

DASHAPUB05001
10/12/2018

DASHA
pp 05001-05058

PUBLIC
HEARING

COPYRIGHT

INDEPENDENT COMMISSION AGAINST CORRUPTION

PATRICIA McDONALD SC
COMMISSIONER

PUBLIC HEARING

OPERATION DASHA

Reference: Operation E15/0078

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON MONDAY 10 DECEMBER, 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.

Sensitive

THE COMMISSIONER: This is the resumption of the public inquiry. Mr Buchanan, is there any administrative matters?

MR BUCHANAN: Not this morning, Commissioner.

THE COMMISSIONER: All right. Mr Montague, we'll just have you resworn.

Sensitive

THE COMMISSIONER: Now, Mr Montague, obviously the order I made previously under section 38 of the Act continues.---Thank you.

COMMISSIONER'S DIRECTION PURSUANT TO SECTION 38 OF THE ICAC ACT CONTINUES

10

THE COMMISSIONER: All right, Mr Buchanan.

MR BUCHANAN: Commissioner. Mr Montague, at the end of the hearing on 18 October, 2018, when we were last here, I was asking you questions about the interview panel for the selection of a director of planning, and what I want to do before returning to that subject is to go to the subject of your relationship with Mr Hawatt and Mr Azzi, in particular in relation to attending social occasions at Mr Azzi's house. You told the Commission, transcript pages 4866 to 4867, that in the period 2014-16, before amalgamation, you made numerous visits to Councillor Azzi's house and that the nature of those visits was mainly social. You told the Commission, page 4924, that you went to Councillor Azzi's home, "On a number of occasions, particularly in that latter stage of 2015 and early '16," amongst other things, "to strategise a little bit about where we were going to go when the amalgamations happened." What I'd like to ask you about is that last piece of evidence that I just quoted to you. Do you consider that it was appropriate for you as the general manager to be strategising with councillors about political matters affecting the council, particularly select councillors?---I don't think it's inappropriate.

20

30

And why is that?---Well, because the future of the entire council was on the line, my future is inexorably part of that, and, yes, I thought it was appropriate to try and talk about what we do after the amalgamation.

And did you consider that it was appropriate to do that in social settings?---I didn't think it was inappropriate.

Was there a risk that such associations by you as general manager with particular councillors would be conducive to you being improperly influenced by those councillors?---No.

40

And why not?---Because I didn't allow councillors to influence me to that extent, on anything.

Did you think that there was a risk that associations on those occasions by you with those councillors would improperly shift the focus of local government decision-making from the collegiate body, the council, together

Sensitive

with you as administrator, to on the other hand a self-selected group of councillors and the general manager?---To answer that question you have to understand the politics of the council at that time. The two councillors involved, and they were generally speaking Councillor Hawatt and Azzi, effectively were the council.

THE COMMISSIONER: What do you mean by that?---They had control. They had a great deal of influence on, on the other councillors.

10 MR BUCHANAN: And does it follow from that, that they had control over you?---No, not at all.

Was it the case that they had control over you?---No.

On occasions in those social gatherings at Mr Azzi's house, there were present particular developers?---Oh, I can recall one or two occasions.

And on occasions there were present political identities, particularly ALP identities?---On one occasion there, there were, yes.

20

So far as concerns the ALP identities, which occasion are you thinking of? ---I can't recall the date, I honestly can't.

Was there a purpose to it?---Well - - -

Was there a reason why they were there rather than not on other occasions? ---Well, Mr Azzi was the host and he saw fit to invite them.

30 Was there a risk that associations by you with those particular councillors in those, on those occasions when there were particular developers there and/or ALP identities, shifted the focus of decision-making from the collegiate body and yourself to this self-selected group of councillors, yourself and those other people?---Well, I have no control over council decisions and I said earlier, a few minutes ago, that they were the two councillors that appeared to have the influence with the other councillors, so I don't see the distinction.

40 And was the fact that on one occasion that you can recall there were also present ALP identities anything that was a cause for concern in shifting the focus of decision-making from the collegiate body and yourself, on the one hand, to whoever was present on the social occasions at Mr Azzi's house? ---No, I don't believe so. As I said, and I repeat, he was the host and he invited whomever he liked to those - - -

That simply explains why it happened, doesn't it? It doesn't suggest that there was any reason why there wouldn't be a shift of decision-making from the collegiate body, council, and you as the person managing the council, to on the other hand these two particular councillors, yourself and say those

Sensitive

10/12/2018
E15/0078

MONTAGUE
(BUCHANAN)

5004T

ALP identities?---No, I don't think so. In the end the decisions are made by the council in session, in council meetings. They don't make decisions in councillors' homes, not formal decisions anyway.

But that somewhat is undercut, isn't it, by the evidence you gave a few minutes ago that those self-selected councillors, Hawatt and Azzi, effectively were the council?---Yes, but they still had to come back to the council, the body corporate if you like.

10 But what did that matter in the circumstances on your evidence? Because at the end of the day they were the council.---Well, that's up to them, they're the councillors, they're making the decisions, they have to get those decisions through the, through the body politic, the council.

Can I take you back now to late October/early November 2014, the recruitment of a director of city planning.---Yes.

20 And you had retained Ms Carpenter's firm to assist you in that process and you decided that there would be an interview panel and that it would comprise yourself, Mayor Robson, Councillor Azzi and Councillor Hawatt. Do you recall all of that?---Yes.

You had a telephone discussion at some stage in early November with Ms Carpenter about the interview panel and told her of its membership? ---That's highly likely. I can't recall the conversation but that doesn't surprise me.

30 Ms Carpenter told the Commission, her statement, paragraph 16-17, that as far as she was aware, the inclusion of councillors on the panel for senior staff had never happened at Canterbury before. Does that accord with your understanding?---Generally speaking, yes, although when I was appointed way back in '82 they were certainly heavily involved, the whole council.

Ms Carpenter told the Commission that she, in the conversation that you had with her in which you told her about the panel and of its membership, asked you why and you said, she has told us, "I thought I would try something different this time." Is that what you said?---Yes.

40 That wasn't a frank answer, was it?---I don't know what you mean by frank.

Well, you told us that there was a particular reason that you wanted Mr Hawatt and Mr Azzi, having regard to their control of council and their involvement in particularly in planning decisions, to have ownership of the decision as to who was appointed director of planning, haven't you?---Yes.

You didn't tell Ms Carpenter that. Instead you gave it the innocuous sheen of, "I thought I would try something different this time"?---Well, that's what I said at the time, but I don't have to explain all my actions to her. She,

Sensitive

she's on the payroll to the council, I'm not retained by her, so what I said then and what I said later are, are accurate.

You had had satisfactory dealings with Ms Carpenter in recruitment of senior staff for Canterbury Council over a number of years, hadn't you?
---Yes.

10 Was there any reason you couldn't take her into your confidence as to the reason why you were including those three councillors, the mayor and those two councillors on the panel?---No particular reason, no particular reason.
No.

Was the reason you didn't take Ms Carpenter into your confidence as to the forces at play was that there were fairly dark machinations, weren't there, that occurred in relation to the departure of Mr Occhiuzzi and the expectations, as you understood it, in relation to his replacement?---They were very difficult times.

20 Doesn't the fact that you didn't tell her the real reason why you composed the interview panel of members including Councillors Hawatt and Azzi that you thought that if you told her what was really going on, it would put you and council in a poor light?---No, not at all. That's the, that's, but, but - - -

It would have put you – I'm sorry.---But that sounds very sinister, what you're trying to propose there.

30 Well, it would have put you and council in a poor light, wouldn't it?---No, no. Look, I, I retained her services, as we had done many times. Now, I expect any consultant that's employed by the council to carry out the instructions given to them and there's no difference this time. I formed a panel – I wish I hadn't now, suffice to say – I formed a panel, I did it for the right reasons and I retained her because I had good experience with her in the past. I didn't have to explain all my actions, chapter and verse, to her.

Looking back on it now, plainly there were expectations on Ms Carpenter's part in the exercise of the recruitment of the director of planning which were not met, weren't there?---Well, I don't know. You'd have to ask her that.

40 Well, I'm asking you.---Well, she never expressed - - -

Looking back on it now - - -?---She never expressed that to me, Mr Buchanan.

Didn't she have conversations with you? Didn't she send you letters in which she indicated alarm at what had occurred?---Afterwards, yes, but not in the early stages of the panel.

Sensitive

10/12/2018
E15/0078

MONTAGUE
(BUCHANAN)

5006T

Well, compare what occurred afterwards with what must have been in her mind beforehand. There was a disconnect, wasn't there, between her understanding of what was occurring and what you believed was occurring and wanted to occur.---I don't know what was going through her mind.

THE COMMISSIONER: Just hold on for a sec.

10 MR ANDRONOS: Objection. I don't know how this question can possibly assist you, Commissioner. What was in Mrs Carpenter's mind at a particular point of time is not a matter that you have to reach a decision on, and it's certainly not something which this witness is in a position to give useful evidence on some four years after the fact, after 50 whatever it is days of hearing. It can't possibly assist.

20 MR BUCHANAN: In my submission, Commissioner, this witness was not frank with Ms Carpenter about the dynamics of the process for recruiting a replacement of Mr Occhiuzzi. It is, in my submission, apparent that Ms Carpenter believed that her understanding of the orthodox recruitment process was not correctly based once the appointment of Mr Stavlis was made. In my submission, the failure of this witness to appraise Ms Carpenter of what was really going on in terms of those dynamics tells the Commission that this witness had a belief that if he took Ms Carpenter into his confidence, it would reflect poorly on him and it would reflect poorly on councillors because those dynamics were inconsistent with the proper administration of the Local Government Act so far as concerned the appointment of senior staff, and instead the involvement of processes which were, at the least, conducive to corruption of that recruitment process.

30 THE COMMISSIONER: Do you have anything?

MR ANDRONOS: I kind of lost track of that submission, with respect, but it simply, first of all, relies on the premise that the witness wasn't frank with Ms Carpenter, and I don't know how you can make that submission because what he said to her was true. Secondly, it relies on establishing some kind of duty to make a disclosure to Mrs Carpenter which isn't established and frankly could not be established. And, thirdly, I stand by the original submission that it can't assist you anyway. Anyway, that's -- I won't belabour the point.

40 THE COMMISSIONER: All right. Look, I'm interested in this area about particularly how the process of the selection of the director of city planning developed, so I am going to allow the question.

MR BUCHANAN: You knew at the time, Mr Montague, that there were, as it were, unorthodox forces at play in the process to recruit the director of planning because of the interest, to use a neutral term, of Councillors Hawatt and Azzi, and because of the circumstances of the departure of Mr

Sensitive

10/12/2018
E15/0078

MONTAGUE
(BUCHANAN)

5007T

Occhiuzzi.---I wouldn't go that far. They were unusual circumstances, I can see that.

You didn't appraise Ms Carpenter of that.---I didn't have to.

And the result was that when she found out or found out that things were different from what she had understood was happening, she was alarmed and she said so to you, didn't she?

10 MR ANDRONOS: Objection. That's not my recollection of the evidence. My recollection of the evidence is that she was alarmed because of the selection, not of some set of circumstances which I don't know that it's been established in the evidence that she was aware of whatever it is the circumstances are that my friend is alluding to somewhat elliptically in that question.

MR BUCHANAN: I press the question, Commissioner, on the same basis as before.

20 THE COMMISSIONER: No, look, I'll allow it

THE WITNESS: Mr Buchanan, the only obligation I have under the Local Government Act in terms of the appointment of senior staff is to consult with council. How I chose to do that is entirely a matter for me, not for Ms Carpenter or anybody else.

MR BUCHANAN: But you had a duty to manage the process with a view to achieving the objects, the relevant objects of the Local Government Act, didn't you?---Of course.

30

And you had a duty at all times in this, as in everything else you did, to act in the public interest, didn't you?---That's a long bow, but I guess it's right.

So why wouldn't you take your recruitment consultant into your confidence and indicate that there were dynamics at play in the recruitment process that she might not otherwise expect or understand?---I, I can't see the value in that and it didn't occur to me, frankly. I recruited her to do what she normally did for us, and that was to advertise the role, receive the applications so I'm at arm's length from that, and to cull those applications and recommend a list of people for interview. That's what I expected her to do, and by and large that's what she did.

40

You also expected her, did you not, to provide you with advice from time to time in the process as was relevant and applicable to the process?---If I wanted advice I would have requested it from her.

You were in – I withdraw that. I'll ask you to think now outside of the box of Canterbury City Council and its selection process for the director of city

Sensitive

planning and ask you to think about, if I could, an interview panel for the position of director of a department of any organisation, any large organisation.---Mmm.

That panel would ordinarily comprise, would it not, the CEO or a substitute senior administrator?---I've got no idea.

10 It would include such a person?---I don't know. My experience is confined to local government. I can't speak for what goes on in the corporate sector.

You have no idea what happens in other organisations?---No. Other councils I do, but not, I've spent my entire career in local government.

You'd expect then the GM to be on the panel?---Yes.

You'd expect a person who headed up human resources to be on the panel? ---Not necessarily. It depends on, again on the circumstances.

20 It's an ordinary task of a director of human resources to be a member of an interview panel for senior staff, isn't it?---Well, that's what you say, I can't confirm or deny that. I don't know what goes on, as I said, in other organisations.

Has it never occurred at Canterbury that the person who held the position of director of human resources was a member of the interview panel?---There was no director of human resources.

30 Was there a person who performed that role?---There was a manager role, right. And the answer to that question is no.

Was it usual for at least one person having qualifications and experience in the area of expertise required for the position to be a member of the panel? ---No.

At Canterbury it wasn't usual, I just want to confirm this, in your experience in all the years you were there, you never usually had a person who knew something about the area of expertise that was required for the position being filled?---No.

40 Is that right?---Not, there were only a handful of appointments of directors in my time under the new structure after the advent of the 1993 Act. It was totally different pre-'93.

So do you mean to say that before '93 you would have on the panel someone who knew something about the area which you were trying to fill, but after 1993 you didn't?---Look, there were very few changes at the top end of the City of Canterbury for many years, because I had a policy and the council endorsed this, to promote from within, and that's what happened

Sensitive

most of the time that I was GM there, except afterwards when two of the very senior people resigned I think in 2010 – that was the director of city works and the director of city planning, ironically enough – when they left after a long, long, long length of service, then the game changed because I needed new blood in the organisation. There was no one at lower levels who were prepared to step up.

10 Thinking of interview panels, though, that you knew were convened and which conducted interviews and made recommendations for the filling of positions other than of senior staff at Canterbury, it was usual, was it not, to include on the panel someone who knew something about the area of expertise concerned?---At lower levels, yes.

But not at higher levels?---No.

Is that what you're telling us?---That's what I'm saying.

That's a bit alarming, don't you think?---No, not at all.

20 THE COMMISSIONER: Sorry, what's the rationale that you'd have it at lower levels but not higher levels?---Well, because the HR people knew they, I, I wouldn't involve myself in the appointment of managers or other less senior staff. I only involved myself and the council in the, the appointment of senior staff, those defined under the Act as senior staff, which generally speaking were on contract.

30 But you haven't answered my question, why on a panel for a lower level position there would be somebody with some expertise in the particular area, while for your higher positions you wouldn't?---I can't answer that. I think it was probably in accordance with our recruitment policy for those, those roles at lower levels, and the HR manager – it was a managed position, not director – that was his responsibility.

MR BUCHANAN: So it was your responsibility in this case - - -?---To do what?

40 To convene the panel and to ensure that the expertise which was required to inform the process of selecting the new director was available?---I always involved myself in the appointment of directors or senior staff.

That's not answering the question, Mr Montague.---Well, that's the only answer I can give you, I'm afraid.

Well, in that case you are deliberately avoiding answering the question, aren't you?---No, not at all. I don't know, I really don't know what the question is.

Sensitive

Well, you see, there is a view that might be taken, rightly or wrongly, that had someone with expertise in directing a planning department or managing a planning department been a member of the panel that you convened, then Mr Stavis might not have been selected and all of the problems that occurred as a result would not have occurred. What do you say about that?
---Well, that's conjecture.

10 Why is it conjecture?---Because you can't prove any of it. You don't know, we don't know what the outcome would have been had what you're proposing taken place.

You don't think that there would have been a chance that a better qualified candidate, a more suitable candidate than Mr Stavis, would have been the outcome of the process had there been a member of the panel who knew something about planning?---Not necessarily, no.

That seems an extraordinary proposition to make, Mr Montague.---I'm sorry. That's how it is, Mr Buchanan.

20 THE COMMISSIONER: Mr Montague, sometimes people will bring an independent person from outside with expertise in the particular area, so, for example, for a council you might have gone to say another council and asked their director of city planning to come and sit on the panel. Did you ever consider that procedure?---No. No, I didn't.

MR BUCHANAN: Is a reason that you did not include anyone with expertise in planning on the panel that you didn't want a person with expertise in planning, you wanted the complete freedom for you and Mr Hawatt and Mr Azzi to choose whoever you wanted?---No, that's not true.
30 That's - - -

A person that you could control?---That's not true and it's actually offensive. It, that's not what I was about. That's not what I was about. I was trying to get the best person for the role, for the betterment of the council and the community.

40 It is also considered, is it not, and was in 2014, best practice for an interview panel to include one woman?---Oh, I don't, obviously these days it probably is important to do that.

Well, in those days did council have an equal opportunity, sorry, equal employment opportunity management plan as is mentioned in the Local Government Act?---Yes. I believe so. I can't recall exactly what it said. I haven't got it in front of me.

And informed by it, you didn't think it would have been appropriate to have included a woman on the panel?---No.

Sensitive

10/12/2018
E15/0078

MONTAGUE
(BUCHANAN)

5011T

Despite the fact that there were, to your knowledge, two female candidates?
---Yes. Judith Carpenter was on the panel, though, as an observer and as an adviser. She's a female.

The failure to include a woman on the interview panel, despite two of the short-listed candidates being women, risked jeopardising, don't you think, the principle that appointment be based on merit?---No, I don't.

10 You know that section 337 of the Local Government Act empowered you to appoint senior staff in consultation with council?---Yes.

What was the way in which you usually complied with that requirement?
---Normally I would have put a – and this is what I intended to do in this case, events took over, overtook me I should say – I would have prepared a report to council. I would have outlined to them the candidates who were shortlisted, the process we went through to interview them, and what the outcome of those interviews were, and there'd be a clear recommendation on my part recommending the preferred candidate. Now, that's probably going further than I needed to. Some GMs wouldn't even go that far. But I
20 would make a recommendation to the council and I would hope that recommendation would be supported.

Well, did you think that by including the mayor and Councillors Azzi and Hawatt on the panel that that assisted in discharging your duty to consult with council in the appointment of the director of city planning?---I still would have prepared that report at the end of the interviews. As I said, the events overtook me. I would have, I would have prepared a report for council outlining what transpired in relation to the interviews and what my conclusions were. And the benefit of those councillors being there, they
30 would corroborate that, particularly the mayor, because the mayor is the mayor and he'd be in a position to, as I said, corroborate what had transpired – if he was called on to, that is.

Before November 2014, how many interview panels had you convened to assist in the selection of senior staff at Canterbury?---I can't, I, look, I can't answer that.

Your best estimate.---Well, look, there was the original appointment of Marcelo Occhiuzzi. There was the appointment of the new city works
40 director (not transcribable). Two of the senior staff left after very long periods of service.

So you're talking about three, six?---Oh, wouldn't be six.

Nine? Wouldn't be six?---No, it'd be somewhere between those two.

Between three and six, perhaps?---Yeah, possibly, yeah.

Sensitive

10/12/2018
E15/0078

MONTAGUE
(BUCHANAN)

5012T

And on each of those occasions, were you a member of the panel?---Yes.

THE COMMISSIONER: And when Mr Buchanan says senior, are you looking at director level?---Yes, contracted staff as per the definition in the Act.

MR BUCHANAN: Now, you told Office of Local Government investigator Richard Murphy on 17 March, 2015 that you – this is volume 5, page 240, at page 242 – that you had not involved councillors previously on the panel but did say for this recruitment because of the pressure from councillors to, to use your word, “reform” the planning division.---No, well, if I said that, I said it. I don’t, I, I don’t recant those words, but as I said earlier, the circumstances surrounding the appointment of a new director of city planning were unique. They were new. It was nothing I had encountered before with that council that was elected in 2012. So that’s why I did what I did. I wish now I’d never formed the panel, of course, but I did it for the right reasons. I did it to try to involve the council in this appointment to the extent that they would be comfortable with the person who ultimately occupied the role.

20

You told us that you at this time were in favour of a greater amount of large-scale development in select areas of the local government area.---Quality development, and that reflected the attitude of the council that was elected in 2012. That’s why the change occurred. They had a different view entirely on how Canterbury City should look compared with pre-2012.

When you said to Mr Murphy that there was pressure from councillors to reform the planning division, was what you meant that you included Mr Azzi and Mr Hawatt on the interview panel because they wanted a director of planning who would be more facilitative of large-scale development - - - ?---No.

30

- - - than Mr Occhiuzzi had been?---Well, if that’s how Mr Murphy interpreted my words, he’s wrong.

No, no, I’m asking you.---No, I didn’t do that, didn’t do that at all.

Did you include Mr Azzi and Mr Hawatt on the panel because you wanted and you understood they would want someone who would provide solutions to developers?---Well, that word solutions of course is out of favour now, I don’t know why, but it is, so I’d say to you that what I was looking for was quality outcomes for all applicants, be they major developers or mum-and-dad applicants. And I think that’s what the council wanted.

40

And did you include Mr Azzi and Mr Hawatt because they wanted, as you understood it, someone who would progress applications and submissions to allow development on a larger scale than had hitherto been allowed?---No. My reason for including them was to try and get the right fit because there’s

Sensitive

no doubt post-2012 there was pressure on to reform, however you define that word, reform the planning division. There had been ongoing problems with planning at Canterbury for many, many years, and I shared those concerns, particularly in relation to processing times, conflicting advice, all sorts of things that would have got back to the council always through complaints from constituents. That's what the councils are there for, to listen to the community and do something about it, basically that's their role. Now, those problems were ongoing, they weren't new, but things changed in 2012 because the council that was elected then clearly had a view, and that, that view was I guess expressed by Councillor Hawatt, yes, that the area was degraded, that it needed improvement, it needed growth, it needed economic investment. I happened to share, I happened to share that view, but I didn't prescribe what type of development, nor did I pressure anybody to come up with a development along Canterbury Road, for example, that would satisfy, specifically satisfy the concerns of any councillor, because in the end it was the council who made, the whole council that makes the decisions on these major developments.

Did this contribute to your decision to include Councillors Azzi and Hawatt on the panel, that you regarded them as the junta, as a small group that ruled the council?---Well, they weren't the junta. The junta consisted of seven people. From my observation, and I could be wrong, they appeared to be directing traffic, yes.

And when you say they, you mean Councillors Azzi and Hawatt?---Yes.

They, Councillors Azzi and Hawatt, had the power to make your life as general manager very difficult, didn't they?---They could have tried but they wouldn't have succeeded.

Well, I suppose I need to put it to you that they did try and for a period of time they did succeed.---Well, if you call what happened - - -

December/January/February.---December – yes, it was a very difficult time. I don't deny that. I went through hell.

And if a person was appointed as director of planning whom Azzi and Hawatt didn't like, they would likely make your life as general manager very difficult.---Again, conjecture, but it's possible.

But that was an input into, that was a factor in your decision to appoint them to the interview panel?---Look, I wanted to try and establish some peace in the planning division, I wanted to try and address the issues that had been extant for many, many years in planning at Canterbury, whether it was, regardless of who the director was.

You told the Commission, transcript page 4998, that if Karen Jones had been appointed, her life would probably have been hell in council and you

Sensitive

weren't going to subject her to that or go through it again yourself. Doesn't that suggest that you needed to ensure that those two councillors more than anyone else had input into the choice of director of planning?---Yes, I don't deny that.

And did you put Councillor Robson on the panel because you wanted to provide a semblance of political balance to the membership of the panel? ---The mayor is, the mayor would always be involved if a panel like that was formed simply because he is the mayor and he had his own views and those views were valuable for me. I, I wanted him to participate, yeah, to provide some balance, a bit of a counterbalance if you like, to the sometimes exuberance of people like Councillor Hawatt.

Now, I just want to clarify for the record, if we can, you were at the time a member of the Joint Regional Planning Panel?---No, never have been.

Oh, thank you. Thank you for that. You certainly weren't a planner?---No.

Neither were Councillors Robson, Hawatt or Azzi?---No. Not as far as I know.

And they didn't have experience in the management of a team of professionals working for a local government authority?---Not that I know. No. But they did understand the community and they were councillors representing the 150,000 people who call Canterbury home and they had views that were valuable in terms of how the area should look, how it should grow and what facilities the council should endeavour to provide, and that's a perfectly legitimate role for the mayor and for the councillors regardless of their political views.

Was it the case that you included Councillors Azzi and Hawatt on the panel not because it was in the public interest to do so, but because of the pressure that those two men had, up to that point, put you under in relation to planning matters generally and the position of the director of planning in particular?---They didn't put me under any pressure. They put enormous pressure on the director and, and we know what happened to Mr Occhiuzzi, but they didn't put any direct pressure on me at all, and had they done that for the wrong reasons, I would have pushed back. They knew that.

Would it be right to say that, so far as concerned your inclusion of Councillors Azzi and Hawatt on the interview panel was concerned, the public interest was really to find in terms of whatever kept Councillors Azzi and Hawatt happy?---I wouldn't go that far but, but it, it was important that, given their influence over the council, that's the body politic, the whole council, it was important to try and keep them onside, yes, otherwise we were going to have ongoing disturbance in the planning division and that wouldn't have been good for the organisation or the community. So in that, to that extent, yes, I think the community interest was taken into account.

Sensitive

You'll recall that on 16 January, 2015, you delivered to the Independent Commission Against Corruption a report about events in 2014-15 involving Councillors Azzi and Hawatt, yourself and Spiro Stavis.---Yes.

10 In that, and I'll just give you the context, this is volume 5, page 253. You said, "On this occasion in response to concerns expressed by councillors regarding planning issues, I included both the mayor and two councillors, Councillor Michael Hawatt and Councillor Pierre Azzi, on the four-person
15 interview panel. Ms Carpenter attended all of the interviews as an observer. This is not usual practice in the appointment of directors or contracted staff and is not usual practice across local government, but in this instance, these two councillors showed particular interest. Examples of typical practice would be where the mayor is delegated by council to sit on an interview
20 panel or where council is provided with the detailed background appointment recommendation and the opportunity to meet a potential new director following selection by the general manager and an internal or external interview panel." Now, your statement "in this instance, these two councillors showed particular interest" was a euphemism, wasn't it?---No, I
25 don't think so because – no, I don't and I, I hasten to add that other councillors were invited to sit on the, or could have sat on the panel if they'd contacted me. None did. So it boiled down to those two and the mayor by virtue of his office.

30 In using the language you used to explain in your report to the Commission your inclusion of Councillors Azzi and Hawatt on the interview panel, you underplayed the true situation and the true reason why you included them on the interview panel, didn't you?---Well, I didn't want this to become a War and Peace epic. I mean, I said what I said at the time, believing it was the
35 truth and believing it was in the best interests of the organisation. I mean it, it's, it's, it's not the Magna Carta.

You weren't being frank with the Commission in that part of your report to the Commission, were you?---No, I, I, I, I deny that. No, of course not.

You were misleading the Commission, weren't you?---No, not at all. Not at all.

40 And I want to suggest to you that as well as not being usual practice, the decision to constitute the interview panel as you did was not designed to ensure that the position of director of city planning was filled by the best candidate for the job. Instead it was designed to appoint the person who politically would have been the best person for the job so far as you, Councillor Azzi and Councillor Hawatt were concerned.---Look, there's no
45 doubt there was a political element to it, but it wasn't the driver. I mean, if, if some person had walked in who clearly had no ability in planning, had no previous experience and patently could not do the job, they wouldn't have

Sensitive

10/12/2018
E15/0078

MONTAGUE
(BUCHANAN)

5016T

got a look-in. And, and, and, and as far as the councillors are concerned I think they would support that.

And I want to suggest to you that it was foreseeable in your constitution of the interview panel as you did that it carried a serious risk that the interview panel process would miscarry, that's to say produce a flawed result.---I know what it means. But I, no, I don't agree with that either because in the end it would have been the council that made the decision based on a report from me as to the process that we'd followed to get to that point, even
10 though that's not really strictly necessary under the Act because it's not, consultation is not defined.

Excuse me a moment. I want to bring up on the screen, if I can, the provisions of section 349 of the Local Government Act. If you could just take a moment to read that to yourself. Would you agree that interview panel members should, in situations like this, understand the obligation to ensure that any appointment is made on merit?---Yes.

Would you agree that interview panel members in a situation like this need
20 to understand that the merit of the persons eligible for appointment to a particular position is to be determined according to the nature of the duties of the position and the abilities, qualifications, experience and standard of work performance of the person relevant to those duties?---Well, I can't deny that's what the Act says, so you've got to comply to the extent that you can.

And if I can just refer you to as well, and you'd accept, wouldn't you, that there was an obligation under the Local Government Act to ensure that an appointment was made on merit and did not involve discrimination in
30 employment on the ground of sex, on the ground of gender?---No, of course. Of course.

Did you do anything to ensure that the members of the interview panel for director of planning in November 2014 understood these three requirements?---I can't remember specifically but I'm pretty certain they would have been aware of those obligations. I don't think I set anything out in writing to them at that time, no.

Is it possible you did nothing to ensure that they were aware of those
40 requirements?---Well, it's possible, but I would have thought that they'd understand that we have to appoint on merit and that you can't discriminate against somebody because of their, their gender. I mean, that's common knowledge in our society, I would have thought, now.

Is the fact that you didn't ensure that the panel members were aware of those requirements an indication of the fact that the purpose of the panel was skewed towards ensuring the political satisfaction of Councillors Azzi and Hawatt with the outcome?---No, I wouldn't accept that at all.

Sensitive

10/12/2018
E15/0078

MONTAGUE
(BUCHANAN)

5017T

Now, declarations as to conflict of interest were required for interview panels constituted by council under its recruitment and selection policy and procedures user guide, weren't they?---I haven't got it in front of me. I can't tell you. I can't actually - - -

Well, I'll take you to it. Volume 1, page 152 at page 160.---It's on the screen.

10 Page 152 is the front page.---Yes.

And if I can just take you to page 160, can you see that there's a flowchart there under the heading Phase 1, Overview of Resume Screening Process?
---Yes.

And that the third box says, "Declaration of conflict of interest," and the dot points next to it says, "Panel members complete conflict of interest form, director (corporate services) approves composition of selection panel."
---If I could just interrupt you for a moment, Mr Buchanan, if you don't
20 mind.

Please.---I'm pretty certain this policy relates to non-senior staff positions.

Oh, certainly.---Right?

Yes.---And I had no involvement in the appointment of senior staff, sorry, staff below the level of director, but - - -

30 You weren't aware - - -?---Oh, of course.

- - - that a declaration of conflict of interest - - -?---Of course.

- - - was required?---And I would have, I would have expected that to be followed, but this, this policy wasn't prepared in relation to the appointment of senior staff.

40 Was there a reason, was there any reason why it should not have been required of the members of the interview panel for the director of planning in 2014 to have completed conflict of interest forms?---Look, in retrospect I'd have to say it probably would have been wise to do that, but I don't believe it was done.

Why wasn't it done?---I don't think anyone thought of it. I certainly didn't.

At the time the interview panel sat on 17 November, 2014, you already knew of Karen Jones, didn't you?---I knew of her, yes.

She was a friend of your daughter?---An acquaintance.

Sensitive

You didn't declare that to the panel, did you?---No.

Why not?---Didn't think it was necessary. The relationship is so distant I couldn't see any need for it.

By 17 November, 2014, you had an interest in Spiro Stavis getting the job as director of planning, didn't you?---No, I didn't have any interest in Spiro Stavis getting the job.

10

You had, over Judith Carpenter's protestations that he wasn't qualified and didn't meet your selection criteria, insisted that he be shortlisted for the position, didn't you?---Yes. We've been over this and the answer is, yes, I did.

So plainly you had an interest in Mr Stavis being at least a member of the shortlist.---Yes.

20

Did you think you should have declared that interest in his candidacy to the other members of the panel?---I don't know what the nature of the declaration of interest would be. I had no personal relationship with Spiro Stavis at that point, none at all. Never met him before.

The declaration might have been, I have insisted, despite the recruitment advisor telling me that this man is not qualified and doesn't meet my selection criteria, I have insisted that he be shortlisted.---I don't believe - - -

30

That would have been the declaration.---I don't believe that's a declaration of interest of anything.

Can I ask you to think back now to the day that the interview panel sat on 17 November, 2014.---I've tried, I've tried to block that out of my mind.

I understand, but just for the purposes of this exercise, if you could think of that occasion.---Ah hmm.

40

I'm not going to at the moment ask you about that day. I'm going to ask you, just thinking about that occasion, had you had any contact with Michael Hawatt in which Mr Stavis's name was mentioned?---Oh, look, I, I don't recall. It's a long time ago now and, you know, I don't recall. It's possible. I don't recall.

Is it possible that you had also had contact by 17 November, 2014 with Mr Azzi in which Mr Stavis's name had been mentioned?---Yes, that's possible too, but keep in mind these are councillors and they're taking an interest in what's going on and they're entitled to do that. So it would have been, maybe there was a conversation, a brief conversation, I don't know, I can't recall.

Sensitive

You told Mr Murphy on 17 March, 2015, the Office of Local Government investigator, volume 5, page 243, that Councillors Azzi and Hawatt wanted Spiro Stavis to be shortlisted for interview, and you've confirmed that in evidence, pages 4983 and 4991, in this inquiry. Do you recall that?---No, I don't recall that but - - -

10 Do you accept that you've given that evidence and that's what you told Mr Murphy?---Well, yeah. I, I must have. You've got it in front of you, I don't.

What was your understanding as to why Councillor Azzi and Councillor Hawatt wanted Mr Stavis to be shortlisted for the interview?---I wish I could answer that question. I don't, I really don't know. All I knew, all I know for certain is they didn't want Karen Jones.

And that was said to you before 17 November, 2014?---That I can't recall either. I think it was said either at the interviews or shortly afterwards.

20 So thinking of what was said to you before 17 November, 2014, did it come out of the blue to you that Councillors Azzi and Hawatt were saying to you that they wanted Mr Stavis to be shortlisted for interview?---I don't know that they actually, well, they could have said that. I don't recall now. All I'm saying and what I'll repeat is that they didn't want Karen Jones and that became very, very clear at the, after the interviews.

30 But you're conflating two different periods and I'm asking you at the moment just to think of the time when you were made aware that these men wanted Spiro Stavis to be a candidate included in the interview process. Thinking of that, was this a bolt out of the blue?---I, I'm, I'm really searching my memory now. I, I, I don't actually recall either councillor insisting on him being interviewed. I may have said I did. That may have been a misstatement on my part. I, I just can't recall. I mean it's nearly four years ago. I, I just don't have the memory of that.

40 You see, if they did then there's a coincidence, isn't there, between them asking for him to be shortlisted for interview and you asking Ms Carpenter for him to be shortlisted for interview.---Well, maybe it was telepathic. I mean, I, I had a view that they were certainly interested in Stavis. I don't know whether they had any prior knowledge of him or any association with him at that stage, I know I didn't, but I, I, try as I may, I can't recall either of them saying, "We want him on that shortlist."

So are you able to assist us at all as to why separately those two wanted him to be shortlisted for interview and you wanted him to be shortlisted for interview?---Well, I, I think that's a question for them. I mean, I don't know what was going through their minds and they haven't given that evidence yet, as I understand it. Now, maybe that question needs to be directed to

Sensitive

10/12/2018
E15/0078

MONTAGUE
(BUCHANAN)

5020T

them. Did, did, would they be able to say categorically, yes, we wanted him interviewed, because it'd come, it'd come as a, a little bit of an enlightenment to me if they said that. I, I can't recall the circumstances now.

Well, that's why I'm asking you, you see, whether it came out of a bolt from the blue when they did ask that he be shortlisted?---Well, that's what I'm trying to say to you. I don't know that they actually did that. Maybe it was just, as I said, a feeling that, that they, that he should be interviewed. I told you, I think I gave the evidence that when I asked Bechara Khouri if he knew anyone who was out there looking for a planning job, could he recommend anyone. He came back with Stavis's name. That was the first time I had ever heard the name. Now, he may have had conversations with Hawatt and Azzi, I don't know. They may have expressed that view to him but that didn't cut any ice with me at that stage.

And so what you've – thank you for that, you've drawn in Mr Khouri here. What we have is a situation where it would seem that it was the result of the actions of Mr Khouri, Mr Hawatt, Mr Azzi and yourself that ensured that Mr Stavis was shortlisted for interview.---Well, I was involved because I instructed Judith Carpenter to include Stavis on the list, yes. To that extent, yes, but that's all. I, I mean, there was, there was no ulterior motive as far as I was concerned. I said I wanted the best person I could find who could bring about the reforms that were necessary in the planning division.

Did you ask Ms Carpenter to shortlist Mr Stavis, despite what she said to you about his lack of appointability, because of what had been said to you by Mr Hawatt and Mr Azzi about Stavis needing to be shortlisted?
---Possibly, but I don't recall that either. I mean, I, I had it in my mind that he was, that I wanted him interviewed so - - -

Where did you get that idea from?---Well, as I said, it was almost subliminal, it was there that they were talking about him, and I, I, I don't know. Look, four years ago. I can't remember. I don't know now. It's impossible.

You can't assist us now as to why you asked for him to be shortlisted, despite what you were told by Ms Carpenter about him?---Look, I, I wasn't too concerned about what Ms Carpenter said. She was entitled to her opinion. She actually recommended, recommended him for interview, and he interviewed very well. Now, put that to one side. Yes, he was there, he was a candidate, he had a different range of experience altogether to the other applicants, including Karen Jones, and I did feel at the time that he would bring a totally new approach to planning, to how to manage the department, how to manage the staff, and how to get the outcomes the council was looking for, and I thought that was valuable, notwithstanding the fact that other people thought he may not have been suitably experienced. But any appointment like this is a stab in the dark a lot of the

Sensitive

10/12/2018
E15/0078

MONTAGUE
(BUCHANAN)

5021T

time. You get good people, you get bad people. They interview well but they perform poorly. That's been my experience.

So you can't assist us as to why you asked for him to be shortlisted in the circumstances?---I'd like to, but the answer is, no, I can't, other than what I've just said.

10 It would be surprising if it hadn't been because of what had been said to you by anyone or a combination of Khouri, Azzi and Hawatt?---I can't, look, Mr Buchanan, I can't put it any other way. I can't remember the precise conversation – if I had one – with either of those councillors.

I'm not asking you to think of the precise conversation. I'm now asking you to think of probabilities or likelihood.---Well, the probability is - - -

20 What other possible explanation can you give as to why you asked for Stavis to be shortlisted than that you had been spoken to by any one of or a combination of Khouri, Hawatt or Azzi?---Yeah, look, I think that's a reasonable conclusion.

When the panel convened on 17 November, neither Azzi nor Hawatt declared any interest?---Not that I recall, no.

And you told investigators – this is your first electronically recorded interview on 3 November, 2016, in Exhibit 53, page 58 – that is Azzi and Hawatt had some sort of relationship to Stavis before that date, 17 November, you would have expected them to declare that to the panel. ---Yes.

30 Is that still the case? Do you maintain that today?---Well, I don't think it would have been, I don't think it would have hurt if they'd done that, they'd made their position clear. Yeah, I don't resile from that.

You would have expected them to declare it? Not that it wouldn't have hurt, but that you would have expected them to declare it to the panel.---Well, it's up to them to make a decision whether they've got a conflict of interest or not.

40 That's different from you expecting them to declare it.---Well, we can play with words all day.

No, I'm asking you to tell us what your opinion is, your judgement as to whether if Azzi and Hawatt had some sort of relationship with Stavis before 17 November, they should have declared it to the panel.---They should have declared it at some time, yes, whether to the panel or whether to me personally.

Sensitive

Now, I'm not trying to be difficult, but what is your reason for saying that? Why should they have declared it?---Well, I think it's germane to the interview process that if they, if they had a relationship with Stavis that they should have advised the panel of that.

And why is that?---Because it's - - -

Stepping it through.---Because it's the correct thing to do. It's appropriate to do that.

10

But why is it correct?---Because it puts everything out there on the table. If, if their, if their judgement about any of the candidates could be influenced by a personal relationship, they need to declare that. It may have actually, if, if that was a strong relationship, it may have actually led to the panel being disbanded. But it's their call, not mine.

And when you say if it had been a strong relationship it may have led to the panel being disbanded, do you mean to say you may have disbanded it?

---Yes.

20

And what would be the benchmark for a strong relationship in your opinion?---Well, if they're round at each other's place for dinner all the time or they had some, a relationship, a personal relationship through the family or the business relationship or anything at all that could, could be held to influence decisions, planning decisions that are made in any way, shape, or form. Anything like that is, is necessary to be disclosed.

If they had shown a candidate the suggested questions, suggested by you for the panel members to ask of the candidates before 17 November, would that have been a reason why you would have disbanded the panel?---Yes, absolutely, but of course I didn't know that.

30

No, I understand that, I'm not suggesting you did.---No, I, I - - -

I'm just asking.---Yeah, I thought that was a violation of trust of the entire process, the panel, everything. That came as quite a revelation to me when I, when I, when it was reported here or given in evidence here that Spiro Stavis had had access to the questions before the interview.

40

Just turn to that just for a moment. You can see on the screen now volume 3 in Exhibit 53 and this is page 180.---Yes.

And it's the front page of a bundle of papers that appear to have been bound with black plastic ring binding on the left-hand side. Do you see that?

---Yes, I do.

And in Exhibit 53 they run from pages 180 to 214. You arranged for the papers to be prepared for the panel members - - -?---Yes.

Sensitive

10/12/2018
E15/0078

MONTAGUE
(BUCHANAN)

5023T

- - - and supplied to them?---Yes.

And you arranged for the – I withdraw that.---Well, sorry, I'm sorry, I take that back.

Start again.---That may have actually been prepared by Judith Carpenter at my request, because I notice it's on her stationery.

10 How would the panel members have received their papers?---Probably by, by delivery, courier delivery.

And would that have been arranged by council?---Yes.

Do you know how long before 17 November, 2014 it was that the papers were sent out?---Would have only been a matter of days, perhaps five, a week preceding, perhaps. That's our usual practice.

20 That's right. You're talking about the usual interval between delivery of papers and the meeting for which the papers are sent out.---Yes. For example, the council meeting, the papers went out on the Friday before the meeting on the following Thursday, so I would have thought this would have been similar.

Now, I just want to take you to something which is recorded in the transcript of your electronically recorded interview that occurred on 9 March, 2017. Exhibit 53, page 21.---Yes.

30 And if I could ask you to go to page 21.---Yes.

And line 5, and please don't think I'm being critical of you here, Mr Montague, all I want to do now is check - - -?---Yeah, I understand.

- - - so that we can just reconcile evidence to the extent that we can. ---Yeah, I understand.

40 You told investigators, you talked to investigators about these papers. You were asked by the investigators, this is the second line, "And then you, you've told us that they may have been provided to the councillors either on the day of the panel interviews or possible the day prior to prepare them." And you said, "More likely they were given to them on the day of the interviews."---Yeah.

Is it possible that that wasn't correct?---Well, look, I'm, I'm sorry, I'm confusing that program - - -

You don't have to be sorry. I'm just simply asking.---I'm confusing the program of interviews with the questions, the interview questions which

Sensitive

probably, they may have been sent out at the same time. Now, I, I seem to recall - - -

You can assume that they were.---Yeah, okay. Well, then, it would have been earlier, they would have been sent out sooner.

That's all I wanted to check.---Yeah.

10 Thank you. Now, you've expressed an opinion already about the impact on the selection process of the provision of suggested questions to candidates beforehand, particularly to one candidate and not all of them. Would you accept that it would have contaminated the whole process?---Oh, absolutely.

Would you excuse me a moment. I'm showing you on the screen the first page of Exhibit 60, which is a set of call charge records for Mr Khouri, Mr Vasil, yourself, Mr Hawatt, Mr Azzi and Mr Stavis between 25 October, 2014 and 20 November, 2014 and can I just ask you, please, about – we're on the sixth page.---Yeah, yeah.

20 And can you see that where the hand is, the cursor on the left-hand side – excuse me. I might have an incorrect entry. I think I've made a mistake, Mr Stavis – I'm sorry, Mr Montague. Yes, I made a mistake. It's lower down on the page than I had thought.---Yes.

Do you see where the hand is?---Yes.

It's against an entry for 9.02pm on 16 November, 2014 and it's an SMS that's recorded as having been sent by you to Mr Stavis and 16 November was the day before the interviews.---Yes.

30 9.02pm. Can you tell us what that SMS was?---No. No, can't recall. I don't know. No, sorry.

Perhaps I can assist you. If we could have a look, please, at volume 3, page 162. It might be a bit easier if you can actually see the text itself. Can you see at the top of that page there's a, this is a screenshot of text messages on Mr Stavis's phone.---Yes.

40 And at the top, for 16 November, is the message from you, or from your phone, "Hi, Spiro. Sorry, couldn't get back to you. See you tomorrow. Jim." Do you know why you sent that?---Might have been just to confirm that he was coming. I don't know.

It suggests that you thought Mr Stavis had an expectation that you would have been speaking to him before the interview.---No, look - - -

In fairness to you, the Commission doesn't have a record of the communications from Mr Stavis before that, and you could have been

Sensitive

10/12/2018
E15/0078

MONTAGUE
(BUCHANAN)

5025T

responding to him.---Possibly. I, look, it could have been anything. It could have been he may have jumped the gun. He may have contacted me about certain conditions associated with the role and just asking questions, as an interviewee would. Not assuming he'd get the role, of course, but maybe he just had some questions about the process. I, I don't know.

10 Do you have a record of – I do apologise, do you have a memory of having contact with Mr Stavis before the interview?---No, but it's possible, it's possible. But as I said, it would have been routine, probably routine things that he was concerned about. You know, where, where, where do I come for the interview? Maybe that wasn't spelled out clearly enough where it, if I said it was the function room upstairs, where is that? Who knows?

All right. I understand what you're saying. Can you assist us, though, as to whether you initiated contact with Mr Stavis before the interview?---I, I, I wouldn't have, no. He probably approached me if, if there was any approach at all. Clearly there was because I've said, "I couldn't get back to you. See you tomorrow." Now, maybe I was just stonewalling. I, I just don't know the circumstances surrounding that contact.

20

Thank you. Can I ask you about what occurred on the day of the panel?
---Yes, of course.

30 And the conduct of the interviews. Is it the fact that their generally on the part of Mr Hawatt and Azzi was hostility to candidates other than Mr Stavis?---Their behaviour in relation to the interview wasn't satisfactory. I thought they were, particularly in relation to Karen Jones, I thought they were unnecessarily aggressive and argumentative with her, and that was the tenor, tenor of the whole interview process. They, they didn't distinguish themselves through that interview process at all. They, they, they didn't conduct themselves in an appropriate manner, in my opinion, and I was, I regretted that. But that's how it went.

And is it the case – I withdraw that. Was it the case that before the first candidate was interviewed there had been discussion between panel members which resulted in the allocation of particular suggested questions to particular panel members?---That, that's the normal procedure, yes.

40 Did that occur in this case?---I believe so. I don't know why it wouldn't have.

And is it the case, though, that panel members did not stick to suggested interview questions?---Yes, that's true.

Is it the case that a principal concern indicated by questions asked of candidates by Councillors Azzi and Hawatt was whether candidates would comply with the directions of the general manager?---That was something

Sensitive

they raised, yes. They didn't explain themselves but that certainly came up through the process, yes.

10 What did you understand them to be referring to?---Well, that's a good question because to this day I haven't worked it out, but I, I assume they meant that since I was in the most senior position in the council that I would, that the director of city planning – all directors, for that matter, all staff, all senior managers – would comply with my requests. Now, that's one explanation, and I know what you're thinking, I think I do, another explanation could be, of course, that they would expect me to direct them in accordance with the wishes of the two councillors. That's not correct and nor did they express that at the interviews.

20 Would they have been justified in thinking that Mr Occhiuzzi had not complied with any of your directions?---I don't know. That was never expressed to me. They, as we've already heard in evidence here, Mr Occhiuzzi didn't enjoy a good relationship with those two councillors, for reasons that still aren't that clear to me, and I, I think their view was that we, we didn't want to repeat that, that process with this new director.

30 But had Mr Occhiuzzi not complied with any of your directions?---Nothing specific that I can think of and I, I, I, I was, I didn't find it necessary – nor, nor did I right up until the time I retired – to direct senior staff in how they do their jobs. That's not my role. I would expect them to comply with council policies and codes, and in the case of the planning director I would expect them to comply with the instruments, the planning instruments, both at council level and state level. I expected them to do their job as effectively and as efficiently as possible and legally. That, that was my expectation and I expressed that to each director in relation to their particular roles.

40 Did you ask candidates the question as to whether they would comply with your directions?---No, no. I raised the issue about loyalty and again, that's another word that appears to be a bit out of favour, it's something I strongly believe in, no matter what connotation you put on that word, I, I may have raised that, "Are you loyal?" meaning are you loyal to me, to the organisation, to the mayor, to the council. That, that, I think that's an important quality in any senior staffer and I, I don't retreat from that. I had been undermined by a previous director and I didn't wish to go through that again.

Was there anything said about development controls along Canterbury Road being an obstacle to good development there?---No. Not in the interviews, no. But Councillor Azzi and Councillor Hawatt didn't say a great deal at all, as I recall, through the interview process.

Was there a question from possibly Councillor Azzi about whether or not a candidate would attend a meeting of a resident group or grouping of

Sensitive

10/12/2018
E15/0078

MONTAGUE
(BUCHANAN)

5027T

residents who were opposed to development, whether or not you would attend the meeting?---Well, I didn't attend those sorts of meetings as, as a matter of course. There were exceptions to that over the years but I didn't attend site inspections, I didn't go out to resident meetings. That's the councillors' job, is to deal with the residents.

Were there any questions about laneways at the back of developments?
---There could have been because laneways was, was a particular hobbyhorse of Councillor Hawatt in relation to, particularly to
10 developments along Canterbury Road. I don't recall specifically a question about that, but certainly laneways was something that exercised a lot of his time.

THE COMMISSIONER: Do you remember a question about the attendance at residential group meetings?---No, I don't, I'm afraid, Commissioner.

MR BUCHANAN: About whether a director would attend, whether the
20 director of planning would attend such meetings?---Well, my view now, sitting here now, would be that, and the answer is yes, if, if, a, if a director is requested, then it used to happen all the time in previous councils, where we had site inspections and like. Yes, I would expect - - -

Just interrupting you if I may. In 2014, was there an issue with the director of planning attending residents meetings?---Not that I was aware of, no.

It hadn't ever been raised in respect of Mr Occhiuzzi?---There was only one particular issue and that was that piece of concrete that we've talked about before where he did go down to that site. I, I guess - - -
30

But that was more a site meeting.---Well, yeah, but it's about the same thing because the residents were there. There were people there, the application was there as I recall. I didn't go. And he went there, I think he thought he was doing the right thing to try and help out, which I think is admirable. I don't think the meeting went all that well, though, from what I heard afterwards.

Would it be fair to say that what was said by councillors at the interview panel indicated that there was very strong pressure to make development
40 happen?---At the interviews?

Yes.---No, no. No. I, as I said, they, they, particularly Councillor Hawatt didn't say a great deal and, no, I don't recall them actually forcing that point that, you know, we want development to happen or anything like that. I, I don't think it was that overt.

THE COMMISSIONER: But you described them as being aggressive and argumentative.---Well, because – mainly towards Karen Jones and I think

Sensitive

that came from the fact that she was a woman, a young woman. Her background was Leichhardt Council, where, you know, the politics of Leichhardt are very different to Canterbury, and Councillor Azzi in particular made it very clear that he didn't want a leftie greenie from Leichhardt to be our director. He made that clear on numerous occasions.

MR BUCHANAN: Is it right that there were no questions asked of candidates about organisational finance experience or qualifications?---I don't believe so, no.

10

No questions were asked about HR, human relations?---No.

No questions were asked about risk experience and capabilities?---No, not that I recall. I mean, I don't know the, the director of city planning, other than assisting in the preparation of the annual budget, would have much to do with the finances anyway as long as they keep their budget under control, which is not difficult, but there weren't, certainly weren't any, wasn't any exhaustive questioning about matters that weren't specifically related to town planning.

20

The selection criteria that you had established were – and I'm not suggesting for a minute this was inappropriate – broad in their scope?---Yes.

The need for a change agent, the need for experience in organisational management et cetera. Is it right to say that the questions did not focus on those broad criteria but instead were narrow in scope, focusing on planning and development issues?---It is, it is straight off the script, yes.

30

And they focussed on planning and development issues?---Yes. Generally speaking.

Excuse me. It's been suggested to me it might be a suitable time, Commissioner. I'm sorry, I'd forgotten.

THE COMMISSIONER: That's all right. Mr Montague, I meant to remind you at the beginning of the day, if you need to stand up at any time, giving your evidence, or if you need to take a break, just raise it.---I will. Thank you very much.

40

But we'll have the morning tea adjournment and come back at about twenty minutes past 11.00.

SHORT ADJOURNMENT

[11.02am]

MR BUCHANAN: Mr Montague, what was your opinion of how Mr Stavis performed in the interview?---I thought he performed very well actually.

Sensitive

10/12/2018
E15/0078

MONTAGUE
(BUCHANAN)

5029T

And that was obviously on the basis of his response to the questions that he was asked?---Yes.

10 And the questions that he was asked were, as we discussed before morning tea, that is to say they didn't exactly focus on the selection criteria, they focussed more on questions of whether he would comply with your directions and specific planning and development issues?---As best I can remember the questions that were asked, and that's difficult now, what I mean by saying he performed well was he was confident, he answered very clearly, there was no hesitation, he seemed to me to be quite impressive in the way he conducted himself in the interview.

20 Now, I just want to take you to something that Mr Murphy of the Office of Local Government recorded after his interview of you at council chambers on 17 March, 2015. It's volume 5, commencing at page 240 at page 242. He recorded that you told him that it was, obviously in your opinion, a mistake to include Councillor Azzi and Councillor Hawatt on the interview panel and that they, to use your word, "blindsided" you. And my question is, what did you mean by that?---Well, I've already said earlier this morning that I think forming the panel was a mistake, I didn't have to do that but I did it for the right reasons, I couldn't have imagined how that process would unfold, and I think in retrospect, thinking back now on reflection, the process was not that satisfactory.

30 But what was it when you used the word "blindsided" to describe what Councillors Azzi and Hawatt did to you as a result of them being on the panel?---Well, because they didn't stick to the script, because they - - - Nothing more than that?---Nothing really, no. And as I said, and I repeat, they, they didn't really have that much to say but what they did say I thought constituted, or what they said I thought was inappropriate by and large. It wasn't a comfortable sort of atmosphere in that room.

Can I ask you now about the same day, but after the last candidate had departed, and I think the last candidate was Mr Stavis?---Yes.

40 Thinking back to that day, when did Mr Stavis depart? What was the time at which the last interview concluded?---It would have been probably mid-afternoon by that stage, probably a bit later than that. He was the last candidate. I think from memory from what you showed me earlier his interview was scheduled at 2.30.

And did the panel then sit around and discuss candidates or did the panel move to another part of the building? What happened?---There was some discussion immediately after Mr Stavis left at the conclusion of the interviews. I can't recall exactly what was discussed but it was, was, was

Sensitive

fairly, you know, uneventful if you like. Nothing was said concerning, not as I recall, nothing was said that concerned me overly.

How long did the post-interviews discussion amongst panel members go for?---Not very long, not very long.

No more than half an hour or less?---Oh, probably less from memory.

10 And was Ms Carpenter present?---I believe so, yes. I can't be certain of that either, but I believe she was because she was there as an observer and to give me advice and I would have expected her to stick around.

She has told us that the forms that had been distributed for panel members to complete as to their opinions about how candidates had responded to particular questions were useless.---Yes.

20 And there was no use that was able to be made of them because panel members hadn't completed them as required.---That's right. That's as I recall it. I think they, they treated that as fairly perfunctory. You know, they didn't, I, I don't think they saw any, any need to do that. Maybe because, as you suggest, they had their mind made up already, but that didn't come across to me.

30 Ms Carpenter told the Commission, this is page 134, that at that discussion Councillors Azzi and Hawatt indicated their preference was for Spiro Stavis.---I don't recall that. All I can honestly remember now, because it just loomed large then and it does now, they said they would not have Karen Jones. I, I don't recall them actually saying they wanted Stavis. They may have but I don't recall it.

40 So I just want to take you to some evidence that you gave on 17 October, here, and you said at transcript page 4869, "Pierre Azzi and Michael Hawatt made it very clear in deeds and words that they, they were inclined to support Spiro Stavis." And then later, transcript page 4871, you said, "It was pretty obviously, it was palpable that they wanted to appoint Spiro Stavis, right." Was a preference expressed by Michael Hawatt or Pierre Azzi at that post-interview discussion amongst panel members for any particular candidate?---I seem to remember them – yes. I seem to remember them, well, I think it was after the interviews, remember saying that they, they liked Manoski and that they probably wanted to put him on funnily enough, and that Stavis would be their second choice but they didn't want Karen Jones. So Manoski I thought loomed large in their minds because he was also quite impressive in interview. That's just a feeling I got, but they did say, I think it was Azzi said, "Well, I, I'd prefer Manoski."

Was a shortlist of interviewed candidates, even if only notionally, created by the end of that discussion?---Well, look, my thinking was that they probably

Sensitive

would have gone for either Stavis or Manoski, probably in reverse order, but not Jones. That, that - - -

Yes. I understand what you say about them but there was also Mayor Robson and yourself.---Well, I, I, I don't know that the mayor, I think one of the things I remember Brian, Brian saying, I don't know exactly when it was but, "I'll go along with Jim," words to that effect, that whatever Jim wants, right.

- 10 Can I suggest to you he said that a little later.---Well, he could have, and that was reassuring for me because I knew I had him onside but beyond that, I, I don't recall any further conversation about the applicants.

Would it be right to say that by the end of that discussion amongst the panel members on 17 November there was a shortlist of suitable candidates comprising three candidates?---Yes. It would be fair to say that.

- 20 Did you at that meeting instruct Ms Carpenter to undertake reference checks on those candidates or have a discussion with her about her conducting reference checks on those three candidates?---I think I did instruct her to undertake reference checks, but I don't know that I did it then. It might have been after that on the phone. I can't recall but I, I, did ask her to undertake reference checks on the three shortlisted, at least in my mind, three shortlisted candidates.

- 30 Mr Murphy recorded on 17 March, 2015 that you told him – this is volume 5, page 242 – that at some stage Mr Azzi indicated that he didn't want a woman and he didn't want a Greek.---He definitely made it clear that he didn't want to employ a woman, absolutely. I can't say Hawatt did that, but certainly Pierre Azzi did, he, because of her background and the fact she was a woman. The Greek comment, back in the recesses of my mind I think he could have said that, but I don't recall him actually saying it.

And the only person of Greek extraction who was a candidate who was interviewed was Mr Stavis.---Well, as far as I know. I don't know what Manoski's background is.

Did Mr Azzi communicate to you that he didn't want a woman?---Yes.

- 40 Did he communicate to you that he didn't want a Greek?---No.

That evening did you have a telephone conversation with Pierre Azzi? I suggest around 5.34pm.---Could have. Could have. I don't recall it.

You don't recall having a conversation with Mr Azzi at that time?---No, no. No. I was talking to Azzi and the mayor, and Hawatt to a lesser extent, continuously after the interviews to try and, you know, resolve the issue

Sensitive

10/12/2018
E15/0078

MONTAGUE
(BUCHANAN)

5032T

because they were on the panel. That was fine. I had no, it was just an extension of the panel process. That's how I saw it.

And can I just pick you up on just something you said there a moment ago just to check that that's what you intended to say. Was the degree of contact that you had on the subject of who should be appointed after the interview panel had sat greater in the case of Mr Azzi or greater in the case of Mr Hawatt, of the two of them?---Azzi. Azzi.

10 More in the case of Mr Azzi?---Yes, yes.

That's your recollection?---Yes, well, that's, that's his personality, his nature. You know, he's just more full-on.

Yes, it doesn't necessarily mean, though, that his contact with you was the more frequent. It might have been - - -?---No, I - - -

- - - that you have a memory of it because he's more full-on.---Well, because of the way he conducts himself, you don't forget it.

20

Yes.---But I can't say the same about Councillor Hawatt. I did discuss it with the mayor, of course, frequently, on numerous occasions in his office or mine. It was common, standard practice. But I don't recall having any in-depth discussions with, with Hawatt about it after the interviews.

Now, you told Commission investigators on 3 November, 2016 – this is your first electronically recorded interview at Exhibit 53, page 17 – that “Azzi and Hawatt expressed concerns about Jones’s political background coming from Leichhardt,” and that in that context the word “greenie” was used.---Yeah, I remember that because I spent 16 years (not transcribable) at Leichhardt. I'm very familiar with the area and the council and I understand the politics of it.

30

Yes, but do you recall both Azzi and Hawatt indicating concerns about Jones because of, amongst other reasons, having come from the Leichhardt Council and being potentially a greenie?---Yeah, more, more Azzi. More Azzi, and I think Michael may have had his hand up Pierre's back, I don't know, but Pierre did all the talking.

40 Now, just thinking about the significance or the meaning of a concern expressed to you by Councillor Azzi and/or Hawatt about Jones coming from the Leichhardt Council, did you understand the gravamen of the objection to be that she would be unlikely to be pro-development?---They didn't, they didn't say that in so many words, but I think they were concerned about her attitude towards development, and given Leichhardt's history that's understandable. But by far the overriding issue was she was a female.

Sensitive

Just taking that first part of it, though, if you could just put into words for us so that we have it on record, what is the significance in this context of a concern that a candidate for director of planning at Canterbury was of Leichhardt Council background?---Because of the history of the, of Leichhardt.

Which is, in a word or two?---Which is, well, in a word, I'm just trying to think of the right word to use, they weren't very progressive in terms of development. They wanted to keep the whole area like a village.

10

And was there a concern as you understood it on the part of Councillors Azzi and Hawatt so far as concerned Ms Jones that she'd be likely to be a little bit conservative in her application of planning controls? ---Yes, I think that's fair to say.

20

Now, you told investigators on 3 November, 2016 – this is pages 30 to 31 of the electronically recorded interview transcript in Exhibit 53 – that Councillors Azzi and Hawatt did not overtly criticise Manoski in your presence, but that you got the impression that they strongly supported Stavis.---Maybe I was reading more into it than, than I should have, I don't know, but that's the impression I got, that they, they, they were certainly more pro-Stavis. However, as I said, Azzi I'm pretty sure did say that he'd be happy with Manoski.

30

And now what I want to do is ask you, is that an impression you got from what they said to you in the debrief, as it were, that occurred on 17 November after the last candidate had gone, or are you taking into account everything that occurred thereafter until you appointed Stavis?---I think a combination of both. I mean it was, it was just an ongoing moving feast. They certainly expressed that, I remember Azzi expressing that view after the interviews that Manoski would be, would be acceptable.

40

Now, you sent an email, we'll just bring it up on the screen, you sent an email to Ms Carpenter at 7.02 that evening saying, "Thanks for your assistance. Off the record, my choice is Karen. I'm concerned, however, that she may be put off by the behaviour of the councillors at interview. I would be grateful if you could explain to her that she'll be reporting to me, not council, and not to take the interview too much to heart. By the way, my second choice would be Simon."---Yep, I don't retreat from that.

And was your preference for Jones because of her extensive senior management experience in similar roles at the parliament?---That plus the

And in local government?---Yes, that plus her experience in, at Leichhardt, which area I know very well, I know how they operate in the planning area, plus the fact, and maybe I shouldn't say this, that she was a woman and I

Sensitive

10/12/2018
E15/0078

MONTAGUE
(BUCHANAN)

5034T

wanted some gender balance on the management team and we had, all we had was four males, or we would have.

But at the end of the day that, that would have been an added extra.---Yes, yes, but an important one I think, an important one in terms of demonstrating our commitment to equal opportunity, which I think these days is important.

10 You told the Commission, transcript page 4869, that Stavis was not your first preferred candidate.---Yes.

You say that he interviewed well. You thought, did you, that he was a very good candidate? This is what you told the Commission investigators on 3 November, 2016 in the transcript at page 31. You adhere to that?---I, I don't know that I used the word very, but he was certainly a good applicant. If I said very, well, I said it, I can't retreat from that, but he was a good candidate. What I liked about him was that he had a different type of experience in his own practice and I thought, maybe foolishly at the time, that he could bring something to that role that we hadn't had before and he could actually reform the planning division and change the culture which was in desperate need of change.

Now, that said, he didn't meet the specifications for the position and you'd been told by your recruiter that he didn't.---I'm not sure when that actually happened. I, as you know and we'll get to this later no doubt, but the second round of interview checks were not satisfactory, but at that time, at the interview, as I said earlier, he conducted himself very well and I thought he was worth a punt, worth a chance.

30 But your specifications were – in the information pack for the position, volume 3, page 26 – that the successful candidate would be a change agent and have a demonstrated ability to drive and implement change. That they would demonstrate leadership, a strong people manager with demonstrated skills leading a diverse group of people and experience in local government or the broader public sector in a comparable role was essential. You can understand why Ms Carpenter told you that Mr Stavis didn't meet those criteria, can't you?---Well, I can, but that was her opinion. I didn't share that opinion and I actually think that, that he did satisfy most of those criteria.

40 But he didn't demonstrate it, did he?---Well, he, he performed well at interview and keeping - - -

But how does that demonstrate an ability to drive and implement change and experience with demonstrated skills leading a diverse group of people or experience in local government or the broad public sector in a comparable role?---Well, he had experience in local government in a similar

Sensitive

role. Not a comparable one but certainly a similar role at two councils or three maybe I think.

As a senior planner?---As a, as a senior person in a planning team, yes.

Not managing anyone.---Well, I mean - - -

10 Wasn't part of your complaint about Mr Occhiuzzi was that he hadn't been satisfactorily managing his department, his division?---That's true, but we're talking about Occhiuzzi, not Stavis. That's a totally different kettle of fish, both of them.

But the specifications that you wrote for the position arose from your experience with Mr Occhiuzzi, didn't they?---No. I mean, I would have asked the same things of him when he was interviewed for the role, only I didn't use the panel then and I remember he was a, he wasn't any more senior at Parramatta than Spiro was at, at Botany or Strathfield for that matter.

20 Now, I just want to clarify, I'm going back to the subject of your contact with Mr Stavis before 17 November and I suppose it necessarily follows but I need to ask you, and it sort of follows from evidence you've already given, before his application for the position was received, had you had any contact with Mr Stavis directly?---I don't recall, well, I don't believe so but I don't recall that.

Well, the application was in October.---Yeah, I, I think - - -

30 Late October.---Yes, but, but I think, as I've said repeatedly in the past, he, Khouri may have had conversations with him or may have had conversations with the two councillors. I don't know what information they conveyed to Stavis and I don't recall - - -

I understand that. I'll just interrupt you if I can. I'm asking you about direct contact.---No, I don't believe - - -

40 As to say did you meet with Mr Stavis - - -?---I only met, I only recall one meeting with Stavis and I know other people are suggesting there were more but I, I can't - - -

That's why I'm asking you.---No, well, I don't believe there was but there was one meeting at that was at Giorgios Café and that was after the interviews were conducted.

And you're quite satisfied it was after?---Yes.

What is it that makes you think it was after?---Because that's how I conducted myself. I wouldn't have had interview, just meetings with

Sensitive

people, I didn't meet the others but I tried to set up meetings with Karen Jones, Stavis and Manoski and failed in the case of Manoski, but I met the other two after the interviews. I'm absolutely sure of that.

10 So you didn't have a contact with Stavis before 17 November in which you spoke to him on the phone, telling him that you heard he was interested in the position?---No. I, I don't recall that. I, I don't but it, it could have happened. I'm not saying it didn't happen but it, it would have just been incidental. I, I don't, I wasn't trying to engineer him to get the job, if that's what you're implying and, and I - - -

Or following up on something Bechara Khouri had told you, to talk to the person that he had referred to you?---No.

Or referred you to.---No. I don't believe so. I said to Khouri, "If he's interested in the role, tell him to put an, submit an application with Judith Carpenter."

20 Excuse me a moment. You might have spoken with him on the phone before the interview?---Possibly, yes, but it would have been a very brief conversation and of no real consequence. I certainly wouldn't have been giving him any tips on how to prepare himself for the role.

Or indicating what it was that you looked for in the successful candidate? ---No, I, I certainly made that clear after the interviews that I, what I expected from the, from the candidates or from the shortlisted candidates, and I did the same with Karen Jones, and I would have with Manoski had I been able to contact him, but he was overseas.

30 Just on that very last point, is that something that you know as a result of evidence in this Commission?---No, because when I tried to contact him I was told that he wasn't available. Judith Carpenter I think told me that because I asked her to follow up and, and she couldn't reach him either.

Thank you. Excuse me a moment. Can I just take you to Exhibit 60 again, please, the call charge records for this period.---Yeah.

40 On 12 November, 2014, just page 5, there were a number of calls you can see that you have initiated under Phone User 1 in the left-hand column on that page.---Yes, yes.

Starting, if you wouldn't mind, at the fifth entry, which is when 12 November started, and going down. You had numerous calls with Hawatt, Azzi and SMSs with Khouri.---Yes, it looks that way.

And concluding at 7 o'clock in the evening on 12 November, if I might just draw your attention to it, a text from Mr Khouri to Mr Stavis. Do you see that there's a series of communications involving yourself and Mr Khouri?

Sensitive

For example, at 7.23 the line is open for 10 seconds there. Mr Khouri texts you back at 9.24. You then ring Mr Stavis and the line is open for 34 seconds, and then at 7.31 Mr Stavis rings you and the line is open for 1 minute and 53 seconds. Do you see that?---Yes.

Now after that Stavis and Khouri, in the highlighted section on that page, exchange eight text messages with each other. What was said in your telephone exchange with Stavis on that day, 12 November, 2014?---Well, that was prior to the interviews, of course.

10

Yes.---I've got no idea. I can't recall that now. I - - -

When you first saw this - - -?---Maybe, maybe - - -

I'm sorry, go on.---Maybe rang to find out something else about the role, who knows. May have had a simple question. I was committed to the interview process but I, I don't know why he called me.

20

Well, it obviously would have assisted him to perform well at the interview if he had an understanding of what you were looking for.---Yeah, but I'm not saying we had an in-depth discussion about, about that. It may have been a simple question on his part. I don't know. As far as I'm concerned, the rubber hit the road on 17 November when the interviews were conducted. Prior to that - - -

But so far as contact between Stavis and Khouri was concerned, the rubber hit the road straight after that telephone contact between you and Mr Stavis around 7.30, 7.31.---Yes.

30

That is to say they had those numerous texts between each other.---Yeah.

When you first saw this page – I appreciate you've seen it before today, but it's in the course of understanding the evidence given in the Commission, correct?---Ah hmm.

Did it surprise you that there was that degree of - - -?---Look - - -

40

- - - contact between Khouri and Stavis straight after Stavis spoke with you? ---Didn't surprise me because we've seen throughout these proceedings that there was a lot of contact with different people that I may or may not been aware of, which is disturbing in a sense, but you've got to understand how Bechara Khouri thinks. I mean, he, I suppose he thought, well, he likes to get involved.

Well, it's initiated, the contacts between him and Stavis are initiated by Stavis.---Well, I don't know - - -

Sensitive

Stavis thought that it would be of assistance to him to talk to Khouri.
---I don't know what relationship Stavis had with Khouri prior to him coming to the interview, I believe that was the first time I met him. I wasn't aware of any of this interaction between the two of them and I can't, I can't speculate about what they may have been discussing, I just can't. As far as I was concerned, the interviews were the test, and if he had performed badly at interview, I mean really badly at interview, or clearly lack the necessary background or qualifications to take the job on, I believe I would have rejected him and maybe that would have put me at loggerheads with the
10 councillors, but deal with that when the time comes.

Stavis has told the Commission, transcript page 3331, that he believed that in that telephone exchange with you, you indicated you wanted to meet him.
---Yeah, right.

This is on 12 November, 2014.---Well, that goes back to this view that I had a meeting with him before the panel and I don't believe I did.

No, no, no.---12 November.
20

The question I'm putting to you is, is it correct, was Mr Stavis correct when he told the Commission that he believed that in that telephone call exchange with you, you indicated you wanted to meet with him?---No, I don't know whether that's correct or not, I can't recall that. I don't, I mean that's, they're his words. Perhaps he should answer that question.

Can I take you then to the pages of Exhibit 60, this record of telephone calls and SMSs that is for 13 November, and if I can just direct your attention to, starting at 10.58 on 13 November, I think we've just enlarged it for you and
30 you can see where the cursor is.---Yeah, got that, yeah.

There's a series of calls and texts from Khouri to Hawatt and then at 11.01 Hawatt called Khouri and the line was open for 3 minutes at 50 seconds. Can you see that where the cursor is?---Yes.

And then at 11.13am, you called Hawatt. The line was open for 1 minute and 54 seconds. Then at 11.21, Hawatt called Azzi. The line was open for more than 2 minutes. At 12.34, Hawatt called you. The line was open for 27 seconds. At 12.34, you called Hawatt. The line was open for 10
40 seconds. At 12.46, Azzi called your office. The line was open for 2 minutes and 49 seconds. Just pausing there, I think you'd accept that if the line was open for that long, the likelihood was that he was talking to you.
---Possibly, yeah.

At 2.51pm, Hawatt called you. The line was open for 1 minute, 14 seconds. At 7.36 in the evening, Mr Azzi texted you and then at 10.56pm, Azzi called you and the line was open for 1 minute and 52 seconds. 10.56 at night.
---Yes. Well, that's not uncommon.

Sensitive

10/12/2018
E15/0078

MONTAGUE
(BUCHANAN)

5039T

Wasn't uncommon?---Not to hear from councillors at all hours of the night and day.

10 Is there anything you can assist us with as to what these communications were about, what these contacts were about on 13 November?---One could assume that it had something to do with the appointment. That is an assumption. I mean, I had a lot of contact with, with Bechara Khouri. As I said he was a, a business friend, a professional friend and we often made contact, had contact with each other. As to what the subject matter was, I, I'd only be speculating about that. It may have had something to do with the appointment. I, I don't know.

But during the daytime – and I appreciate you worked longer hours than 9.00 to 5.00 – but during the daytime you were conducting council business as the general manager by and large, weren't you?---Yes. Yes. Yes.

20 It would be unlikely that Khouri would have been calling you to discuss the football or the cricket?---Well - - -

He would have been calling you to discuss council business, is that right? ---Look, I worked on the view that when you're on top, you're on tap. I didn't mind who rang me at whatever hours it was.

Yes, but it's what Mr Khouri was ringing you about.---Well, I don't know.

30 During business hours. It's likely to have to been council business, isn't it? ---Not necessarily. He could have just rung and said, "Look are you going to have a coffee tonight at Concord?" Something like that, and I'd say, "Yeah, I'll see you on the way home." That, that, that, that wasn't uncommon. But I have to say that it's a long bow to draw that – if this is what you're implying, I don't know – that he was trying to apply pressure to me to appoint Stavis. That's wrong. He didn't do that.

Or try to influence you?---No, he didn't do that.

40 He might not have needed to have pressured you if you were able to be influenced by him.---Well, I wasn't able to be influenced by him, though. I mean, he, he, I, as I said, he was a professional acquaintance, not a friend in the strict sense.

But you'd have coffee with him at night at his suggestion?---Yeah, on the way home, yeah, sure. If I was working back late I'd call in at a coffee shop in Majors Bay at Concord, we'd have coffee, there'd be a few other people there that we knew. We had some good times but I didn't let him influence me and he wouldn't even attempt to influence me on major things because he knows, he, he would have known the answer he'd got. I would have

Sensitive

said, "Bechara, I hear what you're saying but it's got to go to council. They've, they've got to be satisfied with what I'm recommending."

But on the scant amount of information available to the Commission, we know, don't we, that he did influence you in relation to the appointment of Spiro Stavis?---No, he didn't influence me. He put, he, he, he gave me Stavis's name and as I said repeatedly - - -

10 He started the ball rolling.---Well, by request, though. I asked him did he know anyone in the planning area that might be interested in a role because his son was a planner, Bechara had a lot of interest in, in councils in the, in the immediate vicinity of Canterbury, including Strathfield and others and I said, "Do you know anyone?" I was a pretty desperate man at this stage and I needed to get somebody in that role. So, he, he was just one, one of the elements in trying to recruit the right person.

But you didn't contact, I think you told us previously, other general managers?---No.

20 And you instead contacted someone who was, as you knew, a lobbyist for developers?---Well, you're saying he's a lobbyist. I don't know what his, what his particular occupation was. I didn't contact other GMs as they didn't contact me.

Can I ask if we can go back to Exhibit 60 for 14 November, 2014. Between 12.40 on 14 November – see where the hand is now?---Yeah.

30 Until 3.46, there were five calls between you and Councillor Azzi.---Mmm, but that could have been about anything. It may not have been connected with this appointment. Councillors rang me all the time.

But you didn't get contact, did you, as frequently as you did from, and on your part to, those two councillors?---No, that's not, look, of the 10 councillors who were on the council, leaving the mayor aside for a minute, the ones who have contacted me the most were in fact Azzi, Hawatt, Adler and Kebbe. They were the ones who contacted me the most on a variety of subjects. Could have been anything that I could assist them with.

40 We know – I withdraw that. The Commission has evidence that on Sunday the 16th there was a meeting between Mr Stavis and Councillors Azzi and Hawatt at a coffee shop at Marrickville in which the papers for the interview panel were accessed by Mr Stavis. The likelihood is, isn't it, that these calls between you and Mr Azzi on the Friday before were about the interview panel and the candidacy of Mr Stavis.---Not necessarily. As I said, it could have been – and I didn't know about that meeting at Marrickville.

I appreciate you didn't know, but now that you do, and knowing what you know about the evidence, of the interests that Azzi and Hawatt had in the

Sensitive

10/12/2018
E15/0078

MONTAGUE
(BUCHANAN)

5041T

appointment of Mr Stavis, even if it's only from your own exposure to them, don't you think it's likely that, in these five calls between you and Mr Azzi on 14 November, Mr Stavis's name was mentioned?---Possibly. But, and as I said earlier, had I known that he had access to those questions before the interview or that they were discussed or handed over at that ill-fated meeting at Marrickville, that would have aborted the process.

Please don't misunderstand me. I'm not suggesting that you did, okay? That's not on the agenda.---I understand.

10

What I'm asking is, was there nevertheless discussions that you were having with Hawatt, with Azzi and from time to time with Khouri about Stavis's candidacy for the job?---Possibly, but that, it would have been on the periphery. There wouldn't have been anything specific. Certainly I wouldn't have, I wouldn't have been party to having the questions handed to him or suggesting that he get the questions prior to the interview.

No, I'm not suggesting you did, but could it be, looking in retrospect at this, that they were trying to influence you in favour of Mr Stavis at that time?

20

---No, well, I told you before, and it's in the evidence, that I think it was Azzi said to me that "If you don't give him the job, find him a job." I remember that conversation. I'm just remembering now the things that stick, right?

We'll come back to that. That's a bit later, isn't it?---Yeah, it is. But it means that they may have been trying to pressure me but, but I pushed back and said, look, I'm not going to put him on just because you say so. Now, there was that, that episode, and, and the one that you'll quiz me on later no doubt, and I was astounded when I heard that he had the questions before the interviews. And obviously there was a lot going on behind the scenes that I had no knowledge of. That's disappointing and disturbing.

30

If we could go back to volume 3, page 162, please. This is the screenshot of text messages between you and Mr Stavis.---Yeah.

And do you see that on 24 November, bottom of that page, 10.28am, Mr Stavis texted you saying, starting out by saying, "Hi, Jim. Hope you had a good break." You'd been to New Zealand for a break?---I think so. I think that's right, yeah.

40

Can you assist us as to how Mr Stavis would have known that you had been on a break?---I mean, the dogs are barking about it. Whenever I'm not in the office, people know, things get around. It could have come from the councillors. Who knows? Could have come from another staffer.

Or Mr Khouri?---Possibly.

Sensitive

10/12/2018
E15/0078

MONTAGUE
(BUCHANAN)

5042T

Not because you had told Mr Stavis that you were going on - - -?---I don't, I don't believe so. Why would I, why would I be bothered telling him where I'm going?

Well, it's not so much that you might have told him where you were going, but that you weren't around to talk to him because you were going on a break.---Well, maybe I said, maybe I told him that. Nothing sinister about that, and the, and the process wouldn't go anywhere without me being there.

10 Now, after the interview panel had been conducted on 17 November, on the 20th at 4.44pm, if we could go back to Exhibit 60, on 20 November at 2.41 – sorry, my mistake, 2.14. It is my mistake, it's 4.44. There we go, where the hand is, can you see that?---Yes.

A few lines from the bottom. Mr Khouri phoned you and the line was open for 2 minutes at 14 seconds, that was a Thursday, this is after the interview panel.---Yeah.

20 And shortly afterwards we can see that Khouri and Stavis had an exchange of telephone calls.---Mmm.

Can you assist us as to - - -?---No.

- - - what you and Mr Khouri spoke about before that exchange of telephone calls between Khouri and Stavis?---Again, it could have been anything. That may have been, that, if that was a Thursday that may have been a day when committees were being held that night or a council meeting perhaps, I'd have to check the, the dates, but it's possible it was a meeting that night. Maybe he had a question about one of the reports on the business paper, and they're publicly available, so I'd respond to that and there's nothing wrong, nothing wrong with that.

30

You don't think that there would be more of a likelihood that you were talking to him about Stavis's candidature for the position of director of planning?---Look, look, it's possible, but there was a process happening at that stage.

40 So what were you and Khouri saying to each other about Stavis's candidacy after the interview panel?---Very little.

What was there for you to talk about?---Very little really, and that's why I'm not convinced that's got anything to do with the appointment. I don't know. Unless saw the, the, the actual text of the thing, I don't know.

You don't think that there would have been perhaps an attempt by Khouri to find out what your thinking was?---No, no.

Sensitive

10/12/2018
E15/0078

MONTAGUE
(BUCHANAN)

5043T

Isn't that something that he would have discovered from time to time on all sorts of different subjects?---Yes, but he'd also know that if I didn't want to answer, I wouldn't, and I'd, and I'd push back, and he respected me to that extent.

Are you saying that you would have refused to tell him if he had asked you, so what do you think about the candidates, have you got a shortlist going?
---Look, if it was just a general question like that I'd have probably said, if it happened, and this is all speculation, I'd have said, "Yes, we've got a
10 shortlist." Fair enough.

The next question of course is obviously, "And who's on the shortlist?"
---Yeah, of course. And I don't see any harm in divulging that information either, because it's out there, the dogs are barking about it, as I said, everyone knew who the shortlisted candidates were.

Who outside of council knew who the shortlisted candidates were after 17 November?---Well, I've got no idea, but how do we know - - -

20 No one, apart from Ms Carpenter.---Well, that's - - -

Unless you told them.---Well, no, or unless Michael Hawatt told them or Pierre Azzi told them. They were in the, or the mayor told them.

You're the one who's having a conversation with Mr Khouri.---Yes, I know, but I don't know how they, what they did with that information.

Now, did you talk with Mr Stavis on the phone after 17 November but before you offered him the position on 8 December?---I could have, to try
30 and arrange that meeting at the, at the café.

Was there any other times that you spoke to him on the phone?---Well, he rang me about things, simple things, mundane things like what type of vehicle comes with the job and all this sort of stuff. Well, I'd answer those to the best of my ability. So that's what tends to happen. People have an interest in where am I based you know, do I report to Campsie, what sort of car do I get, they're commonplace questions, so - - -

Only of a person who thinks they're getting the job.---Oh, not necessarily. I
40 mean Karen Jones might have decided on the basis of what I said to that question if she's asked it, oh, I'm not interested after all. I don't know what goes through people's minds.

Was there a time when you ran Nick Katris - - -?---Yes.

- - - architect seeking information about Stavis's professional ability?
---Yes.

Sensitive

And what happened?---Well, what, what I got from Nick Katris as best I can recall was not derogatory, it was, it was fairly complimentary of Spiro, nothing that he said turned me off him. Nick and I go back a long way, a long, long way, so he's the sort of person I could ring and get an opinion.

And you have a recollection, do you, of him giving you an opinion about Stavlis and that it was complimentary?---I wouldn't say, look, I have a record of having a conversation with, with Mr Katris, I don't know when, it could - - -

10

You mean a recollection.---Sorry, what did I say?

Record, but it doesn't matter.---I have a recollection of having a conversation with Mr Katris, it may have been after SSROC meeting for example or whenever, but I think I did ring him to ask for his opinion about Stavlis and all I can recall is, is that nothing he said was uncomplimentary.

THE COMMISSIONER: Why did you ring Mr Katris?---Because he's a person I've known in the sector for many, many years, I - - -

20

No, no, no, but what was, how did you know he had a connection with Mr Stavlis?---I, that's a good question. I don't recall. I must have been aware of some connection there, maybe he did some consultancy work for him when he had his own consultancy, but somehow or other Katris's name came up so I thought, well, I'll give him a call and just have a, have a bit of a chat with him.

MR BUCHANAN: Excuse me a moment. Excuse me a moment, sir, Commissioner.---No problem.

30

Can I just ask you to have a look at the transcript of the second interview that was conducted of you by Commission investigators, this time on 9 March, 2017, at page 11 of the transcript. If I could just ask you to cast your eye over line 11 and following where you were asked, "All right. Do you know a Nick Katris?"---Mmm.

You said, "Yes." You were asked, "Did he speak to you about Stavlis?" You said, "Not that I recall." You were asked, "Do you recall having conversations with him about the issues later on in the piece when around the Christmas period when it all blew up I suppose?" You said, "Yeah." The investigator said, "For the lack of a better word." You said, "I certainly did. I could have run into him at Christmas drinks or something but I don't recall. There was certainly nothing pre-designed. I don't know Nick all that well. He's just a councillor, a neighbouring council." That's not consistent with the picture that you've given us today, either about your talking to him about Stavlis or about your degree of acquaintance with Katris.---I think it's entirely consistent.

40

Sensitive

You don't think that you gave us the impression that you didn't, that you did know Katris quite well and that you went back a fair way with him?---No. I, I, look, I knew of him but we had very little personal contact other than at the SSROC meetings and they were a member of the group, or if I ran into him at a function somewhere. Nick, Nick and I were not friends.

You didn't tell the investigator when he asked, "Did he speak to you about Stavis," "No, but I spoke to him."---Yeah.

10 "And he did speak to me in that telephone call."---Yeah.

All I'm trying to just question is do you actually have a recollection now, as you sit there, of calling Mr Katris to get his opinion about the professional ability of Mr Stavis?---Yes, I do. I don't know when it happened and where it happened but I, I don't know whether I was calling from my office or somewhere else but I definitely did have a conversation, albeit a short one, with Nick about Mr Stavis at some stage in the process, and I don't think anything I said back then or anything I'm saying now is inconsistent. I mean, I, I was in local government 50 years. There wasn't one mayor or, at
20 lot of councils or GMs that I didn't know well enough to pick a phone up and first-name basis.

Can I ask you this, did you have contact with Mr Katris about Mr Stavis because of anything said to you by Mr Khouri?---No, I don't believe so. I knew - - -

Or by George Vasil?---No. Oh, Vasil might have mentioned Katris but I don't recall that either and I don't know how Katris's name came up, but I thought, well, I know Nick well enough to call him and get an opinion, and
30 that's what I did. There was nothing more to it than that.

And did Katris tell you that he really didn't know much about Stavis, that he, Stavis, had both public and private sector experience, which was probably a good thing, he could be a good planner but he had a financial problem?---I don't recall him saying that about the financial problem. I'm sure he was aware that, if he knew Stavis well enough, and I don't know how well he knew him, but if he knew of him he probably would be aware that he had a private practice at some stage and that he worked in councils, which I knew anyway. That was, that was no revelation.
40

You don't have a specific recollection that Mr Katris told you these things? ---No, no, not, not, no, not about his financial circumstances. I learned that
- - -

Or about the private sector experience?---No, I don't recall but it wouldn't surprise me because everybody knew that, that Spiro had had his own consultancy for about 15 years. I found out about his financial plight later just in passing. Much later actually.

Sensitive

10/12/2018
E15/0078

MONTAGUE
(BUCHANAN)

5046T

Now, excuse me a moment. I should ask you, when did you find out?---I'm just trying to recollect that. It, it probably was in conversations after, in more recent times actually, like probably after the, the review period that I found out that Spiro had financial difficulties.

When you say the review period - - -?---Well, '16, like beyond '16, 2016 I mean. As I understand it this inquiry concerns itself with '13 to '15 or early '16.

10

Correct.---It could have been after that that I found out that he had financial difficulties but I don't know how, who told me or how I came to know that.

Now, if I could take you then just to volume 3 in Exhibit 52, page 165, the screenshots of photographs on Mr Stavis's phone of text messages exchanged between you and him.---Yeah.

20

On that page is some messages on Wednesday, 26 November. They actually commence the preceding page but it's the meet at Giorgios on Kingsgrove Road at 7.00-ish that I just wanted to take you to.---Yeah.

He is recorded as saying, "Leaving Botany now. See you there." And then later that night, "Thank you so much for meeting there." So it would appear that that is certainly the meeting that you've spoken about.---Yes.

How long did the meeting go for?---Oh, three-quarters of an hour.

And what was said?---Well, a bit of backslapping if I recall.

30

Meaning?---Well, we just, you know, as blokes do, he was interested again in, in what the job entailed in terms of conditions of employment, that sort of thing, and I reiterated to him what I expected from him.

40

Which was?---Reform the bloody planning division, get it moving properly, get the, the applications that have been sitting around forever processed. In other words, improve our processing times. That was the major issue I had, and conflicting advice at the counters for prospective applicants, which was a common problem at Canterbury. So, I would have just reiterated that I expected loyalty from him, and I know, as I said earlier, that's a dirty word now, but to me it's still very important in any business and I, you know, I see that as a virtue in people if they are loyal to the management and to the organisation, the councillors, the mayor and the general manager, being, being a direct report of mine. So, I would have just reiterated the same stuff. Probably asked about his family, what other interests he had, blah, blah, blah, as you do over, over a coffee. I did exactly the same thing with Karen Jones.

Sensitive

You have said more than once that the things that you had were making clear needed reform were, as far as you were concerned, processing times and conflicting advice being given by counter staff to what is later the line that is later taken.---Yeah. An inertia on the part of the planning staff. It was like a revolving door. We had people coming and going all the time.

10 You haven't said anything about needing a manager who would ensure that if DAs were noncompliant, they were refused straight away.---That, that was taken for granted. I mean, I wouldn't have expected him to operate in any other way.

You would expect him to operate in which way?---I would expect I'm to reject, or at least recommend refusal of DA that didn't comply with the codes or there were serious non-compliances. If they were close, say there was just a, a minor breach that could be corrected, then I'd urge him to contact the applicant and resolve it, find the right sort of outcome. Now that, I, I don't retreat from that either.

20 And was the term "finding a solution" - - -?---No, I didn't use that term.

Did Mr Stavis use it in that conversation?---Possibly. It's, it's not a term that I use. I mean, solution again has that unfortunate connotation.

30 Well, you're saying that, but you seem to be propagating the approach that there is a correct line in the Commission on a couple of different issues, one of them being a solutions based approach to assessment and determination of development applications, and I want to assure you there isn't. We're just trying to find out what it was that occurred and what approach people had at the time and whether you think it should have or shouldn't have been the case, unless you're directly asked that, all I'm trying to find out is what was said. And so I'm asking you, was there discussion between the two of you about ensuring that applications which were non-compliant weren't just refused or shuffled off, but that instead you were looking for someone who would sit down with the proponent and try to come to some arrangement whereby the development could proceed, perhaps a little bit chopped off here or a little bit chopped off there, but even though it was non-compliant it could nevertheless be given consent?---Well, it could be recommended for approval to the council in, in certain circumstances. I don't think the conversations were that detailed, but my view now, as I sit here, is just that, 40 that I believe it's the role of the council staff and the senior staff and the councillors to come up with a, with a proper outcome on any DA, particularly if it's a major one, and if there are non-compliances or breaches, that they should be investigated, and where they can't be resolved satisfactorily the application should be rejected with conditions and, and reasons for rejection. That's what I expected of Spiro Stavis.

And as far as you were concerned, at that time, was it your approach that a resolution to a non-compliance of the kind that we've been discussing

Sensitive

10/12/2018
E15/0078

MONTAGUE
(BUCHANAN)

5048T

would involve an assessment that it should be approved, that the, the proposed development should be approved?---No, not necessarily. It depends on the circumstances of each particular case. Now, in some sites along Canterbury Road or elsewhere in the City of Canterbury there would be reasons why you'd consider varying the code. And you can, the LEP you can't vary but of course the DCP you can. And if it's an LEP and, and there's no control over that, fine, but say it's a site that's between two residential developments, high-rise stuff, and there's one little house in the middle. Well, you'd look at that and you'd say, well, have a look at the streetscape. There's, there's high-rise all the way down the street. Why not try to get some symmetry around that street and approve this one if there, if there can be a way found to do it that doesn't breach the codes, the government controls – that is the, the state planning controls – and if we can do that, then my view here and now is that that should happen.

But in 2014 you knew there was a way, didn't you, of varying the controls in the LEP, namely what is called clause 4.6.---Of course. I'm not familiar with, I don't know the ins and outs of 4.6, but I know it is a mechanism that people use. It was written up in the Herald over the weekend. People use 4.6 to achieve certain outcomes.

I'm asking about your state of mind then, in 2014. You knew that that was available.---I knew of 4.6.

Yes.---But I'm not a planner.

And did you have any discussions with Mr Stavis about finding solutions to problems where proposed developments were non-compliant which, as far as you were concerned, might involve utilising clause 4.6?---No. what I expected of Mr Stavis, as I've said earlier, was to do his job to the best of his ability within the controls that existed, and whatever mechanisms are available to develop as legally to achieve the outcome they want, fine, as long as it doesn't involve breaches that can't be sustained. And I expected him to do his job. When I say that, I mean to do it along those lines. If there is an outcome to be achieved, try and find it. If not, reject the application or recommend rejection.

When you spoke to Mr Stavis on 26 November, did you get the impression that Mr Stavis really, really wanted the job?---Yes, and I'm sure that was a result of his financial circumstances that I'd come to know about –

In retrospect?---Yes, I came to know about later. He was very, very keen, no doubt about that.

And is that something that you used in dealings with Mr Stavis when he was director of planning to ensure that developments that were non-complying could be approved?---I don't know what you mean by that.

Sensitive

Did you use your understanding that Mr Stavis really, really wanted the job to influence him in - - -?---Are you, are you implying that I blackmailed him?

No, no, no. To influence him.---Well, that's what it sounds like, Mr Buchanan.

Well, I'm asking you.---No. The answer is no, categoric no.

10 You told Mr Stavis, did you, in your meeting with him that the position was quite a volatile one?---Yes.

You indicated, did you, that the council – that is to say the body comprising councillors – was quite volatile?---From 2012 on the answer to that questions is yes.

And you would have indicated that to Mr Stavis?---Yes.

20 Did you tell him that you needed someone who would make things happen?---No, I wouldn't have used that term.

Did you tell him that you needed someone who would provide solutions?---I don't use the word solutions. I've said I look for positive outcomes that are sustainable, and that implies that the application is assessed on the basis of the controls in place. That's all I expected him to do.

In that meeting on 26 November, 2014, did you discuss Marcelo Occhiuzzi?---I don't think so. Don't, don't recall.

30 Did you tell him of experiences that you'd had with the predecessor in the position?---My, my experience with Marcelo was entirely satisfactory. He was a very good planner. Maybe he, he moved to a role that was beyond him, and with respect I think that's true, but I had a good relationship with Marcelo Occhiuzzi, a very good relationship, but he ran foul of, of a couple of the councillors.

40 THE COMMISSIONER: Mr Maguire [sic], I think we're trying to work out what was said during this conversation with Mr Stavis, so your recollection is you didn't raise Mr Occhiuzzi with him?---I, I don't believe so, no.

MR BUCHANAN: You didn't tell Mr Stavis that you needed someone who could find solutions to problems and that Marcelo was not that man?---I, I may have said to our friend Stavis that I felt Occhiuzzi fell short, not in my estimation but in the estimation of the councillors, and he certainly did. And if you look at silly examples like that lump of concrete for example which looms large in everyone's memory - - -

Sensitive

10/12/2018
E15/0078

MONTAGUE
(BUCHANAN)

5050T

Did you explain to Mr Stavis your view that the Development Control Plan needed to be improved?---That's not my place to recommend anything like that. I'm not a planner. I don't understand the nuances of the Development Control Plan.

But George Vasil had been in your ear for some time about problems with the Development Control Plan, hadn't he?---No, that's not true. George Vasil and I go back 30-odd years.

10 I'm not ask you that.---But he - - -

That's just the setting.---No, but what you're trying to say is that he was in my ear all the time. That's not correct. I had very few conversations with George Vasil until the war started in 2015.

Did he ever raise with you that the Development Control Plan needed - - -?
---George - - -

20 - - - to be improved?---George was whinging all the time about the controls. He should have been a planner himself. In fact I should have employed him as director.

So I think your answer to that we can take it is yes?---No, you can't. George Vasil is his own man. He's out there in the community, he's got a passionate interest in planning and everything that surrounds it.

30 THE COMMISSIONER: Mr Montague, I'm going to interrupt you I'm sorry. What we're trying to determine is we've had an account of your conversation with Mr Stavis from Mr Stavis. We're now trying to work out what your recollection is, and this is what Mr Buchanan is doing, is putting certain things to you that either other witnesses have given evidence about or matters which have arisen during this inquiry that he needs to put to you. So if you could listen to the question and if you can either recall or not recall that that particular issue was raised during the conversation with Mr Stavis it will make the process go more quickly.---Okay. Commissioner, I apologise if I haven't done the right thing but what I'm trying to say is that I'm answering these questions to the best of my ability, given that these events occurred some years ago, and clearly my recollection is a bit hazy on some of these point now. There are certain things that stick in my mind
40 because of the nature of them that I won't forget, ever, as long as I'm on this mortal coil, but I'm not trying to be evasive and I am trying to answer the question as honestly as I can.

Okay. Can I just ask you to listen to the question and try and focus on it. If there's something that – you're represented by very experienced counsel, he has an opportunity to come back and seek some clarification later on.

---Okay. Thank you. Sorry.

Sensitive

MR BUCHANAN: Did you have a view in November 2016 that there appeared to be problems with the Development Control Plan and it needed to be improved?---November 2016?

Sorry, 2014.---Look, I had a view that the planning division wasn't going as well as it could have.

Sir, the Development Control Plan.---Yeah, I - - -

10 Did you have a view that it needed to be improved?---No, I had no view about it all. I'm not a planner.

Thank you.---I don't understand it, to be honest with you.

Did you talk to Mr Stavis about a number of councillor resolutions needing to be implemented and that there had been a delay in implementing them?
---Can you give me an example or is that - - -

20 Well, councillor resolutions being implemented could easily be the residential strategy plan.---Yes, could be.

And there were a number of resolutions there that needed to be implemented.---No, I, I didn't have any in-depth conversations with him about that. That's not my place. He should have taken advice from his staff, his senior people and the councillors.

All I'm trying to ascertain is, were you concerned about these particular things at the time and did you convey them to Mr Stavis at that meeting?
30 ---No, no.

Did you tell Mr Stavis the processes in the planning department were quite antiquated and needed to be improved?---Sounds like something I'd say.

And did you make it clear to Mr Stavis that you needed a person who could find solutions to problems in the context of the DCP?---With the exception of the word solutions I agree.

40 Did you indicate to Mr Stavis that you expected from him unquestioning obedience to you?---No. What I expected from him was loyalty, not - - -

Did you tell him that?---Yes. Not, not obedience, I mean he's not a, he's not a dog.

Why did you say you expected loyalty?---Because, as I said earlier here today, I valued, rightly or wrongly, I valued loyalty very highly in, in senior staff.

Sensitive

But where was the threat to loyalty from your senior staff to you - - -?
---Could be anywhere.

- - - that would underpin a need to raise it with a candidate for senior staff?
---It's better to raise it and have it said than leave it unsaid.

Now, your belief is you had only one meeting with Mr Stavis?---Yes, yes. I do.

10 Before he was appointed – sorry, correction. Aside from the interview of candidates on 17 November, you had only one meeting with Mr Stavis?---I can only remember one and that was at Giorgios. There, there may have been another one but I don't recall it.

Now, you made no notes or records of those contacts you had with Mr Stavis or Ms Jones?---No.

Is that something that, in retrospect, you think that you should have done, kept notes or made some record?---I said in this place before that it wasn't
20 my practice to do that, to keep notes on, on casual meetings.

That's not the question I asked. I understand that. What I'm asking is, sitting there as you do now, do you think that it would have been preferable for you to have had a different approach, that is to say, to have kept notes or have made a record of, indeed the very fact that you were talking to candidates?---It, it couldn't hurt, I agree.

THE COMMISSIONER: Your discussion with Ms Jones, did it cover the same topics that Mr Stavis - - -?---Yes, oh well, broadly, yeah. It was the
30 same pep talk.

And when you say pep talk, that refers to issues such as reform of the department and the need for loyalty?---Yes. And cohesion in the team and all those things that, that have been difficult to achieve unfortunately.

MR BUCHANAN: So, if, if we regard the interview panel process as being a formal component of a selection process for a member of senior staff, then it would be reasonable to regard a meeting like that with Mr Stavis on 26
40 November as being an informal component of the process, would that be fair to say?---Yes.

Can I ask you, do you have any understanding – and you might, just tell us if you don't – but do you have any understanding about whether other general managers in local government in New South Wales take or have taken the same approach of having informal meetings with candidates for appointment as members of senior staff?---I don't know but it wouldn't surprise me. The older hands, people that have been in the, in the business as long as I have. I don't think it it'd happen today because people are much

Sensitive

10/12/2018
E15/0078

MONTAGUE
(BUCHANAN)

5053T

more mindful of, of, new, new controls and requirements. Not sure that's improved the process but that's my answer.

And when you say you're not sure that that's improved the process, what do you mean by that?---Well, look, we set out to employ a director of city planning, or forget the planner, it could have been any of the directors' roles. My, my objective was to achieve the best possible applicant for the role as I saw it, being the general manager of the organisation and having the authority to make these appointments in consultation with council. I
10 didn't have time to be making copious contemporaneous notes about every meeting I had or every telephone call I took. I just didn't do it, it wasn't my practice, don't think the organisation suffered because of that, perhaps until this occasion, but I didn't know I'd be sitting here then.

You think there are limits to the efficacy of rules around selection processes where there are statutory objects to be achieved in the process?---No, I wouldn't, wouldn't say that. I'd say that the, and I repeat, the objective was to employ the best possible person we could and to appoint that person in
20 accordance with the council's standard procedures for, for recruitment. Now, for senior staff and, and maybe this, this is something that I'm not proud of, maybe it wasn't well enough documented, I accept that and I own that, but as far as the other staff are concerned, the people below director level, there certainly were policies in place and as far as I know, they, they were adhered to.

Would you accept that a failure to create records of the contacts was conducive to improper considerations and influences being taken into account in the process?---No, I wouldn't, and that would be based on, I
30 guess, on an assertion, if you like, that I'm, I'm involved in that, that sort of distortion. Not so. Not true.

But nevertheless, taking yourself aside, had anyone else conducted an exercise in the same way, it would be conducive to improper considerations and influences being taken into account to fail to create records of the contacts with the candidates, wouldn't it?

MR ANDRONOS: Well, objection. I'd just ask my friend to clarify whether he's asking an abstract question - - -

40 MR BUCHANAN: Yes. Yes now.

MR ANDRONOS: - - - in relation to process or a particular causal relationship.

MR BUCHANAN: Now. Yes.---Well, look, as I said, clearly if I had my time over, perhaps records, I should have kept records of those discussions.

Sensitive

But what I'm trying to ascertain is why one should keep records, and I am inviting you to say, well, no, there are no good reasons or, on the other hand, to identify reasons if, in retrospect, looking back, you think that they should have been kept. And I'm just asking you, emphasising the word "conducive", it's conducive to improper considerations being taken into account and favouritism being exercised towards particular candidates, isn't it, to fail to have records of what's going on.---I don't, I don't think that's an unreasonable assertion, no, but the end result would have been the same because it's the council that makes the decision, and that report would have gone to them and all of the circumstances surrounding the interviews and the quality of the candidates would have been outlined to the councillors.

And to fail to create records of these sorts of contacts would be conducive to undermining the merit selection and appointment process required by the Act, by the Local Government Act.---I, I, I don't think so necessarily. All of the major things – contact with a recruitment consultant, contact with the, with the candidates – was all documented, and even, even Mr Murphy agreed with that. But, yes, as far as conversations I had with certain people during the process, no, I didn't keep notes. Maybe I should have.

And a failure to keep records obscures what the real reasons are as to why a particular person is appointed, doesn't it?---No, I don't think so.

And to obscure whether those reasons were improper or proper. Failure to keep records obscures - - -?---Yeah, I know what you said, but Mr Murphy didn't - - -

- - - whether the reasons for appointment are proper or improper.---Mr Murphy didn't reach that conclusion.

Well, I'm asking you.---Well, I'm saying that it depends. Horses for courses. The way we did things at Canterbury probably were very different to the way they were done at Woop Woop.

Does that make them a good thing?---It doesn't make them a bad thing.

And a failure to record your meetings with candidates placed council at risk of significant costs in the event that a job applicant challenged the decision. ---Well, again, again, it's, that's speculation. I mean, if there had been, say Karen Jones queried the appointment. We'd deal with that at the time and we'd go through a process to satisfy her concerns, if indeed it went that far. I, I don't know. I mean, it's, it's, you know, it didn't happen and it never has happened at Canterbury where anyone has challenged an appointment.

Can I ask you this, did the failure to create records of the meetings and attempt to contact candidates, was that in fact incompatible with the council code of conduct in terms of the key principle of accountability?---No, because I would have reported all that to council ultimately.

Sensitive

10/12/2018
E15/0078

MONTAGUE
(BUCHANAN)

5055T

All those informal contacts?---Well, the report would have explained how we came to the conclusion as to who to appoint.

It would have referred to those meetings by way of informal contacts?---Not necessarily. Not necessarily.

It's most unlikely, isn't it?---Well, probably.

10 And indeed the failure to create records of the meetings and attempts to contact candidates was incompatible with the fairness and equity provisions of the code of conduct, clause 3.4.---You've got the code in front of you. I, I'd have to study that.

But you know what the fairness and equity provisions said or would have said, don't you?---Well, but, but I've said, but I've said already that the, the recruitment process or the code we had or the policy we had for recruitment didn't apply to senior staff, to contracted staff.

20 The code of conduct applied to your conduct in the selection process didn't it?---Yes, which had never been questioned before.

Did Mr Stavis's responses to your questions on 26 November satisfy you? ---Yes. I, I, I thought he was a good candidate. I thought he displayed the right sort of attitudes to things. I thought that he was a person who would bring about change in the organisation. That he was somebody that wasn't contaminated by local government to the extent that other people may have been and certainly some of the existing planning staff and that he might be a breath of fresh air.

30 Excuse me a moment. Now, if I could just take you please to volume 3, page 225 in Exhibit 52 and you see that this an email from Ms Carpenter to you on 25 November, 2014 at 12.10pm.---Yes.

That's at the top of the page the one at 12.10. At the bottom of the page or about two-thirds of the way down you can see that there's an email to you at 11.33 in the morning from Ms Carpenter saying, "I'm attaching referee reports for Karen Jones." Did you review those reports?---Yes.

40 Were they appropriate?---I thought so at the time.

And were they favourable?---Yes. As far as I can recall they were. There was nothing that jumped out at me. You know, no one had a criminal record or anything.

Yes, but you were looking surely with a slightly more nuanced eye than that for information to take into account on the selection process than whether you were appointing a felon or not?---No, I was just being, I was just

Sensitive

10/12/2018
E15/0078

MONTAGUE
(BUCHANAN)

5056T

exaggerating. I mean, if you're asking was there anything in there that jumped out at me. Answer, no.

Well, you're the one who characterised it as whether anything jumped out at you. I'm asking you whether they were in your opinion from referees who were appropriate to be referees for the position and for the person?---Yes.

10 And whether they were favourable to the candidate?---There could have been some comments that were not quite as favourable, just observations, but on the whole, yes.

Now, you responded, if you can see the middle of the page for that email, at 11.46am saying, "What is your gut feeling on the director?" Can you see that?---Yes.

It's very small type but it's - - -?---Yes.

You can see that?---Yes.

20 And it is to that that at the top of the page Ms Carpenter responded at 12.10pm, "My gut feeling is that Karen is leading the pack and Simon coming in second. Both really good. Spiro okay but hasn't managed at this level at all. I think you would get internal resistance at the least. Also I just realised that one of his referees has not responded so will follow up this afternoon."---Yeah. Okay. She was right.

In what respect?---Internal resistance.

30 Thank you.---And I agree with her. I've said already Karen was my first pick and Simon would have been my second.

And when you say she was right in respect of internal resistance, what's the, what are the events that you're thinking of or event that you're thinking of? ---Just scuttlebutt around the office after it became clear to people that the job had been offered to Spiro. There was a lot of scuttlebutt about.

Right. So you're thinking of the period shortly after 8 December when you - - -?---Yes, offered him - - -

40 - - - provided the letter of appointment?---That's right.

You're not thinking of the dynamics between Mr Stavis and his staff in the period March 2015 to May 2016?---No.

Thank you. Now, you told Commission investigators, this is the interview on 3 November, 2016 in Exhibit 53, page 26, that you were comfortable enough in Ms Carpenter's ability to rely on her advice in those appointments.---Yeah.

Sensitive

10/12/2018
E15/0078

MONTAGUE
(BUCHANAN)

5057T

And that I take it was as a result of your experience in working with her in the recruitment of staff in the past?---Yes.

Did you have any contact with Mr Hawatt or Mr Azzi I want to suggest in the evening of Tuesday, 25 November, 2014 about candidates for the DCP position?---Not that I recall, no. Could have.

10 Did you get an indication from Mr Hawatt that he thought you should appoint Mr Stavis?---Oh dear. I don't know. I can't recall. Azzi made it very clear that he, as I said to you before, that he didn't want Jones. That was about the only - - -

I'm sorry, he didn't?---He didn't want Karen Jones.

Yes. I note the time, Commissioner.

THE COMMISSIONER: All right. We'll take the luncheon adjournment and resume at 2 o'clock.

20

LUNCHEON ADJOURNMENT

[1.02pm]

Sensitive

10/12/2018
E15/0078

MONTAGUE
(BUCHANAN)

5058T