INDEPENDENT COMMISSION AGAINST CORRUPTION

STEPHEN RUSHTON SC
COMMISSIONER

PUBLIC HEARING

OPERATION DASHA

Reference: Operation E15/0078

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 19 JUNE, 2018

AT 10.00AM

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

THE COMMISSIONER: Are there any further applications for authorisation to appear? No? Yes.

MR DREWETT: Commissioner, I seek leave to appear. Drewett, is my name, D-r-e-w-e-t-t. I seek leave to appear and represent the interests of Michael Hawatt, who is an interested party in these proceedings.

THE COMMISSIONER: Authorisation is granted.

MR DREWETT: Thank you, Commissioner,

THE COMMISSIONER: Can I apologise on behalf of Commissioner McDonald for the delay in recommencing this public inquiry. Those here who have appeared in jury trials would understand that sometimes they run over through no fault of the parties, counsel or the trial judge. It's almost unheard of for jury trials to be adjourned except in the case of illness of a member of the jury or perhaps earlier on a Friday to allow juries to do what used to be called "attending to their banking".

The Commission sought to keep the parties informed and updated and was advised that some difficulties had arisen in relation to the availability of particular witnesses on particular days. We've done our best to accommodate those problems, largely by rescheduling. I should say that it's unlikely that the Commission will take the same approach, that is rescheduling of dates to accommodate counsel. I will entertain any applications which should flag that the prospects of success are not good and I do not propose to accede to requests that dates be fixed outside those currently nominated by Commissioner McDonald so as to suit the convenience of counsel.

As I understand it, the dates for the further progress of this investigation are 19 to 29 June, 9 July to 3 August, except for 27 July, and the 6th, 9th and 10th of August. Can I say that it's likely that there will be a couple of additional days, which Commissioner McDonald will announce, hopefully later today. I understand that a proposed witness list for this week has been published, and that that from tomorrow, the Commission will be sitting from 9.30am to 4.30pm.

In a moment, I'll ask Counsel Assisting to open in relation to the next segment. Commissioner McDonald is content to review the transcript of the opening overnight. However, it's not appropriate for me to take evidence from witnesses, particularly, as I understand it, there is a witness who is part heard, so to speak. Commissioner McDonald expects to continue with the evidence later in the day. I now call upon Mr Buchanan to open the matter and I'll deal with any housekeeping matters or applications after that has concluded. Thank you.

MR BUCHANAN: Commissioner, as foreshadowed in my opening address, this is a supplementary opening address to canvass matters which were not covered in my opening and of which there will be evidence in this hearing.

I turn now to a fresh allegation altogether. An 11th allegation under investigation in this hearing principally concerns a property at 212-218 Canterbury Road, Canterbury and adjacent properties at 220-222 Canterbury Road and 4 Close Street, Canterbury.

The 11th allegation under investigation is that between July and December 2015 Pierre Azzi and Spiro Stavis dishonesty and/or partially exercised their official functions in relation to development applications at 212-218 Canterbury Road, 220-222 Canterbury Road and 4 Close Street, Canterbury, in order to favour the interests of Ziad and Marwan Chanine. Now, this specification of an allegation should not be taken as excluding other people from the ambit of the inquiry in relation to these properties. The conduct under investigation could amount to corrupt conduct in the same way as the conduct alleged in respect of the development applications and planning proposals which were the subject of my initial opening address, see transcript pages 22, line 29 through to page 23, line 34.

In addition, the limitations under section 9 for this allegation are the same as for the allegations identified in my initial opening address, see transcript pages 23, line 36 through to 24, line 33. The Commission's investigation concerns the following development applications lodged on 27 April 2015 by Chanine Design Architects, sometimes referred to as CD Architects, for the following properties – 212-218 Canterbury Road, Canterbury, that is to say DA 168/2015, and 228-222 Canterbury Road and 4 Close Street, or Close Street is sometimes referred to as 4 Close Place, Canterbury. That DA is DA 169/2015.

On the screen at the moment is an aerial photograph which shows the three properties, the subject of the development applications, divided for the purposes of those applications into what were described as stages. Stage 1 was the southernmost of the two sites, namely 220-222 Canterbury Road and 4 Close Street. The cursor is hovering over 4 Close Street at the moment. What was described as stage 2 was the northernmost of the adjoining sites, namely 212-218 Canterbury Road.

The development applications sought approval for the construction of multi-level buildings – up to nine storeys – next to the railway line. The railway line is evident across the right-hand, top right-hand quadrant of the screen, and Canterbury Station is just on the other side of the road, where the cursor is hovering at the moment at the top of the screen.

4 Close Street adjoined 220-222 Canterbury Road, which in turn adjoined 212-218 Canterbury Road. Immediately to the east or south-east – referred

to as the rear of the proposed developments – was 15 Close Street. 15 Close Street comprised an area of relatively open space occupied by the former Canterbury Bowling Club and owned by Canterbury City Council.

The estimated cost of the works for each development was specified in the respective DAs to be under $20 million. For that reason, the determining authority for the development applications was Canterbury City Council. Had one application been made in respect of both stages – that is to say all three properties – the consent authority would have been the then Sydney East Joint Regional Planning Panel.

It's necessary to set out a bit of detail as to the people and entities involved with the DAs. The two people most actively involved with the DAs were two brothers, Marwan and Ziad Chanine. Marwan Chanine is a developer. Ziad Chanine is an architect. The business name of Ziad Chanine's architectural company is Chanine Design Architects. The corporate vehicle for that firm was Chanine Design Pty Ltd, the sole director and shareholder of which was Camile Chanine. Camile Chanine was the father of Marwan and Ziad Chanine. Ziad Chanine was named on the development applications as the contact person. The developer of these three properties was Chanine Developments, the principal of which was Marwan Chanine. One of Mr Marwan Chanine's entities was C9 – that's the letter C, digit 9 – Developments which was used for the day-to-day operations of his development office.

On 30 September, 2014, a company called Arguile, A-r-g-u-i-l-e, Pty Ltd entered into option agreements with the owners of the properties 212-218 Canterbury Road, 220 Canterbury Road, 222 Canterbury Road and 4 Close Street. The April 2015 development applications enclosed written consent forms from the property owners who indicated that they consented to the lodgement of development applications by Arguile Pty Ltd. The directors of Arguile were three people – Barry Barakat; Tanya Chanine, wife of Marwan Chanine; and Simon Srour, S-r-o-u r. Shareholders were Camile Chanine, Barry Barakat, and Simon Srour.

In its purchase of the option agreements for the properties, Arguile Pty Ltd was acting as the trustee for a unit trust called BBCS Unit Trust. The initial unit holders in the BBCS Unit Trust were companies belonging to Camile Chanine, the father of Ziad and Marwan; Barry Barakat; and Simon Srour. The evidence is expected to be that the directors of Arguile Marwan Chanine were business partners in the Canterbury Road development. It appears that, as a result of the unit trust, Marwan Chanine's family had a 20 per cent shareholding in the developments comprising the whole of 212-220 Canterbury Road and 4 Close Street. Chanine Design Architects, that is Ziad Chanine, was engaged as architect.

It is expected there will be evidence that Bechara Khouri had a strong social and business relationship with Marwan Chanine and took a particular

interest in this development. There will be evidence that on 26 August 2015, additional units in the BBCS Unit Trust were allotted including 200 units to Bechara Khouri's company, K & H Bech, B-e-c-h, Pty Limited.

There will be evidence that there was another development project which Messrs Barakat, Srour, Khouri and Marwan Chanine were undertaking in the Canterbury Local Government Area, at 433-437 Canterbury Road, Campsie, although that project is not a specific subject of this inquiry.

Around July 2015, Benjamin Black from Planning Ingenuity was engaged by council to assess the DAs. There will be evidence that there was a perception that the decision to outsource the assessment was made because of a perception of a conflict of interest. Mr Black subcontracted assessment of the DAs to a planning consultant, Kim Johnston of K J Planning. Ms Johnston indicated that she could not support the DA for 212-218 Canterbury Road because of its significant variation from the maximum permissible FSR, floor space ratio, under the Canterbury LEP, a variation of over 50 per cent, which she considered had not been adequately justified under clause 4.6 of the LEP. Ms Johnston indicated she expected to be recommending refusal of that DA and likely also the other DA for the same reason. Apparently, Sean Flahive, F-l-a-h-i-v-e, the assessment officer at council who was advised of this, was not surprised.

On 23 July, 2015, Ms Johnston sent to Mr Black draft reports for council on both DAs. The draft report for 220-222 Canterbury Road recommended refusal, principally because of excessive bulk and scale of the proposed development and because it was inconsistent with provisions of SEPP 65 – Design Quality of Residential Flat Development, the Canterbury LEP relating to amenity and maximum permissible FSR, and the Canterbury Development Control Plan.

Ms Johnston's draft report on the DA for 212-218 Canterbury Road was similarly adverse, on the grounds she had foreshadowed relating to excessive FSR and other failures to comply with the applicable planning instruments.

Planning Ingenuity records show that, on 24 July 2015, a two and a quarter hour meeting took place at council. It is expected that the evidence will be that the meeting was between Mr Black and Mr Stavis and other council officers and that it concerned the draft reports recommending refusal of these DAs. No record of the meeting has been found in council files regarding these two DAs. A matter being investigated in this inquiry is what occurred at that meeting.

It appears there was a meeting on 31 July 2015 between Messrs Stavis and the manager of development assessment George Gouvatsos and Ziad Chanine. Again, no record of the meeting has been found in council files.

In August 2015, Mr Flahive, council's assessment officer, sent a letter to Chanine Design detailing respects in which the DAs were deficient and making detailed suggestions as to what needed to be done to achieve compliance. The letter was settled by Mr Stavis. The letter commenced with the observation that both proposed developments significantly exceeded the permitted FSR and this had not been sufficiently justified in the submission for the clause 4.6 variations. The letter also drew attention to a response from a concurrence authority, Sydney Trains, which set out a large quantity of information was required before Sydney Trains would consider concurrence.

In September 2015, Chanine Design provided a response to council's letter, together with amended plans and a clause 4.6 submission, supporting exemption of the proposed development at 212-218 Canterbury Road from the maximum building height control under the LEP.

Mr Stavis made a notebook entry for 17 September indicating a meeting or telephone conversation with Councillor Azzi, concerning, amongst other properties, 4 Close Street, Canterbury. No record of this communication appears in the relevant council files.

Reference will be made later in this address to evidence indicating a particular relationship between Ziad and Marwan Chanine on the one hand and Spiro Stavis on the other. The evidence otherwise suggests, however, that at this stage of assessment of these two DAs Mr Stavis was close to these development proponents. For example, on just one day, 18 September 2015, in a council email, Mr Stavis replied to an email from Ziad Chanine seeking information in which he addressed the architect as "mate". He forwarded to Marwan Chanine an inquiry made to himself, Mr Stavis, from the owner of a property neighbouring the subject sites as to who they should talk to, given the two successive assessment officers had both left council, Mr Stavis telling Mr Chanine that the neighbours would like to talk to Mr Chanine because they were looking to redevelop their site as well.

In late September, council's team leader of development assessment operations, Andrew Hargreaves, forwarded the new Chanine Design documents to Planning Ingenuity and told them that they were to continue with their assessment on council's behalf. Mr Hargreaves informed them that the DAs were expected to be considered by the Independent Hearing Assessment Panel at its meeting on 2 November and so their completed report was requested by 16 October 2015.

There will be evidence that around this time Mr Montague had expressed a keen interest in these applications being progressed.

On 14 October, 2015, as a result of a request from Planning Ingenuity, Mr Stavis asked Ziad Chanine for clause 4.6 variation submissions for the FSR for both DAs. When Ziad said the submissions were already in statements

of environmental effects which had been provided at the time the DAs were lodged, Mr Stavis spoke with Marwan Chanine and then wrote to him, asking for at least an urban design peer review of the development especially in relation to the non-compliance of both proposals with the front setback controls in the Development Control Plan. In addition, Mr Stavis asked for greater justification within the clause 4.6 submission of the proposed FSR and proceeded to detail what was required.

On 19 October 2015, Marwan Chanine provided council with clause 4.6 variation submissions in respect of the FSR proposed for the development at 212-218 and 220-222 Canterbury Road. It will be open for the Commission to conclude that, in his reply seeking more material as agreed, Mr Stavis indicated that he was trying to help the Chanines and that Marwan Chanine needed to provide the material required as soon as possible to enable him, Mr Stavis, to do so.

On Thursday, 22 October, Mr Stavis met with Ziad Chanine. No memo of that meeting appears on file but there will be evidence of an email which Mr Stavis wrote to Ziad Chanine on Saturday, 24 October 2015, indicating agreement that two issues remained outstanding before assessment could be finalised. These were, one, justification of the proposed development's non-compliance with the rear setback to the bowling club, and the need for an urban design report justifying the non-compliance with the front setback required by the DCP. The proposed development had nil front setback.

Commissioner, because the rear setback issue assumes importance in how these DAs were progressed, I should provide a brief explanation of its legal context and how the issue arose.

There was an environmental planning instrument which applied to these proposed developments, the full title of which was State Environmental Planning Policy 65 – I previously referred to it as SEPP 65 – and I continue with the title, Design Quality of Residential Apartment Development. SEPP 65 incorporated by reference a set of requirements contained in a document called the Residential Flat Design Code. Accordingly, the Residential Flat Design Code was required to be considered in the assessment of these particular development applications.

The Residential Flat Design Code – the code is now called the Apartment Design Guide – required separation between buildings. The separation distance required between buildings where the proposed development was up to eight storeys was 18 metres. If the 18-metre building separation requirement were to be equitably applied to the rear of a proposed eight or nine-storey building which faced a similar building on, or planned to be constructed on, an adjoining property, it would result in a distance between the two buildings of 18 metres and a setback for the subject proposed building from the common boundary of nine metres.

The bowling club site at 15 Close Street, at the rear of the proposed developments, was owned by council. It was pretty much open space and identified in the Canterbury LEP as being zoned RE1 (public recreation). However, council had introduced a planning proposal to rezone it to R4 (high density residential). The proposal to rezone it as high density residential had already received a Gateway Determination and had gone on public exhibition. For that reason, assessment of the subject DAs needed to take into account the likely future development on the bowling club site at the rear of the proposed developments at 212-228 Canterbury Road.

The plans for these proposed developments were produced by Chanine Design Architects. The plans indicated that, at their rear, the proposed structures were to be built right up to the common boundary with 15 Close Street – that is, the bowling club. In other words it was proposed that at the rear they would have a nil setback.

A masterplan for 15 Close Street, the bowling club site, allowed for an eight-storey building on the site adjacent to 212-218 Canterbury Road. If the building separation requirement of 18 metres between eight-storey buildings were to be applied when the bowling club site was developed, the structures on 15 Close Street would need to be 18 metres from the common boundary with 212-222 Canterbury Road. This would mean less of the land comprising 15 Close Street could be developed, which obviously would be a significant economic disadvantage to council and to any developer of that land.

Conversely, a rear setback on the subject properties would reduce the footprint on which that developer could build, which would reduce his lot yield and, in turn, the developer's potential profit.

Returning to how these DAs on Canterbury Road were progressed, the evidence will show that on Sunday, 25 October, 2015, Ziad Chanine replied to Mr Stavis's email identifying the rear and front setback issues, saying that two required items would be supplied early in the week. Mr Stavis then forwarded these emails to Councillors Hawatt and Azzi for their information.

The next day, Monday, 26 October, Ziad Chanine provided two letters to Mr Stavis – one a letter from his firm justifying the non-compliance with the rear setback, and the other a report from an urban design consultancy justifying the non-compliance with the front setback. The same day Mr Stavis asked that they be forwarded to Benjamin Black at Planning Ingenuity.

On Thursday, 29 October, Andrew Hargreaves wrote to Mr Black, reminding him the two DAs were due to be considered by the IHAP on 23 November and that the internal deadline for the reports was 4 November, and asking him to confirm he would meet this deadline. In that letter, Mr

Hargreaves added, "In order to assist in your discussion (particularly regarding SEPP 65 setback compliance) of the impact these two DAs may have on the adjoining site at 15 Close St (being the subject of a draft LEP to rezone that site from RE1 to R4) attached is a copy of our advice to neighbours (including the owners of 212-222 Canterbury Road) advising them of this rezoning."

On 3 November, Mr Stavis circulated to his assessment team a list of 11 agenda items for the 24 November meeting of the IHAP. It appears that that may have been the last meeting of IHAP scheduled for the year. Mr Stavis said that three items may not make the list but, "It is imperative that the remainder of the applications listed below make it to the next IHAP meeting. No excuses as commitments have been made."

This instruction applied to a number of applications including the subject DAs. However, it is expected that Mr Hargraves will say that, from the beginning, Mr Stavis made two things very clear, that the subject two DAs were to go to the November IHAP meeting and the December City Development Committee meeting, and that the subject DAs would be supported by his assessment staff.

There will be evidence that Mr Montague was scheduled to meet with Bechara Khouri on 6 November 2015, either about or with Marwan Chanine. It does not appear that a document recording what occurred at the meeting or who attended it was placed on the files concerning these two DAs.

That same day, 4 November, Mr Black sent to Messrs Stavis and Hargreaves the first drafts of his assessment reports for the DA for 212-218 Canterbury Road, that is, DA 168/2015 and the DA for 220-222 Canterbury Road, that is, DA 169/2015. Mr Black's first draft of his reports recommended approval of both applications subject to conditions. In his draft report on 212-218 Canterbury Road, unlike Ms Johnston in her draft report, Mr Black considered that sufficient grounds had been advanced to justify the departure of the proposed development from the permissible FSR controls of the LEP. Mr Black noted that, because of the department's 2008 circular so advising, the concurrence of the Secretary of the Department of Planning and Infrastructure to the exemption from the FSR controls under clause 4.6(4)(b) could be assumed. So far as concerned the front setback issue, Mr Black noted that the proposed development breached front setback requirements of the Canterbury DCP but considered the proposal was in keeping with approval of the nil setback of the building opposite on Canterbury Road.

Mr Black's first draft of his report for 220-222 Canterbury Road took a similar approach. Although the building height and FSR controls in the LEP were breached by the proposed development, unlike Ms Johnston, Mr Black considered that sufficient grounds had been advanced for exceptions

to be made under clause 4.6 of the LEP. Again, Mr Black noted that the concurrence of the Secretary of the department to the variations could be assumed. Again, the nil setback at the front was not a concern because it matched the streetscape opposite.

On the afternoon of Tuesday, 10 November, Mr Stavis scheduled a meeting with Ziad and Marwan Chanine about these DAs for the following morning. Also on 10 November, Mr Hargreaves sent to Mr Black, cc to Messrs Stavis and Gouvatsos, the first half of the draft report for 212-218 Canterbury Road with numerous handwritten annotations he described as "feedback" which he asked Mr Black to amend the report to reflect. The evidence will be that most of the annotations were written by Mr Stavis.

Two annotations of substance are of note. The first was to insert at the front of the report that it was prepared by an independent external planning consultant on behalf of council. The second was to insert an argument that a proposal which complied with the setbacks, height and landscape controls envisaged on the site would generate an FSR over the maximum FSR permitted under the LEP anyway and consequently there appeared to be no correlation between the FSR standard and the other controls in the LEP and DCP. In the second draft of his report, Mr Black made those changes.

In his second draft, Mr Black also identified that there was an issue with the rear setback to proposed development on 212-218 Canterbury Road being nil. Given the source of the rear setback requirement was as to the separation between buildings, a nil setback was not inappropriate where the adjoining site was essentially open land as at that stage it was. However, as earlier noted, there was a draft LEP then on exhibition to rezone the bowling club site to R4 (high density residential). This meant that potential building separation requirements needed to be considered.

In the second draft of his report on the DA for 212-218 Canterbury Road, Mr Black changed the recommendation from one of approval with conditions to one of approval with deferred commencement, subject – amongst other conditions – to the rear setback to the common boundary being changed from nil to three metres. It will be noted that three metres was a considerable benefit to these development proponents over the nine metres which the building separation requirement strictly required.

In the second draft of his report on 220-222 Canterbury Road, Mr Black likewise changed the recommendation from one of approval with conditions to one of approval with deferred commencement, subject – amongst other conditions – to the rear setback to the common boundary being changed to three metres.

Now, this recommendation was not changed by Mr Stavis when he signed off on a review of these second drafts on 13 November, 2015. Ordinarily creating or increasing the setback of a development from the property

boundary would have the effect of decreasing the lot yield which the developer would gain from the development.

Email correspondence suggests that there was some urgency around the progression of the DAs through council. The evidence is expected to be that this was, at least in part, because of interest in progressing the applications expressed by Councillors Hawatt and Azzi.

The evidence will be that Mr Stavis was meeting with Ziad Chanine late on Friday, 20 November, 2015, although there doesn't appear to have been an entry in Mr Stavis's calendar for the meeting. Nor does there appear to have been a file note of the meeting.

In November 2015 – probably on 24 November – the DAs were considered by the Independent Hearing and Assessment Panel. The business papers for the IHAP meeting contained reports by the director (city planning) on these two DAs. Essentially these reports were Mr Black's draft reports containing the recommendations for deferred commencement approval, one of the conditions being amendment of the development to create a three-metre setback at the rear in each case.

The approval conditions for both applications included RMS conditions – that is, Roads and Maritime Services conditions – but not Sydney Trains conditions. However, the deferred commencement conditions for 212-218 Canterbury Road – the site closest to the railway line – included a condition requiring amendment of plans after referral to RMS and Sydney Trains.

Both reports stated, as requested by Mr Stavis, "This report has been prepared by an independent external planning consultant, Planning Ingenuity Pty Ltd, on behalf of council." But each report had a significant change made to it from the third draft submitted by Mr Black. The significant change was to insert in the section relating to the clause 4.6 variations the following sentence, "Council has received legal opinion that the extent of non-compliance to a development standard is not a relevant consideration in determining the reasonableness of any clause 4.6 submission." It will be recalled that the extent of the FSR variation from the FSR control in the LEP in these two DAs was considerable.

It is not known where this legal opinion came from. It is not contained in a letter from the applicant's solicitors, Sparke Helmore Lawyers, dated 27 November, 2015, of which I will say more in a moment. Efforts to locate such an advice have not been successful. Indeed, this inserted statement as to a legal opinion is contradicted by advice earlier received by council in respect of another development, 308-320 Canterbury Road and 6-8 Canton Street, Canterbury, from council's solicitors, Pikes & Verekers Lawyers. On 26 May 2015, Pikes & Verekers Lawyers advised that, "The degree of variation from the standard is a relevant consideration but there is no bright line to decide when a variation is too great." Email correspondence on the

Pikes & Verekers file indicates that Mr Stavis was involved in discussions and emails about this very May 2015 advice.

The evidence will be that Pikes & Verekers were not asked by council to provide it with an opinion about clause 4.6 of the LEP in relation the two DAs for 212-222 Canterbury Road.

At its meeting, the IHAP unanimously agreed to recommend that the development applications be refused on the bases that, "The proposed development exceeds the maximum permissible floor space ratio provisions of clause 4.4, subclause 2 of the Canterbury LEP by over 50 per cent," and, "The grounds of the objection under clause 4.6 provided by the applicant did not demonstrate that the FSR controls were unreasonable or unnecessary nor were there sufficient environmental planning grounds to justify contravening the development standard."

The business papers for the meeting of the City Development Committee on 3 December were circulated prior to the meeting of the committee. The business papers included the director (city planning)'s reports on the two DAs. These were the same as the reports to the IHAP, modified to insert material advising the recommendations of refusal made by the IHAP and setting out the contents of those reports, albeit the contents were inserted at the very end, after the many, many pages of the director's recommended approval conditions. Both of the director (city planning)'s reports still stated, "This report has been prepared by an independent external planning consultant, Planning Ingenuity Pty Ltd, on behalf of council."

By late November 2015, it appears that there were three outstanding issues for the development proponents. Firstly, the recommendation by the IHAP that the DAs be refused. Secondly, the deferred commencement condition recommended for both DAs that the plans be amended to set the proposed developments back from the boundary with 15 Close Street by 3 metres. And thirdly, the outstanding concurrence and, if concurrence were to be granted, conditions from the concurrence authorities, the RMS and Sydney Trains, which meant that the DAs could not be determined.

Bearing in mind that the City Development Committee was due to consider the DAs at its meeting on 3 December, the evidence will be that efforts were made to urgently fix each of these problems for the development proponents.

So far as concerns concurrence by the RMS to approval of the DA for 212-218 Canterbury Road, it is apparent that concurrence by the RMS remained outstanding because it was not granted until 14 December, 2015, after the date of the CDC meeting.

In relation to Sydney Trains, Mr Stavis emailed a Mr Tsirimiagos, T-s-i-r-i-m-i-a-g-o-s, at Sydney Trains on 25 November, saying he needed an "urgent

favour". His words, "Could Sydney Trains provide concurrence before 3 December when the DAs were due to be considered by Council's City Development Committee?"

Mr Tsirimiagos replied that deferred commencement could not be considered because of the number of complex technical issues as to the impact of the proposed developments on the railway line – issues which he proceeded to list. He concluded by asking Mr Stavis whether council could delegate the determination of the DA to the general manager once concurrence was obtained as, he said, other councils had done.

Mr Stavis passed this on to Marwan Chanine saying, "FYI, maybe you can pass on to your legal team to review and advise. As we said, worst case is that we add to the recommendation that council delegates determination of the DAs to the GM once concurrence et cetera is obtained."

On 26 November 2015, Mr Stavis emailed Mr Montague saying, "I have met several times with Ziad and Marwan and they are putting together a submission which supports the deletion of the conditions re the rear setback. I will review once I receive."

Mr Stavis went on to advise of the problem of lack of concurrence from RMS and Sydney Trains meaning that, to use his words, "Technically the application cannot be determined." Nor could it be conditioned as to the conditions which inevitably would be required by at least Sydney Trains. In his email Mr Stavis proposed to Mr Montague that if the concurrences were not received before the CDC meeting, the DAs could be progressed by a resolution, "That council supports the proposed development and delegates the determination of the DA to the GM once concurrence is obtained from the RMS and Sydney Trains."

In the same email, Mr Stavis informed Mr Montague that "Marwan", as he called Marwan Chanine, was agreeable to this idea. Again, there does not appear to be a record of this communication with Marwan Chanine in the council files.

Mr Montague replied, "Sounds good. Please proceed as proposed."

In relation to the setback condition of the recommended deferred commencements, it is expected there will be evidence that at some stage Mr Stavis received a distinct threat from Councillor Azzi if he, Mr Stavis, did not "fix" the setback condition proposed for these DAs. It is expected the evidence will be that the threat was that, if Mr Stavis did not "fix" the issue, he would suffer the same fate as had "The former director." To provide context, I should indicate that the evidence is expected to be that, on one occasion, Mr Montague had told Mr Stavis that Councillors Azzi and Hawatt had given Mr Occhiuzzi such a hard time that he quit.

On 27 November, Marwan Chanine emailed to Mr Montague his "formal objection" to the deferred commencement condition and attached letters including a legal opinion from his solicitors, Sparke Helmore Lawyers, dated the same day. That opinion was to the effect that council, acting reasonably, could conclude that the proposed developments, that is, with nil setbacks, were appropriate and allowed the bowling club site to be redeveloped to its full potential. The legal opinion contended that council set a precedent for a nil setback from the bowling club boundary when it gave approval to development on an adjoining property, 6-8 Close Street, which also shared a common boundary with the bowling club. The Sparke Helmore opinion said, "The council would be acting entirely reasonably in approving the applications as submitted and without deferred commencement condition."

Effectively this suggested removal of the rear setback condition. Given that building separation would be necessary if council land was developed in accordance with the planning rezoning, it might be thought that the practical effect of the Sparke Helmore's approach was that council should absorb 100 per cent of the economic impact of there being no setback on the western side of the common boundary if the proposed developments with nil rear setbacks were approved – as against 66 per cent of the economic impact of the setback of three metres required by the deferred commencement condition recommended in the director (city planning)'s reports.

It does not appear that Mr Montague or Mr Stavis sought to obtain advice from council's solicitors as to the correctness of this opinion. Instead, Mr Stavis prepared, or caused to be prepared, a one-page document entitled "Response to legal opinion from Sparke Helmore about agenda items 14 and 15". Agenda items 14 and 15 were the subject DAs. In that document, Mr Stavis concluded, "The opinion concludes that approval of a nil setback for these two DAs allows for the reasonable, orderly and economic development of our site." I interpolate that is the bowling club site. I continue with the quote, "As well as these two DAs. This is reasonable, and a three metre setback from our common boundary should be removed."

After the time when the CDC business papers would have been prepared and likely circulated to councillors, Mr Hargreaves prepared a draft memorandum to all councillors from Mr Montague. The first draft bore the date 30 November 2015. Mr Hargreaves is expected to say he was directed to draft it by Mr Stavis. On 30 November, Mr Hargreaves circulated the memorandum, the draft memorandum, to Mr Stavis and Gouvatsos. He also attached copies of documents to which reference was made in the draft memorandum, namely, the Sparke Helmore legal opinion, Mr Stavis's one page "Response to Legal Opinion", and revised recommendations to the City Development Committee as to resolutions about the two DAs.

The revised recommendation for the 212-218 Canterbury Road DA substituted conditional approval for the deferred commencement approval set out in the

director (city planning)'s reports in the committee business papers, and contained no condition as to the rear setback. Before setting out the approval conditions, the draft resolution commenced as follows. "That", and I quote, "That development application DA-168/2015 be approved in principle and that having received suitable concurrence the general manager be authorised to issue consent under section 80 of the Environmental Planning and Assessment Act, 1979, subject to the following conditions – (a) This consent not be issued until concurrence has been received and any new conditions added as a result of the concurrence." Apart from the different DA number, the revised recommendation for the 220-222 Canterbury Road and 4 Close Street DA had the same opening phrases.

Mr Montague's memorandum was redrafted on 2 December and redrafted again before it took its final form. In its final form, the memorandum was dated 3 December 2015 and contained considerably more detail. It referred to the IHAP recommendation that the DAs be refused "for non-compliance with our floor space ratio control". However, thereafter it made no reference to the IHAP recommendation or to the reason for it, namely the unjustified variation from the FSR standard in the LEP. The memorandum attached the Sparke Helmore legal opinion but not Mr Stavis' one page "Response to Legal Opinion". Instead, the memo set out much of the argument from Mr Stavis' response document, together with fresh argument attributed to the director (city planning). The main difference from Mr Stavis' "Response to Legal" document appears to have been a more detailed argument, attempting to persuade that a nil rear setback for the proposed developments would not prejudice council as the owner of the adjoining land notwithstanding the 18-metre building separation requirement.

Comments that Mr Stavis made in his one page "Response to Legal Opinion" document, which were moved to the memo signed by Mr Montague included the following, "The external consultant," I interpolate a reference to Benjamin Black, "supported LEP departures but did require a setback from the rear boundary to be increased from nil to three metres. The three metre setback was considered a compromise from the required nine metres under the Apartment Design Guide". And the following, "The legal opinion correctly states that at the time of lodging these two DAs the rezoning of our site wasn't imminent. In addition, the Department of Planning and Environment has not provided us with a definitive time frame for its gazettal".

Mr Stavis' one page "Response to Legal Opinion" document had included the following statement, "However, the owners of these two sites had been advised before each DA was lodged that the rezoning of 15 Close Street was proposed and further that planning legislation requires us to consider the policies, including any Draft LEP, at the time of determination and not a time of lodgement".

This information was not included, however, in the 3 December 2015 memorandum but Mr Montague to the City Development Committee. Mr Stavis' comments, largely reproduced in Mr Montague's memorandum, went on to say the following, "The legal opinion correctly states that our rezoned site can accommodate a range of design options which can incorporate suitable building separation from these two DA sites. The legal opinion concludes that approval of a nil setback for these two DAs allows for the reasonable, orderly and economic development of our site, as well as the two DA sites". And, "Having regard to the above points, on balance it is considered reasonable to allow for the DAs to be approved with a nil setback from the rear boundary."

In the memorandum there then appeared, under the heading Recommendation, the wording of the proposed resolutions. These were that the committee approve both applications in terms which would authorise the general manager to issue the consents subject to the applicable conditions recommended in the director (city planning)'s report and any additional conditions that arise as a result of Sydney Trains and RMS concurrence. The conditions proposed in the director (city planning)'s report did not include a three-metre setback at the rear.

On 3 December 2015, at the Canterbury City Council meeting, Councillor Azzi moved a motion for each of the development applications consistent with this recommendation. Councillor Hawatt voted in favour of both motions, and they were passed by the committee.

After council amalgamations in May 2016, the council in administration instructed Marsdens Law Group to undertake a review of planning decisions made by senior staff of the former Canterbury City Council, including the director of planning. On 30 June 2016, Marsdens provided a report to council in relation to DA 168/2015 concerning 212-218 Canterbury Road. A number of issues with the process of assessing that development application were identified by Marsdens. These issues included the following – the lack of records of meetings held between council staff and representatives of the applicant on the hard copy files; the Sparke Helmore advice provided by the applicant; the general manager's memorandum; and the response to the Sparke Helmore advice from the director of planning were not provided to Planning Ingenuity or to the IHAP.

The Sparke Helmore advice did not appear to have been the subject of any referral to council's legal advisers for review or comment. Council does not have the power to direct the general manager in relation to the way in which that function may be exercised, the process facilitated by the general manager and the director of planning between the IHAP recommendation and the City Development Committee meeting in relation to the Sparke Helmore advice, quoting the Marsdens Law Group report, "Arguably undermined the recommendations of the external planning consultant and the IHAP."

Marsdens commented, "In the present case there also appears to have been an eagerness on the part of senior staff to facilitate an outcome for the development application that was different to that recommended by the external planning consultant (in terms of the rear setback) and the recommendation of the IHAP to refuse the development on the basis that the substantial variation to the applicable floor space ratio was not well-founded".

Ultimately DA 168/2015 was refused by the interim general manager, Matthew Stewart. It appears that the other consent lapsed because the deferred commencement conditions were not satisfied. Arguile Pty Limited then sold their interest in the properties.

I pass on now, Commissioner, to an indication of some of the more significant evidence which is expected to be led about relationships between people involved in the progressing of these two DAs.

I have already mentioned two matters of which it is expected there will be evidence, that is Mr Stavis forwarding to Councillors Hawatt and Azzi his correspondence on 25 October 2015 with Ziad Chanine about the rear and front setback issues, and Councillor Azzi threatening Mr Stavis in relation to "fixing" the setback condition to the recommended deferred commencement.

There is also expected also to be evidence that, generally, it was Mr Montague's practice to conduct meetings between himself and directors such as Mr Stavis, and Councillors Hawatt and Azzi, but no other councillors. It is also expected there will be evidence that, at a meeting of Mr Montague with his directors, when another director was not doing what Councillor Azzi wanted, Mr Montague told the directors present including Mr Stavis, words to the effect, "Whatever these guys want, you give them."

There will be evidence that Mr Hawatt regarded Marwan Chanine as a friend. There will also be evidence however, indicating that both Councillors Azzi and Hawatt had a relationship with Marwan and Ziad Chanine outside the ordinary course of dealings between councillors and applicants.

From around September 2015 it appears that Marwan Chanine became interested in purchasing Councillor Hawatt's property at 31 Santley Crescent, Kingswood, which I mentioned in my initial opening. Communications and meetings occurred between Councillor Hawatt and Marwan Chanine through to at least February 2016, apparently to negotiate a purchase of the property.

There seems to have been a business association between Councillor Hawatt and Marwan Chanine and another person, Godfrey Vella, V-e-l-l-a, in

relation to another development or developments outside the Canterbury area. Evidence to be led suggests that in December 2015, Councillor Hawatt arranged or attended meetings involving Marwan and/or Ziad Chanine, the meetings being connected to Mr Vella.

There will be evidence that, on 18 December 2015, Councillor Hawatt had discussions about a social meeting with Councillor Azzi, Bechara Khouri and Marwan and Ziad Chanine amongst others.

It is also expected there will be evidence that Marwan Chanine facilitated contact between Councillor Hawatt and a John Christou, C-h-r-i-s-t-o-u. In April 2016, Mr Christou entered into an option to purchase Councillor Hawatt's property at Santley Crescent for an option fee of $30,000. Mr Christou subsequently submitted to the local council an unsuccessful DA for the Santley Crescent property. The plans for that DA were prepared by Chanine Design Architects.

At no stage did either Councillor Hawatt or Councillor Azzi declare a pecuniary or a non-pecuniary interest in relation to the developments proposed for 212–218 or 220-222 Canterbury Road and 4 Close Street.

Finally, Commissioner, the evidence will be that Mr Stavis had a pre-existing relationship with the Chanines which was not disclosed to Canterbury City Council. Mr Stavis engaged in paid consulting work for the Chanines in 2014 before commencing work at Canterbury City Council. There will also be evidence of meetings and/or lunches which Mr Stavis had with Marwan and Ziad Chanine, including one just after he had written his application for the position of director (city planning). There will be evidence that at one lunch, Ziad and Marwan Chanine told Mr Stavis that they were happy he had applied for the position.

That is my supplementary opening, Commissioner.

THE COMMISSIONER: Thank you, Mr Buchanan. I'm going to adjourn now. During the adjournment I wonder whether you'd be so good to just inquire of those present whether there are any applications or matters of housekeeping that I can do or deal with rather and we'll take it from there. So I'll adjourn.

SHORT ADJOURNMENT **[11.16am]**

THE COMMISSIONER: Can I say that it's anticipated that Commissioner McDonald will be in a position to recommence taking evidence at 2 o'clock this afternoon. Are there any applications?

MR MOSES: Commissioner, I have an application but I think it would be more appropriate for it to be made to the Commissioner. I think, in terms of how I read section 31 subsection 4 of the Act, the public inquiry is to be conducted by a Commissioner and the Commissioner has been appointed to deal with this matter. So, I think if it's a matter that, in our view, it would probably be more appropriate to be dealt with by the Commissioner. I've raised with my learned friend, Counsel Assisting, what the nature of it is and we're going to have some discussions during the adjournment with the solicitor for the Commission to see if an alternative can be reached of when our particular clients are being called. So we'll have those discussions, which may alleviate some of the concerns that have been raised with me by those instructing me.

THE COMMISSIONER: I am aware of some of the concerns and I can tell you, Mr Moses, that the apology that I extended on behalf of Commissioner McDonald was intended to extend to the witnesses who you represent, as others represented by this counsel.

MR MOSES: Yes, of course, Commissioner. But we'll have those discussions with the solicitor for the Commission and see whether we can reach an accommodation in terms of those witnesses and we'll take it from there, if that's convenient to you, Commissioner.

THE COMMISSIONER: Thank you. Is there anything you want to say, Mr Buchanan?

MR BUCHANAN: I don't think so, Commissioner.

THE COMMISSIONER: All right. And I do apologise, but we'll adjourn until 2 o'clock when, as I said, I anticipate that Commissioner McDonald will be available. Thank you.

LUNCHEON ADJOURNMENT [11.48am]