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18/10/2018

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INDEPENDENT COMMISSION AGAINST CORRUPTION

PATRICIA McDONALD SC
COMMISSIONER

PUBLIC HEARING

OPERATION DASHA

Reference: Operation E15/0078

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY 18 OCTOBER, 2018

AT 9.30AM

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.

MR BUCHANAN: No administration this morning.

THE COMMISSIONER: Mr Montague.

MR BUCHANAN: Can Mr Montague please be provided with Exhibit 60. Mr Montague, have you had a chance to have a look through this schedule?
---Not that I, not that I recall, no.

You haven't seen it before?---Well, I could have but I can't recall.

10 You didn't understand that evidence was adduced before the Commission as to telephone contacts between various people, including yourself during the period of Mr Stavis' recruitment?---I know that, yes.

You weren't interested in seeing what calls were made to and from you?
---Not particularly.

You weren't?---No.

20 I see. Well, let's go through it, then. Do you see that there are a number of columns and rows?---Yes.

On the left-hand side, the heading for the first column is Phone User 1. Do you see that?---Yes.

That is the name in which the phone service identified in the second column is registered. Do you understand that?---Yes.

30 And if you go towards the bottom of the page, you'll see that seven rows up or so there's some contacts where you're identified as initiating them or at least on your mobile phone.---Yes.

Do you see that?---Yes.

And was the phone number ending in 9-5-6-5 that's recorded in the second column there against your name the phone that you were using at this time?
---Yes.

40 Now, the fourth column from the left is headed Phone User 2. That's the name in which the phone identified in the next column, Phone Service 3, is registered. Do you understand that?---Yes. Sorry, Phone Service 2 or - - -

Phone User 2. Excuse me. So, in the case of Phone User 1 and Phone User 2, I should correct myself and indicate that that is the name of the person who used the phone according to information available to the Commission.
---I'm sorry, just to make this clear. So, we're talking about the one, two, three, fourth, fifth column from the left, are we? Phone Service 2.

We're talking about Phone User 1.---Yes.

The first column.---Yes, okay, sorry.

And the fourth column from the left, Phone User 2.---Yes, okay.

That's the person who used the phone with the number that is in the second column or the fifth column as the case may be.--- Yes, I understand.

10 And the Phone User 2 is the person who essentially received the call, or text message as the case may be. Do you understand that?---Yes.

That in the column to the right of Phone Service 2 is Start Date. That's the date in which the connection started. Do you understand?---Yes.

And then ignore the greyed-out data in the column headed Start Time and just go over to the next column, which it reads Start Time with Adjusted SMS Time for EDT. That's daylight saving.---Yes.

20 And that column has the time at which the communication, the contact started. Do you understand that?---Yes.

Then under the heading Duration, the second column from the right, is an indication of whether the contact was an SMS or whether it was a telephone call, and if it was a telephone call it indicates the duration of the line between the two phone numbers being open. Do you understand that? ---Yes.

30 And then the right-hand side there is a column called Caller Location, and I probably won't be taking you to the data in that column. Sometimes there's data there, sometimes there isn't.---I understand that.

Now, can I ask you this. What I want to take you to in the first instance is the contacts between you and Mr Khouri which are indicated in this table. So, for example, do you see that in the fourth column from the bottom is a telephone contact between you and Mr Khouri on 28 October, 2014, at 2.18?---Yes.

40 For 19 seconds and then another one, very shortly after that, between you and Mr Hawatt for 5 minutes.---Yes.

28 October, 2014 was a work day. It was a weekday. Throughout this schedule, can I put it to you, many of the contacts between you and Mr Khouri are during weekdays and during business hours. Why were you and Mr Khouri communicating during business hours on weekdays?---Well, I, I, I can't answer that. I don't know. It's not uncommon, though. I mean, he, he would call me about, pardon me, call me about a range of matters.

What category of matters? How would you characterise those matters?
---Well, I can't. I don't know. I can't recall now.

Yes, but he wasn't telling you, he wasn't giving you a racing tip, I take it?
---No.

You weren't giving him racing tips?---No.

10 Certainly from time to time there might have been a contact to arrange a dinner or a meeting up after work.---Yes.

But otherwise, usually when people call each other during the weekdays it's in relation to business. Would you think that would be a fair statement to make in your case?---I don't think it's an unfair statement but I can't recall, couldn't explain what those calls referenced. Quite a few of them are very short calls.

20 Yes.---That one isn't but some, most of them are. Now, I've got, I've got no idea why or what the subject matter of those calls was now.

But thinking back to the nature of your relationship with Mr Khouri, do you think it's possible that the contacts that you were having with Mr Khouri were about matters of council business?---It's possible, yes.

30 Why were you talking to Mr Khouri as frequently as you did, as disclosed by this schedule, about matters that certainly were possibly council business?---Well, that's not uncommon. He, he's a local identity, he takes an interest in council matters, he had people in the community who would contact him. I don't know. It's not uncommon. It wasn't uncommon for he and other people in the, in the, in the region, in the council area to call me.

But the difference with Mr Khouri was that he was your friend.---Yes.

A long-standing friend.---I'd known him 10 years or more, that's right.

40 For a friend to be communicating with you and for you to be communicating with a friend during business hours about what was perhaps likely to be council business as frequently as this schedule discloses suggests that you and he were organising council business in those contacts.
---No, I don't accept that. I don't know.

Why not?---I don't know. Simple as that. I don't know what we were talking about now. If you'd asked me that 24 hours after the call, possibly, but not now.

I just want to make it quite clear to you that the inference is available that you and Mr Khouri were organising council business in these

communications, these contacts.---I wasn't in the habit of organising council business with Mr Khouri.

But you did it from time to time?---No, I don't recall that.

Well, when you say, "I wasn't in the habit," of doing it, what do you mean?
---I don't believe I had a lot of communications with Mr Khouri about council business, and I don't know what you mean by council business. I mean it could have been anything at all. I've, I've got no idea. Some
10 constituent may have contacted him about a rating issue. I don't know. I can't recall that, the details.

And you would have accepted a call from your friend, Mr Khouri, to address the rating issue, would you?---Yes.

You, the general manager, would have accepted that call?---Yes.

And then acted upon it?---He had my, he had my mobile number.

20 Yes, that's obvious.---So the answer is yes.

You would have then acted upon it, would you?---Well, dependent on what it was. I can't speculate.

A rating issue?---Well, could have been a rating issue, I just used that as an example.

You wouldn't have taken too kindly to the ratepayer taking that up with you on your mobile phone, would you?---On the contrary. I had a policy in all
30 the time I was GM at Canterbury of having an open line to ratepayers and residents and other stakeholders and all sorts of people called me about matters relating to the council, and I was proud of that, that I was so accessible.

THE COMMISSIONER: On your mobile?---Yes, some people had the mobile number. Most of them came through my, my PA, the, the landline, but there were people that had my mobile number, yes.

40 MR BUCHANAN: So you're going to tell me, are you, that in respect of these contacts, let's look at page 3 - - -?---Yes.

- - - that on 4 November, which was a Tuesday - - -?---4 November?

4 November, 2014, so looking at about halfway down, a bit before halfway down the page - - -?---Oh, yes.

- - - you see there's an exchange of SMS contacts between you and Mr Khouri starting at 2.02pm?---Mmm.

Can you assist us as to what they're likely to have been concerning?---You said that was a Tuesday?

Yes.---Again, I don't know. He might have rung me to say, "Look, are you coming through Concord on the way home?" I might have said yes, hung up. Might have rung him back, the call mightn't have been answered. I don't know.

- 10 But it also might have been, you concede, about a matter concerning council business, such as the recruitment of the director of city planning?---Yes, that's possible too.

Did you have contact with Mr Khouri about the recruitment of the director of city planning in October/November/December 2014?---Yes, there were a couple of conversations at least with Mr Khouri, just incidental conversations about the progress in relation to the appointment of the director of city planning.

- 20 And what did you understand Mr Khouri's interest to be?---Well, we'll probably traverse this later, but I actually approached Mr Khouri myself early in the piece after Mr Occhiuzzi resigned and asked him did he know anyone in the, in the sector in planning areas who might be looking for a job, because his son was a senior planner and I put that to him. So that I suppose sparked his interest as to how things were going and he was just keeping in touch with it. That's all I can assume now. There was nothing sinister about that, though.

- 30 Can I just ask you to consider this. You've agreed with us that the way that Mr Khouri earned a living was, at least in some large measure, by being a lobbyist on behalf of property developers and that we've identified that four of them, was it, were developers with an interest in proposed developments in the Canterbury area?---Mr Khouri never characterised himself as a lobbyist.

But you described him as such.---No, I think I refuted that yesterday. He, as far as I was concerned, he was representing people in the community, pardon me, who held legitimate interest in council business or had some sort of dealings with the council.

- 40 Including those property developers that we went through yesterday?---Yes. Well, I don't know which ones they were now, I can't recall, but the ones, yeah, I assume they're the ones we talked about, yeah.

Yes. And were any of the contacts in October/November/December made by Mr Khouri on behalf of any of those clients of his?---It's possible, but I can't say yes or no to that question.

Did you think that given his role as, can we use the word advocate - - -?
---Advocate's a better word, I think, yes.

- - - for property developers, he didn't have an interest in the identity of the person who would be appointed as director of city planning?---He may well have, but he never expressed that to me. In fact on the contrary, after he told me that, well, he told me that Mr Stavis was looking for a position and I said, "Well, tell him to put an application in, apply through Judith Carpenter." That was it. Now, after that I didn't have any lengthy
10 discussions or any discussions really of any note about the appointment. He left it up - - -

With Mr Khouri?---With Mr Khouri. He left it up to me, as he should.

THE COMMISSIONER: You described the contact with Mr Khouri as, my note was an "incidental" contact re the appointment. What did you mean by incidental?---Well, incidental just means, well, I'm not sure what the precise dictionary - - -

20 But you must have had something in your mind when you described the contact.---Well, he might have called me about something else or we might have run into each other at Concord and he might have just asked me about how things were tracking. That, that, that's what I call incidental. It was just that.

How things were tracking with the appointment of the director?---And other things perhaps at the time.

30 MR BUCHANAN: But you do concede that he, to your knowledge, had an interest in the person who would be appointed, given the fact that he earned money from property developers?---I can't confirm that. He never expressed to me that he had an interest in the appointment, other than to give me the name.

Yes, but you could work it out for yourself, couldn't you?---No, I didn't. It didn't cross my mind.

I'm sorry? You were the general manager. You knew what the major projects were that were under consideration at council, didn't you?---When
40 you say projects, what do you mean?

Major projects for development, large scale.---I knew a couple of them but I didn't know all of them by any means.

You knew the major ones, didn't you?---Yes, I know of them of course.

And you knew that Mr Demian had some?---Yes.

You knew that the Chanines had a major one?---Well, the only one that I, I connect with the Chanines was the one in South Parade, Campsie, which as I said earlier yesterday in evidence, was a matter that involved the council directly because we owned the site.

We've been through this. I thought you understood, and indeed told us that you understood, that there was a project under consideration at council that the Chanines were proponents for at 212-222 Canterbury Road - - -?---Yes. I was about - - -

10

- - - and 4 Close Street.---I was about to mention that but that, that and the one in South Parade - - -

So, that's enough, isn't it?---Well, yes, but they were legitimate - - -

Yes. You knew that Mr Khouri was an advocate for Dyldam?---Yes.

They had a property at 15-33 Brighton Avenue, Croydon Park.---Yes.

20

And it was the subject of a proposal for rezoning and changing the development controls in favour of the development proponent?---I, I don't know the details of that now. I'm not sure - - -

But you know that it was, don't you?---It was, but I don't know what period now, I - - -

And you know that Mr Khouri was an advocate for Dyldam?---Yes, yes.

30

And this was in the Canterbury area?---Yes.

So how could you not work out that Mr Khouri was a person who was an advocate for property developers and was earning an income from that source in respect of people who had interests in the Canterbury area?---I don't deny that he was an advocate for property - - -

No, no, no. How could you not work it out?---I did work - - -

You told us you didn't know.---I, I don't know that I did say that actually.

40

Well, what are you saying now?---Well, I'm saying that Mr Khouri was involved in matters in the City of Canterbury area and Bankstown and other councils, including Strathfield, for a period of time. I don't know - - -

We're not talking about other councils.---Well, I know that but - - -

At the moment.---I know that but it means you've got to look at the context of his engagement or his involvement at Canterbury. He was involved in that type of business in property development. I admit that, all right? And

the ones that he approached me about primarily, and others, were the Harrison site and the, the one on Punchbowl Road, which is again a property owned by Mr Demian, and the Dyldam one. I'm not sure when that happened. That could have been outside this period of review for all I know.

'14-15.---'14, was it? Well, I don't recall - - -

'14-15.---- - - when the date was because, yeah.

10

The planning proposal was considered by council at one stage in December, 2014.---That could be right. That could be right.

20

Now, you didn't have an antenna up, you weren't sensitive to the risk of conflict of interest on your part in having a friend who was lobbying you about property developments in respect of which your council was the consent authority?---Mr Buchanan, I can talk to anybody I like at any time I like about anything I like in the council area or anything else, but the point I tried to make yesterday was that in the end it's not my decision. It's up to the council to make decisions about recommendations they receive from the director of planning, and I didn't interfere, nor would I interfere, in what the director includes in his reports to council or the committee, the City Development Committee, or the IHAP for that matter. Now, yes, I run the, I ran the council day to day, that was my responsibility under the Act, but planning was only a part of that. It wasn't the entirety of my responsibilities. And if, and as I said I think yesterday, if, if I excluded anyone who contacted me and subsequently there was report going to council and I said, oh, I can't get involved in that, I, I struggle to understand how I can discharge my responsibilities. I never offered any preference to Mr Khouri or anybody he represented despite the, the closeness of our relationship.

30

But it was preferences that Mr Khouri was seeking by contacting you on behalf of his clients, wasn't it?---No. No, he knew full well that I could not influence the outcome of these, these matters.

Why then do you understand he was bothering to talk to you about them?
---Because we often talked, he was, he was a close friend of mine.

40

It would have been a complete waste of his time though on the account you're giving us.---Well, perhaps it was.

You know that's rubbish, don't you?---No, I don't know it's rubbish at all.

That your answer is, your position generally is, no, you didn't have an antenna up, you weren't sensitive to the risk of conflict of interest by virtue of these contacts by your friend lobbying on behalf of his client's property

developers who had interests in your local government area?---In relation, in relation to conflict - - -

Is that your evidence?---This conflict of interest issue, yes. I, I was, I may have been remiss but the conflict of issue [sic] didn't occur to me because I was dealing with him at arm's length most of the time in relation to the DAs. I did not try to promote a DA or get the director to recommend it a particular way.

- 10 You weren't dealing with him at arm's length in relation to DAs or planning proposals on behalf of his client. That's obvious from the fact that you were having person-to-person contacts with him about that.---Yes, yes. Yes, well
- - -

So it wasn't at arm's length.---Well, maybe that was, maybe that was a poor choice of words. I accept that, but it was very much on the periphery. I, I never got involved in the DAs. I didn't understand the nuances of the planning scheme.

- 20 How many meetings did you attend with Charlie Demian in your office or in another office in the council chambers concerning 548 Canterbury Road and 570 Canterbury Road?---Three that I can clearly remember, one in the conference room or two in the conference room on my level, the meeting room, and one in my office.

You had more than that, didn't you?---Possibly. I don't - - -

Why did you bother having those meetings with him in that case?---Because he requested them.

- 30 Why didn't you tell him to go away? "I'm sorry, there's nothing I can achieve on your behalf. I don't interfere."---Because that's not the way I operate. If a person's got - - -

You do interfere?---No, I don't interfere. Commissioner, I don't know what Mr Buchanan expects me to say. I've admitted that I spoke to Bechara Khouri about certain things, yes. That was, that was quite often, I admit that, but I didn't do anything to influence the outcome of those applications or to get a favourable outcome for a developer.

- 40 Can I take you to page 5 in Exhibit 60, please. Can I just ask you to have a look at this page because it's got a number of entries for you, both under the heading of Phone User 1 and also Phone User 2, that is to say, you are both receiving and making calls.---Yes.

Although they include, and I draw your attention to it, the fifth one from the top is Jim Montague's office. But otherwise generally speaking, and there's

one further down about eight lines from the bottom that's also Jim Montague office, otherwise they appear to be your mobile number.---Yes.

Do you see that there's a large number of them?---Yes.

And do you see that a large number of them are communications with Bechara Khouri?---Yes.

10 Do you see that this is on the 12th and 13th – I'm sorry, let's just focus on 12 November, 2014. Do you see that?---Sorry, what?

Well, if you just go through these columns.---Oh, it's on the screen, yeah.

You'll see that if you go down to the highlighted section, before you get to the highlighted section there are about 12, 13 references to your name. ---Yes.

20 And that most of them are contacts with Bechara Khouri. Up the top three of them are with Pierre Azzi.---Yes.

But most of them – and one of them in the middle is with Michael Hawatt. ---Well, there's about five with Bechara Khouri up until the - - -

Yes. So 12 November is a time when things were well under way in terms of recruitment of the director of city planning.---Well, the interviews if I recall took place on 17 November so - - -

30 Correct.--- - - - the answer to that question is certainly, it would have been on my radar, yes.

And you formed an interview panel obviously some time before that?---It wasn't very long before that.

40 So you were considering, though, doing so I take it?---I said yesterday that, and I admit to this, that I was in, I can remember vividly sitting in my office, knowing the importance of this appointment and knowing what I'd been through with the previous director and what, and the state of play in relation to the planning division itself, I thought how can I take, how can I try to get some assurance for the councillors that we won't go through that experience again. That's what I decided - - -

Yes, I understand that you've given that evidence.---Yeah, that's when I decided unilaterally to form a panel.

Did you discuss that with anyone beforehand?---Not that I recall. I may have mentioned it to the Mayor. I can't recall.

Did you discuss it with Mr Hawatt?---I don't believe so until I actually made the decision to form the panel.

Did you discuss it with Mr Azzi?---I don't, I don't recall.

Did you discuss it with Mr Khouri?---Possibly mentioned it to him just in passing.

10 Why would you mention it to Mr Khouri?---I explained earlier. You have to know the man. I mean he helped me get to the stage of, or offered help in relation to putting some names or seeking people who may be interested in the position which I asked him to do, right. So he followed through on that. He was interested to see what the outcome was. Now, whether there was another motivation behind that I don't know and I didn't ask. He seemed genuinely - - -

But you knew - - -?--- - keen to assist.

20 I'm sorry, go on.---He seemed genuinely keen to assist knowing what we were going through.

THE COMMISSIONER: So he was interested in who was going to be appointed?---Oh, yes, of, he seemed to be, yes.

MR BUCHANAN: And you knew Mr Khouri was close to Mr Hawatt and Mr Azzi?---I don't know, look, he knew both of them, I don't know how close that relationship was, I think that relationship changed as time went on.

30 It might have, but I'm asking about this time at say 12 November, 2014, you knew that Khouri was a good friend.---I wouldn't say he was a good friend. I, I, I couldn't say that with any certainty.

That he and Hawatt and he and Azzi were in reasonably regular communication with each other?---That's possible. I, I, I can't be certain of that. I don't know how often he spoke to them.

40 Is it the case that you negotiated the establishment of the interview panel with any of those three gentlemen?---No. I decided to form the panel, I believe I spoke to the Mayor about it - - -

Yes?--- - - - and I included the Mayor in the panel for obvious reasons.

Yes, but I just want to ask, did you consult - - -?---No.

- - - outside of the Mayor?---No, not that I recall, no, because it was my decision.

Did you find out whether Hawatt wanted to be on the panel or Azzi wanted to be on the panel?---Well, ultimately they did, yes, they were - - -

Yes, I know, but did you find out before making the decision as to the membership?---If you're asking did I form that panel because they asked for it, the answer is - - -

10 No, no, no, that's not what I'm asking. Did you consult them, look, I'm thinking of having a panel, I'm thinking of having you on it, what do you think?---No.

Words to that effect?---I don't, I don't believe I did that. I could have but I don't recall doing it. I remember forming the panel and I remember how I came to that landing in relation to the panel.

20 Did you at any stage before the actual appointment of Mr Stavis on 8 December have any communication with – sorry, I should give you a beginning time frame. Let's say 10 October, 2014, the date of Mr Occhiuzzi's resignation letter.---Yes.

So between 10 October and 8 December, 2014, did you have any communications with Mr Khouri in which he indicated what he understood Mr Hawatt or Mr Azzi were thinking?---Not that I recall, no. At that stage my concern was to get a replacement for Mr Occhiuzzi as soon as possible.

30 Did you have any contact with Mr Khouri during that period in which he indicated anything about Mr Stavis, other than he existed?---Oh, look, I don't recall. Again maybe in one of our contacts something may have been said but I can't recall the details and it had no bearing on, it had no bearing on the progress of the panel or the ultimate appointment. I was open-minded about who would be appointed to that role.

But you've told us that Khouri told you about Stavis - - -?---Yes.

- - - in the first instance.---Yes.

That was, was it, at a lunch at Il Buco at which Mr Khouri was a guest?---I don't recall that, I don't, I don't know.

40 Did he indicate to you that there was this bright young fellow at Botany Council that might be a good candidate - - -?---Well, I don't think he used - - -

- - - or words to that effect?---No, I don't think he used those terms, I think he said - - -

Words to that effect?---No, I think he just said he knew of a fellow by the name of Spiro Stavis.

Yes.---And I said to him in reply, “Ask him to put an,” or, “Tell him to put an application in with Judith Carpenter.”

You weren't interested in who this person was?---Not really, no. I never met him before.

10 You didn't say to him anything like, “Who's he?”---I could have. I mean I don't, I don't see how that's relevant to – it's up to him in the end whether he wanted to make an application or not. I got calls from other people too and I'd say the same thing to them.

But you knew – I'm sorry, did you get other calls from other people about Mr Stavis?---No, about interested in the position.

20 Right. You hadn't even heard of this man before and you weren't even mildly curious as to why your friend was saying there's this man Stavis who might be a good candidate for the position?---Not, not really. I told him to tell him to put in an application and we'd consider that if and when he applied for the role.

It seems unlikely that you wouldn't have been curious - - -?---I may have been curious.

- - - to know what Mr Khouri knew about this man.---I didn't see that as hugely important. He had, this was, this, look, he was going to put, if he put an application in it would be considered along with every other application we received by an external consultant.

30 But you had certain criteria in your mind, didn't you?---Yes, of course.

For the person who was going to fill that position ultimately?---Of course.

And you weren't at all interested in find out whether your friend had a candidate who might meet any of those criteria?---Not, not, not particularly, no.

That doesn't sound likely - - -?---Well, I'm sorry that's how it was.

40 - - - Mr Montague.---I'm sorry. That's how it was.

Even though you were particularly interested in ensuring those criteria were met?---Of course. But the interview would flush that out or post-interview or pre-interview discussions. That's how I conducted appointment of senior staff.

Excuse me a moment. That's all in relation to that document for the moment but I'll come back to you on it, so please keep your copy there.

When did you last have contact with Bechara Khouri?---It's a while, a long while back, a while back now. As far as I know he's overseas. I understand
- - -

How do you know that?---I was told that by a mutual friend, that he'd flown to Lebanon.

Yes.---And that he'd had health issues on the flight.

10 Yes.---And those health issues prevented him leaving Lebanon because he couldn't fly. That's all I know.

Who was the friend? Is it the case that you know the name but don't want to divulge it?---No, not at all. I'm trying to think. Please give me time to think. No, look, I, I can't recall who it was or how I came to know about it.

When was the last contact you had with Mr Khouri in relation to that information that you received that he had gone to Lebanon?---I never, I haven't spoken to Mr Khouri since I had that information.
20

And so did you have a contact with him before, you must have had a contact with him before. When was the last contact?---Mr Buchanan, that, that friendship that I had with Khouri extended past the time I left the council.

Of course.---Right.

That's why I'm asking.---And if I had contact with him after I left the council, I can't see what the relevance of that is.

30 THE COMMISSIONER: Mr Montague, you're being asked questions. Please answer them. If there is an issue about relevance, you are being represented by Senior Counsel. He will make an objection. Also if I'm concerned about the relevance, I can ask questions. So, please answer the question because we'll just get through the whole process - - -?---I'm sorry.

- - - more quickly.---I apologise. I'm just trying to search my mind now. I think at some stage, I can't recall when, I sent a text to the, to Mr Khouri's mobile number and I asked if he was coming back to Australia and how he was, how his health was. That was the last direct contact I had with him. I don't recall when it was and that's when he informed me that he, he actually confirmed that he was in Lebanon and his health wasn't the best.
40

MR BUCHANAN: And before he went to Lebanon – I'll withdraw, start again. Thinking of the time that you discovered he had gone to Lebanon, thinking of that time, what had been the contact that you had with him closest to that time but before that time?---Before he left for Lebanon?

Yes.---Very little contact because after the difficulties we had in 2015, things changed, the relationship changed. I didn't see any, I didn't hear from him as much, I didn't see as much of him through that period from 2015 – I did in '15, but then '16, after the amalgamation, the number of times I spoke to Bechara Khouri reduced.

Why was that?---I don't know. He, I think there was some evidence that he felt that maybe I'd shut him out through some process. I don't know.

10 A cynical observer might say that it was no longer in Mr Khouri's interests to cultivate you because you were no longer in a position to influence decisions made by the consent authority for the Canterbury area. How would you respond?---I'd say that, that, I could understand how a cynical person would say that.

And?---Well, I enjoyed his company. I enjoyed his friendship.

But do you think that - - -

20 MR ANDRONOS: Let him finish.

MR BUCHANAN: I'm sorry.

THE COMMISSIONER: Yes, sorry.

MR BUCHANAN: You're right. I apologise.

30 THE WITNESS: I enjoyed his company. I enjoyed his friendship. We had a lot in common other than local government. I'd left local government in 2016 and I expected that friendship to continue, and I'm disappointed to hear that he's not well and he can't return to Australia.

MR BUCHANAN: Do you understand that contact between you and Mr Khouri diminished after you were no longer general manager because you were no longer in a position to assist him in relation to property developments in the Canterbury area?---I don't know that that was the primary reason. I don't know what his - - -

40 But you think it was a reason?---It could have been. I don't know what his state of mind was then.

He didn't indicate it to you?---No.

THE COMMISSIONER: Can I just ask, post leaving the council, when you did have contact with him was it mainly text messages or phone calls? ---Mainly phone call, mainly that form of communication, yes. There was very little personal face-to-face contact.

So the old having a lunch or meeting at a coffee shop, that stopped?---That changed, although his circumstances changed. He was, as I understand it, going through a fairly messy divorce and he was preoccupied, distracted.

MR BUCHANAN: Have you had contact with Mr Khouri at all about the Commission's investigation in this matter?---No. No.

None whatsoever?---Well, nothing that would cause me to breach the requirements of the Commission in the sense - - -

10

Well, what about when you were interviewed by Commission investigators?---Yes.

That happened twice, didn't it?---Yes.

And did you have any contact with Mr Khouri before or after those interviews?---Not in relation to those interviews, no.

20

Was there any contact between you and Mr Khouri when, as you understand it, he received a summons to attend this hearing as a witness?---He may have mentioned to me that he'd, that he'd been summonsed to appear, but that would have been the extent of it.

And did you mention to him that you had received a summons too?
---Probably.

30

Why was there no discussion between the two of you, as far as you were concerned, about the fact of the investigation and the subject matter of the investigation if the two of you had contact with each other about being summonsed as witnesses?---Well, I considered that wouldn't be appropriate. We shouldn't be discussing the hearing.

Did you have to tell Mr Khouri to not talk to you about it?---No.

40

Mr Khouri gave evidence in the Commission at an early stage in the public inquiry around the middle of this year, in particular in April 2018. Did you receive any contact from Mr Khouri at a time or shortly after a time where, as you understood it, he had given evidence in the Commission?---Not that I recall, no. I mean, our relationship, as I said, had changed by that stage.

Was there any attempt by Mr Khouri to contact you with a view to arranging your evidence and his evidence?---Of course not, no.

THE COMMISSIONER: Did you attend the Commission on the day or the days Mr Khouri gave his evidence?---Yes.

And you either sat in here or outside?---Outside, yeah.

MR BUCHANAN: And you saw what occurred when Mr Khouri gave evidence.---Well, I can recall some of, some of what occurred, yes. I can't remember all the details.

Amongst other things, you can recall, can't you, that a version of Exhibit 60 – the schedule of call charge records – in the period when Mr, or part of the period that the DCP was being recruited, was put to Mr Khouri and it, on one view of it, substantially contradicted the evidence he'd given about his involvement in the matter. Do you recall that?---No.

10

You don't recall thinking to yourself that Mr Khouri seemed to be in a bit of difficulty in the evidence he was giving?---It's a while back now, but from memory he, he seemed a little bit uncomfortable.

And you didn't think to yourself as an observer that he appeared to be in a bit of difficulty as to whether he was telling the truth or not?---Oh, I wouldn't, I wouldn't put it that way.

Did you talk to Mr Khouri after he'd given his evidence?---No.

20

About his evidence I mean?---No, no, not about his evidence, no.

And he didn't talk to you - - -?---No.

- - - about his evidence?---Not that I recall.

What do you mean by not that you recall?---All right. Well, I believe he didn't contact me or speak to me about that.

30 How could you not remember if he had spoken to you about him giving evidence or you giving evidence in the Commission about these matters?
---Well - - -

MR ANDRONOS: Well, I object to this. The witness has said, the witness has said that there was no conversation, then he qualified it by saying, "Not that I recall." That doesn't mean that he is suggesting that there was a conversation the contents of which he doesn't recall. The witness's evidence on this is crystal clear and complete. My friend should move on.

40 THE COMMISSIONER: Mr Buchanan?

MR BUCHANAN: With the greatest respect I don't know that the fact that a witness gives evidence which is either qualified or unqualified, adamant or not, is a reason why the matter shouldn't be explored if it's relevant, with all due respect.

When you said - - -

THE COMMISSIONER: I'm sorry, I'm going to allow Mr Buchanan to
- - -

MR BUCHANAN: I'm sorry. When you said not that you recall, did that admit of the possibility that he did contact you and talk to you about the evidence in the Commission but that you no longer recall it?---(No Audible Reply)

10 Are you saying that's a possibility?---That's a possibility I suppose.

And my question is, isn't it very unlikely that you would fail to recall a contact from Mr Khouri on that subject?---I was, I was warned that we shouldn't discuss the Commission's proceedings with other witnesses and I tried to observe that strictly.

And did you succeed in observing it strictly?---I believe so, yes.

Mr George Vasil, you have known him for a long time. Is that right?---Yes.

20 For how long, sir? I'm sorry, can I start again. As at 2014-16 for how long had you known him?---I knew of him probably 20 years.

Yes. How long had you known him as a person to talk to?---I didn't have a lot to do with George Vasil, he was a - - -

How long had you known him - - -?---20 years I said.

- - - to talk to?---Oh, well, I could have talked to him anytime I liked but I had no reason to.
30

Well, we're not getting a very clear picture here.

THE COMMISSIONER: When you say you knew of him for 20 years, what did you mean by that?---I knew he was a local businessman, he had a lot to do in the local area in his line of work which was a real estate agent, everybody knew George Vasil. He was particularly interested in council affairs, he'd often come to the council meetings and sit in the gallery and listen in on proceedings. That's how I got to know George Vasil. And I knew what he, what he was doing in the local community. He was a very prominent businessperson in the local community, in Earlwood particularly.
40

MR BUCHANAN: He had a development or development interests, as you understood it, from time to time?---Yes.

In the Canterbury area?---Yes.

And he had dealings with councillors from time to time?---I imagine so.

Did you notice any association between him and Michael Hawatt of Pierre Azzi?---Well, in more recent times I guess I understood that there was a relationship there, but I wasn't aware of that relationship earlier.

Right. But what do you mind by – sorry, what do you mean by - - - ?---Well, I mean, I mean - - -

- - - more recent times?---I mean through that difficult period from, in 2015.

10 When did you first know that there was a relationship that Mr Vasil had - - - ?---I'd say 2014.

Thank you. When in 2014?---Um - - -

Well, can I help you?---Please do.

If you just think of milestones like Mr Occhiuzzi's resignation letter, the interview panel on 17 November, Christmas Eve on the 24th when you went and saw Mr Vasil.---Yes.

20

When did you, looking at those milestones, before or after any of them that you know Mr Vasil had a relationship with the, an association with Councillors Azzi and Hawatt?---Well, certainly after the resignation of Mr Occhiuzzi and the recruitment process for the director of city planning and the councillors attempts to remove me from the role of general manager, that certainly crystallised in my mind that there was some sort of a relationship with both Azzi and Vasil.

30 But that's a very large period you're talking about there.---Yes, it is but I can't be any more precise.

How did it come to your attention?---Well, it just, almost by osmosis. I mean, I, I know, I knew that he was there. I knew they were talking to him but I can't put a precise time on it, or date or subject. George, George Vasil, as I said, was a local person who took a great deal of interest in local affairs and his son was a councillor at that stage.

40 And you started talking with him – or he with you – did you, at least, arising from his attendance at council meetings?---No. Maybe I'd say, "Hi George," as I went out, left for a council meeting in to the function room or he may have been in the function room, he might have been invited back for a drink, which was not uncommon. I, I'd always acknowledge him, of course I did.

Was he ever a person who raised with you issues that appeared to concern him about planning?---No. He'd go, he'd go to the, he, he had views about the way the planning division should be functioning.

How did you learn that?---He told me.

When did he tell you that?---Probably over a drink in the function room or some other place in the, in the council meeting.

10 And what were the views he expressed to you?---He had, he was a student of planning, local planning and my, this is my observation, and he would disagree with certain positions that the directors of city planning took but he discussed that with them too. If you saw his office, you'd know what I mean.

Did you have contact with George Vasil, or he with you, in relation to any particular development proposal? Be it a planning proposal or development application in the period 2014-16?---Not that I recall, no.

20 Excuse me a moment. When did you first go to Mr Vasil's office?---I visited Mr Vasil's office on one occasion, I think much earlier, I'm talking years earlier. I don't know what the circumstances were now. But I went to see him after or about the time the councillors or the, the group, if I can put it that way, moved against me.

Yes. So, on that occasion, which is, I'm going to suggest is Christmas Eve 2014?---That's right.

30 Was that only the second time you had been to Mr Vasil's office?---No. There were probably other occasions. I recall one time I think there was a function in the city, his son was involved. We agreed to travel together from, and I went to Earlwood. I don't know whether I entered his office then or not but there were occasions when, but very, very few.

You took George Vasil's views on planning seriously, is that fair to say? ---No. No, because I didn't understand it. I didn't understand, as I said, he was a student of this, I'm not, and I found the whole subject fairly boring actually, arguing about, you know, site ratios and floor space ratios, it, a lot of it went over my head but George was very passionate about it.

40 Can the witness be shown Exhibit 54, please. I'm showing you the sixth page of the transcript of entries in Mr Occhiuzzi's notebook against the date in this instance, of 11 August, 2015.---Yes.

Have you got that in front of you?---Yes.

Can you see that in respect of a particular site Mr Occhiuzzi recorded that you asked him to come to his office to discuss it. He explained the current discussion regarding side and rear setback. I'm sorry, I apologise. He, Mr Occhiuzzi, explained the current discussion regarding side and rear setbacks. You asked him, Mr Occhiuzzi records, whether he, Mr Occhiuzzi, could guarantee that is this was challenged in court that we, council, would

win. Mr Occhiuzzi records, "I said I could not guarantee this and that nobody could. He said that he had spoken with George Vasil and that he disagreed with my opinion. The GM said that I had to think very carefully about how this is managed because if it is challenged and we lost, 'It would not be good for me.' He glared at me seriously as he said this. He said, 'Do you understand what I am saying?'"---Do we know what property this is, sir?

10 I can't give you that as we stand or sit here, but can I just ask that, do you recall that there was an incidence where there was a difference of legal opinion where you advanced George Vasil's view to Mr Occhiuzzi?---No. No, I can't. But my concern was legal costs. If the council is going to engage in legal activity, I needed to know that we had a fair chance of success because of the costs involved to ratepayers. That was my interest.

20 And so wouldn't that indicate that at least on that occasion, if Mr Occhiuzzi's record is correct, you gave some weight to George Vasil's opinion?---But, but I take you back to the comment you just made. If these contemporaneous notes of Mr Occhiuzzi's are accurate, I don't know - - -

Have you got any reason to think they're not?---I don't know. I don't know what - - -

Have you got any reason to think they're not?---No.

Thank you.---They could be. I think we should concede that they could, they could have been exaggerated or he may have got it wrong when he, when he put it on paper. I don't know.

30 You told us, however, that this sort of interchange over whether council would be up for legal costs if council lost a planning argument was the sort of thing that you would do.---As I said, I was very concerned about legal costs. Canterbury had a reputation of having very low legal costs and I wanted to maintain that because of the impact on ratepayers.

And so the only thing that's in dispute, then – if it's in dispute – is whether you said you had spoken with George Vasil and that he disagreed with Occhiuzzi's opinion.---Yeah, that's possible.

40 And so doesn't that indicate that George Vasil had given you an opinion of his and you had sufficient store in it to take it up with the director of city planning because you were concerned that council might be wrong?---Yes. Because - - -

Thank you.---Because I understood the level of knowledge Mr Vasil had in relation to planning. Far better than mine. So I thought, well, we should try and test this, and I was grateful that he actually supplied that information, I guess.

And I'm not for a minute disparaging Mr Vasil, but Mr Vasil you knew was not a trained planner or a qualified planner.---No, not that I, not that I'm aware of, no.

And Mr Occhiuzzi you understood was.---Yes. I don't know what property that is, though. That's, that makes me curious.

10 THE COMMISSIONER: We might see if we can work that out.---Thank you. Thank you.

MR BUCHANAN: You indicated – it can be inferred from that entry for 11 August, 2014 – that Mr Occhiuzzi could lose his job if a court did not uphold Mr Occhiuzzi's interpretation of the setback requirements under discussion.---I don't believe that's the case.

20 Why wouldn't that be the case?---Well, because in any legal proceeding, as you'd well know, you're not sure whether you're going to win, lose or draw. Now, as I said – and it bears repeating – my issue was the costs involved in futile appeals or legal matters, legal proceedings.

Why would you not have indicated to him that it would be not good for him, Mr Occhiuzzi, if council lost?---I don't believe I did that and that's why I need to know the property involved because I can't link it. I'm sorry.

30 Do you have a recollection of a dispute in relation to a proposed development for a child care centre at 570-574 New Canterbury Road, the proponent being Joseph Jacob?---There was a matter involving the Jacob brothers in Canterbury Road, in New Canterbury Road.

New Canterbury Road?---Yes. But I'm not sure it was a child care centre, I don't know a lot about that. I know it was contentious because the people in Marrickville who are on the other side of the street, that's where Marrickville and Canterbury join boundaries if you, if you will, they complained about it, very vigorously about the application.

40 And so side and rear setbacks could indeed have been a live issue?---Yes. In relation to that, was it a child care centre? I can't say. I think it was a mixed-use development from memory.

Thank you. Sorry, can I say that as far as our information is concerned it was indeed - - -?---Okay.

- - - a mixed-use development.---Yes.

But that doesn't mean that there wasn't a component for a child care centre. ---Of course not, of course not.

Was it your practice, when George Vasil questioned the accuracy of the advice you were receiving, to question the accuracy of the advice you were receiving from your staff?---No. This, I can only assume these were special circumstances for some reason or George had a particularly strong view. I respected his opinion on planning issues, as most people did, as I said, he was a student of town planning, particularly in Canterbury, and I thought it was worth pressure testing it. That's all I said to Mr Occhiuzzi.

10 You were prepared to be influenced in the conduct of the affairs of council by what Mr Vasil had told you?---No, I was seeking confirmatory advice.

Can I take you through now some developers with interests in the Canterbury area in the period 2014-16.---Yep.

I'll ask you about a particular month, let's say October 2014.---Yes.

So it's just the period when Mr Occhiuzzi's departing.---Yes, yes.

20 You know Assad Faker?---No. I knew of him but I never, I don't believe at that stage I'd met him.

Did you meet him later?---I think I met him on a site inspection on the adjoining property, not the one that's under - - -

Homer Street, 15 to - - -?---Yeah, but the one next door, the first one.

Not 15-23 but 10?---Well, it's the first one that was built anyway.

30 Yes.---Further up the hill.

Yes.---I went down there on a site inspection with the former mayor and I met him then.

And I just want to clarify, when was this? When you say the former mayor - - -?---The mayor before Mr Robson.

Oh, you mean, you mean Mr Robson?---No, I mean before Mr Robson.

40 Oh, I see. And so that would have been then before October 2014.---Yes.

And did you have any dealings with Mr Faker after that site inspection? ---Not, not that I recall, no. I doubt it very much.

Thinking then of the planning proposal for 15-23 Homer Street, you know the one I'm talking about because you would have heard evidence in the Commission?---Yes.

Did you have any contact with Mr Faker about that planning proposal?
---I don't believe so. He may have called my office, I think we had that discussion about the calls that were, were picked up coming through to the landline number, that would have, it might, if that happened my PA would simply have referred that to the planning division I imagine. I don't recall speaking to him personally about it. I knew nothing about the particularities of that application.

10 Did Mr Hawatt raise that planning proposal with you?---He could have, just over dinner or something one night, but I don't recall that either.

Did Mr Stavis raise that planning proposal with you?---Again he could have. I don't recall.

But you don't have a recollection of it.---No.

Can I ask you about Ziad and Marwan Chanine.---Yes.

20 When did you first come to know them?---Well, that was, that was, whenever the development in South Parade was on foot, I think then. Now, I'm not sure when that was. That was the one I mentioned about the car park.

Yes.---Yes. I can't remember precisely when.

And what was the, how would you describe the relationship you had with them over the period 2014-2016?---Cordial. That's about it.

30 There was a business - - -?---Yes.

- - - relationship or business aspect to it, was there not?---Yes, because the council was negotiating with them over that site, the car park site I'm referring to.

40 Did you have any dealings with them in relation to 212-222 Canterbury Road and 4 Close Street?---I don't believe so. There may have been one meeting when we, I do recall one meeting, I don't know when again I'm sorry, and I never diarised any of these things, if I had access to my diary I'd know but through my PA, but that's all history now, there was one meeting I recall in the meeting room upstairs and I believe one of the Chanine brothers was there and I believe Spiro Stavis was there as well, and the purpose of that, that meeting was to discuss, among other things, setbacks to the Close Street property.

I'll come back to that. Do you recall a pre-DA – I withdraw that. Do you understand – I withdraw that. Have you heard the expression pre-DA meeting?---Yes, of course.

Were you present at a pre-DA meeting in respect of that development proposal?---I wasn't in the habit of attending pre-DA meetings. They were normally confined to the planning staff because they were very technical meetings but it's possible I was there, yes.

You don't recall a presentation to you at council chambers about the Chanines ideas for the development application before it was lodged?---I don't recall it, no, but it's possible again.

10 Mr Jimmy Maroun, did you have any dealings with him?---Virtually none. I knew Jimmy Maroun, again, a local businessman who had a carwash, also owned a site on the corner, near the Canterbury Road and Beamish Street.

Yes.---An old spare parts joint. I knew him, I'd met him socially, we went to a fundraise one night and he, not a, not a political fundraiser, but a fundraise, and he was there, but I had no real contact with him, no.

20 Did you understand Mr Maroun had concerns about that site on the corner of Canterbury Road and Beamish Street and delays to his development application caused by an RMS study that had to be conducted?---No, but I knew there were issues with the height of the building at the rear because the site dropped off. And that's what I picked up during council meetings and in discussions at coordination meetings. You know, I, I, I was interested in planning issues. Of course I would ask, "What's the problem here?" and say we need, I don't, I don't recall a script requiring from RMS but it wouldn't surprise me, being Canterbury Road.

30 And you don't recall any contact from Jimmy Maroun about that site or about 538 Canterbury Road, the site on the eastern side of Harrison's? ---Yeah, the old carwash, the carwash.

Yes.---No, I, I don't recall that. I so recall perhaps running into Jimmy Maroun on one or two occasions when I took my own car down to the carwash.

Mr Demian, how would you describe your relationship with him?
---Friendly, cordial.

40 We're talking '14-16?---Yes.

Friendly and cordial. What was the nature of your relationship with him?
---A business relationship predominantly.

What was, why was it a business relationship?---Well, because, again, he was a local businessperson who had interests in the Canterbury and Bankstown areas and he, and I met him because of that, particularly in relation to the Harrison site, which was hot to trot then, that particular site. And I got to know him because he came in, he requested to see me and I, as

I said earlier, I always received people who wanted to talk to me about matters affecting the council and in relation to, particularly major DAs like that one was. That's how I got to know Charlie Demian. Did we socialise privately, did we go to each other's homes? No.

So when you say business relationship, you mean council business?---Yes.

And his business?---Yes.

10 You don't mean you and he did business with each other- - -?---No, no. Of course not.

- - - of a private kind?---No.

Were you friends with Mr Demian, say as at October 2014?---Yes.

How long had you been friends with him?---Well, he only came on the scene about that time. Probably, I mean talking '13-14, I, I don't remember exactly when. It was a more recent relationship than say the one with
20 George Vasil or Bechara Khouri. I hadn't head of Charlie Demian before that. I'd read some things about, in newspapers, about particular applications in Bankstown, I remember that.

What was it that caused you to, what was it that caused a relationship, a friendship with Mr Demian to start?---Because he wanted to see me, talk to me and others in the council organisation about planning issues that he had in Canterbury.

30 How soon before October 2014 was this?---I, I don't, I don't recall that.

Are we talking weeks, months, years?---Could be, oh jeez, would have been years. Probably more likely to be months.

Excuse me a moment. Could the witness please be shown the transcript of his electronically recorded interview conducted on 9 March, 2017, in particular at page 43. You can see it on the screen there.---Yes, yes.

40 The page I'd like to take you to. And can you see that you were asked, four entries down, "Beyond that, do you have any relationship with Charbel Demian?" You said, "Charlie as I call him." Question, "Yeah." Answer, "He's a person I've known for many years, not dissimilar to Bechara Khouri."---Can I ask a question, please? Am I permitted to do that?

Well, try us.---Well, which interview record is this? I attended the Commission three times.

The second one. No, no, no. Yes, yes, I understand what you're saying. This is the second - - -?---The third one being compulsory.

This is the second one - - -?---Yeah, okay, fine.

- - - that you were, that was conducted with you by Commission investigators.---Yes, I understand now, yeah.

THE COMMISSIONER: And it was a voluntary.---It was. It was, yes.

10 MR BUCHANAN: Yes, it was.---Yes, it was. Look, I don't, yeah, look, maybe, maybe I knew of Charlie earlier. I, I don't know now. I can't recall. But I certainly knew him for some years.

And was the relationship you had with him not dissimilar to the relationship you had with Bechara Khouri?---That's wrong. That, I, I stand corrected there. That's not correct. I, my relationship with Charlie Demian was different to the one with Bechara Khouri. We didn't socialise at all much. I think there might have been one or two occasions. But our relationship was, was much more business-orientated, council business-orientated.

20 Did your relationship change after October 2014, your relationship with Mr Demian?---No, not, not really.

In the interview that I just took you to, line 15, if I could just draw your attention to it.---Yes.

You said, "In a way, more, more a friend now since I've left the council."---Yes.

30 "But, no, look, Charlie would come in. He was frustrated with the council's processes."---Yes.

You went on to say, "I would convene meetings with applicants, not just with Charlie but with anyone who had an issue with council, and I would invite the director of city planning or his staff along as appropriate to try and resolve the issues."---That's right.

40 Have you had any contact – I withdraw that. When was the last contact you had with Mr Demian?---I spoke to him on the phone. Just trying to think when that was now. About six weeks ago.

Has there been any communication between the two of you about the public inquiry?---No.

Or about the subject matter of the investigation by the Commission?---Not specifics, no. He knows I'm a witness. I knew he was. Yeah.

He didn't try and talk to you about his evidence?---No.

He didn't try and talk to you about your evidence?---No.

He didn't ring up and complain about Counsel Assisting badgering him for days on end?---No.

No complaint?---I don't, I don't suppose, you know, he's going to send you a Christmas card but, no.

10 I'm just trying to test that because, you see, I'm trying to work out did you in fact talk about him being a witness in the Commission?---It, it may have come up in passing but there was no detailed discussion about the nature of his evidence or anything of that nature because, as I said before, that would have been inappropriate. I was mindful of the direction that we don't discuss Commission issues outside of the Commission, outside of the hearing.

Excuse me a moment. Can I take you to the 45th page of the transcript of that interview on 9 March, 2017.---Yes.

20 And do you see that in the middle of the page there you were asked to describe your relationship with Mr Demian?---Mmm.

You see that there are some questions and answers there which are similar to what you've just told us. Going over the page, you said, "I would try to facilitate." This is page 46, line 1.---Yes.

30 "I would try to facilitate an outcome by arranging meetings, conferences with planning staff to look at the proposal and to giving advice as to how to, how to submit them and where, where it fell down, where it was short of the controls." Then you were asked if these meetings always take place on council premises. You said yes. Do you see that?---Yes.

40 Was that true evidence at the time, that that's what you tried to do with Mr Demian?---Yes. Tried to do that with anyone – as I've said repeatedly – anyone who had an issue with the council. And maybe that's not the way to go, I don't know, but that's how I conducted myself. They were customers of the council. They were ratepayers, residents, developers. Whatever they were, I think they had a right to expect a certain standard of service from the council and I endeavoured to give them that.

And you expected, where at least they wanted it, developers to receive advice as to how to submit their proposals?---Well, in my experience – at Canterbury, that is – that wasn't uncommon. Whether I was present or not, and I wasn't present at most of these pre-DAs or those sorts of meetings unless specifically requested to be there, the planners would do their best to assist them at the front counter, if you like, and elsewhere. The duty planners, that's why we've got a duty planner, to give people advice.

It assists development proponents if their plans are massaged by council planners to indicate what might be approved rather than what might not be approved if the massaging doesn't occur.---I can't, I can't answer that. I don't know. I, I, I think the use of the word massaging connotes that there's some, you know, we, we're going too far. I don't believe that happened. I think what the planners would do and the counter staff – because the duty planner was qualified but the ones on the counter, the counter staff weren't as qualified – they would simply advise the applicant that won't, that won't fly, that's wrong, that exceeds the density requirements. They'd then leave it up to the applicant to retain his own professionals, or her own professionals, to put, to resubmit the application.

I accept that what you said here on 9 March, 2017 was giving advice as to how to submit them, which is consistent at least with a view that you wanted council staff to assist the proponents in their design of their proposals. ---Yeah, well, I don't see any inconsistency with that. As I said, I was committed to high standards of customer service, that being no matter what the customer may have, who, who the customer may have been. And, and I actually think that's virtuous. I mean, local government is criticised for, for being too much of a bureaucracy. I didn't see it that way. We were there to assist people who were carrying out developments in the area and investing in the City of Canterbury, growing the City of Canterbury.

And you didn't see a potential for a conflict of interest there - - -?---No, I, I didn't.

- - - given the requirement that the consent authority, and as per those staff, carry out an assessment of then the design, the subject of the plans of the proponent?---Look, I don't know to what extent they assisted in redrawing plans. I don't think it was very extensive. They didn't, and I, I do, I do remember them saying take the plans away and have them recast. There was just an endeavour to help people in their, in the process through council. And a DA, I don't know whether you've ever submitted one, but a DA can be a very arduous process to get, to get it through council, to get it determined.

Mr Montague, can I put it to you this way. Was it your hope that in appropriate cases council planners at Canterbury would assist with redesigning proponents' plans for their development proposals - - -? ---No, not, not - - -

- - - to ensure a favourable outcome?---No, definitely not.

Why not?---I - - -

What was, what would be wrong with that?---Because that, that would be inappropriate. I mean - - -

Why?---Well, because they're not there to say to the applicant, do this and you'll get it approved. They would say, look, that doesn't stack up. That's out of the code, that's another exceedance. Take it away and do it again or get your consultants to do it again. That's what I expected them to do, but not to just slam the door in their face and say, that won't, that won't work, we're not interested, which happens in other councils, unfortunately. But at Canterbury we were much more customer focused and that was the ethos in the place for as long as I was GM there, and I'm proud of that.

10 You thought Mr Stavis did a pretty good job as director of city planning, didn't you?---In the short time he was there, yes.

And is it fair to say that you thought he had a facilitative approach to development?---Yes.

And that that was a good thing?---Look, this takes us back to questioning yesterday in relation to what I thought about planning proposals.

20 Just- -?---What I should have said, and if I'm given the latitude I'll expand on that now and clear the air. You asked me was I pro-development and I answered yes. That was a bit hasty. What I was agreeing to was that as long as the development complied with the council's controls and fitted in with the government's overall plans for the Sydney Basin, and as long as it, it was able to be assessed on its merit, there were areas in Canterbury where development was desirable and I think necessary. However, that's not to say that I would have supported nor the council would have supported or I'm sure the director would have supported a situation where residential areas – and particularly residential areas of merit, say classic areas like Hurlstone Park and Ashbury – will be blighted with, with major high-rise
30 developments. No, no way. That's why the council had an overall controlling plan where development could work, say, along major road arteries and in town centres. Yes, I'd support that type of growth, as we saw in neighbouring councils, but leave the residential zones alone, leave them as they are, because that is, that is Canterbury and it is basically a domiciliary area.

And you're aware, aren't you, of the evidence before the Commission that on a number of occasions Mr Stavis personally redesigned the developments on the plans that had been put forward by proponents to Canterbury
40 Council?---That emerged during the evidence given, yes, and that disturbed me to some extent, to the extent that he was involving himself, but I didn't know that was happening. I do recall the occasion where we talked about the 998 Punchbowl Road one, drawing things in that little piece of paper that was, to me was just like Swahili, I didn't understand it, to try and help in relation to the setbacks. That's the only occasion that sticks in my mind, where he, oh, and the one, the Jacob brothers one. I do remember some discussions about cutting the corner off to try and get it to comply with the

density control, but I wasn't aware that Spiro, as a matter of course, was acting like some sort of designer or architect, no.

But the fact that he did that of course facilitated the favourable outcome for the developers concerned, didn't it?---Potentially, yes.

10 And wasn't that the sort of thing that, even in retrospect, you were, you know, quietly pleased did occur?---I was happy to see appropriate development, quality development in the areas that could sustain it, and not to invade residential zones that, as far as I was concerned, were sacrosanct.

What I'm asking you about is, aren't you, at least even in retrospect, weren't quietly pleased to learn that Mr Stavlis had been involving himself in the redesign of projects from time to time.

20 MR ANDRONOS: Could my friend just clarify that question? Retrospect from the perspective of the witness sitting in the witness box today or from the period immediately after the particular designs had been submitted and/or approved? It's not clear from the question, the vantage point that the retrospective view is intended to take.

MR BUCHANAN: I'll withdraw the question.

MR ANDRONOS: Okay, thanks.

30 MR BUCHANAN: Thank you. You see, if you assume that Mr Stavlis did indeed, from time to time and in some respects, engage in redesigning a proponent's proposal, proposed development, that facilitated a favourable outcome for the developers and that was consistent with what you wanted to see happen, wasn't it?---I wasn't aware that Mr Stavlis - - -

Please, I'm not asking you that. You've made that point plain.---Yeah.

I'm moving on. Mr Stavlis doing that is consistent with basically what he would have understood you wanted to happen.---Well, not only - - -

MR ANDRONOS: Objection. How, objection, how could he possibly answer that question? It's most unfair.

40 MR BUCHANAN: I press that.

THE COMMISSIONER: Mr Buchanan I think is exploring the expectations of the witness, which he has described, with now his knowledge of what he claims is now his knowledge of what Mr Stavlis was doing, the redesigning.

MR ANDRONOS: And how Mr Stavlis understood it.

THE COMMISSIONER: Well, he's - - -

MR ANDRONOS: Without, without putting any specific communication to him which would form the basis of that understanding. The answer could not possibly assist the Commission.

MR BUCHANAN: Well, in my submission I can think of a number of answers that the witness might give consistent with the evidence that's been given so far that would certainly assist the Commission.

10

What we would like to know, Mr Montague, with all due respect, is whether that conduct – as you now understand from the evidence – did occur, was in fact consistent with what you expected Mr Stavis to do and what he would have understood from you he was required to do?---I have to answer that question in the no because I'm not at liberty to qualify it. I had no knowledge that he was going to that extent and I wouldn't have condoned that had I known it. Minor alterations to plans or support for applicants if they came in, they went to the trouble of coming in and sitting down with planning staff, I saw no issue with that. Wholesale rewriting of plans at our expense, I wouldn't have condoned that.

20

Did you – I withdraw that. You knew that Mr Stavis, however – I withdraw that. You had made it very clear to Mr Stavis when interviewing him, hadn't you, face-to-face, that you wanted a DCP who would be a solutions kind of guy, who would provide solutions rather than just saying no? ---No, and I, and I think that word solutions is very much out of favour. I would say I was looking for quality planning outcomes. That's what I stressed to, to Mr Stavis and his predecessor. I - - -

30

But you mean, do you, outcomes, that is to say not refusals, but approvals which reflect a particular kind of quality?---No, no. Look, if it's an, if it's an approval, yes, I expect the building's built in accordance with contemporary standards and is a quality building where people will actually want to live.

But you made it very clear to Mr Stavis that you wanted a pro-development, sorry, that you were pro development and that you wanted a pro-development DCP, didn't you?---I just, I just qualified that question about my pro-development and I'll repeat it if you wish. If it's development in areas that can sustain it.

40

No, no. What did you say? It's what you made clear to Mr Stavis that I'm inquiring about.---Look, I don't believe that I'm pro-development, full stop, I've qualified that, and I made it clear to Mr Stavis and the planning staff, particularly people like George Gouvatsos who I'd had a long relationship with, that I expected them to assess these applications on their merits in accordance with the contemporary standards, DCP, LEP and government and reps or whatever, the government controls. I expected, that, that just

goes without saying. That is their job. I didn't expect them to put applications up to council that were full of holes that couldn't possibly expect to be approved, and they wouldn't recommend in that way. In my long experience, planners wouldn't I think abdicate their responsibility like that.

I note the time, Commissioner.

10 THE COMMISSIONER: Would that assist you, Mr Montague, for a break?
---I think it would, yes, thank you.

All right then. We'll adjourn until 25 past 11.00.

SHORT ADJOURNMENT

[11.04am]

THE COMMISSIONER: Mr Buchanan.

20 MR BUCHANAN: Commissioner. Mr Montague, still on the subject of relationships with people, thinking now about the period Christmas 2015, if I could ask you about whether you have a memory of Friday, 18 December, 2015, which was the Friday before Christmas 2015, and after work whether you went to Mr Azzi's house for a social function on that night.---I don't remember the exact date but that's, that's certainly possible.

And is it possible that you stayed there until after midnight?---It is possible, yes.

30 Is it possible that you left with Bechara Khouri?---I don't think so. Not in the same car, anyway. I mean, he had his own vehicle. I would have left to go home. At that time of night I wouldn't be, I'd have driven my own car home. I imagine that anyway.

And were there a number of people there including people from the Labor side of politics? Friday night before Christmas 2015.---I remember one occasion at Pierre's home. I don't know whether this is the occasion referring to or not. I can't recall the exact date. There were some people from the ALP there. People like the general secretary of the USU; the
40 former premier of New South Wales, Morris Iemma; the general secretary of the ALP and others; plus of course our host, Councillor Azzi, and I believe Councillor Hawatt may have turned up. I don't recall that, but he probably may have been there at some stage.

I'm not suggesting to you he was.---No. He could have been. I don't know.

Now - - -?---That was '15, you said? Late '15, Christmas '15.

Yes, yes, that's right. 18 December, 2015.---Yeah.

10 And why did you attend that function?---As you've, as we've already heard in evidence, I went to Councillor Azzi's homes, home on a number of occasions, particularly in that latter stage of 2015 and early '16, because he liked to host these things, these social get-togethers if you like. And it was to, if I recall correctly, strategise a little bit about where we were going to go when the amalgamations happened. What, what, what would be the future of the council, the combined council. What, what we could do, if you like, to prepare for the amalgamation. I, I, I might be wrong but it's possible other people from Bankstown Council were there that night too, but I don't recall.

And are you saying that because December 2015 was a time when amalgamation was very much on the agenda and a concern of people, including yourself, at Canterbury Council?---Yes, it was certainly a very large concern because of what we'd been through since 2011, when it started, when the process started.

20 Can I ask you now about a different subject.---Ah hmm.

Can I ask the witness be shown, please, volume 2 in Exhibit 52, and can I take you, sir, this is the code of conduct.---Yes.

If you go to page 39 you can see that that's the front page, and it's on the screen in front of you if that assists.---Yes, yes, I can see that.

And if I can ask that you go to page 58.---Yes.

30 And can you see that that's part 5 or the beginning of part 5 of the code of conduct headed Personal Benefit?---Yes.

About gifts and benefits - - -?---Yes.

- - - and how they should be dealt with. And can I just take you to three particular clauses. Clause 5.5 says, "You must not," and then if we go over to D, "accept any gift or benefit of more than token value."---Yeah.

40 Clause 5.7.1, "More than token value is defined as a gift or benefit with a value exceeding \$20 or such other amount as may be specified from time to time."---Yes.

And clause 5.4, if I can take you back to page 58, "Gifts and benefits that have more than a token value include, but are not limited to, tickets to major sporting events, such as state or international cricket matches or matches in other national sporting codes (including the NRL, AFL, FFA, NBL), corporate hospitality at a corporate facility at major sporting events,

discounted products for personal use, the frequent use of facilities such as gyms, use of holiday homes, free or discounted travel.”---Yes.

You see that. Now, if the witness – you got a paper copy of that to keep in front of you?---Yes.

Thank you. It’s open at page 58. Could the witness please be shown a document that is a two-page document containing some emails, I can show, provide a copy. Can you see that at the bottom of the first page that has
10 been provided to you is a copy of an email from Mr Robson to you on 18 December, 2014 - - -?---Yes.

- - - at 3.11pm. “Jim, I need to update my register with the following.” And then he itemises NRL Bulldog home games, he provides some dates and identifies some particular matches. Do you see that?---Yes.

“Don’t know how to do this. Regards, Brian.” Do you see your response the next day at 8.49am, “Brian, no worries. All you need to do is fill out a revised declaration. I’ll ask corporate services to follow through.” And
20 then the same day at 8.53 Brad McPherson emails you, “Hi, Mr Montague,” – sorry, “Hello, Mr Montague. When you are free can we discuss? Regards, Brad.”---Yeah.

Well, you can go over the page.---Yeah.

It’s not a secret. A little later you emailed Mr Robson after that email from Brad McPherson. “Brian, on second thoughts I would suggest you do not amend your declaration. I am advised that attendance at sporting fixtures as a guest of affiliated clubs is expressly prohibited under the model code of
30 conduct which prescribes the minimum standard for public officials. Best let sleeping dogs lie. Jim.” Do you see that?---Yes.

From time to time were you called upon to enforce the code of conduct?
---No, not to enforce it, but I was sometimes questioned by, pardon me, councillors and staff as to what their obligations were. This is a case in point.

Was there any occasion where you actually had to enforce it, that is to say institute an inquiry or some sort of investigation into the facts - - -?---No.

40 - - - with a view to determining whether a breach had occurred?---Not that I recall, no. It’s possible but I don’t recall it. And most of the, most of the legwork would have been done by corporate services anyway.

Now, in this instance you, on advice, understood that the Mayor had breached the code of conduct in the respect he’d indicated in his email?
---Well, it would have, it would have appeared that way but I, I can’t recall

the precise circumstances now. But yes, I guess, that's, I assume that's why Brian requested or sought advice.

And you learned that it was a direct breach, looking at clause 5.4 on page 58 of the code?---I did, yes.

And you decided the best outcome was, "Best let sleeping dogs lie"?---Yes.

10 Was that your approach generally to questions of compliance with the code of conduct?---No.

Why did you use the expression, "Best let sleeping dogs lie", in that instance?---I don't know.

20 Well, is it possible that that was your attitude to compliance with the code of conduct, that if a breach was drawn to your attention your attitude was to sweep it under the rug?---No. Not, not, not as a, not as a general course of action, no. On this case, in this case, there must have been some mitigating thing, I don't know. I can't recall, but it's there, I can't deny it.

Was it because the Mayor was a political supporter of you? That is to say, he provided you with political support on council?---No. Would, would, wouldn't have come in to it. Wouldn't have come in to it.

I tender those emails, Commissioner.

30 THE COMMISSIONER: The email chain, commencing with an email from Brian Robson to Jim Montague on 18 December, 2014, and finishing with the email from Jim Montague to Brian Robson on 19 December, 2014 will be Exhibit 238.

#EMAIL EXCHANGES BETWEEN JIM MONTAGUE, BRIAN ROBSON AND BRAD MCPHERSON DATED 18 & 19 DECEMBER 2014 RE: PECUNIARY INTEREST REGISTER

40 MR BUCHANAN: Can I return to the subject, Mr Montague, of the recruitment of Mr Stavis to the position of DCP. Actually, take a step back, to the recruitment process to fill the position of DCP. You were interviewed after all of those matters occurred in late 2014, early 2015, by an Office of Local Government investigator called Richard Murphy?---Yes.

If the witness could be provided, please, with volume 5, page 240. Page 240 is the first page of a document headed Departmental File Note. Can you see that?---Yeah.

And if you go through to page 244, you can see that that's the last page.
---Yes.

The author is identified as Richard Murphy, senior investigator, and then there's a date, 18 March, 2015.---Yes.

And can you see that about a quarter of the way down page 240, under the heading Issue, Mr Murphy wrote, "Canterbury City Council – Review of Recruitment – Director (City Planning) – Attendance at Council – 17
10 March, 2015"?---Yes.

And so this is a record of an interview of you conducted by Mr Murphy and – if you go down to a bit over halfway down, under the heading Comments – in the presence of another investigator from the department, a Ms Annis-Brown.---Yes.

Do you recall that interview?---Yes. Don't remember the exact date but I do recall Mr Murphy coming out.

20 And does March, mid-March 2015, sound about right? Does that accord with your recollection?---Yes, could, could be, yeah, sounds reasonable time frame.

And you can see under the heading Background at the top of the page it starts off by saying, "The ICAC referred this matter to the office for review." You see that?---Yes.

30 You obviously would have had a conversation with Mr Murphy, before the substance of the interview got under way, in which there was a discussion about what was going on.---Yeah.

Did you understand that the interview was occurring because you had made a referral to the ICAC in early January 2015 in relation to events that had occurred over Mr Stavis's recruitment?---I had been advised that the matter had been referred to the Office of Local Government by the Commission, yes.

40 And so you understood that this interview was occurring essentially because of material that you provided to the ICAC that was then referred to the Office of Local Government together with whatever other material the Office of Local Government collated.---I assumed that, yes.

Now, in the first instance, a bit over halfway down, it's the third line under the heading Comments, Mr Murphy records, "We arrived at council at noon and met initially with Mr Sammut. He had a bundle of documents that he had copied for us." Do you see that?---Yes.

And there was then a – can you see in the next paragraph – a discussion involving Mr Sammut about council’s record-keeping practices and the use of electronic files.---Yes.

Have you had a chance, by the way, to read this record of interview or file note?---No.

10 You haven't?---I may have read it. I don’t think it’s the first time I’ve seen it but I, there’s nothing in there that’s, that I’m not familiar with or at least understand.

Was there anything that you recall thinking, oh, I didn't say that?---No, nothing specific. I must say, I was a bit surprised, though, because the ICAC referred it to the Office of Local Government, and when Mr Murphy arrived it had nothing to do with my complaint. It was all about our record-keeping procedures. I found that a bit odd.

20 MR ANDRONOS: Commissioner, perhaps the witness ought to be given an opportunity to, in light of the last two answers, be given an opportunity to read the document before he answers any questions on it.

MR BUCHANAN: Well, Commissioner, that won’t be necessary for the question I intend to embark upon. He can take an opportunity maybe to read it over lunch. But for the questions I propose to ask, it won’t be necessary to spend the time having him read those pages.

THE COMMISSIONER: Mr Montague, I'd like to proceed in that way. ---That’s fine.

30 If Mr Buchanan can ask you questions and then over lunch if you can do some homework and have a read of the file note.---Okay, that’s fine.

MR BUCHANAN: Now - - -

40 THE COMMISSIONER: Can I just ask you, when you said you were surprised that it seemed to be a review of the record-keeping, is that what your impression from the questions that Mr Murphy was asking you?---Yes. And I thought at the time, and I guess I still think, that I didn't feel that the office was addressing the real point that I was trying to make about the behaviour of the two councillors involved.

MR BUCHANAN: Mr Murphy records, on page 240, that he was told by Andy Sammut and by your staff that there was no DataWorks file at council pertaining to the recruitment of Mr Stavis to the position of DCP. That is to say, no log of electronic records pertaining to the recruitment. Does that come to you as a surprise?---Yes.

Why does it come to you as a surprise?---Well, you'd naturally think that records of these things would be, would be kept in this electronic day and age. Yeah, it was a surprise.

Well, you were the person conducting the exercise, weren't you, the recruitment exercise?---Well, not entirely. I mean it wasn't, it wasn't done by the human resources staff, no, I was must more hands-on with the appointment of senior staff, directors.

10 So you're the person who was responsible for ensuring that proper records were kept of the exercise?---There were records kept, they were paper records as I recall that were on a file, and ultimately that file should have found its way to the central records area. I don't know whether that happened or not.

You didn't do anything to ensure that a log of electronic records pertaining to the recruitment be created or maintained. Is that right?---No, I, no, I may have asked my executive officer to do that, but I didn't do it, and I wouldn't know how, to be honest with you.

20

And what would your executive officer have done or used? That is to say, what material would that person have been able to find?---Well, at the very least she should have been able to put her hands on the, the consultants, the appointment of the consultant, the advertisement that was circulated, et cetera, et cetera.

What about the things that you did in the process?---What do you mean, what things?

30 Well, for example, recording your decision to convene an interview panel, take that decision?---No.

You didn't keep records, did you, of the decisions that you made?---No.

You didn't keep records of your contacts with people in the course of the recruitment process?---No, other than official correspondence with say Judith Carpenter or memos that I may have sent to the councillors.

40 And so that would account, wouldn't it, for the absence of a log of electronic records pertaining to the recruitment?---It could.

There weren't any records to be retained?---It could, yes.

Why did you not ensure that a proper record was kept of what you did in the recruitment process? What you, who you spoke to, for example, candidates who you, what you did in terms of making decisions?---That was my practice.

And so are you saying that that was your practice in relation to all matters at council?---No, of course not.

Well, are you saying that it was only your practice in relation to the recruitment of the DCP?---I, I took an interest in the appointment of senior staff, that is the three directors, and, and, and I would conduct that process in a very, in an identical way of what we did with the director of city planning.

10 And so are you saying that as far as you were concerned the recruitment and appointment of senior staff was your fiefdom and you would do it the way you saw fit?---Well, I wouldn't use the word fiefdom. The Act provides that I am responsible for the appointment of senior staff.

Yes. That doesn't mean to say though that you weren't responsible for ensuring that proper records were kept of the process, does it?---And I think, and I think Mr Murphy made that point and I accept it.

20 THE COMMISSIONER: When you say the appointment of the other directors was in an identical way, the other directors you didn't use an interview panel consisting - - -?---No, that's, yeah, thank you, that's, that's correct, but there were special circumstances in relation to this point.

MR BUCHANAN: You didn't keep a hard copy file relating to the recruitment. Is that right?---I believe there was a hard copy file and that file, as I said earlier, should have found its way to the central records area when my office was cleaned out perhaps or when other things happened after, later in the year and certainly in the run-up to the amalgamations.

30 But you didn't create hard copy records of things like your interviews of candidates or - - -?---There probably - - -

- - - your decisions like to appoint a panel?---No, but that would have been contained in, in memos to the councillors and that would have found its way to the file or a file, whether it was the personnel file or whether it was a general recruitment file I can't say, and there would have been copies of the interview questions possibly as well, a copy of the advertisement, so that people could see when the process started. But as to keeping notes about my discussions with individuals, no, that, that was, that wasn't my practice.

40 I found it at some stages, because of the workload I had, to be quite tiresome and, and I didn't see any value in it.

Isn't that why you had an executive officer?---Yes, but you've got to understand the qualities of some of these people, and even though she was a very competent person I didn't delegate to her the, the authority or the, or ask her to keep these sort of records. She didn't sit in on the interviews. That's just how I did things.

THE COMMISSIONER: You referred to a memo to councillors.---I think a, I think it's in evidence. I think a memo went out advising, at some stage, advising the council that a panel had been formed. I, I don't remember the precise details now. Yeah, I, I, I think a memo did go out about the panel formation.

MR BUCHANAN: Well, a memo was sent out by you to explain why Mr Stavis was not going to be starting work as director of city planning. That was in late December, wasn't it?---Well, that's possible too, yeah. Yeah,
10 that might be the one I'm referring to.

Is it possible there was no communication with councillors, as the collegiate body, before that as to what was occurring?---No, because as I said, my, my, my responsibility was to appoint senior staff in consultation with council. How that consultation was conducted is, is a matter of some debate. Some councils do it differently. Consultation could just mean a report to council telling them what, what I'd done. I chose to, to consult them more fully than that and on the key issues, the points that really mattered.

20 But that's not an answer to my question, Mr Montague.---Sorry, could you repeat the question?

Yes. Is it possible that there was no communication with councillors, the collegiate body, the councillors as a collegiate body, about the process of recruitment of the new DCP?---Yes, that - - -

Before you advised them that Mr Stavis had been appointed but he wasn't going to start working.---That's, yeah, that's possible.

30 And was it your approach generally, in relation to recruitment of senior staff, to consider that your obligation of consultation with council was discharged if you told them what you had done?---Well, as I said, that's a moot point. The Act - - -

No, no, no, no, no. I'm not interested in the debate, I'm interested in you telling us what you did as a matter of practice.---Well, my, well, my matter of practice was – in the appointment of senior staff, which didn't happen all that often, directors that is – was to advise the council in a report, a formal report to the committee or the council, that I always supplied them with
40 details of who the applicants were, the shortlisted candidates, what process was gone through and who I was recommending for appointment. That's what I intended to do with this appointment too, but events overtook us.

Well, you weren't recommending anyone for appointment. You appointed them.---Well, I had, I had, I had the statutory power to do that.

Yes.---Yeah, that's right, but to, to examine that, you've got to look at my reasoning, my thought processes for forming the panel in the first place.

No, I'm not talking about that. I'm talking about your general practice. Wasn't it your general practice to comply with the requirement for consultation with council by telling them what you had done by way of appointment?---No, my general practice was to consult with the council on the appointment of senior staff.

THE COMMISSIONER: And you did that by providing them with this formal report?---Yes.

10

MR BUCHANAN: After the event?---I would expect that they would endorse the recommendation for appointment. So, I was ask, actually asking to endorse the appointment of a particular individual.

After the event?---Yes.

There was a document, and it might need to be shown to the witness, volume 1, page 152 - - -?---Yeah, but apparently I need to keep - - -

20

- - - of council's, called the Recruitment and Selection Procedure, Procedures – sorry, my mistake, I'll restart that again. Recruitment and Selection Policy, Procedures and User Guide.---Yes.

You see the first page of it there on the screen and in front of you, page 152?---Yes.

And it went through to the last page, which was on page 165 of this volume.---Yes.

30

That document did not apply in your opinion, is this right, to the recruitment and appointment of senior staff?---No, I don't believe so. That applied to staff at lower levels and that would have been conducted by the HR department.

Was there a document which set out council policy procedures for the recruitment and appointment of senior staff?---I don't believe so.

40

Were there any formalised procedures for the recruitment and appointment of senior staff at Canterbury Council before the amendment of this document after this was drawn to your attention by the Office of Local Government to have it apply to the recruitment and appointment of senior staff?---Having not, I'm not familiar with the contents of this document now. It's been a while. But I, I don't know that this document was amended as a result of the intervention of the Office of Local Government.

You've still got volume 5 there in front of you?---Is that the one - - -

If you could go to page 178, please. Can you see there, on page 179, your letter dated 10 December, 2015 to the manager of investigations at the Office of Local Government?---Yes.

10 And if you go to recommendation 1, the recommendation being, “Council should include senior staff recruitment within the ambit of its existing policy and procedures for the recruitment and selection of employees.” Your response read, “We have updated our Recruitment and Selection Policy, Procedures and User Guide (section 14, Senior Staff) to include recruitment of senior staff as defined in our organisational structure. A copy of the document is enclosed.”---Yeah. Yeah. There is a distinction to be made between senior staff in terms of the Act and directors, even though they are senior staff pursuant to the Act. Yes, look, I, there it is in black and white, and no doubt had – well, I'm speculating.

Well, my question was, was there any formalised procedure that people could consult for the recruitment and selection of senior staff at Canterbury Council before the amendment of - - -?---I don't believe so, no.

20 - - - the Recruitment and Selection Policy, Procedures and User Guide document?---No, because I believe that amendment occurred because of the intervention of the Office of Local Government.

30 Why was there no formalised procedure that people could consult for the selection of senior staff at Canterbury Council?---Well, as I said, the only people that would have consulted that document would have been the HR staff. I always had a hands-on approach in relation to the appointment of directors. That's the other three senior people in the organisation. That was just historical and that's how I conducted this appointment.

Do you think prospective candidates would have been entitled to know what the procedures are going to be?---I don't, won't know whether that's normal procedure or not in local government.

Do you think they would have been entitled to know what the procedures would be?---I don't think so. I don't think so because they'd be advised of certain points along the road.

40 Do you think that having a standardised procedure from which any departure in a particular instance could be measured would have been a valuable thing at Canterbury Council?---Yes, now, in, in, in the light of day now, yes, I do.

Because, you see, you know, don't you, that there are questions about whether you treated candidates for the position of director of city planning in 2014 differently from each other.---No, I don't know there are questions about that. That's the first I've heard of it.

Do you think that candidates should be treated the same as each other?
---Absolutely.

And if a new general manager came in and wanted to know what the procedures were, what would that person do in the absence of a formalised procedure?---Well, they'd probably talk to me or talk to Mr Sammut or the HR manager.

10 But that's consistent, isn't it, with you treating it as your personal fiefdom?
---Again I reject the word fiefdom. I took a hands-on approach to the appointment of directors because of the need to have, to ensure that we got people who were compatible with the council and that had the sort of values, I'm not, not talking about qualifications now, the values to be effective in our, in our organisation, in our structure.

20 Now, I don't want you to take this question as containing an assumption that there was corruption in the process of the recruitment and selection of the director of senior planning, the director of city planning at Canterbury, but you would accept, wouldn't you, that a failure to have formalised policies and procedures which apply to the selection of senior staff would be conducive to corruption in the process of selection of those staff?---Only if that's the sort of venal approach somebody might like to take on the, in, in the team, that is if they're able to be corrupted.

So you'd accept the proposition that it would be conducive to corruption of the process to fail to have formalised procedures?---But even if you have formalised procedures those procedures can be departed from, I mean - - -

30 Precisely.---Yeah. And that, that, no doubt that happens.

That's then something that could be measured.---Yes. And, and I've got no doubt that happens across the sector, across local government.

40 Do you think that a failure to keep a log of electronic records relating to the recruitment of senior staff in this instance could possibly be conducive to corruption of the process?---I don't think so, because the process that was undertaken, as primitive, as primitive as it may seem now, was open to scrutiny. There was, I mean there was an external consultant involved, et cetera, et cetera, so, and there was a panel formed, so I don't think so.

But you're the person who's making the decision. Correct?---Yes.

And you had all these communications, electronic ones, with various people about what was happening during the process, didn't you?---I, I, I don't know who I had electronic communications with now.

You had communications with Bechara Khouri about the process, didn't you?

MR ANDRONOS: I object to that. It's not established in the evidence. It's not, you can't put that, you can't put that as a fact when the highest the evidence rises is there may have been a communication in passing. That's not available.

MR BUCHANAN: Did you have communications with Bechara Khouri about the selection or recruitment of anyone for the position of director of city planning?---Not in any detail, no.

10

But we don't know, do we, because unless by some fortuitous event it's not possible to see the electronic records. Isn't that right?---There, well, you've already stated, and I don't doubt it, that there were no electronic records available.

And the result is that we can't see what communications if any there were between you and Bechara Khouri about this, can we?---Well, unless there's intercepted, well, unless you've got emails that may have been sent, the answer I have to, I say is no, but that - - -

20

Do you think that that might be conducive to corruption of the process, to fail to have - - -?---I repeat, if a person is able to be corrupted, and I'm not putting myself in that category - - -

I understand that.--- - - - then yes, but that can happen if you've got the best systems in the world, people can always find a way through, a way around it, if they have a mind, mind to.

30

But it's better, isn't it, for the public good to have material that can be looked at to determine whether or not that has in fact taken place?
---In principle, yes.

40

And that wasn't available at Canterbury Council in respect of this process and decision by you.---There would have been some records available and I expect that they found their way to a personnel file or a recruitment file somewhere in the organisation. As I said, events overtook us. My office was searched, documents were taken, I don't know, and I'm talking now about after the amalgamation, there was document in my office that referred to this, and they would have been ultimately when the appointment was confirmed, referred to the HR people to set up the necessary personnel files.

What contacts did you have with candidates for the position of director of city planning?---Very little.

But you're conceding that you had some?---Yes, after the interviews were conducted and when they were notified that they were selected for interview, the consultant handled all that, I didn't.

I see. You didn't talk to any of the candidates?---I spoke to the candidates after the interviews were conducted, and of course I spoke to them at the interviews.

And in speaking to them after the interviews were conducted, what records did you create of that?---Again, I didn't, I didn't.

You didn't keep any records at all, did you?---No notes, no.

10 THE COMMISSIONER: And sorry, when you say you spoke to the candidates, you spoke to all of the candidates who were interviewed by the panel?---I spoke to the three who were shortlisted. There were five interviewed and three of them were shortlisted. I think I spoke to one of the others too, who called me, a gentleman it was, to find out how his application had gone and I advised him of that verbally over the phone.

MR BUCHANAN: And you had, didn't you, a good deal of contact with Mr Azzi and Mr Hawatt about the recruitment – or selection, rather – of a director of city planning, didn't you?---Well, that was their doing. They
20 inserted themselves into this process at a point in time. I can't remember exactly when. It's very hazy now.

What obstacle was there to you creating a record of those communications?
---What, with Mr Azzi?

And Mr Hawatt, on the subject of the selection of a new director of city planning?---There was no obstacle. I just didn't do it.

30 Why didn't you do it?---Because I, that wasn't my practice to record conversations I had with people in, in, on day-to-day operations.

They were pressuring you during that process to make a particular decision, weren't they?---They certainly appeared to be favourably disposed towards a particular - - -

That's not the question I asked you. They were pressuring to make a particular decision, weren't they?---No. Not, not in those words, no.

40 You didn't keep a record of what they said to you or when you met with them to spoke with them?---No, no.

And as a result, no record like that is available of the input that those two gentlemen had into the process, you accept that?---Yes.

Had you had proper systems for keeping electronic records of communications relating to the decision, then the public good would be better served, you'd accept that?---I would.

MR ANDRONOS: I object to that question.

THE WITNESS: I would.

MR ANDRONOS: Only the word “proper” because the word, I’m quite happy for that question to be asked without the word “proper” because that assumes that the absence of a particular type of record means an absence of a proper record, and that’s an assumption as to what level of record-keeping is proper beneath with a standard of level-keeping [sic] is not proper. I’m quite happy for my friend to ask that question but just minus the word “proper”. My friend is essentially building a legal conclusion in that question.

MR BUCHANAN: Mr Montague, your failure to keep any record of the communications you had with Mr Azzi and Mr Hawatt about the selection of a new director of city planning was conducive to corruption of the process, wasn’t it?---I don’t think so, necessarily. I never kept records of any conversations I had with councillors.

20 You knew that the State Records Act applied to local government?---Yes.

You knew that the State Records Act required the keeping of full and accurate records of activities?---Yes.

You didn’t think that the State Records Act required a keeping of a record of your processes and your decisions and significant communications during the process?---Not at the time, no.

30 Do you think now in retrospect that that would have been a good thing?
---Of course.

And that’s because of the controversy that’s arisen about what happened during that process?---Yes.

And transparency is a better thing than opaqueness in finding out or understanding what happens in processes as significant as the selection of senior staff.---Well, in general terms, clarity or transparency is obviously a better way to go in anything.

40 Now, I think you might have mentioned this, but just in case, can I ask you, HR was, you had an HR division or section?---Yes.

They were not involved in the process at all?---No.

“No”? You agree?---I agree they weren’t.

THE COMMISSIONER: Just before Mr Buchanan goes on and while it's still in my mind, have you still got volume 5, page 178, which is your letter to the Office of Local Government?---Volume 5, page - - -

5, 178.---Yes, I have.

10 Recommendation number 1 where you say, "We've updated to include recruitment of senior staff as defined in our organisational structure," senior staff, you've identified it as the three directors. In your organisational structure did that also go down to the next level of managers?---Yes. Senior staff is really defined as anyone who isn't on a contract of employment. There was only four of those including myself. Below that you've got a line of, or a series of line managers. They're also defined as senior staff but they're not on contract.

So and does it finish there? It doesn't include your team leaders?---Other supplementary documents into the various divisions would, yes.

20 So you updated that policy to include not only your directors but also your managers?---Yes. I think that's what that's, what that's telling us there on 10 December, 2015, yes.

All right. Thank you.

MR BUCHANAN: Excuse me a moment, Mr Montague. Can I just ask you to have a look at page 244 in volume 5. This is the last page of Mr Murphy's file note of the meeting with you on 17 March, 2015.---244, you said?

30 Yes, please. And can you see there that Mr Murphy inquired about when council was notified that Mr Stavis had been offered and accepted the position, and he reported that you advised that they were notified – I think Mr Murphy meant "not notified" – until your memorandum of 23 December, 2014, which advised them of your decision to withdraw the position. Mr Murphy says he queried this, suggesting to you that there was a council meeting on 11 December, 2014, where the councillors were notified and you rejected that proposition.---Yeah, well, look, I can't recall now. I would have, the Mayor would have been, would have been kept abreast of this.

40 Oh, yes.---Of course. Just in day-to-day discussion with him. My intention – you probably don't want to hear this – but my intention was to go through the process, report to council formally and recommend the appointment of a person as director of city planning. That never happened because subsequent events overtook us.

But you could have sent a memo to council on 9 December, 2014, having appointed Mr Stavis, couldn't you?---Yes, I could.

And you didn't?---No, I don't think so.

Is that because things blew up very quickly after appointing him?---Yes, things just, you know, it, the whole thing collapsed.

10 And so is that the reason really why there was no notification to council of Mr Stavis's appointment, and council as a collegiate body didn't find out what was going on until your memo of 23 December, 2014, which was about the withdrawal of the offer?---It could be explained that way but you'd have to understand my state of mind then. I was under enormous pressure and I probably wasn't making terribly rational decisions at some stage in this process.

Can I change the subject now to Mr Stavis. Can I ask you, before Mr Occhiuzzi's resignation, had you had any dealings with Mr Stavis?---I don't believe so. I never knew the man. I'd actually never heard his name before, no. I don't think so.

20 Are you aware of evidence that Mr Stavis has given that when he was in private practice he had a meeting with you about a particular project, development project, I think it might have been a section 96 application, and in fact that you attended a site meeting?---Do you know the site, sir?

No.---No. Well, I don't recall that. I don't. I believe the first time I met Spiro Stavis was when he arrived for the interview on 17 November. Now, I could be wrong there, but if there was – I wasn't in the habit of going on-site inspections either. I didn't think it was a very good use of my time actually.

30 Before Mr Occhiuzzi resigned were you aware of Spiro Stavis in relation to any project for which the proponents were Ziad and Marwan Chanine?
---No.

In 2014, the whole of that year now - - -?---Yeah.

40 - - - did you have any contact with Marwan or Ziad Chanine in which Spiro Stavis was mentioned?---I can't recall that. I may have met with them but I don't remember them, if the meeting took place I can't recall when or where and I don't remember them ever mentioning Stavis to me. The first time I heard Stavis's name was when I asked Bechara Khouri did he know of anyone in the, in, in the sector, in the planning area that was interested in a role and he mentioned him, and that's when I said, "Suggest to him that he puts an application in to the consultants."

And what were the circumstances of that exchange with Mr Khouri?
---I rang him.

Yes. And how soon after Mr Occhiuzzi's letter of resignation was on your desk did you ring Mr Khouri?---Oh, it wouldn't, wouldn't have been very long I wouldn't imagine because we can't run the place without a senior planner or a director of city planning and it was late in the year, I was mindful of the time constraints.

Was Mr Khouri the first person you contacted on that subject?---He was the only one I contacted.

10 Why was Mr Khouri the only person you contacted?---Well, I said earlier that I rang him, I think I was in his presence and I just, in conversation I said did he know anyone interested in a planning role, given - - -

Why did you ask Mr Khouri?---Because he, because of his interest in the area, because he's contact with a lot of other people, with mayors and the like, and his son's involvement in local government planning at Leichhardt I believe where I spent a good deal of my career. So I just said to him in passing, "Do you know anyone looking for a job?" Just like that. And he went away and came back and gave me Stavis's name. That was the first
20 time I recall hearing that name.

THE COMMISSIONER: So he didn't immediately volunteer - - -?---No.

- - - Mr Stavis's name?---No, I, I, I don't think so. I think he went away and thought about it, maybe asked his son, I, I don't know.

MR BUCHANAN: Had you asked for Mr Khouri to assist you in filling any other positions at council before that?---No.

30 And how soon after you asked him to look for people or potential candidates was it that he came back to you with Mr Stavis's name?---Could have been a week, could have been, you know, a few days, I, I don't recall.

Did he come back to you with any other names at any stage?---No, not that I, not that I can recall.

Mr Stavis was the only person - - -?---Yes.

- - - that Mr Khouri provided you with in terms of a name?---Yes.
40

Did you contact Mr Vasil to ask him for his assistance in finding a suitable candidate?---No, I don't believe so, no.

Did you have any contact with Mr Vasil on that subject, just to cover it off?
---Don't recall that either, no. My focus was to get the advertisement away, to get the consultant lined up and to get an appointment completed.

Is it possible that you asked Mr Vasil to assist you in identifying likely candidates?---It's possible, but I don't think it happened.

And can you just assist us, why don't you think it happened?---Because I wouldn't run to George Vasil on something like that. It was a straightforward routine appointment.

10 Yes. I'm not, okay, I hear what you say, but if you could just assist us so that we can understand, why wouldn't you go to George Vasil?---Well, he's not a councillor, he's not the 11th councillor.

And neither is Mr Khouri.---No, of course, but he at least had some insight into planning issues, he was out there, he spoke to mayors, he had business in various councils and I, and it was just a throwaway line and I said to him, "Do you know anyone looking for a job?"

But I thought you told us that your understanding of Mr Vasil was that he understood planning issues.---Yes, he did. Very, very much.

20 So, why wouldn't you approach Mr Vasil?---Well, understanding the technicalities of the EP and A Act and, and that sort of thing is, is very different from recommending or knowing somebody that might be suitable for a senior role in a council and I don't think Mr Vasil wanted to get involved in that anyway. It just, it didn't, would, wouldn't occur to me to ask him. I, I mean, as I said, it was a routine appointment, one that, a, a, a process that I'd gone through several times before, numerous times before over the years and I didn't see any difference this time except that I asked Bechara Khouri did he know anyone in the, in the game, and the formation of the panel of course.

30 When was it that Mr Khouri provided you with Mr Stavis's name?---I, I don't recall now. It was shortly after that conversation.

And that conversation was shortly after, we can take it, 10 October, 2014? ---Well, it would have been in October or, yeah, it would have been because we needed to move quickly, given the proximity to Christmas and, and that these things take time.

40 What else did Mr Khouri say to you about Mr Stavis on that occasion? ---Nothing that I can recall. Probably, might, might have said he's heard he's a good planner or, through his contacts with other mayors or mayors in the area.

And what were you meant to do with that name, without any information about him?---Nothing, other than to say to him, if he's interested in the role, tell him to put an application in to the consultant.

And you told him that, did you?---Yes.

Mr Khouri?---Yes.

And so you expected Mr Khouri to contact Stavis and put that to him?

---Well, I didn't, I didn't expect anything. I mean, if he hadn't done it, it wouldn't have bothered me one way or the other.

But that would have been a natural thing for him to do on your account?

10 ---Well, I don't know, you might have to ask Mr Khouri that. I don't know what went through his mind, whether we was, was - - -

Well, why did you ask him?---Because he was there on the spot and it was just a throwaway thing I asked him. It was nothing more than that.

No, I'm sorry, I do apologise. I should finish my question. Why did you ask Mr Khouri to – I withdraw that. Why did you say to Mr Khouri, “Well, if he's interested in the position, tell him to put in an application”?

20 ---Because when he said to me he, he, he, when he came back to me and mentioned Mr Stavis's name, I said, “Well, if he's interested in the role, suggest to him that he lodges an application with the consultant. That's the way we're doing it.”

So, you expected Khouri to approach Stavis?---I didn't expect him to do anything.

How could that be? How could you not have had that expectation when you asked him to?---Well, I assumed he, he probably would take it back to Mr Stavis.

30 Why would you have had an expectation that Khouri would do what you asked him to?---Well, he's his own man. I don't control him, I don't pull his strings.

40 Now, at the time, as you understood it, Mr Khouri had an interest in advancing and protecting the interests of a number of property developers with significant interests in the Canterbury LGA?---Well, you're telling me that but I, as I said earlier in evidence, I, I'm not sure what relationship he had with other people in the community. I told you yesterday that he, he had many irons in the fire in terms of business. I wouldn't, I wouldn't have called him a lobbyist, I, I, and I still wouldn't call him a lobbyist, but that was one part of his, of his business undertakings. There were others.

We've established that you understood that he was a lobbyist for the Chanines and for Demian and for Dyldam, correct? You knew that at the time?---I knew that he, I knew that he had a business relationship with Demian and, and with I think Dyldam, and I'm not entirely sure of the desilts of that one, and that he also knew, knew well, the, the Chanine

brothers. I don't know precisely what the nature of the financial arrangements between them were, whether he was on a retainer or what.

And you knew that those three developers had interest in the Canterbury local government area, didn't you?---Yes.

10 Did it occur to you that Mr Khouri's criteria for recommending a candidate for the job would be likely to be someone he saw as someone who would be likely to protect and advance the interests of his clients?---It didn't occur to me, no.

Or of developers in the Canterbury area generally?---No, I don't think so. I mean - - -

It didn't occur to you?---No, it didn't because I expected to appoint somebody to that role who would conduct themselves in a professional manner, an ethical manner to get the job done whether it was Spiro Stavis or one of the other applicants.

20 But you could only appoint someone who was in the pool of candidates, couldn't you?---Yes.

And what you were doing is inviting Mr Khouri to contribute to that pool of candidates?---I told Mr Khouri to suggest to Mr Stavis, who I'd never met at that point, if he was interested in the role to contact the consultant.

You were inviting Mr Khouri to contribute to the pool of candidates, weren't you?---I wouldn't, I wouldn't use that word invited, no.

30 You asked him in fact to see if he could find someone who could be a candidate, didn't you?---Yes. I've already admitted that and he told me of Stavis, he told me about Stavis and I said, I'll repeat it, "Go and talk to Judith Carpenter."

It's very difficult to understand that you could not have appreciated that by getting Khouri involved in contributing to the pool of candidates risked the process being tilted towards the interests of developers with an interest in the Canterbury area.---Absolutely not. It didn't occur to me and it wouldn't be something that I would - - -

40 But why didn't it occur to you?---Well, it just didn't.

You can see from the evidence that's before the Commission that there was a very clear interest that Mr Khouri had in Mr Stavis as a candidate who would be appointed as director of city planning, can't you?---No. There's - - -

You've seen that from the evidence.---I don't know what sort of relationship, if any, Mr Khouri had with Mr Stavis.

It didn't occur to you, though, that Mr Khouri would be likely to recommend someone who would be favouring the interests of his clients?---No. Because all of my experience with Bechara Khouri was that if he had anyone approach him he would say get yourself a good team. Get yourself a good architect, a good planner and don't expect corners to be cut. Now, that, that was his mantra and I don't think that he would have, would have
10 been interested in employing or seeing me employ somebody who would benefit his clients because he knew that wasn't going to happen. But as far as I was concerned the person appointed as director of city planning had to conduct him or herself in an ethical and professional manner to do the best for the community, to do the best for the council and our planning outcomes.

Mr Montague, you're an intelligent man. I need to give you the opportunity of responding to the proposition. The answer you've last given is not true. ---And thank you for the compliment but it is true.

20

You've told us there was no one else you approached to make suggestions for candidates.---That's true to the best of my recollection.

Well, I just want to ask you, though, had you spoken to other general managers to see whether they had any suggestions?---That's not uncommon because local government is quite incestuous. You get to know the good performers around the traps. I don't recall doing that on this occasion, no.

You were - - -?---I may have - - -

30

I'm sorry.---I may have because I was often in the company of other general managers.

You knew people who attended meetings of the South Sydney region of councils?---Yes, very well. I was the, I was the secretary of the organisation.

There was a body called Sydney Metro Mayors?---Yes.

40 You were a member of that?---No. The Mayor was. I wasn't. I - - -

You weren't. Sorry.---I attended.

But you knew people through that body?---Yes, of course.

You didn't try to approach them to find a suitable candidate?---No. I don't think it was, it wasn't an issue that I would have thought they could assist me with. I mean it was, that's a much higher level organisation. It involved

all the mayors. They had much more important things to concern themselves with for the region.

10 You weren't interested in finding out from other people in other councils whether there was a potential candidate for DCP at Canterbury?---I didn't, I didn't think about it in those terms. I thought that the advertisement, if there are people out there looking for a job what do they normally do? They go to Seek or they go to The Herald or they look for a job or they talk to their friends and acquaintances and they find out when a job's available. People knew that job was up for grabs without any help from me. Canterbury was a, it was a big council, it was a well-regarded council – I stress the word "was" – and now in normal circumstances we would have had a very strong field of candidates I would expect.

From mere advertisement?---Yes.

Supplemented by Mr Khouri's suggestion?---Leave Mr Khouri out of it.

20 But how can you?---Because he only put forward one name.

And look what happened.---Exactly. Would I like to undo some of that? Yes. But I did it for the right reasons and I did it to get the best outcome for the council, and that I will never retreat from.

30 Neither of the managers in the planning department applied.---No, but that's not the first time. They didn't either when, when Marcelo Occhiuzzi was appointed, and I actually confronted George Gouvatsos about that, and I said, "George, this is your opportunity. You've been here 20-odd years or more. Why aren't you interested in the role?"

THE COMMISSIONER: Sorry, is this when Mr Stavis was appointed? ---When Mr Occhiuzzi was appointed, after Mr Davidson left, retired. So I went to George – and there were a couple of others who could have done it but George was the principal one. We lost a couple, unfortunately, who would have been good candidates. But George turned me down. He said, "I'm not interested in the pressure. I'm not interested in that level of responsibility," which disappointed me and surprised me.

40 MR BUCHANAN: And you didn't approach Ms Dawson in this instance to see whether she was interested in applying?---I think I did, actually.

Sorry, when I say this instance, I mean in October or November '14.---Oh, yeah. No, she was certainly aware that internal applicants would be considered, definitely, and my practice right throughout my career was to appoint internally if at all possible.

Did you consult either Mr Gouvatsos or Ms Dawson as to whether they had any recommendations for people who could be tapped on the shoulder?

---No. No.

Was there any reason you didn't approach them for recommendations?

10 ---Well, not really, because, you know, you've said to me already that Mr Khouri's involvement may have contaminated the process. Well, I'm not sure I could trust their recommendation if they had a friend at large who they thought was good, so I relied on the normal interview process. I relied on the process of putting a job out there, having people apply for it, and you get good ones and you get duds.

Is that, are you telling us that that's the thinking that went through your mind at the time as to why you wouldn't approach Dawson or Gouvatsos for a recommendation?---No, I'm not saying that. I never thought of it and I never considered it. That's thinking out loud now.

20 Ms Carpenter, of course, was a very experienced recruitment consultant in the local government sector in New South Wales.---Yes. We used her quite often.

And did you ask her did she have any thoughts or could she make any explorations beyond placing the advertisement?---No, I expected her to do her job as a recruitment consultant, and that was to run the ad, screen the applications and come back to me with some sort of report or recommendation.

30 Why wouldn't you have asked her whether she could make any recommendations or make any inquiries with a view to making recommendations for a candidate who could be invited to apply?---I just, it didn't occur to me and I'm not sure that Ms Carpenter, as good as she was, would be the best person to do that sort of research in, in relation - - -

She had her finger on the pulse of local government in New South Wales. ---Yeah, but I don't know whether she got, whether she did much recruiting for senior planning roles. I don't know.

40 The impression you're giving us, Mr Montague, is that although there were what I'm going to suggest obvious points of inquiry for you to determine the availability in the marketplace of potential candidates who would be well qualified, the only person you asked was the person whom you knew was in the pocket of developers who had an interest in development in the Canterbury local government area.---No, I, I deny that. I said to you that it came up in passing, in general conversation. It wasn't, I didn't go out of my way to do that. He was there. I asked. I don't know why I did it, and maybe if I had my time over I wouldn't. But be that as it may - - -

It's because of the nature of your relationship with Bechara Khouri, isn't it?
---I don't think so.

He was your friend of long standing.---I said he's a friend, but there's nothing wrong with having friends.

You didn't tell Mr Khouri that you had any criteria for a suitable candidate?
---No. Would have gone over his head.

10 So you let him use his own criteria?---I asked him did he know anybody experienced in local government planning who might be suitable for this role. I knew that he had contacts with the Mayor of Strathfield at the time and that there may have been people in that organisation or other councils that he could, that he could suggest their name to me. That was it.

You knew that he had contacts with the Chanines.---No, at what point in time?

20 Did you not know in October/November 2014 that Mr Khouri worked for and with the Chanines?---I don't know that I knew then. I did know that he had contacts and had business interests with the Chanines, but I mean I have to ask the question, I don't understand why that has so much importance in relation to the appointment, because the appointment was a transparent process of recruitment through a recognised and reputable employment consultant and the council in the end would have made the final decision.

You need to understand certainly the position that I'm taking with you at the moment, and that is that the process was not transparent. Well, I, I, I refute that.

30 Did you expect that Mr Khouri might identify people as a potential candidate with whom Councillors Azzi and Hawatt might be comfortable?
---No, no. Later in the piece when we get to that, later in the piece I was certainly concerned that whoever was appointed could establish a working relationship with those two councillors, indeed all of the councillors and the Mayor, as unfortunately to some extent Marcelo had failed to do.

40 Did you expect Mr Khouri to identify potential candidates who would be likely to facilitate large-scale development in the area?---No, no.

But you knew that he worked for and with people who did do that sort of work in the area?---I don't understand the connection. I mean - - -

Well, you assumed – I withdraw that. Did you know or assume that Bechara Khouri was pro development?---No, I didn't know that.

Didn't know?---No. Well, look, what do you mean by - - -

Had no idea?---What do you mean by pro-development? It means one thing to me and it might mean something different to you. I've already explained that.

10 It never occurred to you that Mr Khouri might recommend a potential candidate who would be likely to facilitate large-scale development applications and planning proposals?---No, because at that point in time the council had already a huge number of DAs before it, major DAs that had not been determined one way or the other and that was part of the reason for the urgency to replace Mr Occhiuzzi.

That's not an answer to my question, Mr Montague.---Well, would you please ask the question again.

Didn't it occur to you that Mr Khouri would be likely to identify potential candidates who would be likely to facilitate large-scale development applications and planning proposals?---My answer to that question is no.

20 How could it not have occurred to you, given your relationship with Mr Khouri? How could it not have occurred to you?---I don't think - - -

How can that answer be true?---Well, it is true and I don't, I don't really, don't expect you really understand the relationship I had with Mr Khouri, it was more a social relationship. I didn't discuss technical planning matters with him, I'm not qualified to do it and nor is he, and I can tell you numerous times when, when I was approached he would say to applicants or prospective applicants, "Go and get yourself a good planner and a good architect and a good urban designer and come back."

30 But you did discuss council politics with him?---Yes. Politics generally.

Council politics in particular?---What, you mean Canterbury Council or local - - -

Yes.---Local government in general?

Canterbury Council politics.---Yes, of course. I'm a student of politics. I, I, I, I like the process.

40 THE COMMISSIONER: Can I just ask, Mr Buchanan asked you about when you made the inquiry of Mr Khouri whether you said anything about the criteria that you were looking at.---Ah hmm.

And you said, "Oh, no, it would go over his head."---Yeah.

Why did you say that?---Because Bechara Khouri, and he is a friend, and I don't mean to denigrate him, is one of those people that sort of skates over the top. He's not a detail man at all. And I wasn't going to burden him with

all, you know, what I was thinking about what sort of person you need, that wasn't his call. I was going through a process and - - -

No, no, no. I'm asking why you thought it would go over his head.
---Because I don't think he'd understand it.

10 MR BUCHANAN: He wouldn't understand the need to get development applications approved more quickly, is that what you thought?---No. I, I, no, I'm sure he'd understand that but that's, having said that, what does that actually entail? He wouldn't have understood the nuances of some of these applications that were complex, that, that had been in our possession for some time, that had issues in terms of referrals. He didn't know the nuts and bolts of all of those things. He couldn't possibly.

Did you have discussions with Mr Khouri about Mr Occhiuzzi?---I don't believe so, no.

Why not?---What do you mean why not? I - - -

20 Why wouldn't you have discussions with your friend, given that you discussed Canterbury Council politics with him, about Mr Occhiuzzi and your unhappiness with Mr Occhiuzzi?---I, I wasn't that unhappy with Mr Occhiuzzi at all. There were some issues in his performance that were of concern and they related back to the, the perennial problem, the delays in processing applications and, and conflicting advice.

And you wouldn't have ever talked to Mr Khouri about that?---I could have, I could have just in passing, yes, but I didn't expect him to do anything about it.

30 You didn't think that – I withdraw that. You didn't ever discuss with Mr Khouri, a desire on your part to have development facilitated in the area? ---No. And we've been over that, you know where I stand on development. I, I don't think it can be misconstrued that my view was appropriate development in the right areas was a good thing and I don't retreat from that either.

40 More than had been occurring to date?---Yes, because it was long overdue and anyone that knew Canterbury City Council or the local government area would agree with that. Most people anyway.

And you didn't think Mr Occhiuzzi was the person who was going to facilitate that?---No, I never said that.

No, no. I'm asking.---No.

You didn't think that, though, did you?---I, I - - -

You didn't think Mr Occhiuzzi was going to facilitate the development you sought?---It's not what I sought, it's what the council wanted and what the State Government wanted.

You don't want to answer the question, is that right, Mr Montague?---I'm happy to answer the question by but - - -

But you're not answering through question, Mr Montague.---But you can't shoot the - - -

10

I'm after your thinking at the time.---I said - - -

Then I want to talk about you communicating that thinking to your friend, Mr Khouri.---I've said time and again, that I was interested to see, as a person who grew up in the area, who knew the area extremely well and had occupied the role of general manager for 30-odd years, that I thought Canterbury had lagged behind surrounding suburbs in terms of appropriate and sensible development in non-residential zones and, and what I was hoping to do was to change that, and I believe passionately that the council of the day – and previous councils, particularly headed up before 2012 – had the same view.

20

And it was Mr Occhiuzzi who presided over the stultification, is that the right word to use as far as you're concerned, of development in the area during his tenure?---I, I, I couldn't, I couldn't blame Mr Occhiuzzi for that. It, it, went way back further than that. I started there in 1982, and in 1982, as I said in evidence before, a thing hadn't changed for 20 odd years. Now, that, you'd have to look at previous directors of city planning, the two that I named yesterday, particularly the most recent of those older appointees, and that was Robert Davidson. Now, the council all along – even when it was under control politically pre-2012 – was concerned about delays in processing applications, mixed, or, or conflicting advice and just a general malaise in the area in terms of any growth, an investment.

30

You told Mr Occhiuzzi you wanted him to turn the ship around?---Yes.

And you never conveyed that impression to Mr Khouri?---For all I know, Mr Khouri shared that view.

40

You never discussed with Mr Khouri the view that you took about development in the areas under Mr Occhiuzzi?---I could have, I could have, but it would, it would have been denigrating Marcelo. It may have been one feature of his performance that was wanting and I believed at the time, pre-2012, that council wanted that too.

And so, you would expect, wouldn't you, Mr Khouri, to take the thoughts you had communicated to him about the changes you wanted to see occur with him when he went around looking for potential candidates at your

request?---I, I didn't have that expectation at all. I wasn't in the business of somehow or other planting ideas in to his head. He was his own man, he had his own thoughts. I just said to him casually, "Do you know anyone looking for a job?" I wish I never had but I did. Can't undo that but I still maintain that the process from there on, notwithstanding the absence of notes about my interactions with people, was a transparent and fair process.

As you understand it now, where did Mr Khouri get Mr Stavis's name from?---I have no idea. I have no idea.

10

THE COMMISSIONER: Have you ever asked him?---No, I don't think I did but I imagine, and I'm only guessing here, speculating, it may have come from Strathfield where he had a close relationship with a former mayor there.

Sorry, Mr Khouri had the close relationship?---No. Yes. I beg your pardon, yes.

20

MR BUCHANAN: And knowing the evidence as you do now do you think it's possible that Mr Khouri got the idea of suggesting Mr Stavis from the Chanines?---I don't know that. I couldn't say that with any certainty. Possibly but I - - -

You know that Mr Khouri had a relationship with the Chanines, don't you? ---I've already covered that point with you. Yes.

And you know that Mr Stavis had a relationship with the Chanines as well? ---I don't know that. Until he got to Canterbury I don't know.

30

But you know now, don't you?---Yes. When that, I don't know when that friendship was cultivated, whether it was predated, predated his arrival or post his arrival.

At Strathfield?---At Strathfield?

At Strathfield?---At Strathfield, possibly. I don't know what was happening at Strathfield. I had enough, I had enough trouble with Canterbury. I didn't have to worry about Strathfield.

40

THE COMMISSIONER: Can I just ask you something. You spoke about the problems when Mr Occhiuzzi there being the delays which we've covered and also conflicting advice.---Yes.

From whom was the conflicting advice?---Commissioner, one of the perennial issues that came, that came to my attention all the time through the councillors, not necessarily the 2012 council but the councillors generally and previous mayors was that people would come to the counter. They'd be told, they'd say look, I want to build a granny flat and they'd say

yes, away you go. That's approved, that's not approved but that's permissible in that zone.

And then they'd lodge their DA?---And then they'd get it all back.

I see. So conflicting advice by different - - -?---Planning staff.

10 - - - planning staff of council?---That's right. And that's, that's why I think the process of pre DAs and talking to people like human beings before they lodge an application is desirable and, and productive.

MR BUCHANAN: Your unhappiness with Mr Occhiuzzi's performance in large measure revolved around his unwillingness to facilitate solutions for development proposals, wasn't it?---No, no. Look, there'd been a couple of quite notorious problems with, and one in particular we've discussed, the lump of concrete, where he clashed with two particular councillors. That did not serve him well and it didn't help his cause in relation to the performance of his role and I felt for him. I advised him how to deal with that. He went on-site. I mean Marcelo tried very hard to get the thing right, 20 to get it back on track and I admired him for that. He was a good person and a good planner but whether he was out of his depth, and I suspect that was the case, when the pressure was, when the wick was turned up he couldn't cope.

And so when Councillors Azzi and Hawatt roused on Mr Occhiuzzi in relation to the Croydon Street development and Mr Occhiuzzi decided to not allow a breach of the approval conditions that had occurred in that case, that was Mr Occhiuzzi's fault, that was the view you took. If Hawatt and Azzi took a position then that was fine and if Occhiuzzi wasn't able to cope with that and wasn't able to bend or be flexible then that was Occhiuzzi's fault? 30 ---No.

That was the position you took, wasn't it?---No, it wasn't. Flexibility is one thing. Breaking the rules is another. If there was some flexibility there so that an accommodation could be achieved I'd support that. That makes sense to me that you, that you encourage development and you work with applicants and proponents to get good planning outcomes for the zone in question.

40 Favourable to their applications?---Well, by definition it has to be favourable but if they're not happy with the outcome they've got appeal rights.

THE COMMISSIONER: But you don't break the rules?---No, of course not.

And sorry, when you say don't break the rules, you're talking about planning controls?---Yes, and I was at pains to impress on the planning staff

and the director in particular that I expected them to do their job professionally and ethically and in accordance with state plans and the council's own codes. I never ever deviated from that.

MR BUCHANAN: It was in your interests, wasn't it, Mr Montague, to use Mr Khouri to help recruit a candidate for the position who would be facilitative, more facilitative than Mr Occhiuzzi had been, of large-scale, non-complying development and the loosening of planning controls.---No, no. I was, at that stage I was looking at retirement. I was, I'd been in the
10 business a long time. It really didn't matter to me. I had a view as to how the municipality as it was – the municipality, now the city – should look and how it should develop, and I think by comparison with our neighbours it hadn't done very well for at least the 30 years preceding, the 30 years preceding 2014.

And so as a result of that it was in your interests to use Mr Khouri to recruit a candidate for the position who'd be more facilitative of the sort of development that you thought had been held back.---No, no.

20 Why not? That's what you've told us.---No, I didn't tell you that at all. I told you that I asked Mr Khouri in passing, over a drink or a coffee or whatever, did he know anyone who was looking for a job. He recommended, he told me Stavis's name. I said go and talk to Judith Carpenter. My focus was getting the best possible applicant for the job.

Commissioner, I note the time.

THE COMMISSIONER: Just before we break, would it assist your
30 questioning this afternoon if Mr Montague does read the document at volume 5, pages 240-244?

MR BUCHANAN: It would, Commissioner.

THE COMMISSIONER: Now, I'm just a bit hesitant. That's our exhibit copy.

MR BUCHANAN: Yes. We'll make a copy.

40 THE WITNESS: If you could do that, it'd be – appreciate it.

THE COMMISSIONER: Yes. I just don't want that to leave the hearing room.

THE WITNESS: No, of course. Of course.

THE COMMISSIONER: My second request, Mr Montague. I was interested in the identity of the mutual friend who told you about Mr Khouri being unwell in Lebanon.---I, I, I honestly cannot recall.

If you could have a think about it.---I'll think about it but I can't recall.

Often if you think about it, names come back, so just have a think about it.
---Yeah, of course. Of course. I will. Thank you.

All right. We'll adjourn and resume at 2 o'clock.

10 **LUNCHEON ADJOURNMENT**

[1.02pm]