

DASHAPUB00355
20/04/2018

DASHA
pp 00355-00406

PUBLIC
HEARING

COPYRIGHT

INDEPENDENT COMMISSION AGAINST CORRUPTION

PATRICIA McDONALD SC
COMMISSIONER

PUBLIC HEARING

OPERATION DASHA

Reference: Operation E15/0078

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON FRIDAY 20 APRIL, 2018

AT 10.00AM

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

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

THE COMMISSIONER: Mr Buchanan.

MR BUCHANAN: Commissioner, a few administrative matters. Yesterday I, at the outset of Mr Robson's evidence, indicated that there were certain parts of two of his statements upon which we didn't propose to rely unless someone put it into evidence essentially, and we were asked could we clarify that by putting it in writing. That has been done and a document entitled Position of Counsel Assisting re Parts of Evidence of Mr Brian Robson has been put up on the restricted website. In addition a
10 paginated copy of Mr Robson's fifth statement has been put up on the restricted part of the Commission's website to make it just easier to refer to with page number references.

THE COMMISSIONER: Right. And that cross-references to the document position of Counsel Assisting.

MR BUCHANAN: Yes, exactly. The second matter that I need to raise is that yesterday Mr Lloyd of senior counsel apologised for not being able to be here today on behalf of Mr Hawatt. He indicated that he would have a
20 colleague here. The Commission has received correspondence from Mr Hawatt's solicitors indicating that no lawyer will be appearing for Mr Hawatt today.

The third thing is that as sometimes happens in these matters, counsel for Mr Stavis, Mr Pararajasingham, is in a part-heard, serious part-heard criminal matter in Penrith today. He is going to make efforts to come back here as soon as he can today. In his absence, Mr Kerkyasharian is appearing.

30 THE COMMISSIONER: Right.

MR KERKYASHARIAN: With your leave, Commissioner.

THE COMMISSIONER: Yes, thanks, Mr Kerkyasharian.

MR BUCHANAN: I have had discussions with Mr Pararajasingham and Mr Kerkyasharian about evidence that it is intended to lead from witnesses today which might be considered to touch upon Mr Stavis and we have discussed arrangements that, or options for arrangements that might be
40 made to ensure that Mr Stavis is not prejudiced by the absence of Mr Pararajasingham today, or at least for the morning. With any luck Mr Pararajasingham will be back this afternoon.

THE COMMISSIONER: Right.

MR BUCHANAN: But it might be necessary for me to ask a witness to stay in the precincts of the Commission or be on their mobile or just to be

stood down in any event just until Mr Pararajasingham can come back and indicate whether he wants to ask that witness questions.

THE COMMISSIONER: Yes. No, that's good.

And the final matter is next week's witness list, has that been uploaded?

10 MR BUCHANAN: Yes. A provisional witness list has been put up, and I only use the word provisional because invariably things happen that cause the need to adjust the order of witnesses, but a provisional witness list for next week and order of witnesses has been posted on the Commission's website.

THE COMMISSIONER: Right. Thank you. Are we ready to proceed with Mr Robson?

MR BUCHANAN: Yes, if Mr Robson could be recalled, please.

THE COMMISSIONER: And I think, if we can have Mr Robson re-sworn.

MR TAYLOR: Commissioner, for the record, the section 38 declaration will continue?

THE COMMISSIONER: Yes, it does. Thanks, Mr Taylor.

10 MR BUCHANAN: Thank you, Commissioner. Mr Robson, given the political nature of the animal – that is to say I'm speaking of councillors, elected councillors – is there, in your opinion, a risk that council involvement, in the process of recruiting senior staff, has the potential to compromise the principle of merit selection?---I think the involvement of councillors below the level of the mayor does have that implication.

20 Why do you not think that would be the case in the case of a mayor?---I think the mayor has a higher obligation to the community, particularly if he's popularly elected, than the influences that would be exerted on individual councillors.

And this, despite the fact that the mayor might have, for example, a party affiliation or an association with a particular action of council?---The mayors that I have known tended to rise, rise above party affiliations and have a higher regard to the community.

30 You are familiar, I take it, with the provisions in the standard contract for general managers relating to termination of a general manager's employment?---I have a general knowledge of it. I can't recollect the, any of the specifics.

40 Well, we might be able to assist. Volume 5 has a copy of the contract, which I think I showed you yesterday, of employment for April 2015 to April 2017. So, the first page of it is page 39 but I'm going to take you to page 54 of volume 5. And just to give you the context, if you go back to page 53 you can see that the section is section 10 headed Termination, and then clause 10.3, "Termination by either the employee or council. This contract may be terminated before the termination date by way of any of the following," and then there's some sub-clauses, 10.3.1 through to 10.3.5. If I can ask you to look at 10.3.5, "Council giving 38 weeks' written notice to the employee, or alternatively, by termination payment under sub-clause 11.3." And before I take you to 11.3, you can see that all the other sub-clauses under 10.3 require some sort of agreement or reason for the termination.---Yes.

Going then to page 55, clause 11, "Termination payments." Clause 11.3, "Termination of this contract under sub-clause 10.3.5, where written notice has not been given, council will pay the employee a monetary amount, equivalent to 38 weeks remuneration, calculated in accordance with

schedule C, or the remuneration of which the employee would have received if the employee had been employed by council to the termination date, whichever is the lesser."---Yes.

10 And so just going back to, on page 54 of volume 5, clause 10.3.5, that is the clause I had in mind when asking whether you have an understanding that council could terminate the employment of a general manager without giving reasons.---I understand the council could terminate the general manager's contract but I believed that they were required to, at least, give some justification for doing so.

Did you think that justification for doing so had been given in respect of the motion to sack Mr Montague?---No.

Did you cause legal advice to be obtained by council as to the lawfulness of the motion in that case?---I cannot recollect that at that stage, no.

20 Would it be fair to say, though, that if you had sought that advice, you're likely to have a recollection of having received it, either going one way or the other as to the lawfulness of it?---I believe so. However, I felt that the termination attempt was not justified under the circumstances or no justification had been given.

And is it possible that, just speaking for yourself, you didn't explore the lawfulness of what was proposed by Councillors Hawatt and Azzi?---I had a quick look at the contract and that would be a true statement, that I hadn't sought legal advice. I don't recollect specifically seeking legal advice on it.

30 A general manager employed under the standard – I'll withdraw that. This contract of employment that you signed in February of 2015 with Mr Montague, that we've been looking at, is based on or in fact comprises the standard contract for employment for a general manager that's published by the Office of Local Government as you understood it?---That was my understanding, but also the, if I remember, the meeting where the contract was extended to April 2017, the motion or the motion stood as an extension of the existing contract. So the existing contract may have had terms and conditions that were different from the standard contract, but as I didn't have a copy of the standard contract nor the previous contract, I had to assume that the one presented to me was the one that was accurate.

40 Having acquainted yourself with the terms of clause 10.3 and .5 and 11.2 of the contract entered into in February 2015 with Mr Montague, it would seem, wouldn't it, that a general manager such as Mr Montague with that sort of contract is vulnerable if she or he falls out with council to termination without reason.---Yes. Yes.

And can you – what do you think about the desirability or undesirability of that situation?---I think there has to be a mechanism in place for the

termination of the general manager's contract, and the council needs to be the authority to do that because basically the only other alternative is the government. There's been a number of cases that I'm aware of where general managers have been dismissed mainly because they fall out with the council. I don't know in those cases whether justification has been given for

10 When you say cases, you're not saying legal cases. You're talking about situations.---Situations. And I think Liverpool may have been an instance. It's not uncommon for general managers to fall out with councils and generally they tend to go voluntarily or with mutual agreement. But there has to be a mechanism by which councils can terminate the contract but they have to be able to justify it on some grounds. As I was saying - - -

20 When you say they have to be able to justify it on some grounds, are you saying that, is your understanding or opinion of the legal situation? Or are you saying that that is the sort of thing which should be required from a policy point of view?---I think both. I, I, I understood that the termination of the general manager could either be done by mutual agreement or alternatively for misconduct or some other specific reasons that council felt it was justified in doing so. But it had to be done openly and publicly, I think, so that you don't get the, send out the message that the council just is trying to get rid of the general manager because, you know, they want to do it their way.

And when you say openly and publicly, do you mean with transparency so people - - -?---With transparency.

30 - - - understand what is going on and why?---Yeah, yeah. I mean I guess a lot of this would normally have been handled in what's termed closed council in which the transcripts or the decisions and the business papers are not publicly put up on the website, but there has to be able to be some information available so that any outside bodies can scrutinise it and be satisfied that things were done in a proper manner.

40 Thinking back to the events of December/January going through to February 2015, December 2014 going through to '15, were you aware of whether Mr Montague ever considered resigning during that period? ---There were times when Mr Montague was very down, very depressed. The same thing could probably be said about me.

But was there any conversation in which - - -?---But, but they, there was never, never any, there was, there was along the lines of I just don't think I can go on, and, you know, that was a case of, come on, let's just keep going. But there was nothing, any specific on I feel as though I'm going to resign.

Thank you. Turning to a different subject, and you must say if you don't think you have enough knowledge or understanding of DA consideration

and assessment and approval process to answer the question, you understand that. I just want to ask you, you know that a development application had a section for the proponent to set out the estimated value of the development?
---Yes.

And did you have an understanding that the estimated cost of work might have an impact on who was the consent authority?---Yes.

10 And also might have an impact on who conducted the assessment, whether it was council officers or IHAP?---Yes.

And as – I'm sorry.---I, sorry, I was going to say I don't recollect about whether IHAP had a value on it.

Right.---But I certainly know the value of the property affected the section 96 contributions, it affected whether, if it was under 20 million or above 20 million it went to the JRPP.

20 Joint Regional Planning Panel?---The Joint Regional Planning Panel.

Yes. That was what I was after.---Yeah, sorry, I'm, I'm, I'm - - -

No, no, no.---I'm just not certain about - - -

It could have been my question.---I'm not certain about the IHAP, that's all.

30 Did you ever have cause to doubt the accuracy of any estimates of the costs of work for a development the subject of an application for approval, for consent?---If it was in the business papers I took it as face value, what was there, that was the value stated.

And when you say in the business papers, what was in the business papers that you would look at for that information?---Oh, there would usually be a section relating to the value of the DA.

An assessment by a council officer?---Council officers, yes.

40 And so you understood, or was it the practice as you understood it of Canterbury that the estimate provided in the development application as to the value of the proposed development was not necessarily taken on face value, but might be scrutinised?---Sorry?

When the proponent put forward their dollar value estimate as to the cost of the works involved, was there at Canterbury scrutiny of that estimate?
---There should have been, I'd imagine so, yes.

But you don't have any particular knowledge?---I don't have any particular knowledge of that because it was at a finer grain level of the development

than I would necessarily have been involved in because it was very rarely that I might query the values, but I had to assume that the council officers had been doing their, their, their job and presenting me with a truthful report.

Provided it was something they actually looked at?---Yes.

10 And you don't have a recollection of any question as to the accuracy of an estimate as to the costs of works of the development being considered at council?---In general, no, but there was one specific development application which struck me as being slightly askew or different.

In respect of that particular subject?---Well, that particular development application was Canterbury with adjoining lots, and each of the - - -

Is this 538 and 570?---No, I, I, I think, I know the, I can, I can picture the site but I just can't know the address.

20 Did it have a name?---Well, it's actually directly on the other side of the road from, from those developments and - - -

Opposite side of the road from Harrison's?---No, from the Canterbury town centre. It was right next to the station.

30 I see.---And it actually involved two adjoining lots and two separate DAs which were of around about 10,000, \$10 million, sorry, which was way below the threshold for the JRPP. But the two developments could be looked at very easily as being one development which would have – if it had been one development, it would have gone to the JRPP. So it seemed to me to be a mechanism that the developer was using to get council to look at it rather than Joint Regional Planning Panel.

Was this a matter that was ventilated or discussed on council?---I cannot recall.

Was this a matter you took up or had a conversation with anyone about?---I may have had a chat with the director about it but - - -

40 Who was the director at that time?---I think, well, no, it would have been Spiro.

Spiro Stavits?---Yes.

Could it have been the property 212-220 Canterbury Road? Do you remember the name of the developer?---No. I, I, I don't. I know, I, I can picture, as I said, I can picture the site.

Don't worry.---But it was directly opposite the major developments.

I'm sure we can work it out.---Okay.

Thank you. Can I ask you now to sort of take a step back and if I can ask you to take an overview of the work and the position that Mr Stavis did and held as director of city planning. What did you expect of a director of city planning to do in relation to development applications and planning proposals to change an LEP in respect of a particular property?---Well, if we looked at DAs – sorry, prior to, prior to 2012, council very infrequently was involved in spot rezonings. What I expected of the director was to produce a report to be sent to council which looked at the development application in respect of the Local Environmental Plan and the DCP. The report had to show inconsistencies with the LEP and the DCP. Any of those inconsistencies that the council officer or the director thought were significant should have been brought to council's attention, and then council had the discretion to either agree or disagree with the, the report. But it had to be in the context of the DCP and the LEP. That was the – if it, if it was within the LEP, within the DCP, then there'd be no question.

But if a variation was put forward by the proponent and reported on to council, did you respect the director to present a report that canvassed all the options that council had, for example?---Yes. And it would have to be in his, deemed in his opinion to be significant or non-significant or insignificant.

In terms of the variation?---In terms of the variation. Prior to 2012 I think if, generally if there was a 3 per cent variation in, in the, anything less than about 3 per cent with regard to the density was considered to be acceptable.

Do you remember where that figure came from?---I'm just thinking, the 3 per cent seemed to have been the figure that was evolved over time because
- - -

At Canterbury or - - -?---At Canterbury. I mean that goes, I think we're talking, talking developments back through 1999 onwards. It was just - - -

A yardstick?---A yardstick by which the, if it was in about 3 per cent then it wasn't deemed to be excessive.

At the time you were on council and considering reports on development applications and submissions for planning proposals that were coming in under the name of Mr Stavis and director of city planning, did you have any understanding that Mr Stavis might have seen his role as, amongst other things, to provide solutions to proponents of development where they needed to overcome the constraints posed by development standards or controls?---No.

What do you think of the idea that the job of the director of city planning would be, amongst other things, to provide solutions to the developers?

---The job of the director of city planning is not to obtain results to, that are satisfactory to the developer, they, to obtain results that are to the dissatisfaction of council, based on the DCP and the LEP.

Why not? Why shouldn't the director of city planning have, as part of his or her duties, the provision to developers of solutions when they're tangling with the development standards?---He's not responsible to the developers. He's responsible to council and he may be able to prove ideas but he's ultimately responsible, the responsibility of the developer to do the work and provide a solution to council.

Were developers part of the mix, though, whose views needed to be taken in to account by council in the work they did?---Sorry, would you mind - - -

I'm just asking about, just trying to test your opinion that it wasn't his job to provide solutions to developers. What if developers were, for example, constituents of councillors?---Look, the, the, the developer, I, I, I was pretty well a stickler to, for it and you know, I wasn't particularly popular in some quarters as a result of it, but I'm, I'm very big on process and we'd gone through the process of developing an LEP for the zoning and that's what council intentions were. We'd gone through and worked very hard producing a DCP which indicated what council's intentions were, and my view and the developers, the developers, the directors, should have been that he should be working to make sure that the DCP was followed and the LEP was followed. If, if it meant saying to the, to the developer, you know, you're restricted to eight storeys, and if you want to get this through make it eight storeys, then that is a fair comment. But trying other methods to get in excess of eight storeys and that sort of advice, that is beyond his responsibility.

Was there any, was there any pressure from either the general manager or any councillors for solutions to be provided to developers for the period 2014 to 2016?---I'm aware, through conversations with the general manager in, in general terms that Hawatt and Azzi were always it him to try and find solutions for specific developers and/or developments.

Did you get the impression, in 2014-2016 that Mr Montague himself was personally of the view that that was a role which needed to be played by council officers, himself and indeed council?---I was never aware that that would be his view.

Were you aware that he met with developers and with council planners from time to time?---Yes.

What did you think was happening at those meetings?---Oh, they, I'd imagine, it's my belief that they'd be talking about specific developments or perhaps LEP.

And what was the purpose of such meetings?---Oh, it would have been to progress developments of the, you know, that they had, but I understood them to be just in, in general terms rather than specifics.

And what was the role of the general manager in attending such meetings or even convening them?---Well, it would be the same – my impression or my understanding again would be the same attitude that I was taking, which was if you did have any meetings like that, first of all that if possible you had another officer there and that you would take the information on board but not necessarily act upon it.

But the general manager's time is fairly valuable, why should the general manager provide an hour or two of their day to have a meeting with developers, whether council planners are present or not?---I'm sorry, I couldn't say how the general manager allocated his time. It was his, his day was based around his diary and how he spent his time was really of no concern to me.

And you weren't interested in whether it was, I'm going to use the word proper for the general manager to have meetings with developers, whether council planners were present or not?---I had no opinion of it at that stage.

Did you ever attend an event or a gathering at Councillor Pierre Azzi's house?---Once or twice, but probably no more.

And at the invitation of Councillor Azzi?---Yes. I remember one occasion happened to be my wife's birthday, we were invited over for a barbecue. I can't remember who was there, I think the general manager was there and I think Michael Hawatt might even have been there, but as it was my wife's birthday we couldn't stay because we'd organised a dinner.

You saw Mr Montague there on that occasion, were you aware that he went occasionally to Mr Azzi's house?---I was aware that he went occasionally, yes.

Were you aware that on information that the Commission has Mr Montague was having discussions about specific developments - - -?---No.

- - - that were before council?---No, I had no idea what was, in fact I had no real idea who was attending those meetings or, or what was discussed.

Did you know of any association between Mr Montague and Mr Charbel Demian?---I knew that Jim knew him pretty well, but that was about all.

Did you have any knowledge about an association between Mr Montague and Mr Bechara Khouri?---Yes.

Who was Mr Khouri?---He was a friend.

Of yours?---Of mine.

Yes.---I felt. And ah, he was well-known in Labor Party circles and I had lunch with him frequently and coffee occasionally. I used Bechara as an intermediary when the troubles occurred to try and approach Pierre Azzi and get some sort of arrangement or agreement with him after 2014 when things had turned really sour.

10 THE COMMISSIONER: Sorry, when you say the troubles, is that - - - ?---I'm sorry, I'm talking about the attempt to fire the general manager of 2013.

Right.---2014/2015.

Ah hmm.---Because it was in that following year, following period that somehow he'd learnt that I had made a complaint regarding a specific, it was a specific complaint that I had made and that came up in the conversation at The Lantern Club with Azzi, Bechara and myself.

20

The Lantern Club?---The Lantern Club, yes.

With Councillor Azzi?---Yes.

MR BUCHANAN: Did Mr Khouri have any involvement in planning issues at council?---Bechara always seemed to have an opinion about developments and LEPs and he talked continuously about them. But to be absolutely honest, I, I didn't pay a lot of attention. I, the ears pricked up if he mentioned a specific development because my attitude was that I would try and take on a lot of information from different sources regarding any developments and then ultimately make my decision based on the information I absorbed and also what was in the reports. But Bechara never made any specific requests – and not in my presence of either myself or the general manager – to do anything specifically about a particular development. He might ask the GM the current status of it, if there was any issues about it, but that was about all that I can remember.

30

But did you understand he had an interest in specific developments?
---You're talking about a financial interest?

40

Well, no, just generally.---He had a general interest in a lot of, lot of developments that were occurring at Hurlstone Park, along Canterbury Road.

And did you understand it to be as a mere constituent or an academic interest or - - -?---Well, I, I, I knew he had a, had, I knew he was acquainted with Charlie Demian, and a lot of these developments I think were

Demian's developments. But it was only as an acquaintance of Demian that you could say.

Did you know he had an acquaintance with Ziad and Marwan Chanine?---I wouldn't know either of those, so the answer would be no.

THE COMMISSIONER: Sorry, when you say an acquaintance with Mr Demian, what do you mean?---Bechara always said he knew Charlie for many, many years, and just along those lines that - - -

10

So just your impression was a social or - - -?---Yeah, he, he'd known him through all the developments and things that were occurring and it's the limit of it. It was, yeah, it was more or less social.

MR BUCHANAN: Was Mr Khouri a go-between between developers, certain developers, and council?---I'm not aware whether he was actually a go-between because, as I say, the only discussions were general discussions. But I didn't know whether he had any official role.

20

Did he have an influence on planning decisions made at council, whether at council officer level or councillor level, in 2014-16?---My answer with that would have to be not to my knowledge. However, knowing that he had an acquaintance with at least Azzi, whether he had any influence over Azzi or Hawatt, I don't know.

Would you have – thinking of the period 2014-16, would you have given Mr Montague any particular label in terms of his attitude to development? ---No. Not, no.

30

You didn't consider him pro-development?---I considered that he was trying to do his best between conflicting parties, and that was the Azzi/Hawatt arrangement on one side pressuring for development all the time and the desire, my desire, to actually abide by the rules and let the process flow.

And what did you understand Mr Montague did in order to do his best? ---Oh, just it seemed to be a bit of a balancing act with his, what he was doing.

40

That it might have involved compromise from time to time with the rules in relation to planning?---I didn't believe any, that Mr Montague had any direct influence on any planning decisions. He, he might have been taking the information on board from, like he did from me, but I, I can't recall him ever saying I've directed Spiro to do this. I've directed Spiro to do that.

Did you have any view as to whether the reports that came forward to council once Mr Stavis was appointed and commenced his job in March 2015 were reliable or partial or biased in any way?---Through 2014, or

sorry, through 2015, no, 2016 I recollect there was one particular report that I jacked up on completely when it came to council and refused to support it.

And what was the name or address of that property?---Again I can't remember the specific address but it was in Carrington Street near the club, opposite Carrington Square. It was a development that had a 27-metre or 24-metre frontage which would have entitled it to three storeys, however the recommendation which came through from council - - -

10 Council officers?---From council officers recommended four storeys and
- - -

That's probably all we need to know at this stage for identification purposes.
---Oh, okay. But the important thing was that it was only seven metres short of what was required for four metres, for four storeys.

What do you mean it was only four metres short, seven metres short?
---Well, the frontage I think was 24 metres and something and it required at least 30 metres to be a four-storey.

20

I see.---And I thought that particular report was just far outside - - -

Were there any other reports that you had concerns about?---Not that I recollect. The only one, as I said, the one that I queried where it appeared that the developer had split it between two.

30 What was your view about the role which council's IHAP played, Independent Hearing Assessment Panel?---The role of the Independent Hearing and Assessment Panel when we formed it was a mechanism which was intended to take the heat out of development applications which quite, which usually got quite heated in council up until that time, and it was a mechanism which alleviated any public pressure on councillors to make a decision related to significant developments that were generating a bit of public interest. It was a mechanism by which the public could still have their say but councils wouldn't be sitting there going, oh, I hadn't thought of that, and start making decisions based on the way they felt at the time rather than having a report produced for them which set it out in cold facts.

40 By independent professionals.---By the independent, independent professionals, yes.

And certainly you understood that IHAP reports and recommendations were intended to ensure that there was no partiality or bias involved in the assessment process so far as concerned the particular applications that were sent to them?---That's right, because the Independent Hearing and Assessment Panel was a bunch of professional people who, as far as I knew, had no internal, no interests within the Canterbury area and could assess development applications that had a great public interest or were above a

certain dollar figure I think and they could assess them properly and council could then look at two reports, one produced by the officers and one sent by the IHAP as virtually a commentary on the report that had been done by the, by the officers.

10 But sometimes there would be a report by the officers after the IHAP recommendations had been made which differed from the IHAP recommendations.---I can't recollect any reports coming in after the IHAP because the process, as far as I remember, was that the councillors would produce a report, the council officers would produce a report which would then be sent to the Independent Hearing and Assessment Panel and the two reports would then be sent to council at a City Development Committee meeting.

20 Do you have a memory of any occasion when a report from Mr Stavis set out what the IHAP recommendations were and then proposed, or indeed made recommendations, which were inconsistent with the IHAP recommendations?---It could have been possible because the, the report that actually went to council included a supplement, a summary of what the IHAP had said, with the IHAP report being a separate business, well section of the business paper.

30 On the information available to the Commission, it appears that council disregarded the advice of its IHAP in relation to three particular properties and applications. I'm not going to run the particular ones past you, but I'll just ask you to assume that. Do you have a recollection of that occurring while you were mayor in 2014-16?---Yes. I, I, I have a recollection of one, a City Development Committee meeting where Councillor, there was a number of occasion where changes were recommended by the Independent Hearing Assessment Panel and there was one regarding a lighting column or a, a space which would allow light in to the development and Hawatt was definitely against that because it would cost more for the developer, and reduce his profits effectively. And then there was another case, and it was a development, I seem to recollect was one for George Vasil. Azzi got up and changed, or attempted to change the recommendation. I was sitting at the, the, in the chamber. I looked across and I saw that George Vasil was talking intently to Azzi. I immediately brought that to the - - -

40 From the public gallery?---From the public gallery. I brought it to the attention of the chair and I moved that we have an adjournment, seeing Councillor Azzi was taking advice, that it would be proper, we adjourned it for the time being and then reconvened.

Now, when you say a development through George Vasil, what do you mean?---It was one of George Vasils development applications that had been dealt, discussed by, produced a report by the IHAP and by the council.

How many occasions do you recall there being development applications by Mr Vasil before council?---There may have been a number of them. I, I don't know. This one sticks because of the fact that I had to call a recess because George was in, yeah, Azzi's ear.

I understand. Was that in the period 2014-16?---Yes.

Do you remember when? What's your best memory?---Oh, it could possibly have been mid-'15.

10

After the troubles?---Oh, yes. Certainly, certainly.

Have you a recollection of an occasion in 2015-16 when the IHAP recommended that not proceed to make a decision until the IHAP had received further information and considered it?---I think the reference that you make to, it possible in December, 2015, with regard to Canterbury Road?

20

Yes.---I remember that, initially I thought that it was still undergoing the Gateway process, but, and reading the report, I think I might have been incorrect in that assumption. However, I do recollect that there were extensive arguments being put forward with regard to a section 46 application on that and they report produced by Spiro consisted of a number of precepts that supported the application. And the IHAP report, in summary, had one line saying don't do it. But there was no supporting arguments and under those circumstances, it was extremely difficult to, to mount an argument for refusing it because of all the precedents and the nature of the report presented to us. Or to me anyway.

30

Can I ask for your opinion on a question of, of policy? A number of planning proposals were sent to the department at council's request in the period '14-16. Would you accept that?---You're referring to the Gateway?

For a Gateway Determination.---Yes.

And a number of applications, development applications, were considered by council where there had been a submission that, under clause 4.6 of the LEP, there should be exemption from the applicable development standard in the LEP. You'll appreciate that?---Mmm.

40

Is there an argument that – I'll withdraw that. A number of those were decisions of council that variations should occur to the development standards in the LEP.---Yes.

Is there an argument that if this was being done on the basis that it was considered that the development standards were antiquated and needed overhauling and loosening generally, that this shouldn't be done on a piecemeal, property-by-property basis but rather that there be a transparent

process of review of the provisions of the LEP, which were considered by those who held these views to be overly restrictive? A transparent, general process of review established by the council.---Rather than spot, spot rezonings.

10 Yes. Yes.---Yes. But I was never really in favour of spot rezonings. I, I cannot recall, unless for special circumstances, that I ever approved a spot rezoning. And I was aware of the Gateway process and in fact attempted to use the Gateway process to circumvent some decisions by council or limit those, those decisions by council and utilise the Gateway process to do so.

20 But my question is about – if I'm oversimplifying it tell me – on the one hand obtaining decisions by council in favour of developers in respect of particular properties for the loosening of specific development controls, usually the same type of controls in respect of something that will not allow a developer to maximise their lot yield on the one hand. And on the other hand, if there is an argument to be made for accommodating a development boom that might be occurring in the local government area, taking a step back, commissioning a full-on review of the controls considered by those who might be pro-development, with a view to determining whether the controls should be loosened as a political exercise that involves the community and it's a bit more apparent as to what's going on.---The, the LEP, which set the, set the zonings and the heights, was a result of a vision of council's. If that vision changed, then the LEP should have gone through a process of, of change.

30 Wasn't it arguable that, given the numbers on council, that vision had changed from 2012 by the time of 2014-16?---I think individuals' visions had changed and the result was the, the spot rezonings. And there was, we, we'd had a number of workshops and, and there was one that stuck in my mind regarding – not rationalising decisions but being a little flexible in height. And one instance involved a development that was - - -

No, no, no.---Sorry.

Not the instance. What was this workshop? Just tell us about the workshop.---It was a workshop, really, about assessing development applications and height, allowing for height.

40 When was this workshop held?---2015 sometime.

And was it a workshop of councillors or officers and - - -?---Yes, it was a, a workshop of full council. A full council workshop.

Who conducted it?---It was conducted by an individual, well - - -

External consultant?---An external consultant.

Who was that?---I can't remember, sorry.

And what's your best recollection as to when that was in 2015?---No, I, I think possibly sort of late 2015.

10 Was there an outcome of the workshop or was it simply to educate councillors?---It was, it was simply an informative workshop designed to give councillors some indication of how they could relax height restrictions under certain conditions, and it was basically if for example there is a development which, and this is a specific development, that had eight
20 storeys at the back and was limited to eight storeys at the front, you could switch the limit, reduce the storeys at the back to say six and move those two storeys to the front of the development, which meant that residents at the back would be, would have a reduced frontage to look at.

20 Was this with a view to informing as it were a policy approach to clause 4.6 submissions seeking that sort of adjustment or planning proposals seeking that sort of adjustment?---I think it was planning proposals seeking that sort of adjustment. The particular development came to mind, came, came to the forefront a few months later, that's why I remember it, it was just an attempt to sort of alleviate the, the back - - -

Thank you, Mr Robson. Thank you, Commissioner.

THE COMMISSIONER: Mr Moses.

MR MOSES: Yes, thank you, Commissioner.

30 Mr Robson, I act for the City of Canterbury-Bankstown Council and others. I have a few questions for you. The role of mayor under the Local Government Act you understand was that you be the leader of the council. Correct?---True.

And a leader in the local community?---True.

And to be the principal member and spokesperson of the governing body? ---True.

40 And to exercise in cases of necessity the policy-making functions of the governing body of the council - - -?---Yes.

- - - between meetings of the council? You've told the Commissioner that, to use your words, that the mayor has a higher obligation to the public. Correct?---I think it was, higher might have been a word, I think broader, yeah.

A broader obligation?---A broader obligation.

And in relation to councillors, their position is that they have to provide strategic vision and leadership by putting in place principles, policies and local laws that enable the delivery of outcomes. Correct?---Yes.

And the role of the general manager under the Act you are aware is really one where under section 335 relevantly they are to conduct the day-to-day management of the council in accordance with the plans, programs, strategies and policies of the council?---Yes.

10

And they are to appoint staff in accordance with the organisation structure determined under chapter 11 of the Act. Correct?---Yes.

So council sets up the structure after consulting with the general manager and then the general manager, she or he appoints people in accordance with that structure?---Yes.

And they have the power to direct and dismiss staff?---Yes.

20

Okay. Now, in relation to the position of director of city planning, the general manager of course had the sole authority under the Act to hire the director of city planning. Correct?---Yes.

And what you've said is that should, if necessary, occur after consulting with council but the decision is the general manager's. Correct?---The decision is the general manager but the definition of how you consult I think was never actually concisely defined.

30

Okay. And in relation to the code of conduct that's attached to your 9 May statement – could you go to that for me, your 9 May, 2017 statement. I just wanted to - - -?---If I could get a copy of it I'd appreciate it.

You don't have your statement there with you? It's in the, it should be in a folder that was given to you but it may have been taken away. It's the larger 9 May statement. I think there's a short one.---Yes, I've got conflicts of interests page 15 onwards.

Do you have that with you?---Yes.

40

So if you go to the policy, the policy I think you are aware applied to both councillors and staff. Correct?---Yes.

And if you go to page 22, clause 5.9. One of the, one of the obligations there was that you must not use your position to influence other council officials in the performance of their public or professional duties to obtain a private benefit for yourself or for somebody else.---Yes.

In 5.10, “You must not take advantage or seek to take advantage of your status or position with or functions you perform for council in order to obtain a private benefit for yourself or for any other person or body.”---Yes.

And if you go to clause 6.2, page 23, this is the obligations of councils and administrators. 6.2A, “Councillors or administrators must not direct council staff other than by giving appropriate direction to the general manager in the performance of council’s functions by way of council or committee resolution or by the mayor or administrator exercising their power in section 226 of the Act.” And reference there is made to section 352 as well, correct?---It’s in there but I’m not, I cannot recall section 226 or 352.

You don't recall section - - -?---Specifically.

So section 226, of course, is the statutory functions of your previous role as mayor. You would have understood that section, wouldn't you?---I would have looked at it at the time, yes.

Yes. Now, in relation to section or clause 6.2B, it also states that
20 “councillors or administrators in any public or private forum direct or influence or attempt to direct or influence any other member of the staff of the council or a delegate of the council in the exercise of the functions of the member or delegate”, that that was another prohibition contained within the code of conduct.---Yes.

And if you go to 6.9, page 24, one of the other prohibitions was that you must not engage in any of the following inappropriate interactions,
30 “councillors and administrators approaching staff and staff organisations to discuss individual or operational staff matters other than the broader workforce policy issues”, correct?---Yes.

And then if you then go to clause 8.2. I'm sorry, before I move on, page 25, it expressly prohibited – this is at E – “councillors and administrators being overbearing or threatening to council staff”.---Yes.

And G, “councillors and administrators directing or pressuring council staff in the performance of their work or recommendations they should make”.
---Yes.

40 And if you then go to page 30, “Complaints made for an improper purpose. You must not make a complaint or cause a complaint to be made under this code for an improper purpose.” Correct?---Sorry, which section are we looking at now?

Page 30, clause 8.2, part A.---Oh, sorry. Yeah.

You're aware of that provision?---Yes, I think.

If you go to 8.3. "For the purpose of clause 8.2, a complaint is made for an improper purpose where it is trivial, frivolous, vexatious or not made in good faith or it otherwise lacks merit and has been made substantially for one or more of the following purposes," and it sets it out, "to intimidate or harass another council official; to damage another council official's reputation; to obtain a political advantage; and to avoid disciplinary action under this code," and so on. Correct?---Yes.

10 And fraud and corruption control policy starts on page 45. That's something that you were familiar with as well as mayor?---43, 44, 45.

Correct?---Yes.

If you go to page 49, clause 6, under the heading Responsibilities, "Council officials are responsible for reporting cases of suspected fraud or corrupt conduct," correct?---Yes.

20 And you were aware of that obligation at all times whilst you were mayor?
---Yes.

And external reporting, page 51. "The code of conduct also provides an alternative avenue for staff and councillors to report fraud and corrupt conduct to external investigating authorities such as the ICAC, the New South Wales Ombudsman or the Division of Local Government." And you were aware of that, of course?---Yes.

30 Can I then turn to your 6 June statement which attaches the submission to ICAC. Do you have that with you? This is the one sent to a Ms Gamble, assessment officer, dated 22 January, 2015.---Yes.

Which attaches a submission dated 20 January, 2015.---Can't find it specifically, but - - -

Well, it's better that you have it in front of you. Commissioner, may I ask through you whether the witness has the statement of 6 June, 2017?---No.

Thank you. Could the witness be given the attachment by the Commission if that possible?

40 THE COMMISSIONER: 6 June.

MR BUCHANAN: We'll have to go and make arrangements to obtain them. This is the paginated set that was created yesterday and - - -

THE COMMISSIONER: Could I just inquire - - -

MR MOSES: It's the one attached to 6 June, 2017, Commissioner. It's a thick document which was the thing that my friend took to the witness yesterday.

MR BUCHANAN: It's some 900 pages long.

THE COMMISSIONER: But within the original volumes I got, and I assume on the website, is the abbreviated version which you took us to yesterday.

10

MR BUCHANAN: That's correct.

THE COMMISSIONER: Mr Moses, can I ask - - -

MR MOSES: That's all I'm taking.

THE COMMISSIONER: Is the abbreviated version sufficient to your purpose?

20

MR MOSES: That's all I need. That's all I need.

THE COMMISSIONER: Do we have a copy for the witness? Excuse me for a second.

MR MOSES: We can provide the witness with a copy. Commissioner, we have a clean copy we can provide the witness.

THE COMMISSIONER: Thank you, Mr Moses.

30

MR MOSES: Thank you. It's bit heavy, thank you. So the submission is attached to that statement of 6 June and it's appended to a letter, I think, which you've signed. Correct?---Yes.

And the submission, which is dated 20 January, what you told Counsel Assisting yesterday was, as I understand it, but please correct me if I am wrong, is that it contained a number of concerns that you had had over some period of time in relation to planning decisions that had been made at the council. Correct?---Yes.

40

And that what brought this issue to a head for you was the process involved in the appointment of a new director of city planning. Would that be right? ---Yes. It would be right that it, I took it to be as an opportunity to bring these to the attention of ICAC.

Up until that time of 22 January correspondence to ICAC, the planning decisions that you sought to draw to the attention of ICAC, you had not previously reported your concerns about those matters to the Department of Local Government, correct?---Because at that time, no, it is correct. Yes.

And nor had you reported those matters previously to the Independent Commission Against Corruption?---That's true.

And the reason I think you've said that, and please correct me if I am wrong, is that you had a suspicion in relation to these matters but not sufficient to alert an authority to them, correct?---Taken in, yes, that, that's be true. Taken in eventually. It was hard to justify putting in a, a referral taken as a whole. It was not a good look.

10

But prior to that date if you had indeed formed the view that there was sufficient evidence to make a complaint of potential corruption, you would have done so because that was your duty to do so under the code of conduct. Correct?---I think the term I used was, "Reasonable suspicion." And I had been collating all of this information but what I felt was a naked grab for power and control was sufficient to trigger the fact that I would refer everything to ICAC and that I ICAC make decision.

20

Now, you've given evidence in your statement of 25 May, I think it's paragraph 7, that you had a discussion with the former premier Morris Iemma in late December, 2014, correct?---Correct. Yes.

And that your evidence was that Mr Iemma told you to report matter to the ICAC, correct?---Yes.

And Mr Iemma told you that this would provide protection for Mr Montague, correct?---No. I don't recollect that he told me but I'd have to have a look at the statement.

30

Well, Mr Iemma, in his statement to the Commission, has said that he had a meeting with you to discuss concerns about planning and development matters in the Canterbury area in 2015, correct?---Yes.

And these discussions took place in 2015, correct? Is that right?---The discussions I had with Morris were in, were between Christmas and New Year of 2014, to my recollection.

40

Did you have discussions with him in 2015 about planning and development matters in the Canterbury area?---I can't recall.

If he was to say in his statement to the Commission that he had those discussions with you, what would be your response to that?---My response would be that I would have to take Morris's word for it. He was a neighbour of mine or is a neighbour of mine, and I was in the habit of having a cup of coffee with him on occasion at his house.

Well, I might come back to that in a moment, but can I just ask you, then, just in relation to 2015, did Mr Iemma tell you that reporting a matter to the

Independent Commission Against Corruption – and I'm not suggesting he did, but I'm going to ask you – did he say to you that reporting a matter to the ICAC would provide protection to Mr Montague?---I can't recall that being said.

Now, yesterday Counsel Assisting asked you about a document which was marked Exhibit 59, which was an article in the Sydney Morning Herald by Ms McClymont concerning lunch bills.---Dated 12 January?

10 That one was dated 12 January.---Yes.

And I think you said there were a series of articles that occurred in that week in relation to matters concerning the council, correct?---Yeah, one on the 12th, 13th, and 14th.

Yes. So the 13th one was about the South Korea sister city expenses.---I cannot recall that but I wouldn't be surprised.

20 There was some publicity about yourself and the general manager booking hotel rooms at the Four Seasons.---Oh, yes, yes.

Yes. And then there was an article that appeared on the 14th, correct?---Yes.

And it's fair to say that those articles were critical of yourself and the general manager Mr Montague?---Yes.

And that it's fair to say they were matters that were adverse publicity for yourself and Mr Montague?---Yes.

30 And they were matters that were adverse publicity for the council?---Yes.

And did those articles at all factor into your decision in making a report to ICAC in January 2015?---No, because we actually reported to the ICAC on the 29th of December.

40 So the submission that went in on 20 January, 22 January, came after a contact with ICAC on 29 December?---29 December we got an answering machine. Around about 5 January, when I was in Melbourne, I had a, got a phone call from the ICAC. I had a discussion with somebody from the ICAC, I can't recall who, who requested that or told me that I should put all of my complaints and concerns in writing, which I subsequently did on the 20th.

And the 22 January correspondence is the first time that development applications are mentioned by you in any report to an external agency? Concern about development applications?---On the 20th. That submission that I put in on the 20th, yes.

Thank you. Now, can I just come back to that submission. You mentioned – I'm not being critical of you, but we don't use those terms these days anymore – that the girls in the office knew about the submission, correct? Is that right?---Yeah, Leslie and Chris would have known about it.

Yes, who are they? Who are the people that you referred to yesterday?
---Leslie was my, okay, Leslie was my personal assistant who helped in the printing of all of the documents.

10 What was her surname?---Leslie Nehme, N-e-h-m-e.

Thank you. And the other person?---Christina Pettenon, who was the PA for the general manager, who worked closely. They may have discussed it but I do not have any proof of that.

Did you tell Mr Montague about the contents of the submission?---No.

Did you provide him with a copy?---No.

20 Apart from the two employees that you've referred to, did you provide or did you tell anybody else within the council that you were putting in a submission?---I asked Janelle McIntosh to read the submission, to actually just do a proofread of it to correct any errors.

And could you tell the Commissioner who Ms McIntosh is? What position did she hold?---Janelle McIntosh held – I'm not sure of the title of the position, but she worked closely with the general manager for special projects.

30 Thank you. And - - -?---Oh, sorry, I must add, was a good friend of mine.

And where did you understand a copy of the submissions was kept within council after it was submitted to ICAC?---I didn't believe that council had a copy of the submission.

Was it typed on council computer?---No, sorry, it was, the submission was actually held, my copy of the submission, apart from the one that I held at home, was held on a USB stick which I gave to Leslie to print submissions from and then the stick was then returned to me.

40 Okay. Do you know that when a search warrant was executed by ICAC on Mr Stavis's records that there was a USB stick in which a copy of your submission was found on one of Mr Stavis's USB sticks, sir?---I am aware that the USB stick was found because I was asked to identify over the phone a USB stick. I actually asked the investigator if she could tell me where it had been located and she did not tell me.

THE COMMISSIONER: Sorry, Mr Robson, the inquiry was a USB stick that actually belonged to you?---Yes, it was. I felt that it was not appropriate to have an of these - - -

No, no, no, no, I'm not worried about that.---Sorry, no, but I'm just, no, no
- - -

MR MOSES: The Commissioner's asking you about an inquiry that you received I think from an ICAC officer - - -

10

THE COMMISSIONER: When they were executing the search warrant. ---Well, they had executed the search warrant and it was along the lines of, it was Lisa Stockley who phoned me and said, "Have you lost anything?" And I said, "Um, can't remember." I do remember, I think losing a USB stick which I couldn't find, but I had any number of the same USB sticks at home and I thought I'd lost it at home.

And so it was your USB stock that was located?---My personal USB. I didn't want council to have access to anything.

20

All right. Thank you, Mr Moses.

MR MOSES: The USB stick, just following up what the Commissioner has asked you, the USB stick containing the ICAC submission, was there only one USB stick?---There's only one USB stick.

And was that the USB stick that you told us earlier you had kept at your home?---I kept a number of USB sticks - - -

30 I'm referring to - - -?--- - - - at home but it was one that I took with me at all times.

I'm referring to the USB stick - - -?---Yes.

- - - containing the ICAC submission.---Yes.

And at some stage you lost that, that USB stick?---At some stage I thought I'd lost it, yes.

40 When you say you thought you lost it - - -?---Well, if it has seemingly appeared somewhere else at council, then it may have actually been taken from my computer because on occasions, as most people do, you put it in your computer, you do your work on it and then you forget it's stuck in the, stuck in the computer and you just go home. So I had, had come back to the office occasionally and though, oh, jeez, the USB stick's still there.

Are you finished?---Yeah.

Yeah. Okay. Well, I'll ask you a question. In terms of the USB stick containing the ICAC submission, that was the USB stick that you kept on your personal self you said. Is that right?---Yes.

And at some stage you lost that USB stick. Correct?---Yes.

And the next time that this issue comes up is when you are contacted by an ICAC officer. Correct?---Yes.

10 Thank you. Now, in relation to your letter of 22 January, 2015, attaching the submission dated 20 January, 2015, that was a matter or matters that you were raising that you regarded to be serious issues with ICAC. Correct? ---Yes.

Did you receive a response to that latter dated 22 January, 2015?---I cannot recollect that I did.

20 Okay. Now, you also had correspondence with the Office of Local Government in relation to matters pertaining to Mr Montague's position. Correct?---Yes.

And in relation to that matter, could the witness be shown, Commissioner, volume 5 of the brief of evidence, page 69. That letter is dated 11 February, 2015, from the Office of Local Government. Correct?---Yes, it is.

And this was a letter that was sent to you by the acting chief executive of Office of Local Government?---Yes.

30 And what they informed you, is this right, that in the third paragraph that, "I requested that you, on behalf of council, seek legal advice on whether the termination of the general manager's employment was valid. You provided a copy of this legal advice to the Minister in your letter of 9 February. The officers also sought legal advice and both advices bring in to question the validity of the decision to terminate the general manager's employment, made on 27 January, 2015, which in our view means that Mr Montague remains as the general manager." Correct?---Yes.

40 And went on to note that it was expected that, "All councillors demonstrated commitment to the high standards of behaviour required of council officials"?---Yes.

"And any conduct which demonstrates that a council's not acting in the best interest of the community is viewed with great concern"?---Ah hmm. True.

And finally, "The present situation of the council falls short of the reasonable expectations of the community in terms of councillor behaviour and the office would monitor the situation." Correct?---Yes.

Was that the last piece of correspondence you received from the Office of Local Government?---My recollection is that it was.

Thank you. Now, can I just go back then to Mr Montague's position. There was pressure being placed upon him because of his refusal to employ Mr Stavis, correct?---I would put it that it was his decision to not employ.

10 Thank you. Now, if you then go to, this is in the brief of evidence, Commissioner, volume 5, page 11. There is here a somersault done by Mr Montague, correct, in respect of the employment of Mr Stavis?---Yes.

And you'll see in this document he states that he is making the offer for three reasons. The events of the extraordinary council meeting of 27 February, 2015. I'm assuming he's referring to 27 January?---That's right.

Demonstrated clearly that the majority of councillors are in favour of his appointment, Do you see that? Of this appointment?---Yes.

20 Stopping there, of course, the decision to appoint a director of city planning was solely within the power of the general manager under the Act, correct? ---Under the Act, yes.

Secondly, "His appointment will avoid potentially costly legal proceedings on his part, pursuant to my letter, 17 December, 2014, withdrawing my previous offer of employment."---Yes.

That's in reference to the K&L Gates advice, received from a Mr Belling, that the Counsel Assisting took you to yesterday?---Yes.

30 Is that the reference?---Yes. I think so.

And thirdly, "His appointment is in the best interest of the community and of council as a whole." Can you see that?---Yes.

Do you agree with that, that last point, Mr Robson?

THE COMMISSIONER: Sorry, can I ask at the time?

40 MR MOSES: Yes. Thank you, Commissioner.---At the time, it would tend to settle the council down because it could be, at best, said that all of the councillors were quite excitable in their actions. Some actions I felt were not necessarily rational and it really was in the best interests of the community that the council stop arguing and looking inwards and actually dealing with the job that councillors were elected to do.

I'll come back to that. And then the second, the last paragraph, second last paragraph. "This appointment will hopefully stem any further unhelpful

publicity surrounding this appointment and the consequent negative impact on staff morale and the overall efficiency of council." Can you see that?
---Yes.

What was the unhelpful publicity that's been referred to there?---I would imagine that, recollect that it had been the articles produced by Kate McClymont in January and the fact that any continual publicity regarding the infighting of council would certainly have led to, to staff morale dropping considerably because I think I'd lose faith in it.

10

But those three articles were primarily critical of yourself and Mr Montague, correct?---Those three articles, yes. But I think the fact that the instability would have led to further publicity, which wouldn't have been satisfactory for the council.

But your role as mayor was to do what's in the public interest, not in your personal interest, correct?---Correct.

20

And making an appointment to stem any further unhelpful publicity is irrelevant, isn't it, when determining to make a public appointment. Do you agree with that? As a former mayor, do you agree with that?---I agree, yes.

Now, in relation to Mr Stavis, I think you stated that he was not the best candidate for the job, correct?---He was not my choice for the job.

30

No. And in fact you had such concerns about the process surrounding his appointment that it compelled you to write to ICAC, correct?---The circumstances relating to the ultimate attempt to fire the general manager and forcibly rehire or hire Spiro Stavis did result.

But they were matters of serious concern.---They were matters of serious concern but the, but the trigger, if you would like to call it, was the fact of the meeting between the general manager and Azzi and Hawatt on 27 December.

Now, if you go to the memo of 26 February, 2015. This is at volume 5, Commissioner, pages 109-110. It's a memorandum from Mr Montague. In the brief of evidence it's pages 109-110.

40

THE COMMISSIONER: Sorry, which volume?

MR MOSES: I think it's volume 5 but I may be wrong. It is volume 5. It's page 109 of volume 5. It's a report by the general manager.

THE COMMISSIONER: Yes, sorry.

MR MOSES: And you'll see that the general manager's reporting to council matters in relation to why he had determined to appoint the director.---Yes.

And added in here was a third dot point, which wasn't in the previous document, was that "his appointment would also avoid a second costly and time-consuming recruitment exercise, which could take six to eight weeks to complete".---Yes.

10 And it then finished off by saying, "The finalisation of this matter will hopefully stem any further unhelpful and damaging publicity around this matter and avoid any further negative impact on staff morale and the efficiency of the City Planning Division."---Yes.

And "the mayor endorsed my proposal to confirm Mr Stavis's appointment". Do you see that?---Yes.

In retrospect do you accept that that was a failure of leadership on your part as the mayor to have allowed this capitulation by the general manager in relation to external forces being brought to bear upon his decision making, sir?---No.

20 You don't accept that?---No.

So even sitting here today and reflecting on all that has occurred, you don't accept that that was a failure of your leadership as mayor, sir?---It is your opinion, I think, that it's a failure of leadership. However, given that I had no capacity to actually direct the general manager into hire or fire individuals, I could only advise the general manager as to what actions that I thought he should take, and it was then up to him to take that advice.

30 Why didn't you persist with the complaint to ICAC and follow that up in relation to the matter that you'd reported, you say, on 22 January because you had serious concerns? Why didn't you follow that up rather than capitulate?---I didn't capitulate.

Well, you endorsed - - -?---I can't see that I capitulated.

40 Well, you endorsed the proposal to confirm his appointment.---Because the general manager had made the decision to re-employ or to employ Stavis, and I told the general manager and I've made the statement all along that I would support the general manager in his decisions, whatever that decision was made.

Even if he was being, his decision-making process was being suborned by blackmail by others, or threats? Is that right?---I had informed the ICAC in what I considered to be a timely manner, and it's not my position to make a decision along those lines.

I note the time, Commissioner.

THE COMMISSIONER: Thank you. We'll adjourn for about 15 minutes.

SHORT ADJOURNMENT

[11.35am]

MR MOSES: Commissioner, is it convenient to proceed?

THE COMMISSIONER: Yes, thank you, Mr Moses.

10

MR MOSES: Thank you.

Mr Robson, Counsel Assisting took you to a motion of 13 February, 2015. If I could just ask for that to be called up on the screen. It's volume 5, Commissioner, page 94 of the brief of evidence. This was the motion dealing with your mayoral minute which was the review of council hospitality policies.---Yes.

20

And I think your evidence was to Counsel Assisting was that in large measure these were to deal with the issues which had been brought to public attention as a result of a series of articles in the Sydney Morning Herald? ---Yes, and as a result of a promise that I made at a press conference on 27 January.

And in relation to that motion it says, "The motion on being put to the meeting was declared lost."---True.

30

And prior to the motion being put did you have discussions with any of the councillors who voted against it which revealed to you why they had voted against it?---I had no discussions with any councillors prior to the meeting regarding the mayoral minute, but there were some arguments being put in the meeting as to why they refused to vote for it.

And can you recall what some of those arguments are now?---I know that Councillor Adler was concerned that the wording of my motion did not offer to do an audit of all of these expenses, however it didn't include the word forensic and I offered to amend the mayoral minute to include the word forensic.

40

And so if you go to page 94 of volume 5 it talks about a suitably qualified independent expert conduct a forensic audit. So did you amend it as part of the motion on the day?---I amended it on the day.

Okay.---At the request, well, basically at the demand of Councillor Adler.

Of that councillor.---Yeah.

Okay. Thank you. And of course in relation to this motion you I think you were putting it forward because you accepted, didn't you, that some of the matters that had been disclosed publicly were matters of concern?---They were matters of concern to the general public. Under the terms of the (not transcribable) facilities that we had, I accepted that we had behaved according to those.

Okay.---But other people might have had another opinion so let's just have a look at the whole thing.

10

Okay. Thank you. Now, can I just ask that you go back to your first, to the first statement I took you to, which is 9 May, 2017. It's the larger statement which attached the code of conduct. I want you to go to page 15 of the code of conduct, part 4. You might recall, Mr Robson, there were two statements of 9 May, a larger one and a shorter version.---Yes.

And the one that I'd like to direct your attention to is the larger one that I took you to at the commencement of the cross-examination of you.---Yeah.

20 Do you have that with you?---Yeah.

It's up on the screen in front of you, so I thank the Commission for that. So the code of conduct part 4, Conflict of Interest.---Yeah.

4.1, 4.2 and 4.3 and 4.4 deal with how to deal with conflicts of interest. Correct?---Yes.

And 4.2, the onus is on you to identify a conflict of interest?---Yes.

30 And take the appropriate action to manage the conflict in favour of your public duty. Correct?---Yes.

And you understood, did you not, that private interests can be of two types, pecuniary and nonpecuniary?---Yes.

And if you go to 4.10, at page 16 – I thank the Commission for that – "Nonpecuniary interests are private or personal interests the council official has. They do not amount to a pecuniary interest as defined. These commonly arise out of family or personal relationships or involvement in
40 sporting, social or other cultural groups and associations and may include an interest of a financial nature." Can you see that?---Yep.

And you understood that was your obligation?---Yep.

Did you always comply with that?---Yeah.

You did. Okay. Can I ask that the Commission bring up on to the screen volume 14 of the brief of evidence, page 196. This is a planning proposal

for 17 March, 2016 at 998 Punchbowl, Punchbowl. Do you see that? Once it comes up. Page 197. It's going to come up on the screen for you I think, Mr Robson, in a moment. Volume 14 of telephone brief of evidence, page 196-197. With this property, you know this is one of the applications that the Independent Commission Against Corruption is looking at, don't you? Punchbowl Road, Punchbowl?---Yes. Yes.

And if you go to page 197, there is an amendment to the planning proposal that was put by councillors Hawatt and Azzi.---Yes.

10

And you voted in favour of that, didn't you?---Yes.

Do you know who owned that property?---No.

You don't?---I, subsequently I've learnt - - -

It was Charbel Demian, wasn't it? Charlie Demian's company.---Yeah. I learnt that, yeah. I wasn't aware of it at the time that I recollect.

20

You weren't aware at the time?---Well, I don't recollect being aware of it. I very rarely paid attention to who owned what properties, and if it had been a company name I would certainly have, have probably not recognised it anyway.

And you voted in favour of that resolution, correct?---Well, if the minutes said I did, then I did.

30

Well, do you have an independent recollection, sitting here today, of voting in favour of this particular property?---Not a particular recollection of it.

Well, if you go to 2, it talked about what the current planning proposal for the site was, correct?---Sorry, in relation, what was the question again?

At the bottom of page 197, it noted what the current planning proposal for the site was, correct?---Sorry. I haven't got page 197.

You haven't?---No.

40

It's on the screen in front of you. If the, if it gets - - -?---Well, it's not identified as page 197, so sorry.

Well, if it gets, if the Commission scrolls down. Can you see that there? ---Okay, yes.

So, in effect, what was being resolved was to increase the height of this property, correct?---Yes.

And that was, in effect, a rezoning that was to take place, correct?---Yes.

This falls within the category of what one describes as a bit of spot rezoning?---Yes.

And it's a matter, I think, that you would regard as a serious matter for the council to consider?---Any development applications that were at council level were a serious application.

Can you recall why you voted in favour of this, sitting here today, sir?
10 ---There was, there was, I, I understand that there would most likely be, as I cannot recall it specifically, had been a recommendation from, from the director, from, in the report. It may also have been the subject of a discussion that I had had previously with the director because if there were contentious issues, I'd have a discussion. So, but it would have been result of a recommendation from the officers.

When you say, "May have, would have been," that's because you don't have an independent recollection today of having the discussions?---I don't have an independent recollection of that.
20

Thank you. Now, I want to just ask you then, about some evidence you gave to Counsel Assisting. I think you said that you're a friend of Bechara Khouri's?---True.

Correct?---Yes.

And that you've met with him regularly, correct?---Yes.

Yes?---Yes.
30

Now, a property at 212-218 Canterbury Road, Canterbury, are you aware that was owned by Bechara Khouri's companies?---I don't, well, sorry - - -

Mr Robson?---The answer, well, I'm trying to identify 212. I don't know the, I can't recollect the site specifically. I need, really, a bit of help with the address. But I don't recollect knowing of any properties that were specifically owned by Bechara Khouri.

If there was a company owned by Bechara Khouri or that he had an interest in, do you accept under the code of conduct you had a duty to record the fact that you were a friend of his before you purported to vote on that development application, sir?---The non-pecuniary interest – I think it depends on the amount of influence that can be seen but if, if I had known specifically it was a property of Bechara's, I, I may have made a declaration.
40

Well, I want to put it to you that you didn't.---Well, I didn't. Well, if I didn't, I didn't.

Well, this property, just to refresh your memory, was near the railway line, beside the railway line.---Okay.

Does that refresh your memory?---Well, there are a number of properties that were along the railway line there on, on Canterbury Road.

10 We're going to come to those. Yes, we'll come to those, don't worry. In relation to 3 December, 2005, DA application 168/2015. This is for 212-218 Canterbury Road. You voted in favour of the development application in relation to that property which involved, again, an increase in relation to what could be built on that property. Are you aware of that?---Well, if the minutes say that I did, I did.

And you voted with Mr Azzi and Mr Hawatt and others in favour of that. Do you recall that?---If the minutes state that I did, then I did.

So, that's - - -?---I don't recall it.

20 You don't recall it?---No.

Did Mr Hawatt and Mr Azzi and you ever discuss any properties belonging to Bechara Khouri in terms of development applications?---No.

Sorry?---No.

30 No. Let's go to the next one. On 3 December, 2015, again this is a development application 169/2015, this time at 220-222 Canterbury Road. Are you aware that at that property that was a Bechara Khouri-owned property through his companies?---No.

Sorry?---No.

That's your evidence?---Yes.

40 And are you aware that in respect of that matter again there was here a proposed development in relation to accommodating mixed-use development? Are you aware of that? If you don't have a recollection, say so.---I, I, I have no recollection of it.

No. Okay.---But - - -

Okay.

THE COMMISSIONER: Sorry, Mr Robson, can I just confirm, the first development application that Mr Moses referred you to was 212-218.---I believe so.

Can you recall whether at the time you voted in favour of the proposal that you knew it was a company belonging to Mr Khouri?---Commissioner, it was always my policy never to pay attention to who was actually applying for a development application or a rezoning or anything of that nature. So my honest response would be, to all of these questions, would be no because, A, unless the person was specifically identified I would have no knowledge of or interest in who the applicant was. I mean, that's, that's the truth of the matter whether I voted for them or not. The fact is that in the majority of these, these were recommendations to the director and it would be extremely hard to argue against those recommendations given that I'm not a planner.

MR MOSES: Well, let's go to the 220-222 Canterbury Road, Canterbury. Counsel Assisting put to you a number of propositions concerning IHAP, correct?---Yes.

Now, in relation to this property, 220-222 Canterbury Road, do you recall this was actually refused by IHAP on 24 November, 2015?---No.

20 And that despite that, you voted in favour of the application and resolved the general manager be authorised to issue consent. Do you remember that at all?---No.

No. Did you discuss with Mr Khouri this particular development application, sir?---No.

And sorry, it wasn't meant to be humorous, did you?---No, I'm not being humorous, I'm just, the assumption that I would discuss outside of council with any of the developers or their representatives on specific sites with a decision that I would make is not of my nature.

30 Did you ever discuss with Mr Bechara Khouri - - -?---No.

Can I finish the question? Did you ever discuss with Mr Bechara Khouri the property at 220, 220 Canterbury Road, Canterbury?---No.

Thank you. Now, again on 3 December, 2015, this is development application 509/2013A, this is property 548-568 Canterbury Road, Campsie. This was in relation to a property owned by Charlie Charbel Demian's company. This is the Harrison Timber site, Harrison's Timber site. Do you recall that one?---Yes, yes.

40 And do you recall in relation to this property that there was an application there for a development in what was an industrial area?---Yes.

And again that's what we would classically refer to as a bit of spot rezoning?---Yes.

Yes. And you voted in favour of that. Correct?---Yes. If the minutes say I did I know I must have.

Well, they do. And did you discuss this particular property with Mr Azzi and Mr Hawatt?---I don't recollect doing so.

10 Okay. So again on 3 December, that was quite a busy night, quite a bit of work going on that night, development 592/2014, this related to the same property, this was in essence a further amendment that was being undertaken to the development application again for the same property. Do you recall anything about that, that particular motion?---I recall on the night that, if I'm, if I'm correct on this one, 3 December, 2015.

3 December.---There was quite a lengthy argument being put regarding 4.6 variation and that was in the business paper which quoted at least one precedent and I also recall the IHAP recommendation was not to approve.

Is that your recollection?---That's my recollection.

20 Thank you. Now, in relation to the evidence you've given earlier that you wouldn't know if there's a conflict, is that because you don't look to see who the applicant is?---I have no interest who the applicant is.

So how would you know if you've got a conflict or not unless you looked to see what the name of the applicant is?---Well, a conflict we'd consider to be any way that you could influence the decision by knowing who the applicant was, by actually divorcing yourself from the knowledge of who the applicant was, then you could operate with a clear conscience and make a decision based on the facts before you.

30 But the name of the applicant's on the forms.---Not necessarily. The name of the applicant is usually a company name.

Usually a company name?---Mmm.

Okay. And you wouldn't even read who the applicant company was. Is that what you're telling the Commissioner?---That information would not be provided as part of the report under normal circumstances.

40 Are you sure about that?---I can't be sure in all cases, but most cases at least.

Well, see, just in relation to the evidence of your complaint to ICAC you had a concern about development applications that were occurring within the local community. Correct?---Yes.

[REDACTED]

And in respect of one of these applications I just put to you, you proceeded to approve it despite an IHAP recommendation saying not to.---That's entirely possible I'd say, yes.

10 And you can't recall why you did that? As the mayor, sitting here today, you cannot recall why you did that?---I cannot, I, look, I can, I can recall - -
-

Less than three years ago?---I can, please - - -

THE COMMISSIONER: Mr Moses, let him answer, please.

MR MOSES: Yes, Commissioner.

20 THE WITNESS: At that point in time I was juggling the, the councillors and trying basically to keep the peace. I was aware, and I checked this with the directors and also discussions with other people, that these LEP approvals or changes to rezoning were only a recommendation that council had made and would then be referred to the Gateway proposal, which would then refer it back to council. Now, my attitude was that it was probably easier to not argue, given that I was in the position of chairing these meetings, about any of these changes and that I could rely on the Gateway to act as a gateway and a gatekeeper.

30 MR MOSES: But you voted in favour of them, sir.---True. Because I knew there would be phase two and phase three of those approvals.

But you had a solemn duty on behalf of the ratepayers of that council to make a decision based on what was right, correct? Correct?---That is true. But - - -

And - - -?---And I make the judgement call to the best of my ability and to the best of my knowledge of these changes. At the time I voted for them, but in retrospect I thought that they were of concern to the ICAC.

40 I'm sorry. You say in retrospect they were of concern to ICAC. You never reported - - -?---Well, I mean, I, I, I, I obviously noted down at the time that the changes were being made, and at the time – and I think you're probably referring to the change in the LEP 2012 – it was a very busy meeting and, yeah.

Mr Robson, you may be confused. I'll just point this out to you. Your letter to ICAC was dated 22 January, 2015, sir.---Ah hmm.

And these votes on these matters occurred after you sent that letter to ICAC.---Okay.

So do you want to correct the evidence you just gave to the Commissioner a few moments ago?---Well, I thought you were referring to those particular, the changes to the LEP 2012. You're talking about specific ones, then to the best of my knowledge I would have acted on what was recommended in the business papers.

10 Because you're not suggesting, are you – or are you? Let me put it in a neutral way to you. Were you voting in favour of development applications or amendments to approval to development applications that were being moved by Mr Hawatt and Mr Azzi to keep the peace?---I'm sorry?

Were you voting on development applications in a particular way to keep the peace with Mr Azzi and Mr Hawatt?---After 2014, no.

20 But before then you were? Is that your evidence?---If there was a position that the items were going to be referred to the Gateway, and I remember in connection specifically with the changes to LEP 2012, some of them had some relevance or could possibly have been approved, but I let the Gateway decide.

Is that your evidence on that issue?---On the LEP 2012, yes.

30 Now, let's move on to another topic, which was the interview for candidates for director of city planning. There's been some different versions about your role on the day. There is evidence from a Vince Connell that, in effect, there was questioning occurring from all three councillors at the interview. ---Yes.

Did you ask questions at the interview?---Yes.

40 That reference, Commissioner, is page 180, line 40 of the transcript. And I think at page 183, line 40, Mr Connell said that – in terms of the reaction from the councillors – is that it was pretty a stern, stonewall face of the three councillors to the answers I got out of the other. Would that be consistent with your recollection of what occurred at that meeting?---I cannot recall specifically Connell's interview, except that Connell wasn't considered to be one of the top three. We were assigned questions. I would have asked questions which had been assigned to me. I wouldn't have inquired specifically about site, council sites, and I would not have asked questions beyond my expertise.

Your expertise being what?---Oh, 17 years on council, working with the ATO, working, I mean, I had no, I had no technical expertise and I saw my role, really as being, helping to determine the best fit for council.

Thank you. And just my final questions because there's been a bit of confusion about this. What did you understand Bechara Khouri's occupation to be? Because - - -?---I don't know. I had no idea of his occupation.

I'm sorry?---I had no idea of his occupation but I did know that he had a few very many pies.

10 What were those pies?---I, I remember in his statement that, oh, he talked about aluminium extrusion, housing, restaurants, that was my understanding of his employment.

Is that what he told you?---Well, yes.

Sorry?---Yes.

And you were his friend for how long?---Four years.

20 Four years. What period?---From the period of becoming mayor.

Which was when?---1 November, 2011.

And you didn't know him beforehand?---No.

Did you know that he'd featured in an ICAC hearing in 2005 involving Strathfield Council?---No.

You didn't know that?---No.

30 You never Googled that for it to come up?---Why should I?

So you weren't aware that he'd featured in respect of what was said to be the alleged blackmail attempt in respect of Strathfield mayor?---No.

No. That is he featured in the evidence of the inquiry.---No.

No. Thank you. No further questions. Thank you, Commissioner.

40 THE COMMISSIONER: Just going on from that, did you know Mr Khouri through the Labor Party?---Commissioner, it goes back to the way in which I was introduced. The answer is yes but I first became aware of Bechara Khouri at Rob Furolo's farewell.

At whose sorry?---Rob Furolo's farewell dinner.

Oh, yes, the mayor.---The previous mayor. And he pointed Bechara out to me and said, "This is a man you should get to know." And that was the first time that I had met Bechara.

And can I just follow on from a couple of questions from Mr Moses. When you were sitting with council and you had some application before you, the information you relied upon was the business papers?---Yes.

And your recollection is that the business papers wouldn't identify necessarily, the owner of the property?---Yes.

10 Would it identify who was putting forward the proposal?---The company would be identified in the heading of the first page of that report.

All right. And as you said, if it was a company, you would have not - - -?
---To be honest, if it had been, it, it works in the other way in that, for example, I, I was aware that the old Harrison site was a Charlie Demian site. So if the company name had been popped up, I, I, the company I may not have recognised but I certainly recognised the name of the site because it was one that was quite contentious, under discussion, "Oh, that's Charlie Demian's. That's Jimmy Maroun's." That's, but to that extent, that was the limit of my knowledge.

20

So, that was based just on information gathered outside the council papers?
---I would, I would be listening to discussions. I felt it was my role to take on as much information, whether it was the official information which I had to base a decision on, but it always helped to have some idea of basically who was who in the zoo.

No, I'll leave that. Okay, Mr Neil.

30 MR MOSES: Commissioner, I just have one question arising out of what you've asked. Just about knowing who's who in the zoo, this is about corruption prevention, Commissioner. Do you think it would be better in the future that not only the company names are disclosed in respect of applications or development applications, but the principals of those companies, so that people such as yourself actually know whether or not your code of conduct is triggered in terms of your obligations, sir?---It, it would certainly help. However, I would clearly define the code of conduct obligations because the fact that I knew this was a Charlie Demian site would not have been of any influence to me because I did not know Charlie Demian but I knew of Charlie Demian.

40

Yeah, but - - -

THE COMMISSIONER: Yes, but what about the - - -

MR MOSES: Sorry, Commissioner, I interrupted you.

THE COMMISSIONER: - - - properties that Mr Khouri – Mr Moses says that the particular company was - - -?---Well, if, if, if, if those, if those

companies have identified Bechara Khouri then I would have taken advice as to what we should do about it because there was a reasonably close association.

So that would have triggered a conflict of interest concern on your part?
---It, it would have triggered a conflict of interest concern and I would have taken advice as to the seriousness of that and whether it actually required me to make a non-pecuniary interest declaration.

10 MR MOSES: Well, just to be clear, in terms of those, the information you think it would have assisted, wouldn't it, if it actually named the principals of the applicant and the landowner so that you could make that informed decision. Correct?---Yes.

And importantly so that there could be proper policing of the code of conduct as well by council officers. Correct?---I think the, the short answer would be yes.

20 Thank you. Thank you, Commissioner, for that indulgence. I have no further questions.

THE COMMISSIONER: Thank you, Mr Moses. Mr Neil?

MR NEIL: Thank you, Commissioner.

Mr Robson, so you understand, I appear for Mr George Vasil.---Yeah.

30 Now, do you have with you your statement which is Exhibit 53 and is dated 6 June, 2017?---Mr Moses's copy of it, yes.

Thank you. And I just want to take you firstly to the page that is headed in your submission to ICAC, towards the top of the page it has, "Amendments to CLEP 2012," and is about four pages into the attachments. Could you see that, please?---I'm just going to start at the front again and work my way backwards.

40 MR BUCHANAN: Sorry, Your Honour, Commissioner, can I just ask for my friend's assistance. I'm a little confused as to what it is the witness is being asked to look at.

MR NEIL: Yes, well - - -

THE COMMISSIONER: Yes. Mr Neil, the page I'm looking at, it starts off with, "3. I have reasonable suspicions."

MR NEIL: Yes.

THE COMMISSIONER: And then after three lines there is in capitals, "Amendments to CLEP 2012."

MR NEIL: Quite right, Commissioner, but at least the copies we have don't have paginations.

THE COMMISSIONER: No.

10 MR NEIL: That's why I've had to ask the witness to find it.

THE COMMISSIONER: Can you just excuse me for a minute?

MR NEIL: Yes.

THE COMMISSIONER: I think this may have been the start of the section that you indicated that you weren't going to rely upon.

20 MR BUCHANAN: Correct, Commissioner, and secondly, I appreciate it's late in the day for this to have occurred but there is now a paginated version available on the restricted part of the Commission's website.

THE COMMISSIONER: And I've got my copy here so I might be able to assist. I think it's page 11.

MR BUCHANAN: In any event, so long as my learned friend understands that this is material upon which we indicated an intention not to rely, but we did say unless persuaded otherwise.

30 MR NEIL: All right. Well - - -

THE COMMISSIONER: Mr Neil, can I suggest you start asking your questions and taking Mr Robson to the sections that you want to take him to and if there is any issue of relevance we can take it up with you.

MR NEIL: All right. Well, in view of - I must say, and I do apologise, I have not attended properly to realise that this is part that's not being relied on by my learned friend, so I'll keep my questions about this quite short.

40 Have you been able to find the page that towards the stop starts with Amendments to CLEP 2012?---It's currently up on the screen, yes.

Thank you very much. Now if you could go to the next page, please. There's a reference there to certain properties at Canterbury Road and they're set out, Thompson Lane, Wilson Lane and the like. Do you see that?---Yes.

10

20 Well, I'll keep this short. Is it the case that you voted in favour of this spot-zoning, it went to the Planning Department, to the Gateway, and eventually the proposal was rejected?---I cannot recall whether it was rejected but that's a distinct possibility.

All right. Thank you. Well, I won't take that matter any further in light of the circumstances.

30 THE COMMISSIONER: And, Mr Neil, just to assist the transcript, the reference to that paragraph was on page 12 of the paginated version of the statement.

MR NEIL: I'm very much obliged, Commissioner. Thank you. Now, you gave some evidence yesterday in which you said that you'd had a phone conversation, as I understand it, after the time that there'd been the motion put forward to remove the general manager. You had a phone conversation with Mr George Vasil. This is at 3371, Commissioner. Now, did you, as I understand what you're saying is you wanted to convey to Mr George Vasil that he should convey to his son, Councillor Con Vasiliades, that he shouldn't in effect support Councillor Hawatt without proper consideration.
40 ---I phoned George Vasil out of my concern that Con was getting himself into a situation that he did not know the full implications of, and that he should consider his options based on those implications.

Did you say to Mr George Vasil, words to the effect, "Tell Con not to follow Michael blindly"?---There's a possibility that I did.

Did Mr Vasil say to you he did not wish to discuss any such matter with you?---I cannot recall that.

Now, you also gave some evidence to the effect that, at page 338, transcript 338, pardon me, that you understood from other people that Mr George Vasil vetted and looked at basically anything that Con did on council. Do you recall giving that evidence?---I recall saying words to that effect, yes.

And you say you got that understanding from Vasiliades family members.
---Yes.

10 Can you name any of them?---Con's wife.

And about when was this?---It was the result of a conversation that my wife had had with Councillor Con Vasiliades's wife, where she told my wife that all of the business papers, all of the emails were vetted by George Vasil on behalf of Con, even the pink papers, which were the restricted papers.

Did you ever raise such a matter with Mr George Vasil?---No.

20 Did you ever pursue any investigation of such a matter?---No.

For all you knew, the information could be quite wrong. Correct?
---It is not something that I would certainly have done myself.

Now, is that an answer to the question?---Yes, sir, yes.

Well, we rely on the transcript. Now - - -?---Well, in that case the answer is no.

30 You said in your evidence yesterday at 339 that you didn't know anything about whether Mr George Vasil had attempted to intervene as it were to make peace, was the question. What I want to ask you this, after the time at which the motion had been put forward to remove the general manager, did the general manager ever inform you that he had sought out Mr George Vasil as a possible intermediary in the matter?---I don't recall that.

40 I think you say, if I might just go back a moment – I'll withdraw that. Commissioner, could I just ask my learned friend, with an apology, going back to the ICAC submission, and what I think would be page 9 where there's a reference to following a Christmas break, if Counsel Assisting is relying on that or not. If not I won't pursue this.

THE COMMISSIONER: Excuse me.

MR NEIL: It's two or three pages before obviously 12 which I was asking about.

THE COMMISSIONER: I think my understanding is you are relying on that, Mr Buchanan?

MR BUCHANAN: Yes, it is, we're relying on that and the next page.

MR NEIL: All right. Thank you. At what I think is page 9 there's a paragraph, are you able to see that?---Yes.

10 "Following the Christmas break," et cetera. Could it have been that the general manager told you that he had approached Mr Vasil?---At the time of writing this, well, at the time you were questioning I couldn't remember having made this statement, however now the statement is there in front of me I'll stand by that I guess that, because it was written at the time or close to that the general manager said he had been approached by George Vasil and by Tony Stewart.

Now, you gave some evidence this morning about a meeting of the council at which there was an adjournment. Do you remember giving that evidence?---That would have been the special meeting to discuss amendments to the CLEP 2012.

20 It was not a meeting on 14 April, 2016 at which you called an adjournment at about 8.25pm?---Sorry, I've misunderstood the question. I thought you were referring to an adjournment which I did call at that particular meeting. I think you're referring to a City Development Committee meeting.

Was it a meeting of either council or City Development on 14 April, 2016 to consider an application by or on behalf of Mr George Vasil in respect of 86-92 Kingsgrove Road, Belmore?---I can't recall the specific site or the date.

30 Did you adjourn the meeting for a short time?---If it is the meeting to which I think you were referring I called on the chairman for an adjournment and if it was the City Development Committee meeting I would have been sitting on the floor of council as a normal member of that committee, I would not have chaired it but if it is the meeting to which you refer I did call for an adjournment because a I saw George Vasil talking to Councillor Azzi who was sitting at his seat in the council chamber.

And was it a meeting at which a property of Mr Vasil's was the subject of consideration?---I would imagine so, yes.

40 And was it a meeting in respect of a property that had been the subject of certain recommendations by council planning staff?---As I've said, I cannot really recall specific, there was a meeting and I am assuming that it was the meeting to which you refer. There was an item on the agenda at that meeting which was subject to a report both from, I think, the IHAP and by council officers.

Thank you. And I want to suggest to you that there was a question relating to some conditions but that, "Subject to questions of conditions, council officers and I have recommended approval of this development and that the

council voted to approve the development." Do you agree with that?---If the minutes state they did and it's the meeting to which you're referring, yes, they did.

And I want to suggest to you that at that meeting Councillor Con Vasiliades, 14 April, 2016, had made a declaration and left the meeting and did not take part in the vote regarding Mr George Vasil's property. Do you remember that?---If it had been George Vasil's property or anything associated with Con Vasiliades or his family, Con usually took, declared either a
10 nonpecuniary and, or a pecuniary interest and left the meeting.

All right. And I want to suggest to you that Councillor Hawatt was not present at that meeting. Are you able to say anything about that?---No idea. No, I cannot recollect.

And I want to suggest to you that absenting Councillor Hawatt and Councillor Vasiliades, the vote in favour of the proposal was as follows, Robson, yourself, the mayor, Adler, Azzi, Eisler, Kebbe, Nam, and Paschalidis-Chilas. Do you remember that?---I think you're quoting from
20 the minutes, so it has to be the case.

And indeed it must have been a most uncontroversial matter if Paschalidis-Chilas and Eisler voted along with Azzi and Nam. Agreed?---Sorry, can you rephrase that, please?

I'd suggest to you it must have been a most uncontroversial matter if Paschalidis-Chilas and Eisler voted along with the other members present, that included Azzi and Nam.---If it is the item to which you refer, and I seem to recollect that it was the subject of both an IHAP and a council
30 officer's report, which meant that it had triggered something of concern to the officers otherwise it would not have been referred to IHAP, and that would have been over a certain dollar figure or contentious. My recall of that particular item was I think there was, whilst both the IHAP and council did recommend, the council officers did recommend approval, the IHAP recommended certain extra conditions which were the point of some discussion. But ultimately if those conditions and the decision had been resolved by the committee, then there'd have been no reason why that would not have been approved.

40 Well, I want to suggest to you that there were some amendments regarding conditions and, subject to some conditions, the vote was unanimous, as I have just put to you.

MR BUCHANAN: All right. Commissioner, I object. I just query the relevance of this degree of detail in the question that's being asked.

MR NEIL: Well, I'll come to the nub of it, Commissioner. By your evidence this morning, in which you gave evidence of Mr Azzi and Mr

George Vasil in some way communicating with each other, if you accept it's relating to this property that was dealt with on 14 April, did you mean to convey any suggestion adverse to Mr Vasil?---No, I - - -

Thank you. Thank you, Commissioner.

10 THE COMMISSIONER: I think, to be fair, why did you refer to it in your evidence this morning?---Because I considered that it was totally inappropriate for anyone who had a development before council to be talking to a councillor while this determination was taking place. I brought it to the attention of the chairman and called for a recess so that Councillor Azzi and George Vasiliades could have a discussion away from the council circle, as it were. There was no implication on anything. It was just that I got quite annoyed at the fact that George was trying to involve myself while we're trying to make the decision.

So was it more a procedural - - -?---It was certainly procedural. I mean, yeah, I just didn't like what was happening.

20 MR NEIL: All right. Well, could I just ask something arising out of that, Commissioner, very briefly. Did you adjourn the meeting for five minutes, from 8.25 to 8.30, and did the meeting conclude, having voted on the matter, at 8.32?---No.

All right.---I wasn't chairing the meeting.

Thank you.---So I had no role.

30 How long was the adjournment for, can you remember?---No, it's in the minutes.

All right. Thank you.

THE COMMISSIONER: Mr Andronos.

40 MR ANDRONOS: Thank you, Commissioner. Mr Robson, I appear for Mr Montague. I'd like to ask you just a couple of questions in relation to Marcelo Occhiuzzi.---Would you mind speaking up a little bit? My hearing is not the best.

Sorry. Is that any better?---That's better, thank you.

Yes. To start with I'd like to ask you a couple of questions concerning Marcelo Occhiuzzi. Now, he was already the director of city planning at Canterbury Council when you became mayor in 2011.---Yes.

You had a positive view of him at the time you became mayor?---Yes.

Yesterday you were asked by Counsel Assisting some questions about your opinion of Mr Occhiuzzi at the time of his resignation. Do you remember that?---Yes.

And your answer – for those who are following, it’s in the transcript at 291, at 34 – your answer is that you thought he had performed adequately. Do you recall that?---Yes, I had no reason to believe otherwise.

10

Yes. Now, I might suggest to you that’s less than a ringing endorsement of Mr Occhiuzzi’s time at council. Do you agree with that characterisation?
---I think I was being careful with the words that I was using, but Marcelo had always answered my requests for information in a timely manner. I had no reason to doubt his performance.

20

Yes. But is it fair to say that there were certain aspects of his performance during his tenure as director of city planning as not sufficiently impressive for you to give him a grade of good or excellent?---It was not my position to rate him. I based any opinion of Councillor, of Mr Occhiuzzi on the way he behaved to me and the quality of the reports he produced. The other comments were related to me via the general manager.

Yes. But you say it wasn’t your position to form an opinion, but you were the mayor. You must have had a view?---Yeah, it was the general manager’s job to maintain the staff.

30

I understand it was his job, but you were the mayor. You must have had a view?---I had a view that Marcelo was doing the job.

So even though he was a senior member of the executive team on council, you didn't form a view as to whether he was doing – you didn't independently form a view as to whether he was doing his job well or not?
---I could didn't criticise his performance.

Can you answer my question, please. You didn't independently form a view as to whether he did his job well or not?---My view was, yes, I did. My view was that he was doing his job in a manner which I accepted.

40

In your third statement, I’m using the nomenclature of Counsel Assisting yesterday, or the larger 9 May, 2017 statement, to use the nomenclature of counsel for Canterbury-Bankstown Council, paragraph 7, if you could turn to that, please.---I think I’m relying on the screen coming up.

That’s probably the easiest way. Now, if I could just take you to the first sentence where you say, or perhaps if you just read the last of paragraph 6 just to put it in context, that, you say that, in paragraph 6 you understand from conversations with Montague in 2013/14 that he had concerns

regarding quality of reports Occhiuzzi had recently produced for council as well as his interaction with certain councillors, in particular Councillors Azzi and Hawatt.---Yes.

And then at 7 you say, “I also had concerns regarding some of the decisions made by Occhiuzzi following meetings with Azzi and Hawatt.” Now, these are meetings that Mr Occhiuzzi had with the councillors, not meetings that you had with the councillors. Is that correct?---Yes, under those circumstances that would be a fair statement.

10

Yes. And can I suggest to you firstly that what you’re expressing there is you were concerned about some of the decisions that Mr Occhiuzzi had made. That’s what you’re saying there, isn’t it?---Yes, because in this particular case it was a reflection of a discussion I’d had with Occhiuzzi regarding 28 Oatley Street. It was only where Hawatt and Azzi had been putting pressure on was I concerned.

So the answer to my question is yes. Is that right?---Yes.

20

Now, can I just take you away from 28 Oatley Street and ask you a more general question about Mr Occhiuzzi’s performance. Were you aware that the gross mean average time for processing of development applications in the 2013/14 financial year was 85 days?---I cannot recollect that.

But that would sound about right, wouldn’t it?---It could possibly have been a figure that was reported to me.

30

Yes. But if it were 85 days, you would regard that as a gross mean average as being unacceptably long, wouldn’t you?---I remember discussions that there were long times taken to process DAs but also the fact that there were limits to the amount of work that the staff could actually progress and there were other concerns that I just can’t recollect at the moment.

So if we could come back to my actual question, if it were 85 days, your view would have been that would be too long, wouldn’t it?---It would possibly have been, yes.

40

Yes. Wasn’t the, hadn’t it been discussed at council that the objective was to be closer to about 40 days?---The number 40 does cause, well, I do recollect the number of 40 being mentioned.

Yes. And the figure of, the time period of 85 days, that’s the figure that, that’s the figure that had arisen on Mr Occhiuzzi’s watch, hadn’t it?
---Well, that is the figure you’re quoting me, yes.

Yes. Perhaps we could, well, perhaps after the adjournment I’ll take you to, I’ll take you to a reference in the evidence. Let’s just move on. Now, in your answer to me a short while ago and also in paragraph 7 of your third

statement you give us an example of the source of one of your concerns, 28 Oatley Street, Kingsgrove. You recall that?---Yes.

Now, your particular concern arose out of an application for retrospective approval of some illegal concreting.---Yes.

That was in the front yard of a single-occupancy dwelling?---Yes.

10 That involved about two square metres of concrete, didn't it?---I can't recollect that.

But it wasn't a – perhaps if we just put it this way. It wasn't a massive piece of illegal construction.---I don't know. It was obviously of significant concern to the owner, because he certainly didn't want to dig it up because of the services underneath it.

20 So is the answer to my question, yes, it wasn't a large piece of illegal construction?---Well, I mean, I'm not, I'm not going to, I'm not going to set limits to what I consider to be significant or not. I think if a ratepayer has got a concern or council's got a concern, it's important and significant.

Now, it's your recollection Mr Occhiuzzi was resistant to any compromise which would result in partial retrospective approval of the concrete slab? ---From what Marcelo told me, yes.

30 And even after he prepared a compromise solution which had been propounded by councillors Hawatt and Azzi, he still refused to approve it himself. Is that your recollection?---I recollect that there was a discussion that he was unhappy with the result, but I can't remember what was finally put into the report which went to council.

Do you recall that he submitted a report that he did not personally endorse? ---I can't recollect that.

To your mind, did you form the view that Mr Occhiuzzi was ever inflexible or dogmatic in his approach to planning approvals?---I don't think I'd use the word inflexible or dogmatic.

40 How would you describe it, Mr Robson?---I would describe it as him being a planner who knew what the Development Control Plans were, which was a reflection of what council wanted, and the LEPs, which was what, again what council wanted. And he attempted to process DAs which were compliant with those wishes of council.

And he was reluctant to consider any variation, either on a clause 4.6 basis or any other, which would not enforce the letter of the LEP or other instruments?---I couldn't say. I couldn't answer that question.

THE COMMISSIONER: Do you think that's an appropriate time?

MR ANDRONOS: That will do. Thank you, Commissioner.

MR MOSES: Commissioner, just in relation to Mr Stewart, we've taken the view – unless we're told contrary by Counsel Assisting – that it's unlikely that he'll be reached today, because he's at work and we hadn't - - -

10 THE COMMISSIONER: That's right. And it was - - -

MR MOSES: About making arrangements for him to arrive, so we'd held off.

THE COMMISSIONER: We'd reconsider it at 1 o'clock.

MR MOSES: But if my friend thinks he'll get to Mr Stewart after Mr Manoski today, then we'll certainly ask him to come into town.

20 MR BUCHANAN: No.

MR MOSES: May it please the Commission. Thank you.

THE COMMISSIONER: Thank you. All right. We'll adjourn until 2 o'clock.

LUNCHEON ADJOURNMENT

[1.03pm]