplicable delays. That, that was the major issue. Processing times were bad and that Mr Occhiuzzi hadn't managed to reform that.

In any event, you've accepted that it's possible that - - -?---Yes, it is.

- - - that the view that Mr Occhiuzzi had been too strict with the application of controls may have been traversed.---Yes.

30 Now, can I just ask you, I just want to understand, I suppose, your mindset following the war. You've given ample evidence that that was a very difficult time for you, yes?---Extremely difficult, yes.

And it's the case that you came to appreciate the kind of power that Messrs Hawatt and Azzi wielded at council level, correct?---Well, I knew that already.

40 But certainly that was brought into sharp focus during the war.---Oh, of course, yes.

And they had demonstrated to you what they were capable of doing, correct?---Yeah, I think that's a fair, fair comment.

And you, of course, were seasoned in local government affairs, correct?---Yes.

And is it fair to say that you hadn't really gone through anything like that before?---I had once. Once before.

Was that sometime previously?---1998 to be precise.

THE COMMISSIONER: Sorry, 1998?---1998.

MR PARARAJASINGHAM: And, Mr Montague, as bad as the conflict was, you didn't walk away from the job, correct?

MR BUCHANAN: In 2014 or 1998?

10

MR PARARAJASINGHAM: 2014. No, I'm not talking about 1998. I'm talking about the war in 2014. As bad as things were, you didn't walk away from the job.---No. I thought about it.

Certainly. You contemplated it but you didn't do it. You certainly had the opportunity to do so.---Of course.

20

And part of your motivation for not doing so was that you wanted to continue in the role as general manager.---Yes, and I didn't want to desert the staff and, and the organisation in a very difficult time.

And you understood that what Messrs Hawatt and Azzi wanted was for you to honour the appointment of Mr Stavis.---Well, I can only answer that by saying they weren't happy when I did what I did.

Let me put it another way. Honouring the appointment of Mr Stavis had the effect of bringing hostilities between yourself and those two gentlemen to a close.---Ultimately, yes.

30

Did you regard that decision, the honouring of the appointment, as a kind of sop to those two gentlemen?

THE COMMISSIONER: Sorry, could you say that again?

MR PARARAJASINGHAM: A concession to appease them.---No, I was more concerned about the impact it was, the whole row was having on the reputation of the organisation, the staff and the council itself.

40

And is it fair to say that after the ceasing of hostilities, the war was certainly not an experience you wanted to relive?---I don't think anyone would.

And so what I'm suggesting to you, it's the fact, isn't it, that it was in your personal interest to keep these men onside and happy?---It was in the interests of the whole council that the, that there be harmony amongst the councillors and, and the management, yes.

I'm not suggesting that that also wasn't the case, but you must accept, surely, that it was in your personal interest to keep these guys onside and

happy. Do you agree with that?---Well, I don't think any GM wants to have councillors offside.

So is that a yes?---I'd say a qualified yes.

Now, I just want to ask you some questions about Exhibit 243. This is the telephone intercept between yourself and Mr Hawatt. You were asked some questions on this. I want to take you to a different aspect of it. Before I do that, Mr Montague, it would appear that you weren't big on the emails. Is that a fair comment?---I didn't hear that, I'm sorry.

You weren't big on the emails. It wasn't your practice to send lots of emails to staff or councillors.---I used the email, internal email system to the extent I needed to.

And you recall you were asked questions by Counsel Assisting to the effect that you failed to take contemporaneous notes of various conversations you had with people?---Casual, casual meetings in-house, yes, that's true.

20 And certainly it would appear that there is a dearth of telephone intercepts involving yourself. My question is this, did you deliberately avoid leaving a paper trail or any contemporaneous recordings of conversations you had and things you did?---No, not at all.

If Exhibit 243 could be brought up, please. Just one moment. You recall this exhibit, Mr Montague?---No. Just, it's there, though. I can't deny it's around.

30 Sure. But you were taken to this I think on Friday and yesterday I believe. This is the conversation you had with Mr Hawatt.---It seems that way, yes.

And can I just take you to page 1 of 3, and about halfway down Mr Hawatt says, "I said we got to back him up. We got to back Spiro up on this one." You respond, "Yeah, on that particular one. Some of the others, no, but this one I, I think." Mr Hawatt says, "No, this one, I'm talking about this one. It's", and it goes on. My question to you is this. Where you say, so you say, "Yeah, on that particular one," and then what follows, "Some of the others, no," what are you saying there?---I've got no idea. It could have been other applications on foot. I don't know. I've got no idea.

40 Well, let's take a step back. So Hawatt says that we've got to back him up, we've got to back Spiro up on this one. You say, "Yeah, on that particular one." Pausing there, plainly you're agreeing with Mr Hawatt's position that Mr Stavis needs to be backed up on a particular position that he's taking. You accept that?---No, not necessarily. I expect, I would expect the councillors to support their senior, their leadership team.

I'm just trying to understand what you meant by the things you said there. You're agreeing with Mr Hawatt that we got to back Spiro up on this one. ---But I don't know what he's referring to when he says "this one" so I can't add any more.

Sure, but you're agreeing with what Mr Hawatt is saying there, plainly. That's the - - -?---Not necessarily, no.

10 - - - only inference from that. You don't accept that?---Well, it might be but I'm not saying I agree with it.

And then if we continue on that sentence, "Some of the others, no." Are you saying there that you weren't prepared to back Mr Stavis in other circumstances?---It depends on the circumstances. Councillor Hawatt may have had a shopping list. I don't know.

20 Sure, but you're plainly referring to some other event or circumstance there, aren't you?---Well, it could have been anything, though, in the planning division. I don't, I can't recall. I really can't recall. I have no recollection of that.

Well, plainly this conversation was about an interaction with Mr Demian you see at the, with the opening line.---Yes.

Right. And can I suggest what is going on here is Mr Stavis had pushed back on a particular Demian demand. Do you accept that?---No, I don't.

30 Well, I'm going to have to take you through this, then. If you go down page, at the bottom of page 1 of 3 you say, "We've gone, we've gone far enough to Charlie I think, Michael." Do you see that?---Yes.

And then if you go over the page. Continues, Hawatt, "I think, so I think he's just got delayed. Put it down and just follow what we want." You say, "Yeah, I think so." And then you again say, "There might be room for a little bit of minor compromise." Do you see that?---Yes.

40 And then further on Mr Hawatt says, "We've got to show we can't push Spiro too much. You know you've got to." And you say, "No, no, no, no, I agree, I agree." Hawatt says, "Need to support him." Do you see that? ---Yes.

Does that refresh your memory about - - -?---No.

Are you feigning ignorance on this?---No, I'm not.

Well, can I suggest that what this exchange shows is firstly an alliance between you and Mr Hawatt. Do you agree or disagree with that?---He's a councillor. Look, I often had conversations with councillors.

Is that a yes or a no?---I wouldn't use the word alliance.

So you disagree with that?---Yes, I have to.

And can I suggest that this exchange is an example of strategising between you and Mr Hawatt in your dealings with Charlie Demian. Do you agree or disagree with that?---It would help if I knew what property we were talking about, what application, what issue.

10

Didn't you yesterday identify this exchange to be about 998 Punchbowl Road?---I, I can't recall.

THE COMMISSIONER: I thought - - -

MR ANDRONOS: I think we did go through this. It's in the transcript.

THE COMMISSIONER: I thought it was 570.

20

MR ANDRONOS: Yes. I think the witness erroneously either – I can't remember whether it was his own inference or someone had suggested to him that it was 998, but I think we established it was in fact 570.

THE COMMISSIONER: All right. Could I ask Mr Buchanan what - - -

30

MR BUCHANAN: My learned friend is absolutely correct. It is in relation to 570. It's in relation to changes that Mr Stavis wanted Mr Demian to make to the approved development in order for favourable consideration to be given to the DA for the additional two storeys on 570 Canterbury Road. And there is, I think I'm right in saying, a telephone conversation between Mr Stavis and Mr Hawatt that is very, very close to this time – my mind tells me that it was shortly before – in which Mr Stavis makes all of this plain.

THE COMMISSIONER: Yes. Mr Pararajasingham, that was my recollection. It was about - - -

MR PARARAJASINGHAM: Certainly. Well, I stand corrected on that.

40

THE COMMISSIONER: All right.

MR PARARAJASINGHAM: Having heard that, Mr Montague, does that refresh your memory about what this conversation was about?---Not really because I, I know 570 was an issue but I, I don't really recall, I don't understand, well, I didn't understand the variations that were being sought.

You see, this exhibit is also a good example of how you and Mr Hawatt handled Mr Stavis.---I don't know what you mean by handled.

Well, you were not prepared to back Mr Stavis in circumstances where his view differed with yours and Mr Hawatt's.---Not necessarily. Not at all. I think that's healthy.

That can be taken down. Could we have up on the screen volume 5, page 191. Mr Montague, you recognise that as Mr Stavis's contract of employment?---Yes.

10 We don't need to go to it, but at the end of that, or annexed to that contract are, there's a document that sets out a number of KPIs.---Yes.

What role did you play in the formulation of those?---A lot of them were fairly generic. They, they, they'd be reflected in the other directors' contracts. I, I, I had a role in them but so did the HR people. A lot of it was lifted from previous contracts from previous directors. As I said, generic material.

20 So you just acknowledged that you had a role. What role was that?---A very minor role to see that the contract was produced and available for distribution.

So you would have reviewed, at the very least you would have reviewed the KPI section of that document?---I doubt it because, as I said, it would have been uplifted from the previous director's contract and the roles were very similar. There may have been a couple of things added, I can't recall, I can't recall now, but it would have been very – and it's a standard local government contract, so a lot of the material is, is required in all senior officer contracts.

30 But certainly that material wouldn't have made its way into the document without you at least approving it, surely.---No, of course not, but I don't know exactly what material you, we're both referring to.

At this stage I'm just referring to the KPIs just generally.---Okay. Well, I'm saying they are pretty much generic.

40 Just returning to the exhibit, if you go to page 193 of volume 5 you see there plainly the contract. You're referred to as the employer. You see that? ---Yes.

And then if we just go to page 198. Firstly 197, please. You see there clause 6, Duties and Functions?---Yes.

6.1. "The employee will" and sets out a number of subclauses. You see that?---Yes, yeah.

If we go over to page 198, do you see 6.2, The Employer?---Yes.

And you see 6.2.3 reads as follows, “The employer will take all necessary steps to ensure that the employee is not subject to direction by council or a councillor as to the content of any advice or recommendation made by the employee”. Do you see that?---Yes.

10 Now, to your knowledge and experience, that clause is really an acknowledgement of the difficult position a director can find himself in with respect to his or her dealings with a councillor when it came to the content of advice and/or recommendation. Do you accept that?---Well, I’m not sure I so understand. That’s, that’s a generic clause, and as I said that will be in all the other directors’ contracts. The directors, the distinction is that the directors report to me, not to council.

20 What I’m asking you, sir, is – well, perhaps I’ll put it another way. To your knowledge and experience, what mischief or concern is that clause directed towards?---Well, I think what it’s – reading it now and trying to interpret, I think it’s trying to say that the councillors shouldn’t be interfering or shouldn’t be directing staff as to what they put in reports and, and to what advice they give the council, and I agree with that.

Certainly. But it’s also saying more than that, isn’t it? It’s imposing a mandatory obligation on you to prevent the very mischief contemplated, isn’t it?

30 THE COMMISSIONER: See it says, it’s a section called Duties and Functions. 6.1 says, okay, this is everything the employee’s got to do, and then on page 198, at clause 6.2, it then focusses on the employer, and they’re your duties because you signed as the employer, didn’t you? ---That’s right, that’s right, yes, that’s true.

MR PARARAJASINGHAM: Yes, thank you, Commissioner. So you accept that this clause imposed on you a mandatory obligation to prevent the mischief contemplated. You accept that?---Well, I don’t like the use of the word mischief but, yes, it, it does impose on me, an obligation to ensure that the, the staff aren’t directed by the councillors.

40 And in this case that the director of planning is not subject to direction by council or a councillor as to the content of any advice or recommendation made by the director, you accept that?---Well, well, well, you see, I don’t accept that the council can’t direct them because they can. The individual councillors can’t but of course the council can. In, in session, the council can make any resolution it likes.

So, well, firstly, you were aware of this condition at the time that the contract was sent to Mr Stavis, weren’t you?---I, I didn’t, I didn’t read it down specifically. I, I, as I said, they’re generic terms, they’re in every contract.

When was the last time you turned your mind to this particular clause?
---Now.

Sorry?---Now.

10 THE COMMISSIONER: When you were GM?---I didn't. I, I, these were, these were – we had very few contract renewals, with new people that is, and these were generic terms, as I've said repeatedly, that were included in the contracts and I, I suspect that was one that was dictated by the Office of Local Government in the standard contract of employment, which was promulgated by the Office of Local Government.

MR PARARAJASINGHAM: So to be clear, whilst you were GM, and certainly during Mr Stavis's tenure, you did not turn your mind to clause 6.2.3 of the exhibit in front of you?---I don't recall doing that.

20 Well, are you saying it's possible that you did?---Yes. I could, as I said before, anything's possible but I, I don't think I ever had, would have had a reason.

Well, hang on. A moment ago you said that you didn't turn your mind to it, now you seem to be shifting - - -?---Well, because the question's shifting.

Well, with respect, it isn't, but just to clarify - - -

THE COMMISSIONER: Sorry, Mr Andronos, I think if Mr Pararajasingham clarifies - - -

30 MR ANDRONOS: I'm not going to butt in unnecessarily.

THE COMMISSIONER: Sorry, Mr Pararajasingham.

MR PARARAJASINGHAM: If there's an objection, I'll take it.

THE COMMISSIONER: No, please continue.

40 MR PARARAJASINGHAM: Yes. My question is this, Mr Montague, during Mr Stavis's tenure as director of city planning, did you turn your mind to your responsibilities under clause 6.2.3 of the - - -?---No.

So then it follows, doesn't it, that you took no steps to ensure that you complied with that obligation?---No, that's not true because I did counsel Mr Stavis on numerous occasions and I told him that if he was being unduly pressured that he should bring it to my notice immediately and we'd see what could be done about it. I was very clear with him about that.

When did you have these conversations?---Well, he was only with us 12 months or so, so it would have happened not long – well, it would have happened straight after he started in March, I think it was, 2015.

So how many times did you have these conversations?---Numerous times.

Five?---Oh, say five if that, that, that's what you want to say. Could have been more, could have been less.

10 Well, when was the first time you had this conversation?---I can't recall the exact date. It would have been around about the time he started in March 2015.

Are you making this up on the run?---No.

And what did you say when you first raised this topic?---I told him that if he felt he was being pressured – this was something I would say to all staff, senior staff – if you felt you were under pressure from councillors, individual councillors, to bring it to my attention and I'd do what I could
20 about it by either talking to the councillor and maybe invoking that clause.

And where did this first conversation take place?---I think in my office.

THE COMMISSIONER: You actually have a recollection of it?---I do have, look, I, Commissioner, I made a point of saying to all new starters particularly at that level who had, those people had a lot of direct contact with councillors, that was expected and normal, and I used to say to them, well, if you, if you get into difficulties with councillors and they're giving you grief over anything and you think it's unreasonable, come to me about
30 it.

MR PARARAJASINGHAM: So you're saying that you had a practice of doing that?---Yes.

But you don't have a specific memory of doing that in the case of Mr Stavis, do you?---No, not, not taking it to the councillors, but I do have a memory of talking to him about it, yes.

40 You see, can I suggest that, Mr Montague, you did nothing to ensure compliance with this clause.---No, that's not true.

And in fact you fostered a situation in which pressure was brought to bear on Mr Stavis to comply with the issues of Messrs Hawatt and Azzi in respect of the content - - -?---No, I deny that.

- - - of advice and recommendations.---No, I deny that.

You deny that?---Yes.

You recall the questions you were asked about meetings conducted in the presence of Mr Demian?---Yes.

You maintain the position you've just taken in - - -?---And there was one occasion that's documented where I pushed back against Mr Demian because he was, he was offensive towards Mr Stavis and I told him so.

10 You've been asked questions on that so I won't revisit it. Those are my questions, Commissioner.

THE COMMISSIONER: Thank you, Mr Stavis. Mr Pullinger. I'm sorry? Did - - -

MR DREWETT: Oh, no. I thought I would just move out of sight so Mr Pullinger can - - -

THE COMMISSIONER: Thanks, Mr Drewett.

20 MR PULLINGER: Thank you. Mr Montague, I represent Pierre Azzi, former councillor on Canterbury Council.---Thank you.

I just need to address some things which may have been to some extent already covered by Mr Drewett in relation to Mr Hawatt. And earlier today, when Mr Drewett resumed his cross-examination of you, he took you to that document prepared by Mr Murphy, and you're aware of the document I'm speaking about?---Yes, of course.

30 He put to you on behalf of Mr Hawatt that the reduction of the number of people to be interviewed from 13 to five was done without any intervention by Mr Hawatt, and I suggest to you similarly there was no intervention by Mr Azzi in securing that reduction from 13 to five.---That's correct.

And similarly in relation to the reduction of the numbers from five to three, Mr Drewett put to you that that was secured without the intervention of Mr Hawatt, and I suggested to you similarly without the intervention of Mr Azzi. Is that correct?---That's, that's correct.

40 Thank you. Now, it appears to have become almost a practice to refer to Mr Hawatt and Azzi as if they were one entity during the course of the conduct of this Commission. There's been suggestions that they were joined at the hip and - - -

MR BUCHANAN: That was what this witness said.

THE COMMISSIONER: Yes, that was - - -

THE WITNESS: I did, I did say that.

THE COMMISSIONER: So we've got a question, Mr Pullinger?

MR PULLINGER: It's coming, thank you, Commissioner. I want you to assume that I want to disconnect them and not suggest that they're one entity. Do you understand that?---Yes.

10 Thank you. Now, I'm going to address the selection and appointment of Mr Stavits to the position of director (city planning) and the role that Mr Azzi may have played in any part of that. He had demonstrated some interest in planning matters and you thought it appropriate to invite him to be on the interview panel.---That's correct.

It is your opinion that to some extent his conduct during the course of the actual interview was disrespectful of Miss Jones?---I think you could say that.

20 That was because the nature of his questioning was repetitive, insisting on her answering his questions, is that correct?---Well, I can't recall the exact questions he asked now, they weren't on the script, but I think some of the things he said may have been better off left unsaid.

THE COMMISSIONER: So what like?---It's hard to remember, Commissioner, but he wasn't on-script. I can't recall the exact details now. I mean, they were just questions and Pierre's mannerisms and his personality.

30 Mr Pullinger seems to be suggesting that it was a matter of procedure, asking questions, that Mr Azzi was getting upset about because he didn't consider they were answered, while the impression I got from you was that you were concerned more with the content of the questions.---Yes, one of the questions that I – sorry, Commissioner – one of the questions I think he asked, he was alluding to Karen Jones's background and that she was left of centre, that she was a greenie, things like that, that weren't very helpful.

MR PULLINGER: You can't recall the words that he may have used to make such a suggestion?---I remember the word greenie. I remember the word Leichhardt. I remember the word leftie.

40 Was that in the questionnaire heard during the course of the interview or was that rather words spoken at the conclusion of the interview process when you were discussing?---That I can't recall. I think there was a reference to her political leanings in the interview but certainly he repeated it again after the interview.

THE COMMISSIONER: And the political leanings were either being a greenie or a leftie.---Well a leftie mainly, given Leichhardt history.

MR PULLINGER: Now, in the interview with Mr Murphy you accepted that you told Mr Murphy that neither Pierre Azzi nor Michael Hawatt pushed hard for Spiro?---That's true.

It's also the situation beyond that, Mr Azzi clearly indicated that his first choice was Simon Manoski.

THE COMMISSIONER: This was after, in the post-interview panel discussion? Okay.

10

MR PULLINGER: In the post-interview, yes, yes. Is that correct? ---It's a bit hazy now, but I'll say yes to that to advance things. I think he - - -

THE COMMISSIONER: Well, no, Mr Montague please.---I can't remember precisely.

I would, sorry, to assist me, if you can't recall, if you can, that's the appropriate answer.---Sorry, Commissioner.

20

Mr Pullinger then can test you further, refer you to other evidence if something will assist him with his forensic purpose. But it's so important that you answer either what you can recall, or if you're definite it didn't happen, or if your evidence is you can't recall.---Okay, I'm sorry. To answer the question, Mr Pullinger, Mr Azzi indicated a preference for Mr Manoski, that's correct.

MR PULLINGER: And in fact, he told Mr Murphy words to the effect that, Azzi didn't want a woman or a Greek, is that correct?---Ah - - -

30

THE COMMISSIONER: Well, it actually says he said one of the councillors and then it's got question mark – sorry, can we bring this up, please, page 242 of volume 5. If you look down to, he indicated that Karen Jones and the mayor said something, then he said that “One of the councillors,” and it's got in brackets Azzi, “indicated that they didn't want a woman in the role and didn't want a Greek (meaning Spiro).” And sorry, Mr Pullinger, I just wanted to draw that to Mr Montague's attention as to what was recorded by Mr Murphy.

40

MR PULLINGER: And that's the true position, politically incorrect or otherwise. That was the way Mr Azzi expressed himself, isn't it?---Well, I do recall now that you mention it, and it didn't come to my mind before, the word Greek was mentioned. I don't know that that was specifically in relation to Mr Stavis or not.

THE COMMISSIONER: And by Mr Azzi?---By Mr Azzi. Mr Hawatt didn't say much after the interviews, as I recall.

MR PULLINGER: Now, can I just ask you this, did you in fact offer the job to Karen Jones at any stage?---No.

You recall being shown in recent days a copy of a statement made by Ms Carpenter, November 2016?---Yes. I don't know, well, I may have been shown it, I, I don't recall,

THE COMMISSIONER: Do we need to get it up, Mr Pullinger?

10 MR PULLINGER: Please, Commissioner.

THE COMMISSIONER: Have we got the reference to it? Sorry, Judith Carpenter's statement and if you have a paragraph reference, Mr Pullinger.

MR PULLINGER: Paragraph 40.

THE COMMISSIONER: Thank you.

MR PULLINGER: Can you just read paragraph 40, please, Mr Montague?
20 ---40?

Yes.---40. Yes.

Now, just looking at that, you told Ms Carpenter sometime after the interview process that your daughter and Ms Jones had worked together, is that correct?---I think that's correct, yes, briefly.

It's not something you told Ms Carpenter or any other of the interview panel before the interview process?---No.
30

MR BUCHANAN: Commissioner, I rise at this stage only to indicate that there's nothing so far that's been asked on it that I hadn't elicited from the witness on this subject.

THE COMMISSIONER: Mr Pullinger, I thought you were getting to the statement that Ms Carpenter recorded, that Mr Montague had offered Ms Jones the job.

MR PULLINGER: Yes.
40

THE COMMISSIONER: Yes.

MR PULLINGER: Commissioner, but I was just putting it in context because that's the way it's spelled out in that paragraph, Commissioner.

THE COMMISSIONER: All right.

MR PULLINGER: Thank you. Do you see in that paragraph Ms Carpenter's indicating that your disclosure in relation to your daughter and Ms Jones came after you'd offered her – clearly Ms Jones – the job.---I'd offered who the job?

Karen Jones.---I didn't offer Karen Jones the job.

10 You've no idea how Ms Carpenter could have gained the impression that you'd offered the job to Ms Jones?---No, I had no idea at all. I don't know what she's talking about. And I don't like my daughter being mentioned. It's got nothing to do with her. I said that earlier. That's outrageous to drag my daughter into this.

If you'd have offered the job to Ms Jones, of course, you would have been ignoring the sentiments expressed by Mr Azzi about employing a woman, wouldn't you?---Well, that's a big if, but if that happened, yes, because he didn't want a woman.

20 You made a decision to offer the job to Spiro Stavis after you'd received information which determined, in your mind, that you should not offer the job to Manoski, is that correct?---That's right.

And you felt that in view of the sentiments expressed by the councillors that you were not able to offer the job to Ms Jones.---That's correct.

And that left only one of the three shortlisted candidates available. Is that correct?---Yes.

30 Now, in terms of determining to make the offer of employment to Mr Stavis, you had consulted with at least some of the council or councillors?
---Sorry, I didn't catch that. Can you repeat that, please?

In determining or deciding to offer employment to Mr Stavis, you'd engaged in some consultation with some at least of the council or councillors?---Yes.

THE COMMISSIONER: And, Mr Pullinger, that was in December when the first offer was made?

40 MR PULLINGER: That's on and before 8 December, when the offer was made in writing.---Yes.

The decision to withdraw the offer was a decision made by you in or about 16 December, is that correct?---Thereabouts, I suppose. I can't remember the exact date.

And that decision you made after receiving what you've described as scuttlebutt and a letter or some further advice from Ms Carpenter, is that correct?---That's correct.

And you asked council's solicitor to send a letter withdrawing the offer of employment.---That's correct.

And you did that after consultation with only one councillor. That is, the mayor.---That's correct.

10

When was it that you communicated to the other councillors, including Pierre Azzi, that you had not only decided but you had in fact withdrawn the offer?---I think it was, I can't remember the exact time but I think it was a phone conversation I had with Mr Azzi and possibly with Mr Hawatt, and I, and I advised the mayor what I was doing.

At the time you decided to withdraw the offer of employment had it become apparent to you that you were exposing council to a significant financial liability?---No, not at that stage, no.

20

It wasn't until sometime after the offer had been withdrawn and Mr Stavis had engaged lawyers and union representatives that it became clear that council was so exposed. Is that correct?---I don't know that it was triggered just by what Mr Stavis did but certainly became apparent to me there was a risk, yes.

Well, the risk had become apparent shortly before Christmas Eve on 2014 hadn't it?---Christmas Eve 2014 is when Councillor Azzi and Councillor Hawatt served that notice on the mayor at his home. I'm not sure I understand and I don't follow you on that.

30

It had become apparent to you before Christmas Eve on 2014 that your actions had brought about an exposure to significant liability by the council?---Yes.

And in the communication you sent to councillors on 23 December was that alluded to, the significant liability?---I believe so.

Now, the meeting that occurred at the Bulldogs Leagues Club on 27 December, is it fair to say that that came about at your request through the intervention of good Samaritans on your behalf?---I think it's fair to say.

40

It was a meeting that you wanted to have with those councillors to see if in short your position could be salvaged?---Partly, yes.

And the suggestion that you would like to stay on and at some time in the future retire as opposed to be terminated, that came from you, didn't it? ---Yes, of course.

And the suggestion that August of 2015 marked a career milestone for you, that was information again that came from you during the course of that meeting on 27 - - -?---Yeah, that and the contract termination date. Yes, we discussed that.

August 2015, that was a milestone anniversary for you, wasn't it?---August 2015. Yes, it would have been.

10 And that was information - - -

THE COMMISSIONER: That's 50 years, isn't it?---50 years. That's right.

MR PULLINGER: And that was information that you brought to the table on 27 December - - -?---Well, at some stage I would have advised them of that, yes.

The document that's volume 4, page 148, it's the code of conduct complaint.

20

THE COMMISSIONER: You want that, oh good. Thank you.

MR PULLINGER: Thank you. If I can just take you to a part of that document at page 150, which is page 3 of the document. You'll see there a numbered paragraph 25. A meeting was held?---Yes.

Can you just read that, just read to - - -?---Read what?

30 Can you read that through to yourself, the points - - -?---Oh, I beg your pardon. Yes, of course.

Thank you.---I'm pretty familiar with it though. Yes, I've read that.

And do you accept that insofar it refers to matters raised at the meeting on 27 December, 2014, it's an accurate summary or chronology of matters raised?---No, can't say that. I don't know who prepared this and who, what they relied on to prepare it. I, I, I can't speak for the veracity of the document. There are elements in it, yes, that are correct.

40 Well, let's take it one at a time. Did you say on 27 December, "I will reappoint Mr Stavis"?---I don't believe so. I might have said I'll consider reappointing him.

Did they say to you or did either of them say to you that you may need to consider your position in the council?---Yes. I do recall that.

Did they, or either of them, say to you that they were concerned about the actions that you'd taken?---They were certainly concerned about the action, the actions I took in relation to Mr Stavis, yes.

Did you tell them or either of them that you would appreciate being able to finish 50 years in local government council in August of 2015?---In all probability I did, but as I said, I also mentioned the date in April 2017, when the contract expired.

10 Did you say that you wished to buy out your car?---Possibly. It was a nice car.

Did you say that there may be an issue with the mayor buying a new mayoral car and it being an Audi?---I don't recall mentioning Audi. They were certainly concerned about executive expenditure and all sorts of things that arose from the earlier exposure in the press.

20 THE COMMISSIONER: And they raised that at that meeting?---Yes, I think they did.

MR PULLINGER: Now, in the new year - - -

THE COMMISSIONER: Hold on, what about G? Did you advise them that you would be back with a position as to the terms and timing of your retirement?---No, I don't think so. Not in those terms, no. That would have been the subject of a report to council, rather than me contact individual councillors, I would have thought.

30 MR PULLINGER: You'd been in contact with ICAC on 29 December, 2014, is that correct?---I can't recall the exact date.

A couple of days after the meeting at the Bulldogs?---No, I don't, I can't recall that either. I only recall, the, the discussion, the meeting I had with Mr Murphy.

40 Well, there was a day, wasn't there, that when shortly after that, a couple of days after that meeting at the Bulldogs, you spoke with the mayor and you and he, in effect, collaborated in bringing matters to the attention of the Commission, is that correct?---The mayor had his own concerns.

THE COMMISSIONER: But there was some evidence before that you came – not here, probably to another building – and spoke with Ms Gamble from Assessments.---Yeah, I remember speaking with her and I spoke to Mr Berry.

MR BUCHANAN: If I can assist, Commissioner. I think the evidence is that there was an attempt by the witness, in the presence of Mr Robson, to ring the Commission on 29 December, that the report was then prepared and

apparently finalised at least by 5 January, and that on 6 January it was delivered to the Commission per an assessment officer, Ms Gamble.

THE COMMISSIONER: Ms Gamble.

THE WITNESS: Yeah, that's probably right, thank you.

MR PULLINGER: Thank you. You received legal advice from the council solicitors concerning the status of the contract for Mr Stavis early in the new year 2015, is that correct?---Yes.

And it was as a result of that advice that you determined to reinstate the offer of employment to Mr Stavis, is that correct?---That certainly was a part of it, yes, for reasons that have been traversed here.

THE COMMISSIONER: But my note is that you got some advice from Mr Belling - - -?---Belling, that's right.

20 - - - by email on about 13 January - - -?---That's right.

- - - where he set out some options.---Yeah. Yes, he did.

You took that into account but your decision that you were going to re-offer him or - - -?---Reinstate the offer.

We've got that memo of the beginning of February.---That's right. That's right.

30 So is it around that time that you - - -?---Yes, around that time, that's right, Commissioner.

MR PULLINGER: So, sorry, Commissioner, "around that time" refers to the middle of January or - - -?---February.

40 THE COMMISSIONER: No, no, no. The sequence was 13 January Mr Belling provides advice and sets out some options, which are along the lines of Mr Stavis starts work immediately, he's directed to stay at home or you sack, I think it's terminate the contract and you'll have to pay him 38 weeks' pay. And then my recollection is it's on about 3 February that Mr Montague writes a memo to the mayor where he says, look, I'm minded to continue with the contract, and then we've got a signature of Mr Robson endorsing that, which we're not quite sure when that was put on the document.

MR PULLINGER: Thank you, Commissioner.

THE WITNESS: That's, that's pretty good, yes.

THE COMMISSIONER: That sequence is right?---Yeah, that sounds, sounds good.

MR NEIL: The document's 2 February, Commissioner.

THE COMMISSIONER: Oh, thank you, Mr Neil.

10 MR PULLINGER: When between the middle of January and the beginning of February in 2015 did you determine for yourself that it was appropriate to renew the offer of employment or continue the offer of employment with Mr Stavis?---I, I can't improve on that time frame, I'm sorry.

But sometime between the middle of January and the beginning of February?---Yeah. Once I received the advice and considered the options that were given.

20 Now, you knew that there'd been a call for an extraordinary general meeting to discuss the termination of your services.---Which one are you, which meeting are you referring to?

The meeting which was scheduled eventually for 27 January, 2015.---Yeah. Yes, I knew about that on Christmas Eve. I knew the meeting was wanted on Christmas Eve 2014.

The appointment of the day 27 January, 2015 didn't come about until sometime in the new year, did it?---That's right. That's correct.

30 Now, you'd had benefit of advice in January to the effect which influenced your decision to reinstate the offer to Mr Stavis. Is that correct? The advice from Mr Belling - - -?---Oh, yes, I had the advice - - -

- - - had been influential in your decision to - - -?---Of course.

And, well, once you made that decision to reinstate Mr Stavis, the war was ended, wasn't it?---Well, certainly hostilities, after 13 February, because there was another meeting on 13 February and there was still a motion there, but after that it, it sort of just fizzled out. That's the only term I can use.

40 THE COMMISSIONER: And you had that meeting on about 18 February with Mr Hawatt and Mr Azzi?---Yes, I think about that time, Commissioner.

MR PULLINGER: The meeting on 27 January, 2015, the extraordinary general meeting, was in your mind effectively aborted by the mayor at the beginning of the meeting?---Well, the meeting didn't proceed.

Well, in the mind of some councillors it may have proceeded. You're aware of that?

MR BUCHANAN: Commissioner, could I just respectfully inquire of my friend as to the purpose of this questioning because I had previously made it clear that the legalities, the procedural legalities, were not within the scope and purpose of this inquiry. Now, I have touched upon what occurred at that meeting and will likely do so again but it's with a view to exploring the issues which are within the scope and purpose before the Commission and I wouldn't want this to be taken as an opportunity to have a go at the mayor or anything like that.

10 THE COMMISSIONER: All right.

MR PULLINGER: That's not my purpose, Commissioner.

THE COMMISSIONER: All right. So, Mr Pullinger, we've got the extraordinary general meeting on the 27th. The mayor walks out but some councillors remain.

MR PULLINGER: Yes. After that you returned to your place of employment and barricaded yourself into your room?

20

THE COMMISSIONER: Sorry, that night?---That night I went back to my office, yes.

MR PULLINGER: And you turned up for work in the days or weeks following?---Every day. That's right.

And so far as you were aware in the days following, the war continued?
---For a while it did, yes.

30 And it was within your power to bring the war to an end. Immediately you determined that you were going to reinstate the offer of employment with Mr Stavis. Is that correct?---I don't think so. I mean, there was a lot of bitterness between us and I don't think that goes away lightly or easily.

So the attack on your position by the councillors calling the extraordinary general meeting and continuing beyond that meeting on 27 January, you didn't regard that as solely to do with your decision making in appointing or reappointing or withdrawing the appointment of Spiro Stavis. Is that correct?---I think - - -

40

MR BUCHANAN: I object, only to ask whether the intention is to ask a question about the purported continuation of the meeting that evening or is my friend asking a question about in the days subsequent to 27 January?

MR PULLINGER: The days subsequent to 27 January. Thank you.

THE COMMISSIONER: Thank you, Mr Pullinger.

THE WITNESS: Mr Pullinger, there's no doubt in my mind that what triggered the hostilities was my actions in relation to Mr Stavis.

And in relation to your actions in relation to Mr Stavis, it was the withdrawal of the offer of employment creating a significant liability to pay compensation that was the concern of Pierre Azzi, wasn't it?

10 MR BUCHANAN: I object. I wonder if my friend could perhaps recast that. It's possible that it could be a matter of assistance if it was a question about whether this witness heard Mr Azzi say something or whether Mr Azzi indicated what his precise concern was.

MR PULLINGER: I appreciate that. Thank you very much. At the meeting on 27 of December at the Canterbury Leagues Club Mr Azzi made it clear to you that he did not much care whether you appointed Mr Stavis or not. However, he did care and was greatly concerned about your actions having exposed the council to pay a significant sum by way of compensation, didn't he?---The councillor who raised that with me was Councillor Hawatt not Councillor Azzi.
20

THE COMMISSIONER: And when did Mr Hawatt raise it with you?---He raised it on the telephone, not long after I, I, I withdrew the offer.

MR PULLINGER: And (not transcribable) join them at the hips again, but Mr Azzi certainly joined in expressing that concern as being of significant concern to him?---Yes. Subsequent to that, he did.

30 THE COMMISSIONER: Sorry, subsequent to the telephone call with Mr Hawatt?---Yes. Mr Hawatt made it clear that he was deeply concerned about the, the exposure, and Councillor Azzi at some later time took that up too. He, he was, he, he, was agreeing with Councillor Hawatt.

And did Mr Azzi take that up at that 27th of December meeting or did he - - -?---I, I don't believe, I don't think so.

But at some subsequent time you can remember him raising it?---Yes. It was certainly exercising their minds, there was no doubt about that, but Councillor Hawatt was the one who raised it with me first.

40 MR PULLINGER: Now, just I'm moving on now to another topic. You have told the Commissioner at various stages that Mr Azzi told you in relation to Mr Stavis, "Find him a job or else," words to that effect.---No. He said, "Put him on or it's your job." That was one statement he made. The other one was, "If you can't put him on, find another job for him." Those two things are etched indelibly in my brain.

And can I just remind you that early in your evidence, in the early days of giving evidence, you were inclined to the position put by Counsel Assisting

that that may have happened before 8 December, but in more recent times you're adamant that that only happened after the offer had been withdrawn. ---Mr Pullinger, I cannot recall exactly when that happened and I'm not saying it, it happened in the heat of battle after I withdrew the offer. All I can tell you is, and tell the Commission is, that those two statements were made by Councillor Azzi at some stage during that, that period.

10 THE COMMISSIONER: Can I just ask you, do you think they were said in the one conversation or at different times?---I think probably the one conversation. It's hard to remember. Yeah.

MR PULLINGER: And can I suggest to you that, in fact, during the course of a meeting at Canterbury Leagues Club on 27 December he said to you words to this effect, "We're short of planners. If you can't offer him the job of director, offer him a job in the planning section, and you do that rather than paying him compensation for nothing"?---Well, that's a perfectly reasonable position to take - - -

20 THE COMMISSIONER: No. Was it said?---I was about to come to that, sorry, Commissioner. I've already said that he made that statement, find him a job, I don't know when, I don't know whether it happened at the Leagues Club or not. There were two statements attributed to Councillor Azzi and I, I've outlined both of them and, yes, it, as I said, it, it was an issue that was certainly exercising their minds.

I think what Mr Pullinger's doing now is linking it with "Give him a job so we can avoid paying him the money." Is your recollection that - - -?---No. I, I don't know that that was the motivation or not - - -

30 MR PULLINGER: But that's what he said to you?---Who, who - - -

THE COMMISSIONER: Sorry, Mr Pullinger's putting to you that Mr Azzi said to you something like, "Get him a job rather than pay him compo." ---He said, "Find him a job. If you can't give him the director's job, find him a job." He never linked the two.

MR PULLINGER: The council had, prior to 2012, been Labor-dominated and subject to the caucus position that you've explained?---Yes.

40 Sometime after the elections of 2012, the mayor had lost the support and confidence of his Labor colleagues, or some of them?---After that, after, it was all right for about the first 12 months but then the relationship between the mayor and the Labor councillors deteriorated.

And I think Councillor Adler was certainly one whose relationship with the mayor deteriorated.---I think it's fair to say that, yes.

And did you express to Councillor Azzi a suggestion that you needed a council that could make decisions?---Well, that goes without saying.

Well, it may go without saying, but did you in fact say to him - - -

THE COMMISSIONER: Did you say it to him?---Sorry (not transcribable). No, I don't believe I did.

10 MR PULLINGER: Do you in fact suggest that he should approach Councillor Hawatt with a view to forming some alliance?---No. I don't recall doing that either. They'd already formed the alliance.

And so far as you knew, this was Mr Azzi's first time as an elected councillor?---Yes.

Were you aware that he'd stood at the previous election and failed to - - -?
---Yes.

20 And were you aware of any relationship or association between Mr Azzi and Mr Hawatt that preceded the election in 2012?---No. No.

Thank you.

THE COMMISSIONER: Thank you, Mr Pullinger. Now - - -

MR ANDRONOS: Ready to go, Commissioner.

THE COMMISSIONER: You're ready to go. Terrific.

30 MR BUCHANAN: Commissioner, can I interrupt with an apology, but to make an application to have your leave to ask the witness a few questions about a matter which I had overlooked? It's a discrete matter. In my submission it does need to be explored because the question might come up later and it would be undesirable that Mr Montague not have an opportunity of addressing it if he can.

THE COMMISSIONER: All right.

40 MR BUCHANAN: It will certainly be in five minutes, within five minutes.

THE COMMISSIONER: All right.

MR BUCHANAN: Unless I'm taken by surprise.

THE COMMISSIONER: Sorry, what's the topic?

MR BUCHANAN: A document that is in the material in evidence about which I overlooked asking the witness a question that has a link to, has links to both Mr Belling and to Mr Hawatt.

THE COMMISSIONER: All right. I'll grant you leave.

MR BUCHANAN: Thank you, Commissioner. Could the witness be taken, please, to volume 3, page 242. And, sorry, before I do that, could I just –
10 that will be the document I want to ask you a question about.---Okay.
That's fine. Thank you.

But can I ask the witness first be shown volume 4, page 184. This is a letter by Mr Belling to Mr Boatswain dated 13 January, 2015, and I've simply plucked it out from all the correspondence from Mr Belling that's before the Commission simply to show you one thing. If we could go to the bottom right-hand corner and enlarge that. Do you see that there's a, what might be called document identifier?---Yes.

20 And that it concludes with, in capitals, B-E-L-L-I-N-B. Now, if we could go back, please, to volume 3, page 242 and can you see that an identically formatted document identifier appears in the bottom left-hand corner of this page and concludes with, in capitals, B-E-L-L-I-N-B?---Yes.

You would accept that the, you know, on the face of it then it looks as if it's been generated by Mr Belling?---Yes, I'd say so.

Can I now ask you to look at the contents of it and can you see that it is headed, "Draft Motion. That councillor Michael Hawatt acting for and on
30 behalf of Canterbury City Council be authorised by the council to engage the services of a legal adviser and a panel of solicitors appointed by council to assist with any actions required by the council in relation to staff, industrial and employment matters and to instruct that solicitor in accordance with the resolutions below."---Yes.

“(b) That acting on legal advice the general manager's contract of employment be terminated by agreement with the general manager effective no later than ...” And just reading on, can you assist us as to what you know about either this document or an relationship that Mr Belling might have
40 had with perhaps Mr Hawatt that would explain it?---No, I can't I'm afraid. I think that, I believe that's the first time I've ever seen that document.

And there was a – sorry, I withdraw that. There is material in the documents indicating that a sub-dispute in the war as it were arose at some stage as to whether you were to be permitted to retain council's lawyers. Do you recall anything like that?---No, I do not.

You don't recall anything like that?---No.

Do you recall a suggestion that you shouldn't be allowed to retain council's lawyers?---No, not, not at this point, not at this point of time. Not around that, that, you know, the hostilities.

Not in January/February?---No, no. No, sorry.

10 And there's nothing you can assist us with as to why Mr Belling might have generated this document with those paragraphs, particularly the first two that I have just drawn your attention to?---I can only assume that Councillor Hawatt requested him to but I, it's an assumption but no basis of fact.

Would Mr Belling have been required to act on Mr Hawatt's request?---No, no. Councillors can't direct our legal advisors individually.

And, in fairness, K&L Gates were council's solicitors at this time in relation to employment matters?---They were on the panel, yes. They were one of the panel solicitors, yes.

20 Thank you.

THE COMMISSIONER: And did you have a particular panel for employment matters in comparison to planning matters?---Yes. We tend to have specialists in each of those key areas on the panel, yeah.

30 MR BUCHANAN: And then finally, if I could take you to F. Can you assist us as to who Rob Noble - - -?---I know Rob Noble, I know of him, I don't know that I've never met him, I don't know him well. He was a GM, I think, years ago in, it might have been Queensland somewhere. That name really surprises me.

He certainly wasn't an employee of Canterbury City Council?---Oh, absolutely, absolutely not, no.

THE COMMISSIONER: There was another - - -?---Chris Watson was the other one whose name was mentioned.

MR BUCHANAN: Yes, correct.

40 THE WITNESS: He was a former GM at Rockdale.

THE COMMISSIONER: And he's referred to, I think in maybe some of the council resolutions?---Yes. Yeah.

Sorry, the resolutions to be put up for one of the extraordinary meetings. ---That's right. But this one's, this one is a complete revelation to me. I've never seen that before.

MR BUCHANAN: Thank you.

THE COMMISSIONER: Did you seek independent legal advice during the wars about your own position?---No. No, I didn't.

Now, Mr Andronos, should we break for lunch?

MR ANDRONOS: Well - - -

10 THE COMMISSIONER: How long do you think you'll be?

MR ANDRONOS: I think I'll be an hour. I'm very keen to get Mr Montague out of the witness box today, so I don't know how long my friend thinks he'll be in re-examination, if he thinks he'll be an hour or less, perhaps we could break for lunch. Perhaps we could come back early?

MR BUCHANAN: I'd be half an hour maximum, but I hope shorter. I should just indicate, I would ask, Commissioner, that you canvass the representatives and parties present as to whether there's anything pursuant
20 to my additional questions.

THE COMMISSIONER: Oh, yes. I'm sorry.

MR BUCHANAN: On that matter, subject of leave.

THE COMMISSIONER: I should have done that. Could everybody maybe consider it over lunchtime, if you've got any other questions concerning page 242 of volume 3. If you do, we'll take those questions at 2 o'clock, then Mr Andronos, and then we'll finish with Mr Buchanan and, Mr
30 Montague, fingers crossed that will be it.---Yes, please.

All right. We'll adjourn until 2 o'clock.

LUNCHEON ADJOURNMENT

[1.01pm]