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INDEPENDENT COMMISSION AGAINST CORRUPTION

PATRICIA McDONALD SC  
COMMISSIONER

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 16 OCTOBER, 2018

AT 2.00PM

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THE COMMISSIONER: Yes, Mr Stavis. Right. Thanks, Mr Pararajasingham.

MR PARARAJASINGHAM: Mr Stavis, I just have one – can you hear me?---Yes.

10 I just have one topic left to explore with you. You recall you gave some evidence as to the, with regard to the Willeroo property, you referred to a conciliation process under section 34 of the Land and Environment Planning Act.---Yes, sir.

Can I just take you to page 3471 of the transcript. So here you were asked questions about some things that you did as a result of some intervention by Mr Hawatt and perhaps others. Can I just direct your attention to lines 13 to 24 where you were asked, “Having reviewed all of this material, the material I’ve taken you to, it’s fair to say that as a result of Mr Hawatt’s  
20 interventions with you, Mr El Badar and his co-owners received a higher level of service from you than would have been the case had Mr Hawatt not intervened?” And you answered, “That’s fair.” “Indeed if you had not intervened there would have been a likelihood, wouldn’t there, that they would not have submitted amended plans and the applicant wouldn’t have achieved the outcomes he achieved?” And you say, “I think, I think that he probably would have at some point in time during the course of the court proceedings, so to that, to that extent I think it’s not unusual if it goes, it goes to a full-on hearing and there is an opportunity for amendments to be  
30 made.” My question to you is, in the context of the section 34 conciliation process, firstly who attends that?---Ordinarily it’s relevant council staff, the applicant and his or her respective experts and lawyers from both sides.

Okay.---And also in some cases the commissioner or a - - -

There’s a commissioner?---Yeah, yeah.

Or a mediator present?---Yeah.

40 And when would that occur? Forgive my ignorance, but when would a conciliation like that occur?---Normally once an applicant has lodged an appeal, and I haven’t been a practising planner for a long time, but there’s a requirement for a 34 process to go through.

And can you just explain typically what occurs at these conciliations?---It’s a, it’s, it’s, it’s a pretty much a round-table discussion between both parties where council articulates any issues.

Council, the council?---Council, our council staff.

Council.---Yeah, would articulate issues they may have with the proposal and the applicant and/or their representatives would provide a response. So it's a, it's meant to try and find an amicable solution.

And you've accepted this expression in another context in my questioning, but would you describe that as an exchange or a free flow of ideas?---Yes.

10 Now, in circumstances where a commissioner or a mediator is present, what role does that person play?---Look, I've been – ordinarily they're meant to be, I guess to facilitate discussion, to try and cut to the chase with issues, but I've also been present in section 34's where the commissioner would actually make suggested changes or pose scenarios. For example, you know, "If you cut the building back here would that satisfy you, council?" or those sorts of things, exchanges.

Okay. And in these conciliation meetings, presumably there is, the applicant has a plan - - -?---Yeah.

20 - - - with him or her?---Yes.

And are notations made to the plan by any party?---Quite often, yes. Normally in the course of the exchange of issues and responses, there might be scribbles done on, on drawings and the like, yes.

And are there occasions where the commissioner or the mediator makes annotations or edits to the plan?---Not normally, no. Not them physically writing things, no.

30 But the council and their representatives make amendments or annotations to the plans?---Quite often that's the case.

And is it the case that if the parties come to some agreement following this process, the court gets notified?---Yeah. The court gets notified as best as I can recall, at some point in time, whether the mediation was successful or not, yes.

40 And what happens, where the mediation is successful, what happened to the plans?---If it involves amendments, normally they're given a certain amount of time to provide those amendments, them being the applicants, and that is normally done through the solicitors and if those amendments are acceptable then the council staff would notify our solicitor to say that they're accepted.

Now, can I just take you to, still on that same page, 3471, well, before I do that (not transcribable). You recall you were asked lots of question, Mr Stavis, about handwriting that, your handwriting that appears on applicants plans. You recall that?---Yes, sir.

And I mean, I can take you to some examples if you like but you know what I'm talking about?---Yes, sir.

Can I just ask you this, if you just go to page 3472, now this is still in the context of, you were being asked questions about the Willeroo property and things that you, edits or annotations that you made to the applicant's plans. Can I just take you to lines 42 to the end, where this is put to you,  
10 "Certainly. Can I put this proposition to you. It was appropriate for council, through you, to indicate what its position was in this case so far as setbacks were concerned, but was it appropriate that you indicate 'And this is how you can do it,' or 'This is how you should achieve it so far as concerns your application,' rather than, given that it's the applicant's application, really it was for them to make the application?" Do you see that question?---Yes, sir.

And your answer is, "No, I don't know it was in appropriate at all. As I said, it was a way in which to try and provide clarity around the issues for them,"  
20 this is over the next page, "and in that mediation process it was, it was about trying to find, I guess, a compromise but I don't see it as being inappropriate at all." Now, can I put a hypothetical scenario to you, Mr Stavis, and could you assist us in understanding how this scenario would play out in practice, if you like? Relying on what was put to you as perhaps a, I'm going to call it a, say a gold standard, assume this, assume that council indicates to an applicant a general position regarding setbacks without making any suggestion as to how that could be satisfactorily achieved. Just assume that.---Okay.

30 So, it may take, for current purposes, council indicates, look, we have a problem with the setbacks or the setbacks are inappropriate.---Yes.

Now, at that point, can you identify, drawing on your experience, any problems for the applicant in understanding what is it that they need to do to progress their application?

MR BUCHANAN: I object. Is this in a section 34 conciliation conference?

40 THE COMMISSIONER: That was, actually, I was going to raise that. Is this in the context of Willeroo and the conciliation conference that you've raised or more generally?

MR PARARAJASINGHAM: This is, it is more generally, and as I understand the way it was put in the extract, it was put as an appropriate way of practice for council. That's the way I understand the question. So, I am putting it generally.

THE COMMISSIONER: So, whether it's at a conciliation conference or at some meeting outside the court process?

MR PARARAJASINGHAM: Yes.

THE COMMISSIONER: All right.

MR PARARAJASINGHAM: Sorry, it was just raised in the context of this property. Do you want me to repeat the question or do you recall what I asked you?---I, yeah - - -

10 I'll ask it again.---Yeah, yes.

So I've given you the hypothetical of what council, council indicates the setbacks are inappropriate. At that point can you identify for us any difficulties that the applicant may have in appreciating what it is that they need to do to progress their application?---It doesn't provide any surety or clarity for the applicant if you are just merely saying four metres.

Well, hang on, I didn't - - -?---Sorry.

20 Let's assume that the general position is these setbacks are inappropriate. ---Yes.

Right.

THE COMMISSIONER: But your answer of four metres, they're inappropriate because they don't comply with the control. Is that what, is that your understanding when Mr Pararajasingham said inappropriate? ---I don't think – did you say inappropriate? I'm not sure of the question. Sorry.

30

MR PARARAJASINGHAM: Well, I'm picking up the language of the question where it was suggested that it was appropriate for council through you to indicate what its position was, using the Willeroo example, so far as setbacks were concerned, but was it appropriate to indicate this is how you can do it? So assume that council has a general problem with setbacks in a particular plan. They by inference want the setbacks to be reduced or in some way amended, but, and I was picking up the language of this question, no guidance is given to you as to, sorry, given to the applicant as to how that can be achieved specifically. Do you understand?---I understand.

40

And you've given an answer about from the applicant's point of view, it is your position that really in those circumstances the applicant is left to interpret council's general position without being given any guidance as to how that concern can be specifically addressed?---Yes.

Now, in those circumstances, assume the applicant goes away, gets their architect to make some amendments to the plan - - -?---Yes.

- - - at their cost, assume that.---Okay.

Can I ask you this. Typically in your experience how long does that process take for a developer to get an architect to make amendments, get the plans back? What's the turnaround time?---Depends on the extent of the changes but - - -

10 Sure.--- - - - I would say it's not unusual for it to take at least two to three weeks.

And of course all the while it's down tools on that DA at council's end?  
---Pretty much, yes, yes.

You qualified that. Why do you qualify it?---Well, I mean, you know, you might, you might be reviewing some other aspect of it, but generally speaking it's, you don't do much work on an application when there's, when there's that scenario that you pointed out, as an officer.

20 Right, because you don't have the final plans.---No, that's right.

The thing's not going to really progress, is it - - -?---Correct.

- - - in any meaningful way?---Correct.

Assume then that the applicant comes back to council down the track with some plans with some amendments made and assume that, for whatever reason, those particular amendments do not satisfy council.---Yes.

30 And this process is repeated a number of times until the applicant has achieved council's satisfaction.---Yes.

And in this example I'm just dealing with setbacks, a similar process would, assume a similar process for example height controls?---Yes.

Now, my question is this. Would that be a productive use of council resources?---No.

Would that be a productive use of the applicant's resources?---No.

40 Would that be consistent with your understanding of your KPIs?---No.

Would that be an approach which served the public interest?---I don't believe so.

Those are my questions, Commissioner.

THE COMMISSIONER: Mr Buchanan.

MR BUCHANAN: Could we have a look, please, and could the witness be shown volume 17 in Exhibit 52, page 189. And if I can indicate this for the Commissioner and the parties, I'll be taking the witness to something that he was asked and said at page 4548, line 5. It's just to clarify some evidence, Mr Stavis, that you gave in relation to this email.  
---Yes, sir.

10 The evidence that I'd like to take you to, if you could just bear with me is, "Do you know what this email's about, sitting here today, do you know whose property this is referring to?" Answer, "Yeah, I think it was Mr Demian's." And can you see that there's actually two properties referred to? One is in the heading, 536 Canterbury Road DA.---Yes, sir.

And the other is at the bottom of the text, 570-580 Canterbury Road DA.  
---Yes, sir.

20 Were you probably referring to the bottom of part of the email, the reference to 570-580 Canterbury Road DA, when you said Mr Demian's?---Yes, sir.

And as far as 536 is concerned, is it possible that you meant 538 Canterbury Road?---Yes, sir.

And that's just a type for Mr Maroun's property at that address?---Yes, sir.

I'm sorry, I stand corrected. Volume 17 is in Exhibit 69, not 52. Transcript page 4555, around 18, perhaps I should take you to, just to give you a bit of context, line 5. Question, "There might be a general public interest which doesn't fall within any of those categories?" Answer, "Yes. Yes, sir."  
30 Question, "Now, in any particular development there might be a benefit to council through increased revenue from statutory contributions?" Answer, "Yes, sir." Question, "Where the development results in an increase of residents, there'll be more rate payers?" Answer, "Yes, sir." Question, "It might mean that there are, it builds up community with attracts and retains business?" Answer, "Yes." Question, "Yes. I left out higher levels of government in this question of benefits, but we might just note that and move on. Now for neighbours, for neighbours, it's not strictly a public interest, it's a private interest, isn't it?" Answer, "Affected neighbours?"  
40 Question, "Yes, affected neighbours." Answer, "Yes, yes." Question, "Because they could be affected by loss of amenity?" Answer, "Yes, sir." Question, "They could be affected by diminution in the value of the property?" Answer, "Yes." Question, "Conversely, if a derelict structure is removed, they could obtain a benefit?" Answer, "Correct." When you said that neighbours are not strictly, affected neighbours are not strictly a public interest, it's a private interest, my invitation to you is to reconsider that answer, bearing in mind that the question was it's not strictly a public interest, as to ask you the public interest requires that the interest of affected neighbours be taken in to account, doesn't it?---I agree with that.

Page 2557. Around line 36. Oh, I'm sorry. I do apologise. 4557. It's my mistake. 4557. Mr Andronos asked you at about line 36, he's referring to the Liverpool Road, Strathfield development or proposed development, where you provided a redesign of a portion of the proposed redevelopment to take it from a lower level and put it at a higher level to address concerns expressed by neighbours.---Yes, sir.

10 Now, Mr Andronos, if I can take you from about line 36, "But in doing so exceeded the height limit permissible in that locality?" Answer, "In part, yes." Question, "In part. And so in doing that, what you have done – and correct me if this is not the way to express it – you had employed a creative solution to a problem, which was trying to balance the interests of stakeholders." "That's, that's exactly right." Question, "And when you talk about creative solutions and solutions-oriented, am I correct in understanding that's what you mean?" Answer, "Yes." Question, "And when you and other people in the council environment, including Mr Montague, ever discussed solutions-oriented planning, this is what you're referring to?" Answer, "Correct." Question, "And this is what you  
20 understand Mr Montague was referring to?" Answer, "Correct." Going over to page 4558. Question, "And when you described yourself as a solutions kind of guy, this is what you meant?" Answer, "That's exactly right." In the case of the Liverpool Road proposed development, was there a non-compliance with a development standard that related to the concern expressed by neighbours which caused you to suggest a redesign?---As best I can recall, there was an issue with a setback from the rear, which was I believe a laneway that separated the properties, the residential properties, from the actual development itself. So there was a, I believe there was a setback issue, from memory, from the laneway.

30 And just to tease that out, do you mean that, as designed, the proposed development breached a setback requirement by extending closer to the affected neighbours than it should have?---Yes. Not, not for the full length but in part I remember, yeah.

THE COMMISSIONER: And was it the laneway? It was closer to the laneway than the control would allow?---Yes, because it, the control, from memory, did not require – it required a standard setback from a laneway but didn't really take into account if it was a corner block that was effectively  
40 abutted by a laneway and a secondary road frontage as well as a main arterial road.

MR BUCHANAN: And was this a setback requirement in the DCP or in SEPP 65 and the Apartment Design Guide or its predecessor?---I, I believe it, it, as best I can recall it was both.

And so certainly there would have been a problem if there was a non-compliance with the Apartment Design Guideline requirement, given its force of law under the Act?---It certainly takes precedent, yes.

Thank you. And the result of your redesign, or suggested redesign, was to ensure compliance with the setback requirement, but then the outcome was that there was a breach of height control, and that would have been in the LEP?---Yes.

- 10 But that could be accommodated because it was not significant, and clause 4.6 is designed for flexibility in the case of non-significant non-compliances. Is that fair to say?---It, it, it is. The only thing I'm not sure about is if the resultant proposal, the amendments, did in fact strictly comply with the separation distances under SEPP 65 along that laneway. I'm not sure.

- 20 And how in that case was that if – let's assume that there was still a breach of the SEPP 65 setback requirements. How was that dealt with in the officers' report?---Ordinarily, and I, I can't remember exactly how, but ordinarily you look at issues of associated impacts. So you would potentially look at a compliance scheme versus, a SEPP 65 compliance scheme, versus, in terms of setbacks and height, versus what the applicant was proposing. And if you came up with the same performance standards as articulated in SEPP 65 in terms of at the required number of hours for sunlight access, you met all the other provisions as far as separation distances go, with noise attenuation, visual impacts and the like, then you could in those instances support the proposal.

- 30 But that sounds – please tell me if I'm wrong – like pretty close to the same sort of, or at least a good part of the same sort of analysis that was required if there was a non-compliance with a development standard in the LEP pursuant to clause 4.6.---Yes. Yes, sir.

And was it pursuant to clause 4.6? Or what other authority did you have in the officers' report to allow for a breach of the SEPP 65 requirement? ---There, there is no, you, you, under section 79C you actually take into account the relevant planning instruments that apply on the day.

- 40 Well, you're required to apply them, aren't you?---Yes. Yes - - -

Yes. If you applied SEPP 65, then this was in breach from what you say, unless you had authority to say in all the circumstances it should be allowed.---No, sir. It's, and it's been a while since I've read SEPP 65, but it allows you a degree of flexibility. It's, they're not, they were never designed to be prescriptive standards.

Right. So your answer is, tell me if I'm wrong, the authority to allow the breach was in the SEPP itself, the instrument itself?---It allowed, yes.

So you had lawful authority.---Yes.

You simply exercised this, applying it to the facts and circumstances in this particular case.---As well as all the other section 79C considerations under the Act, yes.

10 So I just want to be clear. When you are a planner and writing a report on a development application that is non-complying, if it is a non-compliance with the LEP or SEPP 65, then there's a problem with recommending approval unless the plans are amended to ensure that the proposed development is complying, unless – using the authority conferred by clause 4.6 and the LEP or the relevant provision in the SEPP – the non-compliance can legitimately be treated as not so offensive as to require strict enforcement of the rule. Is that right? And please re-express it if you would like to.---Sure, sure. The relevant matters for consideration when you're assessing an application, a development application, is section 79C of the Act, and under that there are subsections in there that talk about what one must consider in assessing an application. One of those subcategories 20 includes relevant planning instruments. Of the ones you've mentioned, SEPP 65 is one, LEPs are another and Development Control Plans are also another. In the, in the instance of a non-compliance with the SEPP, SEPP 65, they're design guidelines by virtue of their name, so they're meant to provide an indicator of the appropriateness of a particular type of development and what are best performance indicators that apply, like solar access, privacy, those sorts of things. Under 79C anyway - - -

30 MR MOSES: Commissioner, can I just raise an issue. I'm sure this is, maybe we've missed something, but if this evidence is being led in order for there to be an understanding of how this Act operates, this is not the witness to do it through, with all due respect to Counsel Assisting, and given the time so far in relation to this matter, this cannot assist the Commission because there would be far more qualified people to provide the Commission with assistance in relation to these matters than this man in relation to how the Act operates. So I'm not sure what the relevance of this is, and I just note the time as to what this has got to do with this witness. If it's to do with something about my friend wants to challenge him then on this by reference to specific matters that you're looking at, that's a different question. But if these questions are being asked to have an understanding 40 how the Act operates, this is not how you do it and certainly not through this person.

THE COMMISSIONER: Mr Buchanan.

MR BUCHANAN: Commission the question of this witness's state of mind and the explanation he has provided for various aspects of his conduct having been a solutions-based approach, in my respectful submission it is important for the Commission to understand what the witness means by that

and how what the witness understood he was doing actually worked, particularly in relation to the requirements of the law. The evidence shows that there were a number of applications for non-complying developments which were progressed by the witness, and the question of whether he was applying a legitimate approach or was applying an approach because he was under pressure or influenced improperly, particularly by others, or by a desire to assist an applicant, is at the top of the tree when it comes to the issues before the Commission. And so the understanding by this witness as to how he took a solutions-based approach is important. That's the basis on which I've been addressing it. I do appreciate the witness is giving a long answer. I did ask him the question, however, and my submission is he should be given the opportunity of providing the answer.

MR MOSES: Well, Commissioner, I don't press the objection but the only observation that I would make is that it has to be drawn back to a temporal connection with the actual matters that he was dealing with at the time so that the reader of the transcript will have a link as to how this is being approached. It wasn't certainly being appreciated from our end as to how this was being approached, but that's a matter for Counsel Assisting. We just ask that be borne in mind.

MR BUCHANAN: Well, an illustration - - -

MR MOSES: And it's no criticism, it's just - - -

MR BUCHANAN: No, no, none taken. An illustration is the numerous matters where Mr Stavis engaged in redesigning an applicant's plans, and the question which is being agitated again by his counsel and Mr Stavis today of whether that was a legitimate approach and, in any event, the basis upon which that conduct was undertaken.

THE COMMISSIONER: All right. Well, look, the objection is not being pursued. I agree with you, Mr Buchanan – especially given some of the questions asked by Mr Andronos and also Mr Pararajasingham – this is a relevant area for re-examination. I think you were stopped before you completed your answer. Can you complete it or do you want Mr Buchanan to resume asking?---That would be, if you don't mind, sorry.

MR BUCHANAN: Well, in doing so, Mr Stavis, can I just ask you to put to one side the provisions of 79C in relation to the DCP, because they're quite different, aren't they, and confer a specifically discretion? And I'm not asking about setback requirements or any other requirements imposed by a DCP. I'm asking about requirements imposed by, what I submit is, the law, when the Environmental Planning and Assessment Act says that the LEP and the SEPP have to be complied with. And my question is, how do you get away with not complying when you're the planner who is writing the report for the approval of the consent authority?---With respect, sir, it, you cannot separate section 79C, when you're dealing with assessing an

application in front of you, that takes into account SEPP 65 and an LEP or a DCP for that matter.

But, sorry, 79C, you know has quite separate provisions in respect of the DCP. I'm asking you to put those provisions to one side. By all means any other provision, but I'm not talking about requirements for design imposed by DCP. Other environmental planning instruments – the LEP, SEPP 65.  
---Sure. Sure. Okay, well, SEPP 65, as I've said, is a, is a flexible policy in the sense that it's meant to provide guidelines in how to achieve good urban design. In terms of an LEP breach, obviously clause 4.6 is used as a lawful way of accepting or denying, for that matter, a breach of an LEP control.

So when you were asked by Mr Andronos, page 4557, whether you and other people in the council environment, including Mr Montague, ever discussed solutions-oriented planning, this is what you're referring to, and you said, "Correct." And what you what you had said before that was that you employed a creative solution to a problem which was trying to balance the interests of stakeholders. And what I'm pointing out to you is, that doesn't take into account the requirements of the law, does it?---Yes, it does.

That's balancing the interests of stakeholders, not applying the law.---Sir, the net result was an LEP breach and it resulted in a better planning outcome. So I think that was a solution-orientated approach. Yeah.

Page 4558, at line 3. Question, "Now the extent to which a developer might get a benefit out of this, am I correct in saying that that is not necessarily a concern of a solutions-oriented planner?" Answer, "No, it's, it's not a head of consideration in planning terms, no." It's also the case, isn't it, that if a developer is disadvantaged by, say, delays, that's not a relevant head of consideration in planning terms either, is it?---No, sir. You're right.

That's correct, isn't it?---Yes.

Excuse me a moment. Page 4564, line 16. Mr Andronos asked you, "So I want to take you to the meeting you had with Mr Vasil and Mr Khouri. Now, your purpose in attending that meeting was to find out what you could about the Canterbury local government area, wasn't it?" Answer, "It, it was also, it was, I'm just trying to think now what actually the conversation was, but - - -" Question, "Well, perhaps rather than look at the conversation itself, although that may inform your answer, my question is directed to why you went to the meeting. What did you expect the meeting was going to achieve for you?" Answer, "Well, to find out about the area, yes, and about the, about any issues, I guess, getting some intel." You went to that meeting because Mr Vasil asked you to attend it, didn't you?

MR NEIL: I object. Clear evidence is that Mr Katris gave some information to Mr Stavis, and there has been some question about who rang

who but there was no suggestion that Mr Vasil asked him to attend upon him. Either way it was something that this witness had been put on to Mr Vasil by Mr Katris on any view of the evidence. In my submission, this question is simply not open. It was never put to Mr Vasil.

MR BUCHANAN: Commissioner, I withdraw the question. Who arranged for the meeting?---I rang. I believe I rang Mr Vasil after, you know, it was suggested to me by Mr Katris.

10 Who arranged for the meeting, Mr Stavis?---Ah - - -

Did you ask Mr Vasil to meet you?---I'm just trying to think. I don't believe I did.

No.---No, no.

And the meeting was held at a coffee shop very close to his office.  
---Correct.

20 It was Mr Vasil who arranged that meeting, wasn't it?---Well, if, if it, if it wasn't me, it's him, yes.

Page 4565, line 48. I withdraw that. Page 4570, line 17. 4570. You were shown the list of questions. It's actually the, I think you were shown one of the three photographs, the list of sample questions you first described them, but are headed Suggested Interview Questions. You recall that?---Yes, yes, sir.

30 And you were asked, "Can you look first at question 5 on page 178. Do you recall giving some thought to the answer that you were going to give to this question if it was asked?" Answer, "Yes." I think the witness does need to be shown the document, in fairness. It will be, I think, volume 5. 3, I'm told. Thank you. It's up on the screen now if that assists, Mr Stavis.---Yes, sir.

Can you see that? We'll put it in front of you.---Thank you.

40 So you were being asked about the question 5 that appears there, customer service issues facing the portfolio.---Yes, sir.

And you were asked what your thoughts were at the time and you said, "At the time I was of the view that there were issues pertaining to general, a general way in which the planning department was actually responding and, and to proponents, applicants and, and that involved things like not promptly returning phone calls or answering emails and just being, there were issues pertaining to that leading to bad customer service effectively." "Who did you understand the customers to be?" Answer, "Everyone, applicants, residents and the like." At the time you saw those questions, had

anyone raised with you the issue of customer service in the planning department? So thinking of the time, that's 16 November, the day before the interview panel that you saw the questions, had anyone previously raised with you the issue of customer service?---Yes, the people that I had spoken to or met with prior. That included George Vasil. Sorry, sir.

I'm sorry.---Yeah. That included George Vasil, it included the councillors, but it was, a lot of it had to do with the lack of response times and, and so forth.

10

And when you say councillors, as at 16 November had you spoken to any councillor before you saw those questions, other than Mr Azzi and Mr Hawatt?---No, I don't believe so.

Okay. So it would be those two you mean?---Correct.

And also Bechara Khouri, you'd had numerous telephone exchanges with him, you'd had a few meetings with Mr Vasil.---Yes, sir.

20 Had you heard of an issue in relation to customer service from either or both of them?---Yes.

Are you able to say which it is, either or both?---Both, both, both.

And when you gave your answer there at page 4570 at line 20, "It involved things like not promptly returning phone calls or answering emails and just being, there were issues pertaining to that leading to bad customer service effectively." Is that the nature of the poor customer service that you'd heard about as at the time you saw the questions on 16 November?---And  
30 probably the other thing I would add would be processing times, how long things took, yeah.

But your understanding that that was an issue could only have been from people that you'd spoken to, being the people that you've identified. It wasn't something that you'd learned from any other source?---Well, the only – look, it had been my experience as well in dealing with, as a, I guess as a, as an applicant when I was a consultant in, in some cases, but in terms of being told something, they were, they were the main ones, yes.

40 Excuse me, Commissioner. Page 4580, do you recall the text message that you were – I'm sorry. Oh, looking at line 26. Do you recall the text message that you sent to Mr Montague on 24 November in which you said to him words to the effect, "Hope you had a good break"? Do you remember that, that text?---Yes, sir.

Do you want to see it? But you recall the text?---I do recall the text.

Yes. Thinking now about the time that you sent that text, how did you know Mr Montague had taken a break?---That I'm not sure, to be honest with you.

The likelihood is Mr Montague told you that, is that fair to say?---I believe so, yeah.

10 Did he tell you that – I withdraw that. Did you have any conversation with Mr Montague on 17 November, the date in which the interview panel sat and you made your presentation, apart from Mr Montague asking you questions or introducing members of the panel?---What was the first part of your question, sorry?

Yes, look, thinking of the interview panel.---Yep.

The interview panel's occurred on 17 November.---Yep.

Mr Montague was there.---Yes.

20 He would have introduced the members of the panel to you, I take it?---Yes.

Or Ms Carpenter would have, perhaps?---Yeah.

Mr Montague would have asked you a question or three, is that fair?  
---That's fair.

Did you have any other conversation with Mr Montague on that day?---As I sit here today, I really can't recall if I did. I, I - - -

30 Did you have an informal conversation with Mr Montague on that day?---I, I don't recall, sorry, sir.

Could we have a look at volume 3, page 162, please. If you look at that page, that's a screenshot that you took of text messages on your phone, is that right?---Yes, sir.

40 And can you see that the first one is on Sunday, 16 November, at 9.02pm, and it's from Mr Montague and he says, "Hi Spiro. Sorry, couldn't get back to you. See you tomorrow." We've established that it's unlikely that Mr Montague had an informal conversation with you on 17 November. Is it the case that you had a contact with Mr Montague that's not recorded on this page during the course of which you learned that after the interview panel sat, Mr Montague was taking a holiday?---It's possible, sir. I just don't have any specific recollection.

All right. How otherwise would you have learned that Mr Montague was taking a holiday?---It probably would have, I don't know any other way.

So what other contact did you have with Mr Montague on the 16<sup>th</sup> or preceding days than the text from Mr Montague, which is at the top of page 162 in volume 3?

MR ANDRONOS: Well, objection. The question proceeds on a premise which the witness hasn't accepted. The question is, "Did you have a contact?" "It's possible." "Well, what contact was it?" That's not permissible.

10 MR BUCHANAN: I take my, yes - - -

MR ANDRONOS: Secondly, this doesn't properly arise. It's not necessary for the purpose of resolving ambiguity or explaining the evidence. It's not proper re-examination.

MR BUCHANAN: Commissioner, I take my friend's first point and I'm happy to reframe the question. Secondly, Commissioner, in my respectful submission, rules of re-examination, the Evidence Act, do not apply to these proceedings and it actually does arise from the question in the middle of  
20 page 4580, "Hope you had a good break." "You recall now, don't you", I'm looking at line 29, "that following the interview on 17 November, Mr Montague took some time off?" Answer, "Yeah, because I, yes, I believe he did. He was on leave, yes." So, my first point is, the rules of examination do not strictly apply and, secondly, it arises directly from the examination of the witness by Mr Andronos.

THE COMMISSIONER: You can pursue the topic, Mr Buchanan.

MR BUCHANAN: Mr Stavis, the likelihood is, isn't it, that you had a  
30 contact with Mr Montague before he sent you the text that's recorded at the top of page 162 at 9.02 on 16 November?---Yes.

Leaving aside the fact that you had this knowledge that he was going to take a break, or at least by the 24<sup>th</sup> at 10.28 had taken one, Mr Montague's text presumes an attempted contact by you, doesn't it? That's at, sorry, the top of page 162.---Yes, sir.

What was that attempted contact by you?---Are you talking about page 162 at the top?

40

Yes.

THE COMMISSIONER: So, Mr Montague says, "Hi Spiro, sorry, couldn't get back to you." And Mr Buchanan's putting the "couldn't get back to you" suggests that you have attempted to contact Mr Montague, asking him to ring you back or something along those lines.---Yeah. Look, probably, look, I would say it's likely that it had something to do with the position of DCP.

MR BUCHANAN: Had you attempted to contact Mr Montague through Mr Khouri?---That I'm not sure about, I'm sorry.

Well, Mr Khouri and you would have been talking before 17 November at some length over different days about Mr Montague, wouldn't you?  
---That's, yes.

10 Was there any discussion between you and Mr Khouri as to whether you should attempt to contact him before the interview panel sat?---Not that I can recall.

So, if you did ask Mr Khouri to pass on a message that you wanted to talk to Mr Montague, then how did Mr Montague learn that you were attempting to contact him?---I, I really don't know, sir, other than maybe perhaps I left a message or it was a missed call or, I, I, not sure.

20 Excuse me. Did you have Mr Montague's mobile number by Sunday, 16 November?---I believe so, yes.

And where had you got that from?---That I'm not sure about. I may, I may have had it in my previous dealings when, you know, some years back. I just don't recall how I got it.

But another possibility is Mr Khouri, isn't it?---It's possible.

Well, you learned from Mr Khouri that he was quite closely connected to Mr Montague, didn't you?---Yes.

30 So it would be astonishing if Mr Khouri didn't have Mr Montague's phone number, wouldn't it?---Yes.

So there's no other assistance you can give us as to what the contact or attempted contact was that occurred to which Mr Montague responded with that text at 9.02pm on Sunday, 16 November?---Not other than me contacting him about the position, I guess. I, I can't think of anything else.

40 I don't intend to go over the evidence you've given about meetings with Mr Montague. You ultimately came to the position, tell me if I've got this wrong, that you cannot adhere to the evidence that you previously gave to the Commission that you had had meetings and contacts with Mr Montague before the interview panel, we arrived at that position, and that we were left with what you thought were two meetings - - -?---Yes, sir.

- - - after the interview panel, together with the texts that were in the evidence.---Yes, sir.

But it would seem that there was some other earlier contact that's implied by that text there from Mr Montague at 9.02pm on Sunday, the 16 November.---I, I - - -

Sorry, when I say contact I mean including attempted contact.---I accept that, yes.

Had you possibly left a message for Mr Montague to contact you via the switchboard at council or via Mr Montague's staff? Is that a possibility?  
10 ---It's a possibility, yeah.

And why would you have been wanting to talk to Mr Montague at that stage before the interview panel took place?---Just to, I'm just trying to think, other than trying to get some information on the position of, the director's position, I can't think of really anything else that might have been.

Not to bring him to a position where he would think well of you?---That's a possibility, yes, sir.

20 Just for the record, there is also some examination of Mr Stavis by Mr Andronos on page 4578 about this. Now, page 4581, line 33, can I take you back, perhaps, to probably line 26. And one of the reasons, well, before that, sorry, Mr Stavis, I apologise. Page 4581. Can you see that there's a question around line 20 about how I had put to you that some of your contact was trying to ingratiate yourself with Mr Montague? Ingratiate yourself.---Yes, sir.

And then the question read, "You were trying to demonstrate to Mr Montague that you were keen as mustard to get this job." Answer, "Yes, 30 sir." Question, "And one of the reasons you were doing that is that you hoped to persuade him that your enthusiasm for the job made you a better candidate." Answer, "I accept that." Question, "To make you the best candidate because you were the one who wanted it the most." Answer, "I accept that." Question, "And you were enthusiastic and you knew that Mr Montague responded well to enthusiasm." Answer, "Yes." My question is, how did you know that Mr Montague responded well to enthusiasm?---At that point in time?

Yes.---I'm not sure, sir, other than maybe being told that.  
40

By Mr Khouri?---It's possible, sir, yes.

Mr Khouri's the most likely candidate, isn't he?---I would say at that point in time probably yes.

I'll just check something, Commissioner. Page 4582, line 36. You're asked by Mr Andronos, "When you say to Mr Montague, 'Can achieve your,' meaning his, 'objectives,' you were referring, weren't you, to

communications you had had in the interview itself, weren't you? Sorry, I should withdraw that. You were referring to the objectives as you understood them as they had been communicated to you in these ways. Firstly, you received or downloaded an information pack from council setting out criteria for the job, correct?" Answer, "Correct." Now, if we can go to volume 3, page 19, for the first page of the interview pack that Mr Montague provided to Judith Carpenter & Associates. I'm sorry. That starts in front of you?---Yes.

10 Sorry, it's on the screen if it'll assist.---Got it. Got it.

Now, the information pack didn't include any material in it about looking for a solutions-based approach to planning at Canterbury, did it?---I, I'm not sure but I, it's unlikely it would have.

Were there any questions during the interview conducted by the interview panel on 17 November - - -

20 MR ANDRONOS: Before my friend goes on, I think in fairness to the witness he should be given an opportunity to look at that document. I'm not going to try and suggest the page in particular that he should look at.

MR BUCHANAN: Can I respectfully agree with my friend, just to cut him short. Would this be an opportunity to just take a five-minute back-stretching break?

THE COMMISSIONER: All right.

30 MR BUCHANAN: We're sitting till 4.30 today.

THE COMMISSIONER: Can I just confirm the document commences at page 19 and goes through to – is it 36?

MR BUCHANAN: Correct.

THE COMMISSIONER: All right. Mr Stavis, during our five-minute break could you have a look through that document?---Sure.

40 We'll take a five-minute adjournment.

**SHORT ADJOURNMENT**

**[3.09pm]**

THE COMMISSIONER: Now, Mr Stavis, you had an opportunity to read the director (city planning) information pack?---Yes.

All right.

MR BUCHANAN: And was there anything in there or is there anything in there that you can take us to that told you that council was looking for a solutions-based approach to planning in the local government area?---On page 26 under Influence, which is the last bullet point under Personal Specifications, it says, “An ability to analyse and resolve issues, to negotiate outcomes and guide executive decisions in a complex, politically sensitive environment.”

10 Yes. Why did you take that – sorry. Do you say that you read that and said to yourself, ah, they want a solutions-based approach to planning?---I think by virtue of the fact they use the word negotiate outcomes and look at resolving issues, yes. I, I think that’s fair.

Are you saying that in retrospect, though? Or are you telling us that that’s what you read and you thought, ah, they want a solutions-based approach to planning?---I remember reading something like that there as well, yes, at the time. Where is the other one I saw? Somewhere else I read, I think it was on page, yeah, on page 29 under Continuous Improvement, the second  
20 bullet point says, “Encourages people to develop creative solutions and share ideas.” I believe - - -

Thank you. Anything else?---I believe they were the only two references, sir.

Thank you. Can I take you to page 4587 in the transcript, line 4.---Yes, sir.

Where you were asked by Mr Andronos, “It’s where you might have a first-round interview with a large number of candidates and a second round  
30 interview with a smaller number of candidates?” And you said, “Yes, sir.” Did Mr Montague tell you, on the first occasion that you saw him one-on-one at Giorgios Café, that it was a second round interview?---No.

Did he say anything to the effect of, oh, congratulations, you’ve come through to the second round?---No. I don’t believe so, no.

Excuse me. You were asked questions at page 4594, line 9 about a text, we can show you the text, please, volume 3, page 166.---Sorry, what page number was that?

40 Well, maybe if I could take you first to page 165 just so that you can see the context.---Yes, sir.

And you see - - -

THE COMMISSIONER: Sorry, what was the transcript reference?

MR BUCHANAN: Oh, first of all, the transcript reference is 4594.

THE COMMISSIONER: Thank you.

MR BUCHANAN: Line 9.

THE COMMISSIONER: Thanks.

MR BUCHANAN: At page 165 of volume 3, Mr Stavlis, you conclude on  
26 November, 10.10pm, your text saying, "Look forward to speaking soon.  
10 Cheers, Spiro." Do you see that?---Yes, sir.

And then the next text is over the page in the screenshots at 166. On 27  
November at 8.15pm, Mr Montague sends you a text saying, "Hi Spiro.  
Sorry, please call me tomorrow. Jim." Now, Mr Andronos asked you in  
respect of that, line 4 on page 4594, "Now, you tried to contact Mr  
Montague again the following evening. Do you recall that?" You said, "I  
don't really but it's, it wouldn't surprise me." Question, "Well, again, just  
in terms of what inferences we can draw from the chain of text messages at  
20 166 of volume 3, Mr Montague sent you a text in the evening saying, 'Hi  
Spiro. Sorry, please call me tomorrow. Jim.' That would be consistent  
with a missed call, wouldn't it?" Answer, "Yeah. I don't believe based on  
that text that I spoke to him, no." Can you assist us as to, that would  
explain, can you assist us with any circumstance that would explain Mr  
Montague saying to you, "Sorry. Please call me tomorrow," if it wasn't a  
response to you trying to contact him?---The only other scenario would be  
as I said there, in reference to my text on the 26<sup>th</sup>, I believe, which basically  
was initiated by me saying words to the, saying, "Thank you so much for  
meeting me. Much appreciated. It reinforced that we are on the same page.  
30 Look forward to speaking soon," and then he didn't respond, he responded  
the next day with that, "Hi Spiro. Sorry, please call me tomorrow." So,  
there was only two likely scenarios. That I either contacted him by phone or  
he was, and he was responding to that call or that it was a response to my  
text from the day before.

You were talking with Bechara Khouri on a reasonably regular basis and Mr  
Vasil on a less reasonably regular basis around this time, is that right?---I  
believe so, yes.

Is it possible that you had, through Mr Khouri, say, passed on a message to  
40 Mr Montague that you wanted to talk to him?---I don't think so. No, it's not  
likely that I did it that way, no.

Now, can I take you to transcript page 4597, line 7. And do you see there  
the question was, "Yes. And you recall also saying that Mr Khouri  
appeared to have influence, perhaps at the very least on council?" Answer,  
"Yes." "And even Mr Vasil you thought demonstrated that he had some  
influence on council. Do you recall giving evidence to that effect?" "Yes, I  
do, yes." Now, just looking at, oh sorry, question, "Now, just looking at the

position of Mr Hawatt and whether he had any influence, may I suggest to you, if he had, well, firstly, what do you mean when you say influence? And I'll just throw some possibilities out there and you can tell me whether any of those are correct or whether I've misunderstood." Answer, "Sure." Question, "Does influence in your mind, in the context of Mr Hawatt vis-a-vis Mr Montague, mean that he will be able to persuade him to his point of view, he was able to force him to accept his point of view or something else?" And there was an exchange then between the Commissioner and Mr Andronos with Mr Andronos saying, "Well, using the word persuasion with forcing I think is a bit extreme. Perhaps I'll put them to you as alternatives." And you said, "Yeah, yeah, probably in terms of maybe persuading, I'm not sure. I mean I, it was not a, it was not something that I thought about at the time in terms of any great detail in that regard, but it appeared to me that he had some sort of influence over the general manager." And then Mr Andronos asked, "It appeared he had some sort of influence, but you had obviously not seen the two of them together so you - - -" Answer, "No." Question, "- - - didn't have any direct knowledge?" Answer, "No, exactly." Question, "So you were just drawing an inference from Mr Hawatt either telling you - - -" Answer, "Yes." Question, "- - - or him expressing a view and Mr Montague later expressing the same view?" Answer, "Yes, sir." Question, "It would be something like that. It's an inference you drew." Answer, "It's an inference I drew, yes." You had another source of information, though, didn't you, and I want to suggest it was Mr Khouri.---That's, that's correct.

And Mr Khouri obviously knew Mr Montague well?---Yes.

And he had – I withdraw that. Please correct me, Mr Vasil and/or Mr Khouri had told you about Mr Hawatt and Mr Azzi?---Told me about them or - - -

Yes, in the first instance?---That, that I'm not 100 per cent sure of.

Well, I'll ask, I'll take another approach.---Sure, sure.

In your opinion did anyone introduce you to Councillor Azzi and Councillor Hawatt, was there some contact you had with a third party that brought about a contact with Mr Hawatt or Mr Azzi that led to that meeting at the Yeeros in Marrickville?---No, I don't believe that happened that way.

How did that happen then?---It was, I believe it was a phone call that I received from - - -

From?---I believe it was Mr Hawatt, and yeah, that's the best of my recollection anyway as I sit here today.

But you had been told about Messrs Azzi and Hawatt by Mr Vasil and Mr Khouri. Is that right?---At some point in time, yes, I had, yes.

And had for example Mr Khouri told you about the relationship Mr Hawatt had with Mr Montague at council?---That I'm not 100 per cent sure of, sorry, sir.

The likelihood is, isn't it, that Mr Khouri demonstrated to you insights into the character of Mr Montague?---That's fair comment.

10 Now, you were asked questions, I'm focussing upon line 20 of page 4601, but you were asked questions about the effect on you of learning that Mr Montague wasn't going to honour the offer of employment of 8 December, 2014, and at line 20 Mr Andronos asked you, "And you enlisted the help of Mr Vasil." You said, "Well, well, no. I wouldn't use the word enlisted. They were I guess initially involved when I had that, if you like, mini meeting with them at the café in Kingsgrove, so there was a bit of consistency there right through up until that point in terms of contact and the like." Question, "When I say they, who do you mean by they?" Answer, "Oh, mainly," I think that might be a transcript error, Commissioner. I think the question that my learned friend has probably asked at that point is,  
20 "When you say they, who do you mean by they?" In any event - - -

THE COMMISSIONER: That makes sense.

MR ANDRONOS: I'll take that.

MR BUCHANAN: Answer, "Mainly George Vasil but obviously Mr Hawatt, and they were the main two I would imagine, yes." But that again omits any reference to Mr Khouri, who you've acknowledged and the evidence shows had frequent and regular contacts with you from the time of  
30 that meeting in Salvatores café to the time of the interview, doesn't it?  
---Yes, sir.

And in fact – I withdraw that. Did you have any contact with Mr Khouri about what Mr Montague had done to you?---I don't recall any specific contract but it's possible, sir, yes.

Well, thinking about it, then, you have told us that you've got a memory of talking to and going and seeing Mr Vasil about that.---Yes, sir.

40 And you weren't happy about enlisting the help of, but you said there was a consistency of contact with Vasil all the way through, but what about Khouri?---Yeah, I, I probably should have mentioned Khouri as well.

Yes.---Yes.

Did you have any conversation with him saying, you know, "Look at what your mate's gone and done to me"?---Not, not that I can recall in those

words, but at some point in time I believe that there was contact with him, with Mr Khouri.

And what was the nature of that contact - - -?---It would have been - - -

So far as concerned the subject matter of Mr Montague not honouring the offer of employment?---It would have been on the phone and it was in relation probably to, well, it was in relation to the withdrawal of the offer, yes.

10

And what did Mr Khouri tell you about that in response to what you told him?---That I can't recall exactly what he said.

What was the tone of his response to you? Was he washing his hands of the matter or what?---No, no. He was certainly, the impression I got was that he'd look into it.

20

Did he get back to you and tell you what was going on?---Sir, to be perfectly honest with you, I don't have any real recollection of it because I was getting so many, it was obviously an emotional time but it was also, you know, constantly making phone calls, receiving phone calls and that sort of thing. So - - -

But the difficulty with accepting that answer, Mr Stavis, can I make this suggestion to you, is that as you understood it, the person closest to the man who had just done this to you was Mr Khouri.---As I understood it at the time, yes.

30

And so it's a bit difficult to understand how you could no longer recall what Mr Khouri's communications or contacts with you were over that period when you learned that Mr Montague wasn't going to honour the offer of employment. Either there was some sort of blazing row that you had with Khouri because he hadn't delivered what he'd promised. Was that what happened?---No. No, sir.

Was there a complaint by you to Mr Khouri?---No, I think it was more me relaying what had happened.

40

Well, surely, if he was the person closest to Mr Montague that you knew, as you understood it at that time, you wanted to find out from Mr Khouri what was going on.---Yes, I accept that. Yes.

And what happened?---That I, that I can't recall exactly what happened but it was him conveying to me that he'd look into it. I remember that.

Yes.---And then, and then I, I'm not sure if he gave me a call back and let me know what was going on. That's likely but I, I'm just not, I guess, I can't remember the details is what I'm trying to say to you, but it's likely that

there was an exchange. I mean, I was at that point in time trying to find answers.

10 And what was the burden, what was the gist, what was the thrust of the answer or response you got from Mr Khouri on that subject? What was going on, as he told you?---That I don't recall, sir, exactly what the answer was. As I, at that point in time I wasn't getting any answers to what was going on behind the scenes or what was in, because Mr Montague wasn't communicating with me, it's, look, I really don't, really don't know if, how I can assist any more than that.

Well, did you and Mr Khouri continue to have contacts with each other from that period on?---It's likely, yes. It, it would have been likely that we did up until probably the point where I was officially advised, I guess, that I would, that they would honour the contract. So, I don't discount that.

20 But there's nothing you can -- you tell us, do you, you have no memory of Mr Khouri telling you anything substantive at all about what was going on in Mr Montague's head about him not honouring the offer of employment to you?---No.

Or about him maybe honouring the offer of employment to you?---Um - - -

Did he tell you, "Oh, look, Mr Montague's thinking about changing his mind again"?---That I can't be a hundred per cent sure of, I'm sorry.

I'm just trying to understand.---Sure.

30 Did you maintain contact with Mr Khouri or did that contact drop away?  
---I, I like I've said before, I, the best of my recollection, I maintained some contact with him right up until being advised that they were going to honour the contract.

And why, why did you maintain that contact? What was in - - -?---It was in - - -

40 - - - it for you to maintain contact with Mr Khouri in those circumstances?  
---Because I, I knew that he was either friends or friendly or knew Mr Montague well and I wanted to get some answers, obviously.

But you can't tell us anything about what Mr Montague, sorry, what Mr Khouri told you on that subject?---I wish I could, other than, I'm just, I'm just trying to think. Sir, I, I, I'm not, I'm not a hundred per cent sure. So, I don't want to speculate, that's all.

Well, was there anything that Mr Khouri told you about a fight occurring between Mr Hawatt and Mr Azzi, on the one hand, and Mr Montague on the

other?---At some point in time, yes, he did convey that to me, that that was happening.

And that it was over you?---No, I don't recall, well, sorry, I retract that. Yes, yes.

But you can't tell us anything more than that about what Mr Khouri told you?---I wish I could. I, I just don't recall.

- 10 Can I take you to page 4602, line 72. Question by Mr Andronos, "But the suggestion I'm making is that by no later than this time the extent to which you felt any loyalty to Mr Montague had been – I'm sorry I withdraw that. By no later than 23 December, any loyalty you felt you owed to Mr Montague was gone and you shifted, by no later than that date, your loyalty to Mr Hawatt. Do you agree with that?" Answer, "No, sir." Question, "If the same page can be brought up again there's a text message on number 37, number 37, a Christmas Day text, 'Merry Christmas.' Sorry, number 36. I'm sorry. I was reading the wrong one. 'Merry Christmas to you and your family. Thanks for everything. Spiro.' That's a text you sent to
- 20 Mr Hawatt?" Answer. "Yes, sir." Page 4603. "In the early hours of Christmas morning what were you thanking him for?" Answer. "I really don't know, to be honest with you." Question. "Well, you must have been thanking him for something?" Answer. "Yeah, but I don't recall." Question. "And the only things that he'd done which were in your favour up till that point had been provide you with interview questions prior to the meeting on 17 November and support you as against Mr Montague in your application for the job as director of planning. Is that right?" Answer. "Yeah. Well, I can't think of anything else, no." Question, "So you must have been thanking him for those things, mustn't you?" Answer.
- 30 "Probably, yeah." In addition, would it be fair to say that you would have been thanking him for providing you with intelligence about the process by which the decision by Mr Montague to offer you the job was made? Remember those communications you had with Mr Hawatt?---It's possible, yes.

And you know how you spoke to Mr Hawatt in texts about him having meetings with Mr Montague?---Yes, sir.

- 40 In the very time that he was deciding who to appoint?---Yes, sir.

So you would have been thanking him, wouldn't you, for Mr Hawatt's role, not to discount Mr Azzi's, in persuading Mr Montague to make the offer of appointment to you in the first place. That was a matter for which you would have been thanking him as well, wouldn't it?---It's possible, sir, yes.

And you – I just need to give you the opportunity of responding to this. As a result of the things that Mr Hawatt had done for you up to that point you

were obliged to him, weren't you?---I don't believe so, sir. I didn't think of it in those terms.

Excuse me a moment. Page 4608, line 21. So we're talking about the FSR at 998 Punchbowl Road.---Yes, sir.

And at line 221 on page 4608 question from Mr Andronos. "Now, stating the obvious, but 1.8:1 isn't going to satisfy the Department of Planning, the State Department of Planning, as to the adoption of council policy, is it?"  
10 Answer. "Sorry, can you ask that again?" Question. "Well, council's policy as per the resolution was 2.2:1?" Answer. "Yes." Question. "And the best Mr Annand said could be achieved in fulfilment of that policy was something rather less at 1.8?" Answer. "Correct. Correct." Question. "And so what Mr Annand had done by way of this report was not going to be able to be used to persuade the State Department about council policy?" Answer. "Correct." Question. "And that would have been obvious to you at some point when you looked at the report and compared it to what council had already resolved?" Answer. "Correct." Question. "So if the Planning Department were able to fulfil council's policy, leaving aside the  
20 personalities involved and leaving aside the identity of the developer, for the Planning Department to be able to fulfil council's policy it would be necessary to re-evaluate Mr Annand's advice and see whether 2.2:1 were achievable, wouldn't it?" Answer. "Correct." Question. "Now, my suggestion to you, Mr Stavis, is you were still fairly new at council at this stage?" Answer. "That's true." Question, "Less than four months in the job?" Answer, "That's true." Question, "You had portrayed yourself through the interview process as a solutions-driven person, as a can-do sort of planner." Answer, "Yes, sir." Question, "Somebody who'd be able to think outside the box and resolve planning problems in a creative and  
30 constructive way." Answer, "Yes, sir." Question, "All right. You must have seen this as a challenge in which you could demonstrate those capacities, is that correct?" Answer, "Yeah, look, I remember wanting to actually explore whether or not the findings of Mr Annand were actually, could be tested, and at the back of my mind I had the council resolution in mind as a policy, I guess, that, that perspective, sorry." You had options, when dealing with Mr Annand's report that clearly indicated he wasn't going to support 2.2:1, to take other steps, didn't you? Apart from working on Mr Annand, you had an option of reporting to council what the result had been of commissioning a consultant to provide the further material that the  
40 department had required as part of the Gateway process. That was one option, wasn't it?---That was certainly one option, yes.

And another option, maybe sitting beside that, is to go back to council and say this is what a reputable and experienced planner has said when we've gone through this process. In the circumstances we recommend that council reconsider the resolution to put a planning proposal forward seeking an FSR of 2.2:1. That was an option, wasn't it?---That was another option, yes.

You didn't do that?---No, sir.

Correct?---Yes.

10 Was there any reason why you didn't do that?---Because I wasn't satisfied with – I'd been convinced that Mr Annand had actually tested it and I needed to understand how he got to those conclusions. So I wasn't about to put a report up with those options that you just mentioned unless I was satisfied in my mind that, that 2.2:1 could not be achieved within a satisfactory building envelope.

But what you in fact did was, over a period of time, work on Mr Annand to get him to change his mind.---No, sir, I don't look at it like that at all.

20 You see, with any council resolution to prepare a planning proposal with particular development standards in it, there's always the possibility that council will have made a mistake, isn't there? That is to say, have asked for a planning proposal to be prepared and put forward that is not supportable on any view.---That, that's certainly a possibility, yes.

And so reporting back to council is by no means a fanciful option, is it?  
---No, it's not fanciful, no.

You had another option, can I suggest to you, and that was to get a second opinion.---That certainly was another option as well.

You didn't do that.---No, sir.

30 Why at any stage in relation to dealing with Mr Annand in relation to 998 Punchbowl Road did you not seek a second opinion rather than taking the steps with him that you did take?---Only because I was aware that Mr Annand had a history of working along Canterbury Road in developing, which ultimately led to a masterplan for Canterbury Road, and I remember him distinctly telling me about properties that he had recommended in his findings that were not for uplift in terms of heights and so forth, and FSRs, that were not adopted. So I felt at the time that he was the best candidate given the time frame and limitations we had, to explore options with him rather than going and starting with someone fresh.

40 I'll now take you to page 4615, please, line I think 15. Excuse me a moment. Sorry, around line 45, maybe 46. And Mr Andronos asked you, "But just on that point, whenever Mr Demian had a go at you in the presence of Mr Montague, Mr Montague took your side, didn't he?" Answer, "He was certainly, to be fair, if I had to describe it, it wasn't, it was, it was neutral if I really had to put a category on it." Going over to page 4616. Question, "Well, I'm suggesting to you that he was more than neutral. He was in your corner." Answer, "Yeah, look, to the extent that, you know, he obviously saw that I was getting upset as well in, in some if,

in the meetings, and from that perspective, yes, he did defend me in front of him.” Question, “You never had an occasion where Mr Montague and Mr Demian ganged up on you in a meeting?” Answer, “No.” And despite the evidence that you recall that you gave to the Commission in December 2016 on this, Mr Montague at no stage said to you after Mr Demian had presented you with an FSR words to the effect, well, what are we going to do about this, or, what solution can you find to this?---Sorry, are you reading from somewhere or - - -

10 No.---No, sorry.

I’m asking you.---Sorry. What was the question, sorry, sir?

Yes. Thinking back to the evidence that you gave to the Commission in December 2016 that I took you to here, that you had given a version of events of a meeting at which the two councillors were present and Mr Montague and Mr Demian was present and Mr Demian was abusive to you. ---Yes, sir.

20 And you were handed a sketch with scribbles on it?---Yes.

And Mr Montague said to you words to the effect, “Well, what are we going to do about this,” or, “What are you going to do about this?” Nothing of that sort ever occurred? And I’m asking now, you know - - -?---Yeah.

- - - just sort of disentangle, you had numerous meetings with Mr Montague and Mr Demian, didn’t you?---I did, yes.

30 In respect of more than one property?---Absolutely.

Was there any occasion when Mr Demian asked you to do something and Mr Montague gave you to understand that you were to go away and find a solution?

40 MR ANDRONOS: I object to this. In response to an earlier question my friend indicated that the strict rules concerning re-examination or examination don’t apply, and that’s obviously correct. However, this is not an attempt to clarify or to elicit further information. It’s simply an attempt to get the witness to change his evidence where the answer he gave is perfectly intelligible, perfectly clear, unambiguous in its context, it was fairly put and it was squarely answered. It is, in my respectful submission, impermissible for Counsel Assisting simply to come back and say, “Well, this is your answer. I want you to change it.”

MR BUCHANAN: Commissioner, with the greatest respect, I don’t think that there is a legally trained person in this room who doesn’t think that re-examination can be and is used to get a witness to change their evidence.

MR ANDRONOS: But you're not allowed to lead, though, normally.

MR BUCHANAN: And can I respectfully respond to my learned friend by respectfully suggesting I am not leading. I am asking, did anything like that occur in any meeting where Mr Demian put forward a particular proposition as to what he wanted? Mr Montague was present and took the position with the witness, go away and find a solution. That's what I'm asking.

MR ANDRONOS: Well, that's a different question.

10

MR BUCHANAN: Because we have these different versions that the witness has given to the Commission over time in respect of the same matter.

MR ANDRONOS: Well, that's a different question.

THE COMMISSIONER: Mr Andronos, do you - - -

20

MR ANDRONOS: That's a different question and that can be put without impeaching the witness's sworn evidence at 4616, at lines 7 and 8 or 8 and 9.

THE COMMISSIONER: Right, Mr Buchanan, are you happy to put that question - - -

30

MR BUCHANAN: No, Commissioner. Because I'm asking now to the witness to step back, I made it clear you had a number of meetings with Montague and Demian. Did any such event occur at any meeting? Not necessarily this meeting but trying to find out, where did you get the memory from, that you've relayed to the Commission in 2016? If it didn't occur at that meeting where the FSR was of 2.2:1 was written on the sketch plan, then when did it occur?

THE COMMISSIONER: I'm going to allow it, Mr Andronos.

40

MR ANDRONOS: Just, the witness ought be taken back to his answer, though, because the question that I put and that he answered was, "You never had an occasion when Mr Montague and Mr Demian ganged up on you in a meeting?" "No." That's put in the general and absolute terms that my friend now wishes to put his question.

THE COMMISSIONER: Well, I think he's been taken to that question and answer.

MR ANDRONOS: Yes, we've but we've been debating for a few minutes, you see, that's why.

THE COMMISSIONER: All right. Can you put the question again, Mr Buchanan?

MR BUCHANAN: Yes. Sorry, Mr Stavis.---That's okay.

10 Was there any occasion where Mr Demian was putting a proposal at a meeting at which Mr Montague was present and the position that Mr Montague took with you was to essentially require of you to come up with a solution?---He never used those words to the best of my recollection. It was inferred that I would look at could these be tested, can it work sort of thing but he never used those words as best of my recollection.

THE COMMISSIONER: Sorry, can it be tested or could it work, did you say?---Yeah, and sorts of, it was along that, those lines.

MR BUCHANAN: So, I just want to be clear about this. Was there ever a time – I'm now changing the question - - -?---Sure.

20 - - - where Mr Montague asked you to find a solution to a planning problem. the problem being caused by a proposal for noncomplying development?---Not that I can recall, sorry.

30 I just want to remind you that you gave evidence on the subject of the meeting that you told us about with Mr Demian, at page 4642, line 31, where the Commissioner asked you, "Mr Stavis, sitting there today and thinking about that meeting, what's your recollection? Forgetting everything, the version what you said in - - -?" Answer, "It's a bit difficult, yeah." Question, "- - - December, what you said in August." Answer, "My recollection is that I walked into a meeting and the gentlemen, the two councillors, Mr Hawatt and Mr Azzi, Mr Montague and Charlie Demian were all sitting around. There was pleasantries exchanged. I sat down, Mr Demian went and started talking about things just as spruiking his proposal, had the plan and I recall in relation to Mr, Mr Montague, him saying 'Go away, have a look at it,' words to that effect." But I interpret that as actually, really, look, and that's - - -" Question, "Sorry, so that's your recollection as you sit there today?" Answer, "That's, yeah, yes, sir. Pardon, ma'am. Sorry." So I'm just drawing your attention to that.---Yes, sir.

40 You see that?---Yes, sir.

And do you have a recollection of an occasion where Mr Demian was abusive towards you at a meeting where Mr Montague was present. ---Define abusive because - - -

Yes, I suppose the qualifying fact, so there's more than one meeting with Mr Demian where he was abusive towards you. Is that what you're saying? ---There were varying degrees of abuse, yes.

I understand.---Yes.

And more than one meeting.---Correct.

The qualifying part of my question is, was Mr Montague present at any of those meetings where - - -?---Yes.

- - - to a varying degree Mr Demian was unpleasant?---Yes.

10

He was?---Yes.

How many such occasions?---Maybe two, three times.

And do you recall the subject matter of the meeting, the project?---Various projects but I can't give you the actual specific projects but they were projects he had on foot, and it was around the time where we were meeting regularly with him, yeah.

20

And are you able to tell us, can you recall a particular or particular events, occasions where Mr Montague intervened in any way? And if so, what can you tell us?---Yeah, look, he was, oh, look, Mr Montague, to be perfectly honest, was, the two or three times where – and Mr Montague's present – where Charlie Demian was abusive of varying degrees, he was actually putting him in his place. If I had, I mean, I, to be honest that's what he, that's what he did in those meetings.

30

Excuse me. Page 4618. And it appears to be about 998 Punchbowl Road, if we look at line 21, where the question you're asked is, "And if it was the earlier meeting, that meant you didn't say anything at the 25 June meeting to disabuse Mr Demian of any impression he might have had that 1.8 was still what Mr Annand had recommended." Answer, "Yes." Question, "So your response is to go back to Mr Annand and say let's try and work this out. Let's make sure before I do anything further that you're right." Answer, "Yes." Question, "And you did that not just because you didn't want to buy into another fight with Mr Demian, but you did that because that was how you saw yourself, as the person who would be able to try and find a solution." Answer, "Yes." Question, "Now, the problem that you were dealing with was not just the combustible personality of Mr Demian, but you had a council resolution that you were trying to get close to, correct?" Answer, "Correct, sir." Question, "And also you knew you had the particular interests of at least Mr Azzi in this project, is that correct?" Answer, "That's a fair comment." That last question and answer, what were the particular interests of Mr Azzi in 998 Punchbowl Road that you had in mind when you gave that answer?---Just inquiries that he had made, and he was one of two councillors, as best as I can recall, who had made inquiries, and he did attend at least one meeting, you know, in Mr Montague's office with Charlie Demian and - - -

40

About 998 Punchbowl Road?---Yeah. Yes.

And did Mr Azzi demonstrate a more frequent contact with you or in your presence in relation to 998 Punchbowl Road than Mr Hawatt or were they about the same?---I think they were about the same, yes.

10 Thank you. If I could take you to volume 12, just keeping that page of the transcript in front of you if you wouldn't mind, volume 12, page 291, please. I just need to give you the opportunity, Mr Stavis, of just being reminded of the email that you sent to Mr Annand that's at the middle of page 291 on 26 June, 2015 at 8.32am where you said, "Peter, please come and see me on Monday, we've already let the cat out of the bag to the applicant when we received your draft report, we need to get as close as possible to that FSR," and that was the FSR of 1.8 you'll recall?---Yes, sir.

20 You gave these answers that are on page 4618 to Mr Andronos which give the impression that you were simply trying to find out whether Mr Annand was right or not, but that's not what you said at the time as conveyed by that email, is it?---(No Audible Reply)

You weren't trying to check whether he was right, you were saying, look, we're stuck with the FSR that we've given the applicant and we need to get as close as possible to that FSR?

MR ANDRONOS: Commissioner, to be fair to the witness I think the balance of the questioning on 4618 should be brought to his attention.

30 MR BUCHANAN: The witness can read all he likes in 4618, I want to ask him about the email of 26 June, 2015 at 8.32am on page 291 of volume 12. So please read all of page 4618 and then I'm going to take you back to that email.---Okay, sir.

MR ANDRONOS: It actually starts in the last line of 4617.

MR BUCHANAN: 4227?

THE COMMISSIONER: 4617.

40 MR ANDRONOS: 4617.

THE COMMISSIONER: I think Mr Andronos is saying it starts, and so then about 44 minutes later you sent the next email - - -

MR BUCHANAN: 4617. I apologise, I misheard.

MR ANDRONOS: Sorry, I didn't say it clearly.

MR BUCHANAN: I misheard. Did you hear that, Mr Stavis?---Yeah, I read that bit, yes.

Thank you.---Thank you. Yes, sir.

10 So looking then at the email of 8.32am on 26 June, 2015 in volume 12, page 291, by that stage you were certainly wanting to check to make sure you understood that Mr Annan's opinion was supportable. You were trying to get him to change his opinion so that it would support the FSR that had been provided to the applicant namely of 1.8 at that time, weren't you?---I was trying to further test to see if we could get that 1.8 because I do say in the transcript when Mr Andronos asked me and this, and this is on the second paragraph, "And this is a fair characterisation of what you're saying to Mr Annand?" "It's going to create an almighty problem because we have already set certain expectations with the applicant, so what we need to try and do is meet those expectations." "Is that really what you're saying?" "I am to a large extent, yes." So at some point in time the 1.8:1 was conveyed to the applicant.

20 And you wanted Mr Annand to change his opinion?---Well, to certainly look at seeing whether we could achieve it, yes.

You didn't say that. You said, "We need to get as close to that."---Yes. Which is a trigger for him to look at exploring options of how we can.

THE COMMISSIONER: So you did want him to change his opinion?  
---Not change his opinion but to explore options, Commissioner, to look at how can we achieve the 1.8:1.

30 MR BUCHANAN: But that's changing his opinion.---Sir, it's not as clear-cut as that, with respect. It's not like that. When you're dealing with planning proposals and urban designers and urban design reports, you look at, there are varying degrees of how you look at development, right? So, and it might be built forms located on aspects of sites as one option or built forms located on other particular aspects of sites as another option. So I was, I needed to be satisfied that we were testing the 1.8:1 and could that be achieved within a reasonable building envelope.

40 I think I understand your evidence. Thank you. Page 4619, line 41. Question, "Now you were aware through your whole tenure that Mr Montague wanted things done quickly." Answer, "Yes, sir." Question, "And that was across the board?" Answer, "Yes, sir." Question, "And you knew that he responded to complaints and inquiries from members of the community and the applicant community?" Answer, "Yes, sir." Question, and this is page 4620, "And it was his invariable practice, wasn't it, if anybody contacted him, to inquire as to timelines or to complain. So far as you were aware he was on the phone to you saying, 'Spiro, when can we do this?'" Answer, "Yes, sir." Question, "And he always said, 'Can we do this

quicker.” And you said, “Yes, sir.” Now, sorry, I need to read on.  
Question, “If you said it could be done tomorrow, he’d want it done today?  
If you said you could do it next week, he’d want it done this week?”  
Answer, “That, that’s correct.” Question, “And overall, in terms of getting  
things done quickly, that is a practical outcome that you supported?”  
Answer, “Yes, sir.” What you didn't say in answer to that question, Mr  
Stavis, was consistent with doing our job properly and complying with the  
law, did you? Or anything like that.---Well, because I wasn’t asked that.

10 No, but you had this approach to you from Mr Montague, that simply  
wanted things quicker than they were being done. Is that right?---Yes. He,  
yes.

But he didn’t indicate to you a concern that that be done consistent with a  
proper approach to the planning task at hand, be it to draft a planning  
proposal and submit it to the department, or obtain a consultant’s report or  
assess a development application or prepare an officer’s report?---He didn’t  
say that to me, is that the question?

20 Yes.---No, he didn’t, no.

No. Those, however, were critical considerations for you and your division,  
weren’t they?---Yes, sir.

You understood Mr Montague's insistence on doing things more quickly to  
be a response by him to complaints of delays by development proponents, is  
that right?---I understood that, yes.

30 And of course, you understood that development proponents had their own  
financial interests at stake when it came to getting development applications  
processed and processed quickly?---Yes, sir.

And is it the same, for that matter, in getting a submission for a planning  
proposal up and a planning proposal implemented quickly?---Yes, sir.

But of course the public interest was wider than just the costs that a  
developer or a development proponent might incur or be incurring, wasn’t  
it?---Yes, sir.

40 Much, much wider?---Yes, sir.

And the public interest and the duty of assessment, just thinking of  
development applications now under the Environment Planning and  
Assessment Act, required processes of assessment to be done properly,  
that's to say for them to be genuine?---Yes, sir.

Which meant taking all relevant considerations into account?---Yes, sir.

And that factor was one which might militate against assessment of a development application or preparation of a planning proposal or processing of planning proposal being done quickly, mightn't it?---You're saying, am I understand your questioning correctly, are you saying that the two don't necessarily align or is it, what, what's - - -

There might be a conflict between them?---Yes, I accept that.

10 Did you ever say anything to Mr Montague that, look, we've got to do this job properly, or if you wanted the job done properly then we, you know, due process has got to occur, we can't do things yesterday or last week?---I did convey to him on numerous occasions where I had serious concerns about meeting certain deadlines on things.

What did you say?---Oh, said, look, it's, or words to the effect, well, there's no way we can get a determination by X for these reasons.

20 And you're giving us a general, a recollection of a general approach that you took in the appropriate case?---Yes.

Was there a general response that Mr Montague gave in those instances? ---In most cases, to be fair, he would take advice when it was raised with him in that way.

30 And what do you mean by that?---That for example if I said look, we can't do it within that timeline, he would generally accept that, but he'd still push I guess and, and test to see whether it could actually be achieved, but if I had to categorise it, in most cases when I did raise that with him, he, he, he normally took, took my advice.

I note the time, Commissioner. I have a bit more to go.

THE COMMISSIONER: All right. You won't be finished in five to 10 minutes?

MR BUCHANAN: No.

40 THE COMMISSIONER: All right. All right, Mr Stavis, we'll adjourn until 9.30 tomorrow morning.

**THE WITNESS STOOD DOWN [4.30pm]**

**AT 4.30PM THE MATTER WAS ADJOURNED ACCORDINGLY [4.30pm]**