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INDEPENDENT COMMISSION AGAINST CORRUPTION

PATRICIA McDONALD SC
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OPERATION DASHA

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 11 DECEMBER, 2018

AT 9.30AM

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MR BUCHANAN: No administration of which I'm aware.

THE COMMISSIONER: All right. Mr Montague, we'll re-swear you.

MR MONTAGUE: Oh, okay.

THE COMMISSIONER: Mr Buchanan.

MR BUCHANAN: Commissioner. Mr Montague, can I ask you to have a look again at the letter that you sent to Ms Carpenter, dated 15 December, 2014, we were looking at at the close of evidence yesterday. This is volume 4, page 5 of Exhibit 52. Do you see in the penultimate paragraph you asked
10 Ms Carpenter to immediately undertake further reference checks with Mr Stavis's previous local government employers, the City of Botany Bay and Strathfield Council?---Yes.

Why did you ask her to do that?---I thought that would have been fairly obvious. I wanted to, her to follow up on the, after I'd heard rumours from the staff.

Why, though, did you ask for reference checks?---Well, it's just a figure of
20 speech.

What did you mean, then?---Well, find out about him. Check with other people that he worked with, perhaps.

I see. And why did you identify the City of Botany Bay and Strathfield Council?---Well, they were the two I knew he'd worked at.

And they were the two from which you had no reference checks at the time you decided to appoint the man?---I'm not, no, I'm not certain about that. I don't know. I can't remember.
30

Well, you had a person who had reported to Mr Stavis when he was working as a senior planner at Strathfield Council, but that was not a very weighty document, was it?---Well, I don't know. I can't, I haven't got it before me. I can't remember exactly what it said.

But just in respect of its source, that tells you that it's not a particularly weighty document, a person who reported to Mr Stavis.---Oh, look, it may have given me an insight into how he, how he behaved with other people.

40 Why, in that case, did you include Strathfield Council in your request to Ms Carpenter to conduct further reference checks?---Because I said, I, I knew he had experience at both Botany and Strathfield.

Yes. But I'm just trying to ascertain, why wasn't the reference check from the employee at Strathfield Council, which you already had, good enough for you?---I can't answer that. I can't recall.

Well, you obviously considered it wasn't good enough, didn't you?---Well, I don't know. I, I can't think of my thought processes back then now, I'm afraid.

It's a reasonable inference to draw that you, as at 15 December, 2014, did not consider the reference from the employee at Strathfield Council that you already had to be adequate for your purposes.---I don't know what I was thinking then.

10 Excuse me a moment. Now, can I take you please to page 7 of volume 4. I'm sorry, I should perhaps take you to page 6 first.

THE COMMISSIONER: Mr Montague, are you happy with the screen?
---Yes, yes, I prefer that. Thank you.

MR BUCHANAN: And we'll just enlarge it to make it a bit easier to read. It's an email from Ms Carpenter to you of 16 December, 2014, in which she refers to the reference from Heather Warton, W-h-a-r-t-o-n [sic], and she gives a description of her, including the words that her view is that Spiro is
20 doing himself great damage by taking this role and will find it difficult to get a job in the future, and then after she failed to attach the reference check itself to that email and it was attached to a subsequent email that morning and the reference check is to be found at pages 8 and 9 in volume 4.---I don't, I don't know.

We'll just get it for you. I'm sorry, it's W-a-r-t-o-n, my mistake, not an H.
---That's all right.

30 Ms Warton was the director of planning and therefore a supervisor of Mr Stavis, you'd accept that?---You'd think so, yes.

And did you – I withdraw that. You obviously read it and would have been alarmed when you did.---I don't recall reading it actually and I tried to contact Heather Warton myself and she was blocked from talking to me by the then general manager of Botany.

Well, we'll come to that.---So, no success.

40 First of all, why was it that you couldn't act on the contents of Ms Warton's reference check?---Well, it's, again, like, any of these references, it's her opinion.

Why did you bother trying to contact her?---To get from her, first hand, what she thought.

So you didn't give it much weight because it was her opinion, but you wanted her opinion?---And I'd have probably got the same advice as she's

included in this correspondence here, if I could have spoken to her. I prefer to speak to people in person than rely on emails.

You're indicating a tone of voice, I'm sorry, you're using a tone of voice to suggest that you didn't give much weight to this document or this type of document.---No, that's not true. I said yesterday I don't put a lot of store in references, any reference.

10 Why did you bother ringing her then?---Because I just wanted to talk to her to satisfy myself.

That doesn't make any sense - - -?---Well, it doesn't make any sense.

- - - given what you said - - -?---Well - - -

- - - as to what weight you gave to any character reference, and certainly this one.---Well, I'm sorry, Mr Buchanan, that's my answer.

20 It suggests, Mr Montague, that you're trying to avoid the nub of the issue, that this was a - - -?---I'm not sure I know what that is.

That you were being provided with very seriously adverse information about Mr Stavis, having regard to the position to which you had appointed him, and this put you in a very difficult situation.---No, not really, I knew what I was going to do and I did it, I withdrew the offer.

You didn't do that until after 16 December, did you?---I can't recall the dates.

30 Well, it was after you received these character references, wasn't it?
---I can't, I just said I can't recall the dates or why I acted in the manner I did.

Excuse me? Are you seriously giving evidence that you can't recall why you withdrew the offer of appointment?---Oh, no, I'm not, not doing that at all, I knew - - -

40 Well, that's what you just said, Mr Montague.---Well, I don't think that's what I said at all, Mr Buchanan.

Well, if you could listen to the question and just consider your answer and give your answer to the Commission.---I'm doing my best to answer the questions - - -

Can it be a truthful answer, please, Mr Montague?--- - - - as truthfully as I can.

Please don't over speak me.---I said that yesterday.

Mr Montague, please don't over speak me.---Well - - -

THE COMMISSIONER: Mr Montague, can we just take a break. Can I emphasise that we really need for a question to be asked and then you to answer it. So if we can avoid speaking over each other and just listen to the question and please answer it.---I will do my best, Commissioner, to answer the questions as truthfully as I can.

10 And, Mr Buchanan, would you ask your question again?

MR BUCHANAN: Yes, I'll go back a little bit. When was it, as you recall, or in relation to what event was it that you decided not to proceed with the appointment of Mr Stavis?---After I heard the scuttlebutt in the office from people who had been, pardon me, in planning for some time, that concerned me. That's why I asked Judith Carpenter to conduct further reference checks.

20 Well, that doesn't make much sense again, Mr Montague. If you had decided to withdraw the offer, why did you bother going further and ask for more material?---I didn't decide to withdraw the offer until after I had that material in my possession, that's what I believe.

Right. If you decided to withdraw the offer after you had that material in your possession, that suggests that the material that you had in your possession contributed to your decision to withdraw the offer.---It possibly did.

30 And that material was these two character references.---Among other material that I had.

And you tell us what that other material was?---Well, what, what I said, the staff in the organisation talking amongst themselves, it got back to me that they - - -

Anything else?---No, that's all, that's all it was.

40 So you say you weren't able to get hold of Ms Warton. What then, what weight did you give to Ms Warton's character reference?---Well, I, I, I didn't get a chance to speak to her personally.

Yes, you've told us that.---Yeah.

What weight did you give to her character reference?---Oh, look, I took it into account.

What weight did you give to it?---I don't know what you mean by weight.

Did you take it seriously?---Of course.

Did it make a major or a minor contribution to your decision to withdraw the offer?---I, I, I took it into account.

10 But you're not prepared to indicate that it was a serious setback for you in your decision to appoint Mr Stavis?---No, I'm not prepared to admit that at all. I mean I made a decision to withdraw the offer because there was a lot of material coming into my possession either verbally or in writing that caused me to reconsider that original decision.

A lot of material?---Well, I've got to be careful what words I use, material came into my possession.

Yes. And that material was the two character reference checks and scuttlebutt around the office?---Well, pretty, pretty much.

20 Now, didn't you think when you read Ms Warton's reference that you couldn't possibly go ahead with the appointment of Mr Stavis if this character reference was to remain on file?---Well, I'd already made the decision. Certainly that reinforced it, that I had to withdraw the offer, and that's what I did. I don't remember the exact timing of all this now, but I knew I had to withdraw the offer.

Well, we can see the timing up to a point on 16 December, because if we go to page 6 in volume 4, you can see that the email from Ms Carpenter referring to Ms Warton was dated 16 December at 10.05am, then at 10.10am she sends you the actual character reference. You see that?---Yes.

30 Then if we go to page 10 you can see that the same day, at 12.29 in the afternoon, Ms Carpenter emails you in detail as to what a Silvio Falato at Strathfield Council had to say about Mr Stavis, he being group manager (planning).---Yes.

And you can see that that was also a seriously adverse reference, wasn't it? ---Yes, it was. And I believe there was some bad blood between the two of them.

40 And so does that mean you didn't place any weight on it?---No, not at all.

Does it mean you diminished the weight you placed on it?---Not at, not at all.

How did you find out there was some bad blood between them?---I can't recall. Someone told me.

When did you find that out?---I don't know now. Heaven's sake.

You can't assist us at all as to the allegation that there was bad blood between the referee and the person whom he gave a reference in respective of?---No, no, I can't. All I know is that, that I believe – and again I can't tell you the source – he was in competition with Mr Stavis for a job at Strathfield at some stage in the past.

And it could be, could it, that you didn't find that out until after you had withdrawn the offer?---I can't recall when I found – no, I'm pretty sure it was before I withdrew the offer. Can't be certain of that, though.

10

So did you ring anyone at Strathfield?---No.

So it wasn't as a result of you making inquiries that you heard about bad blood between Falato and Stavis?---No, not that I recall.

Now, you tried to ring Ms Warton and couldn't get through.---That's right.

So what did you do?---Nothing.

20

No, didn't you ring the CEO, the general manager?---I tried to. Yeah, I, I know her very well. She worked for me. I tried to ring her. She said that, I think I, I understand, I don't know that I ever actually spoke to Lara Kershner. She was the GM at the time. But I believe she told Warton not to talk to me about it.

Yes, didn't - - -?---Which is fair enough. That's her prerogative.

Was there no conversation between you and the GM at Botany at all?---Not that I recall, no.

30

Did you ever have a conversation with the – was it Ms Kershaw, did you say?---Kershner.

Kershner, thank you.---Kershner.

About her opinion of Mr Stavis?---No. Not that I recall.

Was there any conversation with Mr Kershner of which you are aware in which she indicated she wouldn't have Mr Stavis back?---No, I don't recall that.

40

As in she was pleased that he left - - -?---I don't recall that.

- - - and wouldn't re-employ him?---No, I don't. Look, I, I, I didn't have that much contact with Lara Kershner after she left Canterbury.

So she had been at Canterbury?---Yes.

And you're quite sure you had no contact with Ms Kershner about this?---I can't be, I can't be that certain. It could have happened. I don't recall.

So can we go, then, to page 12 of volume 4. And this is an email by you to council's solicitor, Mr Belling.---Yes.

The same day, 16 December, this time at 5.34pm. Do you see that?---Yes.

10 And you introduce the email by saying, "Further to our telephone conversation earlier this afternoon." What was it that was said in that conversation?---I don't recall that now.

Would it be fair to assume that this email confirmed the contents of that conversation?---That is possible.

And in this email you gave a brief history of the matter?---Yes.

And then said, "Against my advice," can you see that line?---Yes.

20 "Against my advice it was decided to appoint Mr Spiro Stavis, who was not in my opinion the best candidate." Now, I asked you questions about this yesterday but the gist of it there is that a decision was made to appoint Mr Spiro Stavis and that you didn't think he was the best candidate?---I think it was a poor choice of words there in that paragraph.

I understand that, but the gist of it is correct, isn't it?---Yes, yes.

30 That you decided to appoint Mr Spiro Stavis notwithstanding the fact that in your opinion he was not the best candidate?---In the end I, I did, that's right.

Yes. And would, "against my advice," perhaps have been something that you typed into the email thinking of your conversations with Hawatt and Azzi, that is to say you were saying to Hawatt and Azzi that this man is not suitable for appointment but they in effect overruled you?---No, I don't think there was anything, I don't think the email was edited in any way, as I said, I think it's a poor choice of words, it's probably not what I meant, meant to say, I just wanted to give him a bit of background.

40 That I understand, but I want to suggest to you it's not a poor choice of words. I understand it doesn't quite hang together in terms of syntax - - -? ---No.

- - - but "against my advice," would be an accurate characterisation, wouldn't it, of what occurred between you and Hawatt and Azzi about whether Stavis should be appointed?---I think the word advice is wrong because I don't recall actually giving any hard-core advice not to appoint him. It may have been against my better judgement or my, my opinion would have been a better word.

Which you conveyed to them?---Well, I did in one way or another.

That's the sort of thing, though, with all due respect, that's entirely legitimate and should and does occur on a regular basis between a GM and councillors, that the GM gives advice to councillors?---Yes, yes.

Nothing wrong with that, is there?---No, not that I know of. I suppose it depends on the quality of the advice.

10

Yes, but it's simply the relationship between the two I'm just trying to explore. We've gone into aspects of the relationship which could be described as unhappy but on the other hand there is expected to be, isn't there, in an orthodox relationship in a local government setting, a sort of counsel and advise between a GM on the one hand and councillors who are taking a particular position on the other hand?---Of course. I mean I report to the mayor, I encourage the senior officers, that is the contracted staff, to help the councillors as much as they possibly could, so that obviously implies there is communication, contact between the senior staff and the
20 councillors, yes, and that includes myself.

Then at a paragraph that commences, "This afternoon after discussions" - - - ?---I'm sorry, I've lost it.

That's all right, it's coming back.---Okay, thank you.

So it's the sort of second half of the email.---Yeah.

30 "This afternoon after discussions with the mayor and one other councillor," and we talked about that yesterday - - -?---Yes.

- - - you went on to say, "I decided to withdraw my earlier offer of employment and readvertise the role."---Yes.

So it would seem as if sometime that afternoon you made the decision to withdraw the offer of employment. We can fix it, can't we - - -?---I think that's reasonable.

40 - - - to mid-afternoon perhaps - - -?---Possibly.

- - - on 16 December, 2014?---Possibly.

And it's directly after receiving those two character references.---Well, yeah, the, the, that's right, that's how it looks.

Yes. And those two character references had they remained on file would have made it impossible for you to justify the appointment of Mr Stavis, wouldn't it?---No, I wouldn't say entirely, but I'd already decided, as I said,

that I wanted to terminate the, or withdraw the letter of offer and I took into account not only the, the follow-up work that Judith Carpenter did but also the, the comments made by staff who would have to work with this fellow.

THE COMMISSIONER: What were the comments by staff?---Oh, just that he – well, I can't recall the exact details now, but words to the effect that he wasn't, you know, that he wasn't suitable, that he wouldn't be able to do it, this sort of thing, which I, you know, I think from 12 months or so that he was at Canterbury I'd have to question but, you know, at the time it, it, that's what they had to say. I don't know why, whether they had, had previous experience with him or not.

MR BUCHANAN: I'll come back to that in a moment, but can I just explore the evidence that the Commission has about the events which occurred in relation to you changing your mind about the offer of employment to Mr Stavis. Can I just ask you to have a look at volume 4, page 154. Can you see that there, there's a text reproduced in a screenshot which purports to come from your phone, addressed to Michael, "We need to chat about Spiro. Please call me when convenient," and the date is 16 December and the time is 2.36pm. Does that accord with your recollection, that you decided you needed to talk to Michael Hawatt before you took any further step in the matter?---I'm just trying to work out the timing here. Forgive me, when, when did I withdraw, when did I notify Spiro that the offer had been withdrawn, do you know? Because I can't recall.

Well, we'll come to that but firstly, can I just ask you to have a look at that particular text. Was there a communication?---Yes. I remember, I certainly remember the bottom half of that from Michael.

Yes, but the top half of it is what I'm focussing on for the moment.---Yeah. Look, it, it doesn't surprise me. By that stage, if I had, and this is all conditional on I'd withdrawn the offer before this, if I did that, I can understand they'd be very concerned and very upset and very angry.

Yes. And so for that reason, did you, before actually doing so in the email that you sent to Mr Belling, after 5 o'clock, first of all warn Councillor Hawatt that that was what you were proposing to do?---No, no and that's why a war broke out because I didn't consult with them. I made my mind up, I made the decision to withdraw the offer and that's what I did without seeking their permission.

Well, I just remind you that the email to Mr Belling has you saying that after talking to the mayor and another councillor.---Well, he may have been involved in the meeting that I had with the mayor, I can't recall. Or, I may have spoken to him separately.

That other councillor would have been Michael Hawatt for sure, wouldn't it?---Well, I believe it would have been, I believe it would have been Hawatt, yes.

Now, can I just take you back, before I leave this screenshot of that text message on 16 December at 2.36pm. Can I take you back to page 147 and see whether you can assist me here. This is a text message extracted from Michael Hawatt's phone, sorry, page 147.---147, okay. Yes.

10 And just going to the message, can you see that it's in identical terms to the text message we saw a moment ago, addressed to Michael on 16 December, 2014?---Yes.

Then if you could go over to the details as to the party to whom it's sent and the date. You can see that it's sent to a William Vasil. Did you know George Vasil had a brother called Bill who was involved in the conduct of the real estate agency?---No. I, I, I, the first I've seen that name.

20 Fair enough. But it's dated 6 January, 2015. You can't assist us as to why that text message that is identical to the wording you used on 16 December, appeared in that text message?---No, I can't. I, I don't know that, I don't recognise that number or the fellow's name.

Right, thank you. Can I take you then to the, back to the draft code of conduct complaint created on 5 January, on or about 15 January, 2015. This is page 117 of volume 4. And at page 118, items 15 to 18, so it's going to go over to page 119, so it's the bottom of page 118, this is the document you'll recall I've asked you to assume Mr Hawatt had an input into the drafting.---I'm sure he did, yes.

30 And then at item 15, "We are advised by Councillor Hawatt that on 16 December the general manager, via SMS, advised Councillor Hawatt that he wished to discuss Mr Stavis's appointment." Item 16. "We were advised Councillor Azzi received the same message by SMS." Just pausing there. ---Possibly. Don't recall seeing it there, because at that stage Pierre, the shutters had gone down, Pierre wasn't speaking.

40 But could it be that the shutters came down after you indicated to him that you were going to change your mind or that you had changed your mind? ---Well, I'm sure that's when it happened. Once, once he got wind of that, that was the end of it.

But first, can I suggest, the evidence before the Commission suggests that you tried to warn Azzi and Hawatt that this was what you were proposing to do.---Possibly.

Then going over to page 119 in volume 4, item 17, "Councillor Hawatt responded and met with the general manager," and I'll just interpolate there it doesn't say Councillor Azzi did.---No.

10 "At this point the general manager commenced reading from what appeared to be a file containing information on Mr Stavis. The following information was supplied verbally from the general manager to Councillor Hawatt. A, the general manager read a letter from Judith Carpenter which completely contradicted her previous advice to the employment panel. B, the general manager also stated that he had received further information from an unnamed source from Strathfield Council who had a poor opinion of Mr Stavis's work practices. C, the general manager advised he was aware that Mr Stavis was soon to be dismissed from Botany Council." Now, allowing for the phenomenon often described as Chinese whispers and the sort of bowdlerisation of information as it passes from one person to another, those three items – A, B and C – each refer to something that we know about. That is to say, A, it is the letter of complaint, as it were, from Ms Carpenter. B is the Falato reference.---Well, I assume so.

20 One would assume. And C would suggest perhaps that what you talked to us about a moment ago about an attempt to talk to Ms Kershner at Botany was at that time a memory of having actually talked to her and her perhaps indicating that she wouldn't take him back.---That, that's possible, but I don't recall having a conversation with Lara Kershner.

I understand.---It may have come from – well, I couldn't speak to Heather Warton either. No, I don't know. I'll accept that. I must have had either, a very brief conversation with Lara possibly.

30 And then at item 18 it says, "Councillor Hawatt by SMS expressed his concerns on December 17," and that then takes us back to that - - -?---Yes.

- - - a text message that you referred to a moment ago, the ones in, that's in blue, after your text message to Councillor Hawatt on 17 December, 2014. ---Yes.

Just perhaps going back to that for one aspect of it. Page 17 to 19 in volume 4.---You mean paragraph 4.

40 I'm sorry. I'll just check this. Yes. If I can take you to – no, no, not paragraph. My mistake. Volume 4, page 17. We'll bring it up on the screen for you.---Okay.

This is a table of text messages extracted from Mr Hawatt's telephone, and you can see towards the bottom of page 17 a date 17 December, 10.55am, a text addressed to you, "Hi, Jim. Pierre does not want to discuss the director position any further." Do you see that?---Yes.

“Any further”, I appreciate it’s language that was used by Mr Hawatt not by you, but “any further” suggests that there had been conversation between you and Pierre Azzi on the subject.---Early in the, much earlier in the process. Yes, that's possible.

10 Then he says, “I personally had enough with all the instability of how this council is run. It’s like the blind leading the blind.” And if I could draw your attention to these words, “The ones we are having big issues with are back in control.”---That's right. We covered that yesterday. They’re the disgruntled staff - - -

In the planning department?---No, not, I withdraw that word disgruntled. The long-serving staff in the division of planning who Michael had a poor opinion of in some cases.

Now, can I take you to volume 5, page 243 just to see if this assists you. If we could have a look at page 240 in the first instance, sorry.---240.

20 Just to give you context. This is Mr Murphy’s file note of his conversation with you on 17 March, 2015.---Yes.

And then going over to page 243. In the paragraph commencing “I express concern” that is a bit over halfway down.---Yes.

30 “I express concern about the apparent failure to conduct reference checks with Mr Stavis’s two most recent employers prior to deciding to offer the job. He”, meaning you, “indicated that he had spoken with the GM there, and when he did all she had to say was that she was not having him back. I then queried when this occurred, pointing out that that response would indicate it was after the offer had been made. He indicated that he couldn’t recall. He then recalled he had called to speak with the GM and wasn’t able to contact her. He then called again and asked to speak with the director and left a message. He then received a call from the GM inquiring why he was calling her director. He advised that he explained the reason for his call and response that he received.”---Well, that seems to establish that I did speak to her but the conversation wasn’t very satisfactory.

40 You accept that that account is more likely to be reliable?---Well, yes, I think so.

Given it’s much closer to the time concerned.---Yes, I think so.

When you say it wasn't very satisfactory, it did confirm what Ms Warton had said in her reference check, didn't it?---Well, it did, yes. It did.

It was unsatisfactory from the point of view that you were being left with no room to move in relation to sustaining supporting continuing the

appointment of Mr Stavis. That was the problem, wasn't it?---Well, it was then by that stage. That's why I decided to withdraw the offer.

And that was what was unsatisfactory about the telephone conversation? ---No, Lara was evasive. It wasn't what I expected from her. She worked with me for many years and I was a bit disappointed in her reaction.

I take it that that conversation contributed to your decision to withdraw the offer of employment?---I think it all, all taken together I concluded that that was the only choice I had.

Then if I could take you, please, to volume 4, page 46. This is a memorandum addressed to the mayor and all councillors from you dated 23 December, 2014.---Yes.

It's a two and a half page document. You've read this for the purpose of preparing to give your evidence in the proceedings, I take it?---Yes.

When would councillors have received it?---Probably the same day, given that that's one day before Christmas Eve. I would have probably arranged for the couriers to take it out to their homes, as we normally did.

Was there a system whereby a document like this could be emailed to councillors in your office?---Oh, of course, of course. Well, in the outer office, yes, but I don't think, I don't know whether it was emailed as well. It could have been, possibly, but it was certainly sent in hard copy.

Right. And the intention was that they get it before Christmas?---Yes. To bring them up to date on what was happening because everyone was packing up for Christmas holidays.

Did you provide it to councillors with a view to the appointment of Mr Stavis as director of planning being discussed as an agenda item at a meeting of council?---No. There would have been no opportunity to do that. There were no more council meetings scheduled at that late stage.

But even at a January or February - - -?---Oh, possibly at a later meeting or an extraordinary council meeting perhaps, but we didn't pursue that. The purpose of that memo was to simply bring the councillors up to date. If they heard something from somebody else or, who knows what happens, rumours flying around et cetera.

Can I take you to page 47 and the paragraph just above halfway down, commencing, "Following extensive discussions." "Following extensive discussions amongst the panel members, it was resolved that Mr Spiro Stavis be offered appointment for a period of 12 months." Now, that suggests that the panel made that decision.---Yeah, I don't, again, poor choice of words, I don't think the panel did. The, the, I think the used of the

word 'extensive's wrong as well. There were, there was some discussion after the, immediately after the interviews concluded, but apart from the comments I can remember made by Councillor Azzi in relation to Karen Jones, I, I can't remember what else happened that afternoon. I think I made the decision. I probably discussed it with the mayor. I, I decided to withdraw the offer and that's why I sought advice from Belling.

10 And at the least, the evidence suggests that you informed at least Councillor Hawatt, if not also Councillor Azzi, of what you were doing or proposing to do.---Well, I don't think Azzi because Azzi had switched off by that stage. He wasn't talking. But Michael, yes, possibly I would have told Michael that's what I was going to do and we know what happened after that.

20 Can I just ask you, there's been more than one occasion where, in documents that you've created, when I've taken you to particular passages you've suggested that it's a poor choice of words. Were you in the habit, as appropriate, of using euphemistic language that glided over the truth in order to try to explain things that occurred in your work as general manager?---No, I didn't do it intentionally. No.

Sometimes, I'm just asking whether there was some sort of GM's licence that you used to phrase delicate issues where you didn't want identify all the factors being taken into account.---No, not at all, not at all. Everyone writes differently. Everyone puts their thoughts on paper differently. I'm no exception.

30 Yes, but I'm not necessarily criticising you for this, Mr Montague, I'm just asking whether, you know, sometimes you would write things in a way which conveyed what needed to be conveyed but without giving offence? ---I don't think giving offence was exercising my mind at all. I tried to tell the council, to the best of my ability, the facts.

40 Well, it didn't really convey at all, did it, the role which the pressure that you'd been placed under by Councillors Azzi and Hawatt to make the appointment in the first place had played?---Look, I repeat what I said yesterday, Mr Buchanan, you had to be there to understand what was going on and, and this was not a normal situation for anybody, certainly not me. I was alone in trying to sort all this out. I had discussed it briefly with the mayor, but there wasn't much the mayor could do with respect to him because he didn't have the numbers, he couldn't really, and I don't believe he was on good terms with or speaking terms with the two councillors involved to the point where he could pick the phone up and try to reason with them, because they were beyond that, you just had to understand, you know, what a toxic situation it was, and I was trying my best to, to, to get the best out of a very bad situation.

You've said more than once that you had to be there at the time to understand it.---Yeah.

What that does, Mr Montague, if I can indicate to you or make this suggestion, is that it obscures what actually happened, and that's why I'm suggesting it's an answer which obscures the truth when I ask a question about the pressure that you were under from Councillors Azzi and Hawatt to appoint Mr Stavis.---Mmm.

Do you understand that those answers aren't very helpful?---Well, they're the only answers I can give you I'm afraid.

10

The only answers that you can give are answers that obscure the truth? ---I'm not, I'm not conceding that at all. I, I've said repeatedly I tried to give the council the best advice I could in the circumstances and given the dynamic of the council at that time.

Why not then spell out the dynamics that had taken place between you on the one hand and Councillors Azzi and Hawatt on the other hand in relation to the appointment in the first place, in this memo?---Well, that wasn't the appropriate time to do it, in my opinion.

20

Why wasn't it appropriate? I'm just asking you to, I'm sure there's something in the back of your mind which you're saying, well, look, that's not the sort of thing that you'd put in a document like this, what was the sort of thing you would not put in a document like this and why wouldn't you put it in a document like this?---I didn't look at it like that. I mean I, I, I didn't have open communication with all the councillors all the time. I reported to the mayor, I told the mayor what was going on and the mayor ran the council politically, at least that's how it was pre-2012. Now, it would have been in discussions with the mayor. Possibly it could have transpired that we would have had some sort of special meeting with the councillors, whether it was formal or informal, to give them the circumstances. But as I said, the relationships were so poor at that stage, and I was over it, completely and utterly over it. I was in a world of pain. I just wanted to get out from under. That's the truth.

30

Why didn't you resign then?---I attempted to, I wrote it - - -

No, no, why didn't you resign - - -?---I wasn't, no, no, I - - -

40

- - - then at this time?---I, I, I thought it through. I thought why should I? I'm not the cause of this.

I see. So there was something else that happened, you were in a world of pain but, what was your thinking?---I wasn't, I wasn't prepared to throw the job in under this sort of duress for the reasons that they were doing what they were doing.

And “they” is a reference to Councillors Azzi and Hawatt?---Yes. Oh, and the others who supported them.

But the others who supported them had not, on any account you’ve given us, been in contact with you - - -?---No.

- - - as to who should be appointed director of planning.---No, no, they wouldn’t get involved in that. They wouldn’t ever get involved in something like that.

10

So it’s just Azzi and Hawatt?---Because of their nature, because of the way they conducted themselves. I had never experienced anything like this before when it came to the appointment of staff.

Now, can I please go back to the scuttlebutt in the office that you had told us about. What actually happened?---I, I, I - - -

20

Someone talked to you?---Somebody came up to the office, I think my exec officer said, look, so-and-so wants to see you, I can’t recall who it was now, it was one of the more senior planners, and he expressed a view that he wasn’t, that Stavis wasn’t the right fit for the organisation.

Right.---That was it.

And is this after Stavis had actually been appointed, after 8 December, in other words?---Yes, because I announced to the staff I think in a memo or an email that he’d been offered the position.

30

Which would have been very close to 8 December.---Yes.

You didn't take a note of that conversation?---No.

Is there any reason you didn't?---Well, I've told, explained to you before, it wasn't my practice to take notes on, on what I considered to be a casual conversation with somebody.

But it was more than a casual conversation.---It lasted about two minutes, if that.

40

Certainly. But even if it lasted only two seconds, it was a factor, you told us, that affected your decision-making processes.---Yes. Yes.

And you made no record of this input whatsoever?---No, no. Other than, other than what I've already said.

It would have been preferable for you to have made a note of it, wouldn't it?---Look, if I had my time over, Mr Buchanan, there's lots of things I would have done.

Yes, you've said that more than once.---Yeah.

Is that one of the things that you would have done?---Yes. I, I agree that I should have kept notes about meetings in relation to this appointment and other matters. I don't deny that. But that was not my practice at the time and never had been.

10 Now, on Christmas Eve, 24 December, 2014, you got a call from Mayor Robson after midday saying that Councillor Azzi and Hawatt had turned up on his doorstep at his house?---Yes.

With a motion calling for an EGM to consider a motion to terminate your position.---Yes.

To terminate you in your position.---Yes.

20 And to consider also the appointment of an acting general manager, to consider the appointment of the new director of planning, Mr Stavis, and the subsequent withdrawal of his appointment and take necessary actions. Is that right?---Yes.

You would have been distressed on hearing that.---Are you kidding? Hit me like a runaway train.

In 2014-16, that period of time, how often did you go to George Vasil's office?---Oh, maybe a couple of times. I don't recall precisely, but I know I did go there at least, at least once. I remember that.

30 And is that this time, Christmas Eve on 2014?---It was probably around then. It was probably around then.

What, can you tell us what happened?---No, I don't recall now. I mean, the word got out very quickly and, and I had a lot of support in the community, a lot of people who I knew through the job over 30-odd years that were disturbed by what the councillors were doing. I was just trying to get support, if I can put it that way, and, and a lot of people came out of the woodwork to try and help me.

40 And what is the one, at least one occasion where you went and saw Mr Vasil at his office that you mentioned a moment ago?---I can't recall.

What was that about?---I don't know. It would have been about, about, the timing, it would have certainly been about the proposed termination of my employment, no doubt about it.

And on that occasion that you spoke to George Vasil at his office about the motion calling for the termination of your employment, had you been to his office before?---Yes.

How many times had you been there before?---Oh, over the years, two or three maybe, and I'm, I'm going right back, way before this, this period.

On the afternoon of 24 December, 2014, the Commission has evidence, you went to Mr Vasil's office.---Mmm.

10

Did you go anywhere else other than Mr Vasil's office that day?---I don't recall.

Did you go anywhere else with a view to talking to people about what Mayor Robson had told you he'd received?---No, I was still in a state of shock at that stage. I didn't understand what to do. I just couldn't believe what, what they were up to.

20

But in your state of shock you nevertheless formed the resolution to go to Mr Vasil's office and speak to him?---Well, he may have contacted me first, I don't know. But, yes, there was a conversation at his office. I can't remember exactly the date but it would have been about that time.

Is it possible that you rang him?---Yes.

If he had rung you, that would mean he had already known about it before you spoke to him.---Yes, you could conclude that.

30

And is that a possibility, that he did ring you first?---Yes, because, yes, because he and Michael Hawatt spoke regularly, and I don't know what, what he may have, what discussion he may have had with Michael about this time. Phones were running hot.

In any event, you accept that there was a phone exchange between you and Mr Vasil before you went to his office that afternoon?---Well, I expect so. I just wouldn't lob there without, you know, advising that I was coming.

40

Why did you go to his office rather than just talk to him on the telephone?---I don't know. I mean, it was just impulse, I can't tell you.

Why did you go to see Mr Vasil rather than anyone else?---Because of George's relationship with Michael Hawatt.

I appreciate you've referred to that. Can you tell us more about your understanding at that time of the relationship that George Vasil had with Michael Hawatt?---Well, they had, they had a reasonably close relationship, where they would confide in each other on planning issues, and I've said earlier in evidence here that Mr Vasil was very experienced or very

knowledgeable about the planning codes and I think the councillors saw him as a, as a point of information in relation to the planning controls, in broad terms, not necessarily specific applications.

10 How did you know that George Vasil and Michael Hawatt communicated with each other on planning issues?---Well, I just knew because people, you know, it was one of those things you know. You know he's going over to, he, he was seen with, with George Vasil and Michael were seen together at a coffee shop, I believe. People, that got back to me through others. You know, these things, it's a fairly closely knit community over there in Earlwood and, yeah, but there was no secret about it. I don't think they were trying to conceal these meetings.

And you saw George Vasil at council meetings and the public gallery?
---George was a regular attender at council meetings and the gallery, that's correct.

20 Did you see him talk to any councillors during council meetings?---Oh, of course he did. Not, not just Michael Hawatt, though. He'd speak to anyone who was there and often came out after the meeting for a, for a drink in the supper room.

What was it you hoped to achieve by going to see Mr Vasil?---I, I thought he might be able to talk to Michael, so he could have some sort of a pow-wow and try to get to the bottom of all this. What was, what could be done to salvage the situation.

30 What happened at the meeting?---Oh, I don't recall now. It was just a - - -
Was there anyone else there?---Not that I recall.

How long was the meeting for?---Oh, how long's a piece of string? I, I don't know.

You drove there and you drove back by yourself?---Yes, I would have.

40 And what was said at the meeting between you and Mr Vasil?---Look, I, I can't remember chapter and verse, but it would have been, I would have been expressing my concerns about what, the action that council was taking. Maybe there was some brief discussion about the status in relation to Stavis. I don't know. I can't recall any of that conversation and I didn't diarise it.

Did Mr Vasil give you any advice?---Not that I recall.

Did he give you any information that you didn't already have?---Not that I recall.

Did he express any surprise or did he appear to already know?---George is not a very demonstrable person. I, I, I, you know, he didn't, no, he, he, was just George.

You couldn't tell?---I couldn't tell.

Now, whilst you were at his office, did you make a phone call?---Possibly.

10 To whom did you possibly make a phone call?---No idea.

Well, were you present in the hearing room when Mr Vasil gave his evidence?---I don't know that I was, actually. I could have been but I don't recall what the evidence was now. That's a long time ago.

Well, Mr Vasil has told the Commission that from his office you called Mr Stavis.---Yeah, it's possible.

20 Well, if it's possible, what happened?---I don't know. I can't, look, Mr Buchanan, I can't recall any of these conversations.

Surely it would have been a matter of some moment to be speaking on the phone to the person the subject of the dispute as to whether or not his appointment should be honoured.---No.

No significance to you?---No.

It's very hard to understand or indeed, for my part, to accept.---Well, I'm sorry but that's how it is.

30 Did you apologise to Mr Stavis for what had happened?---Well, I wouldn't believe so, and if I had it would have only just, yeah, just been out of courtesy, nothing more.

Were you present in the hearing room when Mr Stavis gave evidence about this phone conversation?---On and off. On and off.

About this phone conversation?---No, I don't recall that either.

40 Did you tell Mr Stavis anything to the effect that you were caught in some political argument and that he was collateral damage or got caught in the crossfire?---Yes. I, I, that's a term that I have used and it's possible I did. I mean, at this stage of the game he was in a pretty difficult situation as well. I mean, he got the job, then he didn't have the job, so I understood he was very upset and perplexed by what was happening and he was looking for answer too. I shared that with him.

And so it's not at all unlikely that you would have, after discussing it with Mr Vasil, perhaps rung Mr Stavis?---It's possible but I don't recall the conversation.

Did Mr Stavis say anything to you to indicate that he'd been talking to - - - ?---No.

10 I apologise. Did Mr Vasil say anything to you to indicate that he had been talking to Mr Stavis?---Not that I recall, no.

Did he indicate to you any insight he had into Mr Stavis's thinking or feelings?---I can only repeat the same answer. I can't, look, I can't recall any of these conversations.

Did you ask Mr Stavis whether he was still available to be employed, to act?---No, I don't believe I would have because I'd made up my mind that we were withdrawing the offer.

20 So do you mean to say that despite possibly ringing Mr Stavis from Mr Vasil's office when your job was on the line if Stavis didn't start work, you wouldn't have inquired of him as to whether he was still available to work as the director of planning?---No. No. No. Because I was, I was prepared to accept my fate. If, if the council wanted to go on with terminating my employment, that's their prerogative. I'd have dealt with that at the time.

Did Stavis say to you that he was still available?---I don't recall.

30 Wasn't that intelligence of the kind that you needed when trying to work out what to do in this situation? Because if Stavis wasn't available, then you had something that you could offer to the other side, namely, well, you can't have Stavis because he's taken a decision to make himself unavailable. ---Didn't occur to me. And I wasn't in that business of trying to play one off against the other.

40 Well, it's not a matter of playing one off against the other. You are the one who is against Hawatt and Azzi in this situation, so it's not a case of playing Stavis off against anyone, it's a case of working out what tools you have in your armoury to use to fend off the possible termination of your position. ---Yeah, but I hadn't really concluded what those tools might be, if indeed I had any.

THE COMMISSIONER: You notified, I'm sorry, the solicitors K&L Gates informed Mr Stavis on 18 December that the offer was being withdrawn? ---About that time, Commissioner, yes.

And we're now at Christmas Eve.---Yes.

Did you speak to Mr Stavis in that period?---I don't think so.

Receive any text messages or emails?---I could have. But, look, I can't recall that. My focus was on what was, what was happening. You know, that the letter had been delivered to him that the offer had been withdrawn. That was, that was my focus. And then when of course on the 24th, well, you know, the world collapsed.

10 MR BUCHANAN: After your meeting with, after your possible meeting with Mr Vasil in the afternoon of 24 December, 2014 what's the next thing that happened in the war, as you've described it, with Councillors Azzi and Hawatt over the appointment of Mr Stavis?---Well, nothing much because everyone was in recess. The council had – pardon me – the council had conducted its last meeting for the year. They had submitted that motion which, among other things, called for the termination of my employment. It was then up to the mayor. I think they asked for an extraordinary council meeting. It was up to the mayor to determine if that would take place or not. I had some discussions with Brian of course about that, but the rest of it is just, just a haze. I know that an extraordinary council meeting finally
20 was called for 27 January if memory serves me correctly – those are dates that I remember – but in between then there had been some concern expressed as to why the mayor had delayed the calling of the meeting. But he prolonged that, and at that stage I assume, and I know there was good reason to do that. That, that infuriated them even more that it was being delayed. So finally an extraordinary council meeting was, was called for 27 January and in between that period I went away and enjoyed myself, had a break.

30 Well, you didn't until at least after 27 December, 2014, did you, because you were in Sydney at that time.---No, I didn't say that. I said I was away in that early part of January.

Yes.---Which was customary.

Yes. And would it be right to say that you were taking steps to try to protect your position?---There's not much I could do until that extraordinary council meeting.

40 Well, you could, this was a political fight, wasn't it?---Well, had an element of politics in it, of course.

And weren't there politicians that you knew – that is to say people involved in politics, one side or the other – who could possibly intervene on your behalf?---Yes. Yes.

Did anyone contact you or did you contact anyone with a view to that sort of intervention occurring?---There's no doubt it would have spoken to people.

I can't name them now. I mean, state politicians possibly. Who knows?
All right, look - - -

It's not a case of who knows. You're the person who was involved.---Yes, I know, but I don't recall it. I'm trying to explain to you that my memory is very hazy about that time. It was a very, very difficult period.

10 So there's no doubt that people did step up on your behalf? Is that what you're telling us?---I think some people wanted to. Whether they actually did is another matter.

How did you find out they wanted to?---Well, from their, their own comments. If I, if I was talking to somebody, like, you know, I, I heard, they said that's a bit rough, you know, it's not the right thing to do to a person that's been in the organisation as long as I had and had such a, you know, a good reputation. Then I did.

20 Surely if you were as distressed as you were sufficiently to go out and see George Vasil after you heard about this call for the EGM, you would have taken steps in addition to going out and seeing George Vasil, namely talking to as many people as you could - - -?---Possibly. Yeah.

- - - with a view to trying to shore up your position and getting people to intervene on your behalf.---Yes, I don't deny that.

And people would have contacted you saying they'd heard about the dispute.---Yes, possibly. I think anyone in this room would do the same thing in the same circumstances.

30 So there was a bit of activity in which you were involved at this time between - - -?---There was, there was a bit of traffic.

- - - between 24 December and, say, new year.---Yeah, but there was nothing I could actually do to guarantee anything until that council meeting on 27 January, and I had no, no idea how that, that council meeting might play out.

40 But you knew that you could talk to people with a view to it playing out in your favour, couldn't you?---I knew I could ask people to try and help, but I didn't expect, necessarily expect them to intervene or do anything that would prevent the council, and the council's who I report to. They're the governing body. I didn't know I could influence anybody sufficiently to have them change the mind of the councillors who were calling the shots, namely Azzi and Hawatt.

Did you have any further possible contact with George Vasil?---I could have, I could have, but I, I don't recall when or where.

Now can I take you to your report to the Commission, which was written on about 15 January, 2015. Excuse me a moment. Volume 5, commencing at page 229. Yes, I apologise for that. Yes, page 253. You can see the front page – I'm sorry, we'll get to page 253. Thank you. You recall this document?---Yes.

And you delivered it to a Commission assessment officer, a Ms Gamble - - - ?---Yes, I believe so.

10 - - - at the ICAC offices then on the 16th, the next day, 16 January, 2015?
---I believe so, yes.

And you spoke with her on that occasion?---Yes, yes.

Excuse me. So page 254, if I could just take you towards the bottom of the page under the heading Actions by Councillors re Aborted Appointment.
---Yes.

20 And you say, "At a meeting attended by Councillor Hawatt and Councillor Azzi after the December 17 withdrawal of the offer of employment to Mr Stavis and before the notice of the extraordinary meeting, see discussion below, Councillor Azzi stated the following, or words to this effect, 'Fix this up. Appoint Mr Stavis or you can go.' They also stated if Mr Stavis wasn't appointed director then another role should be found for him in the planning division. When I asked what job did he, Councillor Azzi, have in mind, he stated I should sack the manager of strategic planning, Ms Gillian Dawson, and appoint Mr Stavis to that vacant position. I regarded this as
30 intimidating and threatening behaviour and an interference with the operation of the council for which the general manager has carriage." Now, it's not so much the details of that interaction that you recount there as the
30 time when it or those interactions occurred that I want to ask you about at this stage. And so it's the words at the top, "After the December 17 withdrawal of the offer of employment to Mr Stavis and before the notice of the extraordinary meeting." So that's between 17 December and 24 December.---Yes, I would say so.

However, I just want to ask, the language that you attribute to Mr Azzi, do you recall that now?---Yes.

40 Right.---There are certain things that do stick in my mind, Mr Buchanan, and that's one of them.

Yes. And where were you and when was that? What were the circumstances?---Could have been on the, on the phone, I don't recall the exact circumstances, but I do recall the words that Mr, that Councillor Azzi used. I think it was on the phone. I can't be certain.

THE COMMISSIONER: It's just that paragraph starts, "At a meeting attended" - - -?---Yes. Now, that - - -

- - - which would suggest in person.---Yes. Well, it could have been a meeting between the 17th and the 24th, I accept that, but that doesn't mean to say that he didn't ring later and make that threat, those threatening comments. I mean, I don't, look, at that stage the relationship had collapsed and I don't think he was in any mind to confront me face-to-face.

10 MR BUCHANAN: Please don't misunderstand me, I'm not criticising you at all. What I'm trying to do here is just sort out when the things that you described here, which you obviously had some memory of at the time you wrote them - - -?---Yes, yes.

- - - occurred and in what circumstances, and I'm just wondering, I just want to posit the possibility that you might have merged in this paragraph more than one event, and in addition the possibility that words you've attributed to Mr Azzi or events that you've said occurred might have in fact occurred not between 17 December and 24 December, but before 8 December.

20 ---No, no, it was after, after I withdrew the offer all this started to happen.

Well, can I just remind you that yesterday we had a discussion about the interactions that were occurring with Councillor Hawatt and Azzi and that before 4 December or around 4 December when you made the decision to appoint or set the process in motion to appoint Mr Stavis.---Yes.

And you'll recall that around that time Mr Stavis had sent to Councillor Hawatt a text message where he indicated that he was happy to compromise as discussed. All of that's before 8 December.---Yes, I remember that.

30

And I'm just wondering whether the discussion about giving the man another job, if you weren't going to appoint him director of planning, occurred before 8 December, when you appointed him, or after?---No, after. Definitely after. There wouldn't have been any need to offer him an alternative appointment at that stage. It was only when I withdrew the offer or when they got wind of the fact that I was going to and how they did that, I don't know, but when they found out that I was considering withdrawing the offer, that's when Azzi got on his high horse and said, well, give him another, put him on or else, and if you can't do that, find him another job.

40

That's what he said and those words are etched indelibly on my mind.

But you can't give us any more assistance as to the circumstances, the setting?---No, other than he was probably on the phone because he hung the phone up. I remember that too. When I started, I said, "Can we talk about it?" he hung the phone up.

Is it possible that you're eliding a telephone conversation with Councillor Azzi on the one hand with what was said to you at a meeting you had with

Councillors Hawatt and Azzi about Mr Stavis?---No. No, I don't think they said that at the meeting and I don't recall the meeting, as I said earlier, but no, I, I don't think that's the case. I think, I'm pretty certain the comment about, "You're gone if you don't give him the job," was on the phone from Azzi.

Well, the difficulty with that, and you can see, as the Commissioner pointed out to you, is that you introduced that paragraph with the words, "At a meeting attended by Councillor Hawatt and Councillor Azzi," after the
10 December 17 withdrawal of the offer of employment.---Well, yes, look I understand the Commissioner's point. It's, it's a good point. Look, it could have been said at that meeting or after the meeting, maybe in the anteroom or when they were leaving my office. I, I don't recall, but I know the words were said and I know they were said after the withdrawal. That's when things got very difficult, after the withdrawal of the offer.

And what you've told us today, then, is that the discussion about an alternative job, sacking Gillian Dawson so that there would be a vacancy, that you think occurred after you had appointed Mr Stavis at around the time
20 that you were considering withdrawing the offer?---I think it happened after I withdrew the offer. I mean, there's, there would have been no point, no, no reason for them to arch up the way they did, if I proceeded with the appointment of Mr Stavis. Once I sent him that letter or, or once Belling sent the letter saying the offer is withdrawn, that's, that's when, that's when it hit the fan. There wouldn't have been any reason to do that otherwise because they were, they were confident he was going to get the job. It doesn't make any sense but he definitely said, "Fix it up or you go, and if you can't find him a job", sorry, "if he can't get the director's job, then find
30 another role for him," and that's how Gillian Dawson got, got, was mentioned. I remember that vividly and I said, "Well, that's not going to happen."

Yes. I'm not suggesting that didn't occur, I'm just trying to find what your best recollection is of the circumstances in which it occurred and whether anything like that occurred more than once.

No, it only occurred the once, and as I said, at that point in time I think Councillor Azzi and Councillor Hawatt had decided on the course of action they were going to take and that's what prompted the visit to the mayor's
40 home on 24 December.

So can I take you then to another document that bears on this question, volume 4, page 218. This is a memo to all councillors that you wrote, dated 22 January, 2015. We'll come back to it later because it's about the referral to the ICAC.---Yes.

And it's before the EGM occurred.---Yes.

But here I just want to draw your attention to the words a bit below the middle of the page, in the paragraph commencing, "Councillors should be further aware."---Yes.

Can you see that? "That prior to and following the circulation of the earlier memo at 23 December, I spoke with Councillors Hawatt and Azzi in relation to this matter. Councillors Hawatt and Azzi made it clear that they wanted to proceed with Mr Stavis's appointment, despite the information we had received from external sources regarding his suitability for the director's role. 'Fix this or you can go,' was stated in front of witnesses." 10 ---Well, that, that seems to confirm the meeting did take place and it was said at the meeting, which I couldn't recall at the time, but I'd have to say that's what happened.

Witnesses, plural.---I don't know who they would have been.

THE COMMISSIONER: Is your recollection it was in your office, the meeting?---Well, I normally conducted meetings in my office or in the, in the meeting room, conference room on the top floor, but - - - 20

MR BUCHANAN: The mayor wasn't there at the time?---He could have been. I, look, I, I don't recall, but I don't know who those witnesses would have been.

Because normally these interactions with Councillors Azzi and Hawatt were just you and them, that we've been speaking about, generally speaking, apart from meetings of council.---Yeah, of course. No, look, I, I don't know who else I was, I don't know who I was referring to there. It could have been the mayor possibly. He's the only person that, that I, I don't think 30 there were any other councillors there.

The difficulty, of course, with the mayor would be that we know what Councillor Hawatt's attitude towards the mayor was and he couldn't abide him. Is that fair to say?---Well, that's true. That's true.

And might not have been prepared to talk to you about the subject in the mayor's presence.---Yeah, I'd say that's likely. But it could have been other councillors. I'm thinking out loud now, but maybe a couple of the other councillors showed up. The obvious ones would be, say, Councillor, 40 Councillor Kebbe and perhaps Councillor Adler.

But you're speculating, really, now.---I am speculating. I am. I don't know. But they're the only ones that took – well, they, they didn't take much interest either but they may have been there to try and provide some support for Councillor Hawatt at that time. All I can tell you is that the words were said. I don't know when or where, I know by whom, but I don't know who those witnesses were now, no, except for the mayor possibly.

Now, I'm going to be taking you to the meeting at the Canterbury Leagues Club on 27 December later, but I just don't want to pass from this before going to the next paragraph, which commences, "Following the submissions," I'm sorry, my mistake, "Following the submission of the notice of motion, I met with Councillors Hawatt and Azzi, who made me an offer to resolve this impasse. Their proposal comprised the following." Do you see that paragraph?---Yes.

10 All I'm doing is simply exploring this. I'm not making a suggestion to you. But was the expression, "Fix this or you can go," from Councillor Azzi something that was said to you at that meeting at the Canterbury League Club on 27 December?---No, I don't think so. I think he said that over the phone.

20 You still think that?---Yeah, I, I do. In fact, that meeting, I'm just thinking now again, the meeting we're talking about could have been the meeting at the leagues club and there could have been other people present there. I think, I do remember Councillor Adler showing up and I think Councillor Kebbe, as I said. Now, whether it's the same meeting, I don't know.

What's the recollection you have of a meeting at which Councillors Adler and Kebbe showed up?---There, there was a meeting at the leagues club and I seem to recall that there were other councillors present. The mayor wasn't, but I seem to remember other councillors being present, and the logical ones would be Adler and Kebbe.

And were Hawatt and Azzi there?---Oh, of course.

30 And what was the subject matter of this meeting?---Again just to talk over what the options are, make me an offer. They, they, they were determined that they were going to proceed with that dismissal notice.

So it was a meeting that you have a recollection of occurring at the Canterbury Leagues Club - - -?---Yes.

- - - involving at least those four councillors and yourself.---Yes.

40 And the subject matter was the dismissal motion which was to be discussed at the EGM - - -?---27th.

- - - that had been called for.---That's right. That's, that's the best I can, the best I can conjecture now is what was, and I do remember a meeting at the leagues club, no question about that.

A separate meeting from the meeting on 27 December with Councillors Azzi and Hawatt?---Well, I'm not sure now, that could have been the same meeting. That could have rolled over. That could all have been considered then. I didn't specify that in this, in this report here, but that's possible,

although maybe not, I mean it may have been a separate meeting with them in my office. I, but I'm absolutely sure that Azzi said those words and they would have been said I think over the phone.

Right. I just want to nail down if I can the memory you have of a meeting at the Canterbury Leagues Club with those four councillors at least.---Yeah, I'm pretty sure they were there.

10 We've established your memory is that it was during the war.---Yes.

And it was before the hostility ceased.---Yes.

And it was with a view to trying to resolve hostilities?---That, I guess, but I think what it, what it evolved into is more a discussion about what would I be prepared to accept to go, if you like. And they made, that's when they made that counter-offer.

20 Well, the first offer that was made to you, I hope I'm not jumping around too much, you have said was made at a meeting at Canterbury Leagues Club by Councillors Azzi and Hawatt on a date which can be established to have been 27 December, 2014, with no one else present.---Well, that's, that could be right.

Well, hang on. Do you have a memory of this offer being made to you or not?---Yes. When and where, I mean it's in that period of time but I couldn't tell you it was on a particular day or date.

30 No, I understand that, and I'm not, if you can't remember the day or date I'm not asking you to say anything else on that subject, but I am trying to establish how many meetings occurred at the Canterbury Leagues Club during, if we can call it the hostilities between you and Councillors Azzi and Hawatt, and there was another one that occurred in February, late February - - -?---Yeah, look - - -

40 - - - where the hostilities were resolved. Do you recall that?---I'd say there were, in total there would have been two meetings at the leagues club. I, I can't say the dates, but we know one was around 27 December, there could have been another one at that time or later, as you say in February. But the one I remember is the discussion about my future and how they wanted to progress the, the extraordinary council meeting and the termination of my employment.

Now, as you understood it, just thinking of your memory of this meeting at the Canterbury Leagues Club with these four councillors, Kebbe and Adler you would have seen as being in Hawatt and Azzi's camp?---Oh, absolutely.

Did you have anyone there to support you?---No, no.

Did you know that Kebbe and Adler were going to be there?---No.

It was a surprise to you when they were there too?---Pretty much of a surprise, yeah. But I didn't expect their support because they were locked in, they were in lockstep with Hawatt and Azzi, that's how it was.

Of course, of course, but what was the role you understood that they were playing at this meeting of which you have a memory?---Well, I just, I think it was just a question of strength in numbers.

10

Did they take an active role in this meeting?---Not really.

So it was just you and Azzi and Hawatt doing the talking?---Hawatt was doing all the talking.

With them being present. Hawatt, sorry, I correct myself.---Yeah, he was doing the talking.

Hawatt was doing the talking.---Yeah, and myself of course.

20

Yes.---I guess I was hoping that I could appeal to their sense of fairness in the way I'd been treated after all those years and that I could talk them round, but I failed.

How did that meeting get set up in the first place?

THE COMMISSIONER: Sorry, I'm confused now, which - - -

30 MR BUCHANAN: Yes, okay. I'm trying to explore the memory that the witness has told us he has of a meeting at the Canterbury Leagues Club on a date that he can't identify that is during the hostilities, that has four councillors present.

THE COMMISSIONER: All right. And that may be different from the meeting on we think the 27th with Councillors Hawatt and Azzi?---Yes.

All right.---Yes.

40 MR BUCHANAN: Because I have to tell you that there's a bit of evidence before the Commission about that meeting that can be established to have occurred on 27 December and there's not a tiddle of a suggestion that anyone was present apart from you, Azzi and Hawatt.---No, that could be right, and that's what I'm saying, there were two, there were two meetings at the leagues club. I can't, I do remember two meetings.

Well, there's certainly clear evidence of meeting in late February where it appears hostilities, at which it appears hostilities were finally resolved.

---Well, they would have been then, hostilities would have been resolved by then.

So could it be when you talk about this other meeting at the Canterbury Leagues Club which had four councillors present, that that was the one at which hostilities were resolved in late February 2015?---It's possible, although there could have been, and I - - -

A third meeting?---There could have been a third meeting.

10

I note the time, Commissioner.

THE COMMISSIONER: All right. We'll take the morning tea adjournment and resume at about 20 past 11.00.

SHORT ADJOURNMENT

[11.01am]

20 MR BUCHANAN: The questions I was asking you before the morning
adjournment, Mr Montague, were with a view to trying to establish where in
the chronology of events particular communications from Mr Azzi and Mr
Hawatt took place, and I appreciate we went forward in time to the period
between Christmas and New Year and also referred to February 2015, but
what I want to do now is take you back, if I can, to Christmas Eve, 24
December. So you have heard from Mayor Robson about the notice calling
for the EGM being delivered to him, and it distressed you and you possibly
went and saw Mr Vasil at that time about it. Judith Carpenter has told the
Commissioner, this is her statement dated 1 November, 2016 in Exhibit 53,
30 at page 8, paragraph 38. "On 25 December, 2014, at 1.30am", and if you
can just mark that time, if you wouldn't mind, "I received a text message
from Montague which said something like, 'All hell is breaking loose.
Please ring me in the morning.' Subsequently I spoke to him and said
words to the effect of, 'My reputation is at stake.' From that conversation, I
believed that he had been coerced and pushed into a corner, 'My biggest
regret was having the councillors on the panel,' or words to that effect.
There was negative press soon after this matter, about Montague and
council business." Now, do you recall sending a text message late at night
on Christmas Eve or early in the morning of Christmas Day to Judith
40 Carpenter about what had happened the previous afternoon?---I don't recall
but it's possible I did. Again, I was in panic mode.

If I could show you, please, an extraction report that is additional to the material that's already been received by the Commission.---Thank you. I've got it on the screen actually.

Yes. Oh, very good.---Would the Commissioner like this one? If I could just enlarge that a little bit, Mr Buchanan, if possible.

Yes, certainly.---Thank you.

If we could just look at the bottom half of the page that's in front of you, which is the second page of the document. The first page just being the title page with details of when the extraction was obtained and so forth. And can you see that there is limited information available here but it is an extraction, as the title page indicates, from your phone, and I can just point to that so that everyone can see that first off. Can you see in the top part
10 under summary of this table, it talks about extractions from, and then identifies a phone used by J. Montague?---Yes.

Thank you. And if we could go over the page, please. Then if we could enlarge it a bit. Thank you. Can you see that it's SMS messages, in this case – excuse me a moment. It doesn't identify who initiated the call but it indicates that it's a text message to or from Judith Carpenter, according to the data you'd entered into your phone on 25 December, 2014 at 1.24am. Now, over on the right hand side under the heading Message you can see
20 that there is no data as to what the content of the text message was, but we can take that, together with what Ms Carpenter had to say, as being another piece of evidence to suggest that she had the time pretty right when she said 1.30am, she received a text message from you in which you asked her to ring you saying all hell is breaking loose. Now, do you recall sending such a message to Ms Carpenter?---No, I don't but I, I must have and it just shows you my state of mind at that time. I mean, Christmas Day, good heavens. You know, at 1.24 in the morning. I, it's extraordinary. I must - -
-

You were very distressed by this?---Oh, absolutely. Yeah.
30

Commissioner, I tender the extraction report in relation to the extraction from Mr Montague's phone with a text message on 25 December, 2014, with Ms Carpenter.

THE COMMISSIONER: Right. The extraction report of Mr Montague's phone recoding an SMS message sent to Judith Carpenter on 25 December, 2014 at 1.24am will be Exhibit 239.

40 **#EXH-239 – EXTRACTION REPORT FROM THE PHONE OF JAMES MONTAGUE RECORDING A MESSAGE SENT TO JUDITH CARPENTER DATED 25 DECEMBER AT 1.24 AM**

MR BUCHANAN: I'd like to take you to some more text messages, not in relation to Judith Carpenter and a day later. If we go to volume 4, page 76, please. And you can see there a text message extracted from Mr Hawatt's mobile phone, from him to you on 26 December, 2014 at 6.49pm, the message

reading, “When can we catch up to talk?” Do you recall that – I withdraw that. What’s your memory of the first contact you had from either Azzi or Hawatt after you heard that they had delivered the call for the EGM to Mayor Robson?---I don’t think I had any contact with Azzi, but this clearly indicates that Michael wanted to say something. I don’t recall it, I don’t doubt it happened though.

10 Was it initiated by him or was he responding to something from you?---No, no, I think it was initiated by him. That’s the only conclusion I can draw, because you know, I was shocked, absolutely shocked. I didn’t really want to speak to either of them.

And then if I could take you to page 80 in the same volume, there’s a text message extracted from Mr Hawatt’s phone from you at 8.57am on 27 December, 2014, so the next day.---Yeah.

And the message is, “Michael, anytime.”---Yep.

20 Obviously responding to his question, “When can we catch up to talk?” Are you able to assist us as to why as much time elapsed as that between his message at 6.49pm the previous evening and yours at 8.57am on 27 December?---Not really, I could have been caught up with family matters. I don’t know.

30 If I can take you then to page 84, and here are further messages extracted from Mr Hawatt’s phone, again on 27 December, 2014 at 11.53am, and the first message reproduced on this page is from Mr Hawatt to you reading, “Pierre, you and I only at the Canterbury Leagues Club at 4.00pm. Is that okay?” And you’ve responded one minute later, “See you there.”---Yeah.

Was there any discussion with George Vasil as to the communications you were having - - -?---No, I don’t think so.

- - - on your part?---I don’t think so. I wouldn’t see any need to.

40 And there wasn’t anything that occurred between you and Mr Vasil to sound you out as to whether you would be amenable to an approach like that from Mr Hawatt on 26 December at 6.49pm?---Not that I recall, but I guess it is possible that Michael and Pierre or one or both of them had been in contact with Vasil, I don’t know. It’s possible.

Okay. All you’re doing is, you don’t have a memory of it?---I’m guessing, no.

There was no memory, sorry, you don’t have a memory of a communication from George Vasil to you?---No, no, not at this time, no.

Now, you then had a meeting at Canterbury Leagues Club with Mr Hawatt and Mr Azzi by themselves?---On the 27th, yes.

On 27 December.---Yeah.

And excuse me a moment. Can I take you to a memo addressed to Councillors Hawatt and Azzi at page 172-3 in volume 4.---I can see it now. Yeah.

10 It's dated 12 January, 2015, but written on it in handwriting is the words "not sent". Is that your handwriting?---Yes.

So you dictated this memo but ultimately decided not to send it?---That's right.

And was there a reason why you dictated it?---I suppose when I dictated it I intended to send it, but I must have had, you know, second thoughts. I'm stewing over the whole thing.

20 Well, the first two lines read, "This is to confirm the nature and outcome of the conversation that took place between us at Bulldogs League Club on 27 December, 2014." Now, for those not familiar with the clubs in the Canterbury local government area, the relationship between the Canterbury Leagues Club and the Bulldogs Club?---Well, there's two clubs. There's a licensed club and a football club, so they call themselves the Bulldogs Leagues Club, but the, the legal identity is Canterbury-Bankstown.

THE COMMISSIONER: So they're the same thing?---The same thing. Well, there's two clubs within a club if you like. There's two separate
30 boards.

MR BUCHANAN: It's the same infrastructure, it's the same buildings? ---Yes, and same people. Although the leagues club, football club meets down at Belmore Sports Ground.

You went on to record, "The meeting was arranged by mutual consent ostensibly to discuss the appointment of a new director of city planning following the resignation of the former director, Mr Marcelo Occhiuzzi, on 7 November, 2014." You then talked about the recruitment process, you
40 then talked about Mr Stavis, and then you said, "The preceding brief history is necessary to contextualise our meeting at the Bulldogs League Club on 27 December, 2014. At the club you presented me with two options to consider." Now, I just need to interrupt my taking you through this to ask you this. When you created this document, or caused it to be created, you were writing down what your memory was of what had actually happened, is that right?---Yes, yes.

You weren't making anything up?---Oh, no.

No embroidery?---No.

And then under the heading of Option 1 you said, "I would be required to retire in August 2015. In addition to my normal entitlements I would be paid an additional eligible termination payment equivalent to 38 weeks' pay based on my annual total remuneration package (ATRP) at the time of retirement. Option 2, as above, except I would be given the opportunity to provide consultancy service to council to assist finalisation of a number of key projects, including council's response to the NSW Government's Fit for the Future reform package." Then it went on to refer to the deadline for those being 30 June, 2015. You went on to say, "Leading up to my retirement in August 2015, I would be required to assist council in the appointment of a new general manager and director of city planning. I pointed out repeatedly that Mr Stavis's appointment would require the endorsement of council, and that in the circumstances I would not be exercising my prerogative under section 337 of the Act to appoint him without further consultation with council. I advised you both that I would need to discuss my options with my family and the mayor, Councillor Brian Robson, before proceeding, and that I would mull things over and come back to you at the earliest possible time. The meeting concluded at approximately 5.00pm." And then on page 173 of volume 4 is reproduced the second page of the memo as dictated, and under the heading My Response you indicated that you declined the offer for three reasons that you then identified.---Yeah.

And I'll come back to that. Now, looking at the second half of page 172, the first page of the memo, is that what occurred at the meeting at, I'm going to call it, Canterbury Leagues Club on 27 December?---Yes. To the best of my recollection, yes.

Did anything else occur?---We had coffee, that's about all.

Was anything else said?---If there was anything else said it was all around the same subject, so there may have been a little bit of, you know, toing and froing, but essentially that was what they said, yeah.

Can I ask you to think back to that meeting. Who started talking?---Oh, Hawatt.

And was the offer made in the first seconds of him talking or was, did he beat around the bush first or what?---Well, there weren't many pleasantries, I think they got down to business pretty much straightaway, after we greeted each other of course, and I was polite and civil to them and they were to me, I must say, and then they got down to business.

They wanted you to go?---Yes.

And the question is the terms.---Yes, more or less.

And then they outlined, or sorry, Mr Hawatt outlined the terms?---Yes, yes.

What role was Mr Azzi taking in this conversation?---Oh, he was the muscle.

THE COMMISSIONER: Sorry, what do you mean by that?

10 MR BUCHANAN: I asked for that, didn't I. I'll reframe the question. Did Mr Azzi say anything?---Very little.

Why did you say he was the muscle?---Because that's what, that was his role, to provide the support to Michael. Yeah, you know, they hunted, they hunted as a pair.

20 But in terms of personality, if they were both trying to achieve the same outcome and they were hunting as a pair, did one play one role and the other play another role?---Oh, it wasn't good cop/bad cop stuff. I mean Pierre really didn't say much other than to emphasise a couple of the points that Michael made, in other words to use that voice of his to emphasise the point, which I took no notice of, because that's, that's his modus operandi, you know, I'll say it, he's a bully.

Yes.

THE COMMISSIONER: And sorry, when you said he used his voice, what, he yelled or - - -?---No, he just, yeah, he's got a very, you know, he's very excitable and he just reinforced what Michael was saying.

30 MR BUCHANAN: Forceful is a word that's been used?---Well, I think so, I think so, yeah.

Is that a fair way of describing the - - -?---Yes, but it didn't bother me because he's - - -

I'm sorry, the way in which he contributed to the meeting?---Oh, firm, yeah, forceful might be going too far, but certainly firm.

40 He wasn't yelling at you thought?---Oh, no, no, no, no, no, nothing like that, not in a public place, that wouldn't happen.

And so was he indicated that he was in complete agreement with what Michael Hawatt was saying?---Oh, no question about that, that's a given.

And is it the case that you indicated after Michael Hawatt had spoken that you would consider - - -?---Yes.

- - - what they had said?---Yes. Well, I was in no position to do much else. They, you know, they had the upper hand.

Well, the option was to - - -?---Walk out.

No. The option was to accept it on the spot.---Yeah, but I wasn't going to do that.

10 Because?---Well, I wanted to discuss it with my wife, I wanted to discuss it with my family, I wanted to discuss it with the mayor, I wanted to think it through thoroughly before I made any decision.

THE COMMISSIONER: Can I just ask, option 1 is retiring in August 2015 plus really a redundancy payment.---Yes, that's what it amounts to, that's right.

And then option 2 is that, plus after your retirement continued provision of consultancy services - - -?---That's right.

20 - - - paid in addition to your redundancy.---Yes, yes, probably on a do and charge basis.

Right. If the motion was approved at council for your dismissal, would you have received any payout or - - -?---Well, under this provision, if, under option 1, I would imagine, and I'm only, I'm only surmising this, I don't know what was going through their minds, if I had agreed to that what I'm assuming would happen, at some stage, probably on the 27th or subsequent to that, 27 January I mean, they would move a motion which encapsulated option 1 which would entitle me to all of my termination payments, which are legally
30 entitled payments, and add the 38 weeks which you've described as a termination payment, yes.

But if you were dismissed by a resolution of the council you would have got your legal entitlements - - -?---Yes.

- - - but you wouldn't have got something in terms of a redundancy package. ---I think under the terms of the contract I would have anyway. I mean that would have to be tested, but we didn't go that far, but that, that's a good point, but I think under the terms of the contract, if my employment is terminated
40 without good cause then I would be entitled to payment which is, as I understand it, unless it's changed in the last three years, is a maximum of 38 weeks' pay, at your total, at the then total TRP.

MR BUCHANAN: So, your understanding, and I'm not suggesting it's wrong, is that had you been dismissed for no reasons, you would have been entitled under your contract to a payout of 38 weeks?---Yes.

Perhaps with sick leave and - - -?---Well that, that, that - - -

- - - the rest of it on top.---That's automatic. They have to pay that, can't avoid that. That's under the award or under the council's industrial agreement. So there was no problem, it was just the extra payment for terminating the contract early.

10 And so what you understood it appears that you've recorded here, page 172 of volume 4, is that in addition to that entitlement, you would get an extra 38 weeks.---Well, that's how I, that's how I interpreted it and, and I, they didn't clarify it and they, they really didn't have, they didn't have the ability to do that because they didn't understand it, I don't think. I think this was fed to them by somebody else in local government and they relied on the information they'd received from this third party to put this offer to me. Now, whether it meant I was effectively getting 76 weeks' pay, I don't know and it never came to that, so - - -

20 Well, if I can just ask you to pause there, though, for a moment. Thinking about that meeting and you walking away, was the impression that you had, was that you were being provided by these two men with an incentive to leave?---Yes, yes.

And of course to be simply given your entitlements upon dismissal for no reason, namely 38 weeks' pay plus the rest of your entitlements, is no incentive because you get that for being dismissed with no reason, so there had to be something on top of that.---Yeah. I, I think so. I mean, as I said, I, I didn't give it a lot of thought. I more or less decided after I left the meeting I wouldn't accept the offer for the reasons I've outlined there. But I'd rather be, I'd rather retire than be sacked.

30 THE COMMISSIONER: So, this option number 1 might have been agreeable to you because it gave you the option of retiring and also possibly an additional 38 weeks to the 38 weeks that you would have received? ---Yes, yes. I, I think, I think the councillors themselves were confused about that, and as I said, it would, would require further investigation. So, if I put my hand up and said, "Yes, I accept that offer," I imagine what would have happened then is that would have all been examined further and we'd come up with a figure in dollar terms, yeah.

40 But it suggests that there was going to be a sweetener in it.---Oh, absolutely, yeah.

I.e. you can retire and some additional funds.---Yes. Yes. That's, that's how I understood it. And I have to add, Commissioner, that that was dropped on me when I got to the meeting. I had no concept of that previously or, but I would have dug in, I would have said, no, look, I'm not going unless, you know, there's something in it for me, obviously, because the contract was due to expire in April 2017.

When you say you didn't give it serious consideration, you don't mean that you're not clear that you were made the offer that you've described in this document of 12 January, 2015, what you're saying is, I didn't give it serious consideration that I would accept it. Is that right?---I obviously considered the offer, the two parts to the offer, which, pardon me, as I said was dropped on me without any notice, but after thinking about it I decided I, I would reject the offer and I would retire or, or go through until, until the termination of the contract in April 2017. That's what I wanted. And I offered to help out with the transition after the merger. I would help out with the transition of the two councils. I was happy to do that and we sort of had an agreement, not with them, but there was sort of an understanding that if the merger was voluntary, not forced, which it subsequently or ultimately was a forced merger, then I would be able to stay on for a year or two to help out with the transition, because it was a very big job to merge two big councils into one, and I was happy to do that but of course that didn't, it didn't eventuate.

MR BUCHANAN: Just excuse me a moment.

20 THE COMMISSIONER: Can I ask, you've got the two options, which really focus on you resign, retire and additional payment, then the position of the director of city planning is raised. What was anticipated there, that Mr Stavis was going to be appointed or they were going to go through a new recruitment process or what?---Well, that, that I'm not clear on. I, I think they had it in their mind once I was out of the way they'd get a new GM, somebody who was sympathetic to their views. I think they had somebody in line, lined up, and that person would go ahead, and either re-advertise, just go through the motions if you like, or, or simply appoint Mr Stavis.

30 And was that based on something they said or just your feeling?---No, just, just, I, I think that's, that's what I felt. They made it, yeah, it was pretty clear. They wanted, they wanted him. At this point all bets were off.

And who was the person you suspected they wanted as GM?---I, I hesitate to name names, only because I don't know what they actually said to him, but there was a fellow who was the formal general manager of Rockdale who was circling the airport, so to speak, and he was very tight with Kent Johns.

40 MR BUCHANAN: Now, on page 173 of volume 4 is the second page of the memo, and under the heading My Response you declined the offer for the reasons that you identified there. Were they the reasons - - -?---Yes.

- - - that you declined the offer?---Yes.

There were no other reasons?---No.

In it, you identify in the first dot point, “I do not believe your offer is appropriate or lawful,” and then you say, “given that you do not have the authority of council to make such an offer.” Now, I’m not suggesting that’s wrong, but there was nothing else that you included in your statement of reasons for declining the offer, which later appeared in your report to this Commission dated about 5 January, 2015, suggesting that it was a corrupt offer.---Well, look, that’s a strong word but, but, but I think it was bordering on corrupt, but I don’t know they understood that. I don’t think the offer was lawful because, as I said, they didn’t have the authority of the council, and for such a payment to take place, they’d have to have a resolution of the council.

Well - - -?---That’s, that’s my take on it.

You know about your report to the ICAC of 5 January. Why did you wait until then before making a complaint or report or disclosure?---Oh - - -

Why didn't you make it on an earlier date like 28 December?---Well, it’s only a matter of a week or so, isn’t it? I mean, I would have been, again, at that time of the year very busy. I was thinking, thinking it over, taking advice from friends, close friends, family, before I made a decision, and I came to the landing that it was necessary to report it to the Commission.

THE COMMISSIONER: Were you getting legal advice?---I would have. I would have got legal advice in relation to the legitimacy of the offer.

But you didn't.---I didn't. I didn't have time and, you know, we, I was away and it was a mess. But if, if they’d insisted or if it had come up at the meeting on 27 January that they wanted to pay me something to go, I think that would have triggered some further legal advice. I can’t, I can only speculate about what might have happened on the 27th if the meeting hadn’t collapsed.

MR BUCHANAN: Well, the meeting didn’t collapse, really. It just ended with you saying, “I’ll think about it.”---No, not that meeting. I mean the council meeting on 27 January.

Oh, 27 January.---Yes.

I see. I apologise, thank you. Can I take you then back to the draft code of conduct complaint created about 5 January, 2015, into which you’ve been asked to assume that Mr Hawatt had some input. So, this is volume 4, page 117 and page 118. Can you see that at page 119, at the bottom of the page, there is a recitation commencing at about point 23 of the events that we’ve just been talking about from another point of view, and so at 23 is, “A request to meet the general manager to discuss all of the above issues was made by Councillor Hawatt on December 27 by SMS.” Point 24, “General manager responded by SMS on December 27 to state any time.” 25, “A

meeting was held at Canterbury Leagues Club with the general manager, Councillor Azzi and Councillor Hawatt. The points of discussion were”, and what I'm going to ask you is, were these things said and, if so, by whom? Point A, “The general manager advised he would reappoint Mr Stavis.” Was that said?---I, I don't know, and as I said earlier when this document was tendered here, I don't know where they got this information from, who prepared it and, and, and I can't vouch for its authenticity.

10 Yes, I understand that, sir, but all I'm asking you at this stage is, is it correct in any way or is it incorrect?---Well, I don't recall - - -

Can you assist us as to whether it's correct or not, firstly.---I don't, I don't recall saying that I would reappoint Mr Stavis, no. To that extent, I don't think it is correct.

And do you think it's likely that you said you would reappoint Mr Stavis? ---Well, he subsequently was reappointed if my memory serves me correctly.

20 But some time later.---Yeah, that's right. The council, the council endorsed that.

No, no, no. Not interested in that history. All I'm trying to explore is the likelihood that you said at the meeting on 27 December, 2014 you would reappoint Mr Stavis. How likely is that?---It's possible, it's possible.

30 And at that time, why would it be possible that you would have said that? ---Well, that's where I'm confused because I don't believe that was one of the terms of reference. That wasn't one of the things that they included in the offer to me, that I'd reappoint Stavis. That didn't come up.

40 Well, let's just think about it, then. When you walked away from the meeting, had a resolution of the dispute as to whether Stavis should start work as director of planning been proposed?---I, I, I can't recall. I, I just can't, I can't sort of sequence it all in my head now. It doesn't seem likely, though, because at that point, 27 December, the withdrawal of the offer was still on foot. I hadn't withdrawn the withdrawal, if you like. There was the prospect of the meeting on 27 January, which was very hostile towards me and, as, as you know. So, look, I can't, I, I, I don't recall just what, how they got that.

THE COMMISSIONER: Mr Montague, it seems to be inconsistent with that draft memo that you were just taken to, and do you remember I asked you, there was a section where you said, you looked at the two options, you described the two options that were put to you and you said, “I would be required to assist council in the appointment of new general manager and director of city planning.”---Yeah.

And I said to you, "So where was Mr Stavis?" And you said, "Oh, look, it was, you know, a new general manager, they'd start again, but you know, Stavis was there to be appointed." That seems contrary to an assertion at page 119 that you advised that you would reappoint Mr Stavis.---If, the only way I can explain it, if the offer, part 2 of the offer or the second offer, there were two offers in that thing, if I accepted the second offer, what I would do is to assist the council to recruit a new director of city planning because I said that that appointment was critical to the organisation.

10 Ah hmm.---Now, my refusal to accept either part of the offer or either offers changed the game a bit, I mean, and, and as far as Stavis was concerned, he was pretty much in limbo then. Now, to me the critical date was 27 January when that aborted meeting took place. What may have happened after that is anybody's guess really.

MR BUCHANAN: Yes. But what we're just trying to establish is, looking at the documents that were created by different people purporting to give an account of the same event, different things are said on the subtopic of what would happen to Mr Stavis's appointment, and we're just trying to work out
20 is there any accuracy to either of those versions or is the truth somewhere in between?---I think the truth is somewhere in between. And as I said, I assume what's happened here is that Hawatt and Azzi, or Hawatt anyway, has gone to somebody else, a third party, related to that what had transpired at that meeting and put it in, put it in writing. Now, whether he got it right, I can't say.

THE COMMISSIONER: Who's the third party you suspect?---Well, it's the guy from Rockdale I think.

30 Oh, who was hovering?---Yes.

MR BUCHANAN: Then paragraph B of point 25 in the draft code of conduct complaint, page 119 of volume 4. "The councillors advised the general manager they were concerned about his actions." Did that happen at the meeting at the leagues club?---Oh, look, yes, they, they did, they were angry, very angry about what I'd done in terminating the offer.

Paragraph C. "Due to his actions the councillors advised the general manager he may consider his position at council."---Yeah.

40 I suggest that Chinese whispers can occur where when a document or an idea goes through a number of people's heads.---Yes.

And it might have been a way that someone represented the idea that you should consider whether you should stay at council.---Well, I took that, I took that as a threat though, that I need to consider my future at the council.

Yes.---Keeping in mind that that resolution on the 24th, that motion on the 24th was still hanging around.

Then paragraph D. “The general manager advised he would appreciate being able to finish 50 years on council in August 2015.”---At the very latest, yes.

That was said by you at the meeting on 27 December?---Possibly, I don’t recall precisely, but - - -

10 And is it likely that you said that?---Yeah, could have said that.

Paragraph E. “The general manager advised he wished to buy out his car.”
---Yep, that’s standard procedure.

Did you say that?---Yeah, it’s standard procedure.

F. “The general manager also advised there may be an issue with the mayor buying a new mayorial” – mayorial? Mayoral?---Mayoral.

20 Mayoral, thank you.---Mayoral.

“Car and it being an Audi.”---Yep.

You said that?---Yeah, there was discussion about the type of vehicle the mayor wanted.

At the meeting at Canterbury Leagues Club on 27 December, 2014?---Yes, they were very hostile about that.

30 That is to say that was an issue out there at the side, was there, between Azzi and Hawatt on the one hand and Robson on the other hand - - -?---Yeah. They, they - - -

- - - that was separate from the employment of Stavis?---But it all, they, they, they wrapped it all in together. They, they wanted to strip the mayor of all his, of all his entitlements.

Paragraph G. “The general manager advised he would call the councillors back with his position in regard to the terms and timing of his retirement.”

40 ---Yep.

And if we go over to page 120, point 26, “No further response was received to Councillor Hawatt or Councillor Azzi.” And then 27, “We’re advised that the general manager began discussing the matter with numerous people within and outside of council.”---We know that. 28 corroborates that.

Excuse me. Now, at the same time as you making your report to the Commission in January 2015 – and I think I inaccurately dated it on 5

January, it's 15 January, my mistake, handed in on 16 January – Mayor Robson also made a report.---Yes.

You knew he was doing that?---Yes.

Did you have any input into his report?---Not really. He wrote it himself, put it together himself. He told me he was doing it and that, that was the extent of my involvement.

10 Did he have any input into your report, you making your report?---No. No.

In Mayor Robson's report, volume 5, page 231, the third paragraph – if we could enlarge page 231 a bit.---Yeah.

20 Mayor Robson said, "Following the Christmas break, on Monday 29 December, 2014, I met with the general manager, Jim Montague, where he informed me that he had been approached by George Vasil, the father of Councillor Vasiliades, and Tony Stewart, former Canterbury deputy mayor and Member for Bankstown, to attend a meeting with Councillor Azzi and Councillor Hawatt ostensibly to discuss the aborted appointment of Mr Stavris and a possible way forward." Then he went on to say, "Instead Mr Montague told me that he had been improperly offered inducements to take a voluntary retirement. If he accepted their offer, Councillor Hawatt and Councillor Azzi would withdraw their demand for a special meeting." Can I ask you about what is recorded there. Firstly, on Monday, 29 December, 2014, did you – were you at council chambers with the mayor?---Yeah, possibly I would have been. I don't know what time it was, but - - -

30 Do you remember meeting with the mayor at council chambers in this interregnum period between Christmas and new year?---Yes, we were still on the job so to speak.

Yes. And did you tell him about the meeting on 27 December at the leagues club?---Not sure. I don't, I may not have.

40 Would there have been a reason why you wouldn't have?---Well, no, look, I, I don't know. I may have told him but it, it may have only, in my view I think at the time, made the situation even worse because of the relationship between them.

MR ANDRONOS: Commissioner, perhaps the witness should have an opportunity to read the whole of the document before answering further questions on the sequence of events because it may be, it may be of some assistance.

MR BUCHANAN: Well, I'm going to take the witness to the next paragraph. The next paragraph suggests that on 29 December, 2014, you did tell him that you had been, instead of attending a meeting to discuss the

aborted appointment of Mr Stavis and a possible way forward, improperly offered inducements to take a voluntary retirement.---Yeah, well, that's what happened.

And you told Mr Robson that?---Yes, it looks as though I did, yeah. If, if Mr Robson's recollection of events is accurate.

10 And then Mr Robson went on to say, "We both agreed that this was corrupt behaviour, that the offer should be rejected and that the offer should be immediately reported to ICAC."---Yep.

So 27 December was a Sunday, according to – my mistake, sorry, sorry, sorry. I was looking at the wrong year. The 27th was a Saturday in 2014 and the 29th was a Monday.---Sounds right.

So, sort of like the first day back?---Yeah.

20 And he says here that on that occasion you both agreed this was corrupt behaviour, that the offer should be rejected and the offer should be immediately reported to the ICAC, and then he goes on to say, "At around 11.00am, the GM placed a call to ICAC and left a message on the recording machine as it appears ICAC were closed for the Christmas period." Now, is that correct?---Well, I've got no reason to doubt Mr Robson's recollection.

You've got no memory of it but you've got no reason to doubt it, is that right?---That's true.

30 And so this is the answer to the question which sort of flowed from what I was asking you earlier as to the impression you had when you left the meeting on 27 January, my mistake, 27 December. When did you first decide that the offer that had been made to you was, if not corrupt, then at least improper?---I think as soon as I got in my car to drive back, to drive home. I, I decided in my head, anyway, I wouldn't accept it.

Now, then there was the pages 172 to 173 of volume 4, the unsent memo to Councillors Hawatt and Azzi. When I say then, it's dated 12 January, 2015. You see that?---Yes, I can see that.

40 Now, thinking back about the meeting that it purports to describe. Can you remember where in the buildings it was that you met the two men?---It would have been in my, oh, where, at the leagues club or my office?

At the leagues club.---Yes, in the lounge area on the, on the ground floor.

And did you stay there for the meeting, whilst you were talking to them and Mr Hawatt was talking to you and - - -?---Yeah, yeah. We had coffee.

You had coffee?---Yeah.

The meeting lasted about - - -?---Three quarters of an hour, max.

No one else took part in the meeting?---Not, not that I can recall, no.

And you stayed in the area where you had originally met?---Yes.

You didn't move to another part of the building?---No.

10 Were there any documents or papers that were around?---I think, I think Hawatt had a list of things that he was reading from, which pretty much, pretty much reflects what was in the offer. Just, and I didn't see it, I didn't read it, handwritten notes from somebody or other.

Well, no, I just want to ask you to pause there. You're not mixing up your memory of the meeting with your memory of evidence that you have seen that the Commission has?---No. No, I, I'm pretty certain he had a document in his hand which was just scribble, setting out what, what they were proposing to offer me.

20

How did you know what was in that document?---Well, I didn't but I saw it in his hand. I didn't read it.

THE COMMISSIONER: And what, when he was making the offer, did he refer to the document, can you recall that?---Oh, not really. He just put it down by his side. It was on the table in front of him, I think. I didn't take a lot of notice of that. I took more notice of what they said obviously, or what he said. Azzi didn't say much.

30 MR BUCHANAN: So I appreciate that, reinforced by seeing the relevant part of Mr Robson's report to the Commission, you gave a verbal account of the 27 December meeting to someone, namely Mr Robson, on 29 December. We have the 12 January, 2015 document that you created, in which you talked about what had happened on 27 December. Was there any earlier record that you created than the memo of 12 January, 2015?---Not that I recall.

Now, did you dictate it?---Yes, I probably did. I sometimes hand-wrote things but often I did dictate them.

40

THE COMMISSIONER: You didn't type things yourself?---No. Not in that format. I would have with emails and that sort of thing but not, not (not transcribable)

MR BUCHANAN: So can I just interrogate the dates, in that case? If it has the date 12 January, 2015, is that the date on which this was typed up by someone listening to a tape that you dictated?---It would have been, it would have - - -

Or is it a date that had been ascertained as being the date on which you dictated it?---I've got, I, I can't recall. 12 January, what day of the week was that? Can somebody help me there?

Yes. Monday.---No, I'd say that was the date that the, the memo was, was produced, was established, was typed.

And when did you dictate it in relation to the time that it was created?

10 ---Probably the same morning, on a Monday. That was one of the times that I did keep some notes.

Now, if I can take you back a little bit before 12 January, volume 4, page 147. I just want to ask again about this text message that is extracted from Mr Hawatt's telephone, addressed to a William Vasil, dated 6 January, 2015, at 8.17pm, but using your words.---Yes.

"Hi, Michael. We need to chat about Spiro. Please call me when convenient. Jim."---Yes.

20

Is there anything else that you can assist us with as to when you used those words? It wasn't more than once? It was only the one time that's recorded on page 154?---I, I believe so. I don't, as I said before, I don't know who William Vasil is. Whether Michael sent it to the wrong number, I've got no idea.

Thank you.---Vasil's a very common name in Earlwood.

30 I understand. Now can I take you to volume 5, page 101. And this is the handwritten letter of apparently resignation.---Yes.

It's your handwriting?---Yes.

Was it all written at the same time, one time, these two pages?---Yes.

Including the crossings out?---Yes.

40 As best as you can recall, when did you write it?---I can't, I can't recall. I'd got to the stage, I remember sitting in my office. I was so depressed and so fed up and over it all. I thought, bugger this. I don't need this in my life. I'm going. And I scribbled that out. How it came into the possession of the Commission is still a mystery to me, but we won't go into that. I would have handed it to my PA or my exec officer, presumably, or I might have just left it in the top drawer. When I drafted it I was in two minds. I didn't know what to do, but I thought I can't deal with this anymore, I've just got to get out, I've got to make a break and get the hell out of it. That's, that was my thinking then and obviously later I reconsidered, I, I thought, no, I'm not going to let these people force me out, no, I don't want to go yet,

I'll, I'll dig in. So I maybe just put that in a drawer or gave it to Crissy, I don't know which, but it never, it was never typed and it was never sent to anybody. That would have gone to the mayor of course.

You can see on the first page at the top of the page that in indicating your decision to enter into retirement, you said, "With my last day of service being Friday, 13 February, 2015."---Yes.

10 What is the period of notice that you believed you were giving when you wrote this?:---Well - - -

How much notice were you giving?---Under the circumstances I couldn't, I couldn't have been blamed if I hadn't given any notice, I mean the way I'd been treated, but normally you would expect, particularly in a role as senior as mine, you would normally give the council at least a month's notice, probably more, much more really. If circumstances had been different I probably would have given the council up to three months' notice so they could, you know, talk about recruitment and all that sort of thing, but these were very unusual circumstances.

20

And because they were very unusual circumstances what do you think was the period of notice that you were giving?---This happened after the meeting, the aborted meeting on 27 January, so it would have been somewhere between 27 January – 13 February of course is nowhere near a month's notice, but you know, as I said, I just wanted out. It didn't really matter to me.

30 What is it that enables you to say that you wrote it after the abortive council meeting of 27 January?---Well, well, that was a very, very unpleasant experience, it attracted a lot of media attention at the meeting that night, and the meeting, people were hanging off the rafters literally. It was a terrible meeting. My family were there, they witnessed all this, certain other people in the community who were anti-me were there, it was a diabolical meeting that night and I just wanted to get the hell out of it. I'd had enough.

And are you simply associating the decision to retire or to enter into early retirement with that point, it being the lowest point that you experienced during this war - - -?---Yes.

40 - - - or do you actually have a memory that after the meeting in the evening of 27 December you went off and wrote this letter?---No, I don't have a memory of that, but it seems logical to put the two together, given the hostility that was displayed at the meeting by people that I would have thought would have been more supportive. It was an extremely difficult meeting for all concerned, in particular the mayor that night.

So you would have given some 17 days' notice?---Yes.

That fits with your memory, as best as you have it, of writing this document?---Well, I can say this, Mr Buchanan, the requirements of the Act or the conventions in relation to termination notice didn't enter my head.

I understand. Thank you. Just excuse me a moment. Can I go back in time now to 12 January, and to Exhibit 59, please, if we can show that on the screen. This is the McClymont article, the first McClymont article in the Sydney Morning Herald. It should be. Yes. Now, just the headline first off, "The King of Canterbury." At one stage you describe Mr Hawatt as the King of Canterbury in these proceedings.---No, well, if I did I was wrong because the King of Canterbury was a term coined by Councillor, ex-Councillor Azzi and it applied to me. I don't recall calling Hawatt the King of Canterbury. If I did, I was wrong.

Kingmaker? I might have mistaken your evidence.---Kingmaker.

Sorry, I think I did.---But there's only one King of Canterbury, and according to Azzi that was me.

20 So you heard Azzi use that expression?---Yes.

When did you first hear him use that expression?---About the time all this blew up.

Not earlier?---No, I don't think so.

So it was intended to be a derogatory term rather than a - - -?---Oh, of course. It was hardly complimentary. And it wasn't 50,000, just to the correct the record, it was 40 over five years, not 50 over four years, but we won't bother about the details there. That's typical of the reporting.

30 When did you first become aware that Ms McClymont or the Sydney Morning Herald were investigating you and Canterbury Council?---Because she put in a request, or the Herald did, the, the paper did, for access to documents under, under the old FOI legislation. We were obliged to, to reply to that and to provide the information requested, which we did.

40 Now, apart from evidence before the Commission, do you have any knowledge as to what inspired Ms McClymont's investigations?---I'm only guessing, I've got nothing concrete.

No, not interested in a guess.---Well, my best guess is - - -

No, not interested in a guess.---Well, then I've got no information.

Thank you.

THE COMMISSIONER: Do you recall when you were notified there was the FOI request?---Yes, of course. My staff always told me about requests of that nature.

So when was the request made?---Oh, look, I'm, it was, it arrived in the paper in the, the article was published in 2015.

2015, January.---It would have been midway through 2014. It took a long time to assemble all of the information she requested and to comply with, with the request.

MR BUCHANAN: Do you know when it was provided?---Well, as soon as possible. No, I don't know the date but my staff reported that they - - -

Or month it was provided?---Oh, no. Look, it was probably August/September, maybe, 2014.

THE COMMISSIONER: And was it wider than receipts for lunches?---No, that was, that was the whole basis of the story, was - - -

20 No, no, no, no, no. Sorry. The FOI request, did it seek documents other than receipts for lunches?---No. All it wanted was details of all expenditure at that particular, at that particular restaurant during a period of, I think it was five years.

MR BUCHANAN: And your best recollection is it was the middle of 2014 when the request was received and that the information was supplied to the Herald about August/September, you would imagine?---Yes. I couldn't, I couldn't be absolutely certain about that.

30 Articles were also published subsequent to this one in the Herald, about you?---Yeah. I didn't read any of them.

You didn't read any of them?---No.

Well, you obviously read this one.---Actually I didn't until later and I didn't read the subsequent ones. I couldn't be bothered reading them.

40 You were aware they were being published?---Of course. The whole world knew about it.

Did the publication of this and subsequent stories have an impact on you? ---Of course it did.

What was the impact?---Well, I, I really don't want to be drawn into a discussion about the media but I, I thought that the story was - - -

No, no, no. It's not what you thought about the story. What was the impact it had on you personally?---Well, it distressed me deeply because it damaged my reputation and it was inaccurate anyway. The reporter didn't both to find out what, why these meetings were held well, well, not this one in particular.

We're not actually exploring the lunches except as a totally tangential issue, really, to the real issues before the Commission.---Yep. Fair enough.

10 Now, can I take you, please, to volume 4, page 185. This is an email that you were sent by Mr Belling, the council's lawyer, on 13 January, 2015 at 8.50am and in it Mr Belling indicated to you that it was likely a contract was formed when you sent the offer of appointment to Mr - - -?---Stavis.

- - - Stavis and he accepted it.---Yes.

THE COMMISSIONER: Was that the first time you received that advice?
---Oh, he may have, he may have conveyed it to me verbally but I don't recall. The first time I think I got a text from him along those lines.

20

But before you sent the letter to Mr Stavis in December saying I'm withdrawing the offer, you weren't provided with that advice that there may have been a contract formed?---Look, I, I know enough about the law and I've had enough experience in local government to know that there probably was a contract formed. Acceptance, offer and acceptance had occurred and my experience told me that I needed to get some confirmatory advice.

MR BUCHANAN: Now, can I take you, please, to page 218 in this volume and can you see that at the top of page 219, the second page of your memo
30 to councillors of 22 January, 2015, you said this, "This offer made on 27 December was followed up with a further meeting on 13 January with Councillor Hawatt and a witness in which this offer was reiterated. Following this meeting the offer was repeated to me in writing via email." Do you see that?---Yes.

What can you tell us about that further meeting on 13 January?---Until I just read that I hadn't, I didn't have any recollection of a meeting.

40 Now that you've read it what is your recollection of it?---I'm just trying to place where the meeting would have taken place.

THE COMMISSIONER: What about your evidence before morning tea that there was another meeting where there were at least another councillor?---That, that could have been it, at the leagues club again. We, we did meet at the leagues club more than once I know that, but this particular meeting 13 January, that's 13 January, 2015, yes, which is before the aborted extraordinary meeting, probably it was the leagues club again. I

don't know. But it would have just been going over the same ground because nothing had really changed.

MR BUCHANAN: Well, can I ask you to have a look at an email at volume 5, page 256 and can you see that that is an email from Mr Hawatt to you of 13 January, 2015 at 6.39pm?---Yes.

“Without prejudice. Hi, Jim. See the following points as discussed.”---Yes.

10 So it's referring to some other interaction between the two of you.---Yeah.
Well, it could have been that meeting that you just alluded to for all I know.

Well, do you remember receiving an email from Mr Hawatt like this in which terms of his offer to you were set out?---No, I don't but it's pretty obvious it was sent. What interests me, though, is at point 2, a payout of 20 weeks. I don't know where that came from.

20 Certainly.---And it doesn't have any, if it had been 32, sorry, if it had been 32 weeks, one week for each year of service, I get it, but I don't know how they came up with 20 weeks.

The Il Buco newspaper story was published in the Herald on 12 January, 2015.---That's right, yes.

This letter is dated 13 January.---Yes.

30 And it has in it as one of the terms of the offer, “Council to conduct,” this is at the middle of that page, “Council to conduct a full audit of the Il Buco and any other executive expense for the past five years and a report to come back to council with recommendation of the findings.”---Yes.

And then it goes on to make another point about executive expenditures. ---Yes.

And then a third point, “Close Il Buco account.”---Yes.

40 Was any of that run past you at the meeting on 27 December, 2014 with Hawatt and Azzi at Canterbury Leagues Club?---I don't recall, but it's possible. I mean, it was just a, a grab bag of things they were – look, you know, I don't remember the exact conversation.

Well, I'm just asking you to think about it.---Yes.

Did anyone outside of your staff raise with you before the publication of that article a concern about lunches at Il Buco?---Well, once the, once the FOI request came in, obviously the people in the finance area knew about it because I instructed them to extract the documents that were requested. So there was no secret about it. I didn't have any reason to be afraid of it

because all of the expenditure was perfectly legitimate. I had the reporter, checked into it a bit further, but that's another story. At the same time, however, and I think this is relevant, these councillors were hell-bent on doing the mayor as much damage as possible. They wanted to take the car off him, take his credit card away from him. All of these things were on, were on the table and I'm sure Brian was aware of that. Now, because my point is that I wasn't the only one at those lunches. If you read this, you'd say I was. And as I said, the expenditure was 40,000 over five years, not 50 over four, and it was legitimate expenditure. I had a credit card - - -

10

Please, you don't have to justify it to me because I'm not asking you to justify it.---No, I'm just trying to, no, no, but, no, okay, I understand that.

But what I'm trying to ascertain is timing.---Yes.

And the question I'm trying to ask is, thinking about the fact that this became very public knowledge on, that it was an issue on 12 January, 2015, given that there is then this email from Mr Hawatt on 13 January which references the Il Buco issue as discussed, but given that you had not in prior documents – either addressed to councillors or addressed to the ICAC – referred to anyone raising an issue about executive expenditures at lunches or Il Buco, this appears for the first time, it would appear, in the records of the war, as it were, that was going on. It was a new front, as it were, that was being opened in the battle between you and Mr Hawatt and Mr Azzi. Do you see what I've put to you?---Not only me. Yes, I do. But I think the publicity that, that had been, this, this story certainly emboldened them, no question. They saw another beachhead where they could get at me.

20

30

Yes, but I'm not interested in that. What I'm trying to do is have your assistance, if you can give it, as to whether the reference to Il Buco in this email assists you in recalling when that front was first opened by Hawatt and Azzi with you. When I say Hawatt and Azzi, I mean Hawatt or Azzi. ---Yeah, yeah. Look, I can't recall. I, as I said, the only thing I can, way I can answer that is that I think they were on a roll. They decided to go for broke. The publicity emboldened them.

40

Okay. Now, I'll just conclude reviewing this email. After the references to executive expenditures, the Il Buco account, the next dot point, "Honour the employment contract of Mr Stavis to avoid any legal action against this council. The above points 1 to 3 must be legally binding and within the Act. The dot points to be used for a press release including the Department of Local Government, the extraordinary meeting will be withdrawn," and signed off as it were by Councillor Hawatt, "on behalf of a number of councillors."---Yes, yes.

Now, can you go to the next page, please, and you'll see page 259 of volume 5 is an email from you the next day at 1.51pm, that is to say on 14 January. And you say, "Hi, Michael. Thanks for your time yesterday

afternoon to discuss matters of common concern.” So just pausing there, that confirms that there had been some personal interaction - - -?---Yeah, seems to be, yeah.

- - - which this correspondence piggybacked.---Yes. I’m very pleased, this is refreshing my memory.

10 And you then went on to say, “Having discussed your offer made on behalf of other unnamed councillors, my family and our Mayor, Brian Robson, I have to advise that I cannot accept this or any other offer of this nature in the absence of a formal resolution of the full council,” et cetera. You head in the next paragraph material about trying to get things back on an even keel and moving forward, particularly in relation to the planning division, and then at the end thanked him again for his time the preceding day. Now, what I want to suggest is that the interaction the preceding day was a meeting that you had with Mr Hawatt in his office in Haldon Street, Lakemba.---Yes.

20 Do you remember going to his office?---Yes, I did meet him once at Haldon Street, yes.

And it was during the period of the war with - - -?---Again I can’t recall, but it would have been. I can’t see any reason why I’d be there otherwise.

And do you remember taking Mr Demian with you?---No, I don’t, but I, but I think Demian showed up. I didn’t take him per se.

30 Well, had you spoken beforehand with Mr Demian about him interceding on your behalf with Hawatt?---He was one of the people who offered, who offered help, yes.

And you had known him for some time?---Oh, not all that long, no, not, not that long, at that stage it was probably only maybe I’d say less than five years.

Did you ask him for his assistance to - - -?---No.

40 - - - intercede with Hawatt?---He, he, he, he offered support if he, if he could help me.

How did he do that?---He told me over the phone. And he had some sort of a relationship as I understand it with Hawatt and I think that was probably a political connection, I don’t know what Mr Demian’s politics are but I think it was a political connection.

And did you discuss with him, him coming along to the meeting knowing that he did have this previous connection or preceding connection with Mr Hawatt and therefor might have some weight with Mr Hawatt?---Well, that

was my hope, that he might be able to persuade Michael to see reason and, and to sort this out. That was what I was about. I'd already decided that, you know, I didn't mind if I, if I had to go, if I had to go I had to go, I'd had a very good run and I was approaching retirement anyway, so it wasn't, but I was concerned about my reputation, I was concerned about how, how it was being done, not what was being done but how, and I thought it was, I thought it was unjust, and so when Charlie said to me, "Look, I can talk to Michael for you," I wouldn't have said don't, but I didn't hold out a lot of hope, knowing Michael as well as I do.

10

So if we could show you some call charge records, please, Exhibit 123. And I can just, while they're coming up, ask you to bear in mind that the date of Mr Hawatt's email to you, talking about the following points as discussed, was 13 January, and then your response started out, "Thanks for your time yesterday afternoon," your response is on 14 January, and you said, "Thanks for your time yesterday afternoon," which suggests that the interaction was on the afternoon of 13 January.---Yes. That's, that's possible.

20 On this page 1 of Exhibit 123 is the first page of a set of call charge records. This is metadata about telephone communications between parties, and can you see that there had been a number of highlightings in different colours for various parties, and that the highlighting assigned to your name is in green and that Mr Demian does not have any highlighting at all assigned to him but everyone else does, and so the communications are all with either Mr Demian or a few of them are with Matt Daniels.---Yes.

30 And you knew Mr Daniels to be an associate who did planning work for Mr Demian, is that right?---I know of Matt Daniel. I, I understand that he is a professional who does work for a, a variety of developers and proponents, yes.

Did you understand him to have an association with Mr Demian?---I, I'm sure they, they knew each other. I don't know to what extent he was on Mr Demian's payroll.

40 If I can take you, please, to the second page and you'll see that the first entry for 2015 is the last entry on that page. It's item number 91 and it's on 12 January, 2015. There's a bit of a gap in these records because the previous record is item 90 and it's a record on 9 December, 2014. But just looking at the January 2015 records commencing at item 91, it's a telephone contact between Demian and Hawatt, initiated by Demian. Do you see that?---Yes.

Going over to page 3 and there's a series of contacts between Demian and Hawatt on 12 January, and this is the day before the interaction that you had with Hawatt and Demian and Hawatt are apparently talking to each other or, in the case of item 94, Mr Demian texted Mr Hawatt. 95, Hawatt called

Demian, the line was open for 43 seconds. The 96, Demian called you and the line was open for 7 seconds. Do you see that?---Yes.

And then there's another series of communications on the morning of 13 January, so the morning of that contact you had with, your interaction with Mr Hawatt. A series of contacts with Mr Hawatt that go down to item 103 and then at item 104, Mr Demian rings you, item 104. Do you see that?---Yes.

- 10 This is at 12.37 and the telephone contact is for one minute and 11 seconds. So just pausing there, you'd agree that the records that we've seen so far are consistent with Mr Demian establishing contact with Mr Hawatt preparatory to meeting with you and him in Mr Hawatt's office?---Yeah, that seems logical.

And that he's reporting then to you what the outcome of his contacts with Mr Hawatt has been up to that point?---Or maybe just to confirm the meeting. I don't know.

- 20 Then continuing on the 13th. After 12.37 again Michael Hawatt in item 105 contacts Mr Demian. Demian contacts Hawatt back. Hawatt to Demian. This is item 107. Item 108 you contact Mr Demian on 14 January. Do you see that?---Yes.

And do you see that there's a series of contacts then between you and Demian on the 14th going through to the 20th and then subsequently?---Well, there were, there was one at 1.08 and three from 1.13 through 1.15. Yes, can I see them.

- 30 And then on 29 January a lengthy contact where Mr Demian rang you at your home and spoke to you for more than eight minutes.---Yes.

Now, does any of this refresh your recollection as to the involvement of Mr Demian in establishing the meeting or the contact with Mr Hawatt?---Of course. Obviously he was in contact with Hawatt to try and arrange that meeting. There's no doubt about that. The evidence is there.

Do you remember going to the meeting, going to a meeting at the office?---Yes. Yes, I do.

- 40 How did you get there?---I drove my own car.

And did Mr Demian go with you in your car?---No.

Where was it that you saw Mr Demian?---In, in Hawatt's office in Haldon Street.

Did you see him beforehand at a coffee shop or anything like that, did you meet up before going to Hawatt's office together?---I don't recall that, no. I don't recall.

When you got to Mr Hawatt's office are you saying that Mr Demian was already there or - - -?---Or he arrived shortly afterwards. I can't recall that either.

10 How long was the meeting with Mr Hawatt in his office?---It wouldn't have been any more than an hour, if that long, probably closer to half an hour, because I was, that was, that was a normal office day. The time, you know, I wanted to get back so I didn't hang around. I mean, it was, yeah, it wasn't that long. The meeting wasn't that long as I recall.

A Tuesday?---Yeah, well - - -

20 What was said at the meeting?---Oh, look, I can't recall the exact words but it, it revolved around the offer that had been made and, you know, asking Michael to reconsider. Just stuff like that, you know, and, but Michael wasn't having any.

Had you told Mr Demian about the offer that had been made to you?---No, I don't think so. I don't recall it. I don't think so. He - - -

You must have given some briefing to Mr Demian about - - -?---Hawatt told him that at the meeting.

30 But what information as far as you knew did Mr Demian have as to what was going to happen at the meeting?---Oh, look, I don't want to speculate about that. He knew that there was a war going on. That I was in the middle of it. He was offering his support which I was grateful for. He knew Hawatt, I don't know for how long or to what degree but I believe it was a political connection and he offered to help and that, that was it. He, the meeting was very much ad lib, you know, like what are we going to do?

40 I'm not trying to persuade you that your evidence that you hadn't told Mr Demian about the offer that had been made to you is incorrect, but why would you not have given Mr Demian a briefing about what had occurred between you and Hawatt and Azzi already before Demian, you know, stuck his head up?---Well, it's possibly I did but I can't recall it.

It's likely that you did, surely.---Well, look, it is likely that there was some discussion about what had transpired prior to this time, yes, but the dogs were barking about it. Everybody knew.

Well, sorry, when you say everybody knew, everybody knew what?---In the community, that there was a war going on at the council.

Sure, but did they all know that this offer had been made on 27 December?
---Of course, of course not.

THE COMMISSIONER: Can I just ask, the offer of 27 December, I think you said that after you left the meeting, in your mind you were going to refuse it.---Yes.

10 But did you tell either Mr Hawatt or Mr Azzi that you weren't accepting it before you met on the 13th?---No, I think it was in that memo that I sent out that was referred to earlier, where I stated that I couldn't accept the offer. I may have, but I don't recall it. I mean, we weren't on the best of terms by that stage.

MR BUCHANAN: The memo, are you talking about the memo addressed to councillors dated 12 January?---Yes.

That was marked by you "not sent".---True. My mistake. I can't recall now. There was traffic going both ways all the time.

20 THE COMMISSIONER: Sorry, traffic both ways between you and Mr Hawatt and Mr Azzi?---And other interested parties who, who'd injected themselves into this disaster.

So you used other people as intermediaries, did you?---Yeah, at their, at their request, yes. They, they wanted to help.

30 Sorry, at the intermediaries' - - -?---Request. They wanted to help. And I, and I wasn't about to, I wasn't about to, you know, reject that offer of assistance because I understood the relationships between Councillor Hawatt and some of the people who were out there trying to help, including Demian and George Vasil and others, Tony Stewart. You know, they were people that I'd known a long time.

MR BUCHANAN: Can I just, I apologise, I do note the time, but if I can just make a couple of questions.

THE COMMISSIONER: Yes.

40 MR BUCHANAN: Mr Demian denies he went to the meeting with you or went to a meeting where you were present with Mr Hawatt.---Well, then, I'm afraid, at the risk of offending Mr Demian, he's not telling the truth.

The offer that is reproduced in the email to you of 13 January, 2015, volume 5, page 256, has its differences from the offer that was recorded by you in the documents you created - - -?---Yes.

- - - after the 27 December meeting.---Well, I'm getting a bit confused now, to be honest with you.

That's okay. That's all right. Okay. But we've established, first of all if we can go to page 256 in volume 5, we've established that these references to Il Buco are unlikely to have been raised at the 27 December meeting at the leagues club.---Yes, yes, I, I agree with that, yeah.

Right. So, and then there is this reference to a gratuity payout of 20 weeks, the 32 - - -?---Yeah, that, that, that's strange, 20 weeks.

10 That's quite different from - - -?---Yes.

- - - what you had recounted.---Yeah, but again I think that was just a thought bubble from Hawatt. Anything he offered had, had, didn't necessarily relate to what was legally available. I mean, he just - - -

20 But what I'm trying to establish is it occurred to you, did it seem to you at the time the offer was evolving over time?---Well, it seemed to be. It seemed, it seemed to be changing, and as I said, I couldn't understand why they came up with 20 weeks. I, I don't get that. It's got no relevance to anything.

30 Now I just need to ask you this before we, before I ask whether we can adjourn, and that is does this letter, I'm sorry, does this email of 13 January, 2015, volume 5, page 256, accurately record, as best as you can recall, the offer that was made to you in Mr Hawatt's office with Mr Demian present? Just casting your eye down it.---I can't say that in all truthfulness. I, I, I don't actually remember the Il Buco stuff being raised at Hawatt's office. Office, the meeting at Hawatt's office was all about what they were prepared to offer, what was on that table for me. It didn't talk about the other things that I said earlier were designed to try and address other issues as they saw it, including, you know, the mayor's entitlements.

This is the day after the publication in the Herald.---Yes. Yes.

Was there any discussion between you and Hawatt in his office about what had been in the Herald the previous day?---No. No, no. I wasn't concerned about what was in the Herald.

40 I note the time, Commissioner.

THE COMMISSIONER: All right. We'll adjourn for lunch and resume at 5 minutes past 2.00.

LUNCHEON ADJOURNMENT

[1.06pm]