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INDEPENDENT COMMISSION AGAINST CORRUPTION

PATRICIA McDONALD SC
COMMISSIONER

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OPERATION DASHA

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON MONDAY 2 JULY, 2018

AT 9.30AM

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

MR BUCHANAN: I have no administrative matters, Commissioner.

THE COMMISSIONER: All right. Sorry, Mr Kirby, do you have any issue?

MR KIRBY: No.

THE COMMISSIONER: All right. Mr Chanine.

THE COMMISSIONER: And the direction under section 38 continues. Mr Buchanan.

MR BUCHANAN: Commissioner. Mr Chanine, you gave enquiries on Friday about a meeting on the Doorsmart project that you had with Mr Montague and Mr Stavis, transcript page 1692, commencing at line 35, at what you called the outset of the inception of the concept design and I'm just going to read to you an extract of the evidence you gave. Question, "You drew attention to what you expect to be non-compliances with controls?" Answer, "Correct." Question, "And was that he purpose of the meeting, to draw attention to them?" Answer, "Partially, yes." Question, "With a view to what, sir?" Answer, "To lay on a table I guess, the non-compliances essentially. Be upfront about it and see whether it was too big a stretch or whether it was something that council was willing to delve into further, obviously subject to a formal application being lodged." Question, "And what was the outcome of that meeting in terms of that particular purpose?" Answer, "That it was reasonable palatable, subject to the detail that would be further presented with a formal application. That was the general process that we would conduct a lot of, I use the term loosely, business in the Canterbury area. We would have a lot of high, high level meetings very early on with, with the general manager and with the director just to be able to lay the groundwork for the future application." End of extract. Now, I think you made it clear in that evidence that you were talking towards the end there about your general practice in relation to running concepts past the general manager at Canterbury. Was that something that you did as well, with general managers in other local government areas?---Not particularly.

Why in Canterbury but not particularly other local government areas? ---The, I think I mentioned this on Friday, that the pre-DA process in Canterbury was, in my opinion, weak, in that the feedback that was provided was a regurgitation of the policies, as opposed to workshopping the ideas. There was a, when I first started doing work, design work in the Canterbury LGA area, there's a disjunct between the LEP and the DCP and the way Canterbury did business was, they assessed things on a merit basis and on a case by case basis. So, from that perspective, I felt that it was always best to start from the top, essentially.

Can you just explain a little bit more about why, from that perspective, you thought it was better to start from the top? How did that address the issue that you've identified?---To start with the decision makers, because it was a, they, I say they loosely, meaning generally the management team, assessed most projects on a merit basis.

Is it the case that the designs for many of your developments were not compliant with applicable development controls, so the, the LEP, SEPP 65 and the DCP?---Well, not necessarily, no.

10 When you say, "Not necessarily," was it the case that many were not compliant?---I don't believe there's a specific, specific thing as compliance. Planning is merit based. There are LEP controls and DCP control. DCP controls being discretionary. LEP controls as well, being to a certain extent able to be varied through clause 4.6 and the like and looking at the objectives, it's not a matter of looking at the numerical control but then looking at the objective behind that control.

Clause 4.6 was pretty restrictive though in its terms, wasn't it?---No, not my understanding.

20 You didn't think it imposed a pretty high threshold that you had to meet in order to arrive at a decision that could be applied and you could have a variance?---In more recent times, yes, it's become a lot more difficult to get variation under a clause 4.6 through various Land and Environment Court decisions that have arisen.

And when you say in more recent times, that was the case in 2014-2016, wasn't it?---I believe it started to get, it started to, the threshold started to get more difficult.

30 And generally, not just in respect of Canterbury, what did you expect the general manager to be able to do when your development designs were not compliant with development controls?---With regards to, sorry, with regards to Canterbury or not?

No, no, not just Canterbury, generally.---In general, in general?

What did you expect the general manager to be able to do?---Well, I guess using the term loosely, being the boss of council, being the head at council, bring together the varying, the various parties and sit and talk through and workshop, workshop the problems. Sometimes it would be that they would facilitate outcomes and other times it would be we'd have to go back to the drawing board.

40 So were you hoping that the general manager in these cases generally would give an indication, foreshadow a likely attitude to an application under clause 4.6 or in respect of the strict application of DCP controls?---I believe so.

Now, including Canterbury, so it's generally speaking still, how common was it for you to meet with the general managers of councils before lodging DAs?---Not very often.

Was Canterbury the only council in respect of which you did that?---I believe so.

And was it because of the person who occupied the office of general manager, namely Jim Montague?---I would say so.

And what was it about Jim Montague that meant that you thought it was worth your while making those approaches to him for that purpose?
---I can't recall the specific first interaction that I may have had with him
10 but from recollection I found him to be somebody who had an open-door policy in terms of was welcoming to hear what we had to say.

Would you accept that development controls in the LEP, SEPP 65, the DCPs were the legal framework within which you needed to bring a proposed development in order to have a reasonable prospect of obtaining approval?---Yes.

Can you help us understand why you would prepare a design for a proposed development that was not compliant in the first place with that legal
20 framework?---In the, in the particular instance to the subject site or in - - -

No, no, generally speaking.---Generally speaking.

Yes. Why wouldn't you, knowing that you had this regulatory framework within which you're meant to bring your designs, why wouldn't you ensure that your designs were compliant in the first place?---There are various reasons, some being that we test ideas, we test ideas in terms of design, sometimes we take instruction from the client as to what they have a
30 perceived outcome for the particular site.

Testing ideas though sounds as if you were trying to push the boundaries of the envelope, that is to say deliberately making them non-complaint with a view to seeing what you could get away with.---No. We'd be pushing the, we'd be pushing the envelope within – I use that term loosely, within compliance, because like I said there are, the framework of the LEP and DCP is, is such that there are objectives, it's not just a numerical control, there are objectives to be reached. So floor space is one, floor space has a particular definition, so what we would tend to do is work within the design of the legal definitions then within the standard instrument.
40

And when it came to Canterbury, would it be fair to say that your business model included, as a strategy, the lobbying of Jim Montague as general manager to - - -?---No, I wouldn't say so.

Sorry, no?---I wouldn't say so.

But it is something that you regularly did in respect of designs that you were putting together for developments in the Canterbury area?---On occasion.

Well, it sounds as if it was more than on occasion from your description of it. It sounds as if it was something that happened regularly but not necessarily.---It would happen at the request of clients. So, if a client requested an meeting with the general manager, I would attend.

So, you'd only do it if the client requested it?---Pretty much, yes.

10 And so, does that mean, so far as your brother's developments were concerned, he would have to request it before you would approach Mr Montague for a meeting?---I believe so, correct.

Did you ever meet Mr Montague without your brother being present when it came to a Chanine development?---I can't recall.

Does that mean you can't recall any occasion where you met Mr Montague in the absence of your brother for a Chanine development?---That's correct. I can't recall.

20 And would it be fair to say that your business model depended upon the lobbying of the general manager in respect of developments for which you were performing design work in the Canterbury area?---No, I wouldn't say so because anything that we did, still had to be substantiated through on planning ground.

But if Mr, I'm sorry, if Mr Montague indicated that he wasn't inclined to approve a variation from a development control, did you go back to the drawing board?---Yes.

30 So, Mt Montague had the last word as far as you were concerned, when it came to concept designs?---Not necessarily, because Mr Montague would generally defer to his directors essentially.

Do you recall any occasion when Mr Montague indicated that he was not inclined to recommend approval of one of your concept designs?---I can't recall the specific instance.

And of course, at the end of the day, your task was to try to maximise lot yield, wasn't it?---Correct.

40 And so, I just want to put it to you again, that your business model depended upon the lobbying of Mr Montague to maximise lot yield for projects that you were undertaking in the Canterbury local government area, that would be the case wouldn't it?---I wouldn't say so.

Can I ask you this, you obviously would associate from time to time, with other designers, other architects?---Yes.

Town planners, is that right?---Correct.

Thinking of the period, and I'm going to ask you now about 2013-2016, not just 2014, 2013-16, how common do you believe the practice to have been in the design and development industry to approach general managers with concept designs to see what their thinking was about them, at least so far as non-compliances were concerned?---From people like, from people that I knew, it was reasonably common.

- 10 Thank you. Can I change the subject, please, now to your contacts with Mr Stavis. Thinking of the time when you came across Mr Stavis and he was moving out or something like that, of the SPD Planners office in your building, what was the next time you had contact with him?---I would say possibly when he was at Strathfield Council.

And just so thinking about that, do you mean that there was correspondence or a meeting or a telephone call where you had contact with Mr Stavis at Strathfield Council in relation to the Liverpool Road project?---Correct.

- 20 And there was no contact in between him leaving SPD Planners and you having contact with him in relation to the Liverpool Road project?---That's correct. When he was at SPD so to speak and when I had met him when he was in the same building as us, that was on one occasion that I had met him, and then time had passed and then I came across him again when he was the officer at Strathfield Council.

And what was your last contact with Mr Stavis in relation to the Liverpool Road project?---I can't recall.

- 30 When was your last contact with Mr Stavis in relation to the Liverpool Road project?---It would have been, as I said the other day, potentially that day that we caught up when he had left council when we had the lunch at Botany. I may have mentioned something about it at that point in time, I can't quite recall, but I believe it was still going through its determination process at that, at that time and it would have been brought up.

When you say the termination project, process, sorry - - -?---Determination process. I believe it was still in, it was recommended for approval et cetera but it hadn't been determined as yet.

- 40 When was your last contact with Mr Stavis in relation to the Liverpool Road project whilst he was still at Liverpool, sorry, at Strathfield Council, as you understood it?---I can't recall.

Sorry. So I might have, I'll just make sure I've got the question clear for you. Whilst Mr Stavis was at Strathfield Council he was assessing the application in respect of the Liverpool Road project. Correct?---Correct.

What was your last contact with him in that capacity?---I can't recall.

Do you recall what your last contact with Mr Stavis in relation to the Liverpool Road project related to?---(No Audible Reply)

Or what stage was the project at?---I can't recall.

10 Had a recommendation been made for approval of any kind, qualified or otherwise, at the stage of your last contact with Mr Stavis at Strathfield?
---I can't specifically recall. The last contact I had was at that lunch, as I mentioned. My recollection serves me that I brought up the issue that we were having problems with council still in terms of getting it over the line, getting it approved, I believe.

And how much - - -?---I can't, I can't - - -

20 I'm sorry, go on.---Sorry, sorry. I was just going to say I can't specifically recall sort of through the lifespan, where that, where that particular meeting took place through the lifespan of that application.

Well, when you say that meeting, are you talking about the Tennyson Hotel?---Yes, correct.

We can work out that that was on 28 October, 2014.---Yes.

How much time had there been before that since you had last spoken with Mr Stavis or had dealings with Mr Stavis?---It would have been in his capacity at Strathfield Council.

30 Yes. How much time - - -?---No idea.

- - - was it?---No idea.

Weeks?---No idea.

Months?---I don't know, I can't recall when he, when he left Strathfield Council.

40 Did you find out that Mr Stavis was employed at Botany Council, Botany Bay Council?---Yes.

And did you at any stage find out that Mr Stavis was going to Botany Bay Council, in other words, before he'd actually been employed there?
---I can't recall.

When did you find out that Mr Stavis was employed at Botany Bay Council?---I don't recall.

In relation to the meeting with him and your brother at the Tennyson Hotel on 28 October, yes, 28 October, 2014, how long before that was it that you learned that Mr Stavis was at Botany Bay Council?---I can't recall if it was through the correspondence I had with him or – I can't recall specifically.

Did you have correspondence with him in his capacity as a senior planner at Botany Bay Council?---Through an application process or you mean - - -

Or anything?---No.

10

Did you have any projects at the Botany Bay Council?---No.

Whilst you were dealing with Mr Stavis in relation to the Liverpool Road project and he was at Strathfield Council, did you acquire his private email address?---I can't remember if I had it already or if I had asked him for it.

If I could ask the witness to show Exhibit 116, please. I would just like to take you to the first and second pages of these photographs of emails on Mr Stavis' phone. Can you see that the first email from you on Saturday, 25
20 October, 2014, is to Spiro Stavis, without the email address being spelt out, do you see that?---Yes.

Sometimes that indicates that the person was in your contacts list by that name.---Correct.

And if we go over the page, we can see that the response to your email from Spiro Stavis indicates that you had emailed his private email address.---Yes.

And so, it would suggest that when you first made contact with him on 25
30 October, 2014 at 10.20am, you already had Mr Stavis in your contact list in your phone and that contact was his private email address.---Yes.

How did that come to pass? How did that happen?---I would have had his mobile number in my, in my records in my contacts, I would presume, and his email address, of course. That first meeting I had with him back in Drummoyne, he may have given me a business card, I can't recall that.

Why did you enter Mr Stavis' private email address in your phone before 25
40 October, 2014?---I don't know. Most people that give me business cards, I would enter them into my contact details.

And his private email address was on a business card he gave you was it?
---I can't recall.

Did you, before 25 October, 2014, have a relationship with him, and I'm not using that in a loaded term, I mean simply acquaintanceship, if necessary, beyond the fact that you had had formal dealings with him as an assessing officer at Strathfield council?---No.

Now, as at 25 October, 2014 at 10.20am, did you know that Mr Stavis did for a living?---When I went him that email?

Yes. What he was doing for work, if anything?---I believe I knew he was at Botany Council.

10 And was there a reason why you approached him believing that he was employed by a local government authority to do private consultancy work for you?---He had left Strathfield, didn't see any, any issue with him doing work in another local government area.

To what extent, by 25 October, 2014, had you provided consultancy work for people who were employed by local government authorities or state government authorities?---Sorry, could you repeat that?

Yes, sure. Before 25 October, 2014, I take it you had provided consultancy work to other people?---Yes.

20 To what extent had those other people been employees of local government authorities or State Government authorities?---What, that I had, I had provided?

Yes.---I haven't done any work for local government authorities.

I might need to reframe my question.---Sorry.

30 I appreciate that the work that you would farm out, as it were, to consultants would be for private jobs, but to what extent has that work been farmed out to state government authority employees or local government authority employees?---We wouldn't.

But on this occasion you were prepared to?---Yes.

40 Why did you do that on this occasion and not on any previous occasion? ---Had a reasonably good working dynamic with Spiro in his time or in his capacity at Strathfield Council and so my brother asked me to reach out to him and see if he could write the report for the other project which was being conducted at Strathfield Council.

Right. That's one side of the equation. Why did you not hire other people employed by state government or local government authorities to do consultancy work for you?---It never came up.

So did the fact that Mr Stavis you believed was employed by a local government authority not cause you to pause or consider the wisdom of asking him to do private work whilst he was employed at a public authority? ---I didn't think that was an issue from my perspective.

Did you actually consider it and decide it wasn't an issue or is it something you didn't think of?---I didn't think of it.

Now, you say that you had a reasonably good working relationship with Mr Stavis when he was at Strathfield Council, this is on the Liverpool Road project.---Correct.

10 What do you mean by that?---Coming from, Spiro Stavis coming from private – my, my perception in dealing with him, coming from private practice he understood, using the term loosely, our side of the fence so to speak. He was practical, understood that reading LEPs and DCPs wasn't just a matter of, you know, sort of a narrow vision approach and specifically, you know, applying the control as it were written in black and white, going further and deeper into that, looking, before that I should say, looking at there are objectives written into the codes and the policies and then there are obviously numerical controls, and with that said, so with that framework then being able to workshop solutions.

20 Did you get the impression that from your dealings with him Mr Stavis was trying to help you and your brother obtain an approval for the Liverpool Road project on terms which were the best achievable for you and your brother?---Not really.

30 Why not? I mean, sorry, what do you mean by that?---As I, as I, sorry, well, as I mentioned on Friday, the original application was compliant, it was compliant with SEPP 65, with the LEP, with the DCP, with the height limit. It was through council's playing around with the design that to achieve a better outcome, asked us to play around with the bulk, take the bulk of the building out, as I mentioned last week, and place it on top of the building, which would provide a non-compliant building, a non-compliant built form, a building higher than the permitted height limit.

Was it Mr Stavis who had asked you to do that or somebody else?---I believe Mr Stavis.

40 And do you know where he – I withdraw that. Do you know what the source was of that request on his part, that is to say whether it came from him or someone or something else?---I can't, I can't put my finger exactly where it came from but I would, I would have believed it came from potentially objections from neighbours and surrounding areas et cetera, so that's my understanding of it.

And was that a solution, if I can use that word, that Mr Stavis proposed for objections as you understood it from neighbours to the proposed development at the lower and ground floor levels?---Possibly.

Are you saying that would be an explanation, is that your evidence?---It would be an, it would be an explanation.

Right. What I'm asking is your memory now.---Yes.

I understand that's a possible explanation, do you have a memory - - -?
---No, I don't.

10 - - - of Mr Stavis indicating a problem with the proposed, the design of the proposed development at the lower and ground floor levels?---I can't specifically recall. What I do recall the specifics of is, as I said, our building was compliant, the client being Marwan, my brother, instructed for a compliant building, as I had previously mentioned, he was toing and froing whether he wanted to come to the party and give council what they wanted because it meant non-compliance.

How often in your dealings with your brother did he instruct for a building that was compliant?---On occasion, often.

20 In the case of the Doorsmart project, you did not receive that instruction from him. Is that right?---No. No, not specifically.

And did you discuss with him whether the design for the development in the Doorsmart project should be compliant or not?---We, myself, my brother, town planner, the three of us had as I, as I suggested to you earlier put forward the proposition of exceeding the floor space. We had an idea and that's how the, the design development came about.

30 And who was the town planner?---David Furlong.

In your firm?---No.

Associated with your firm?---No. He's an independent town planner. Plan Urban Services Pty Ltd I believe is the company.

I'm sorry, which company?---Plan Urban Services.

40 Thank you. Now, can I go back, please, to the contact with Mr Stavis on 25 October, 2014.---Yes.

Again, please refer to Exhibit 116. You sent your first email to Mr Stavis about as you knew it Kanoona Avenue, Homebush at 10.20am on 25 October?---Correct.

Before sending that first email to Mr Stavis on 25 October did you speak with your brother about the idea of approaching Mr Stavis to offer him work?---Yes, we had discussed it.

And when – I withdraw that. How many conversations have you had with your brother about that before you made your first approach to Mr Stavis on that occasion?---I can't recall.

Thinking about it, what is it that you can recall about the contact you had with your brother about approaching Mr Stavis in relation to the Kanoona Avenue project before you actually approached him?---I can't recall the specifics.

- 10 What is it that makes you think you did speak to your brother beforehand? ---No doubt I would have spoken to him, being his development and his project I would have spoken to him about reaching out to Spiro whether it was him speaking, him introducing the idea to me or me introducing the idea to him I can't recall.

And could you assist us, please. The work that needed to be done was a statement of environmental effects?---Correct.

- 20 Was there a reason why you would consult your brother as to the identity of the person you would retain to provide a statement of environmental effects on any job?---The town planner is generally key to the development.

Sure, but so are a lot of other jobs. A town planner would sometimes be regarded as falling within the designers province of responsibility.---No, not necessarily.

- 30 Was it within, was the production of a statement of environmental effects for the Kanoona Avenue job within your area of responsibility?---What do you mean by that, sorry?

Were you, was it part of your job to make sure a satisfactory statement of environmental effects was procured for the Kanoona Avenue project?---Yes.

But you, and sorry, and you consulted with your client, namely your brother - - -?---Yes.

- - - as to who it should be that you would retain for that purpose. Is that what you're saying to us?---Correct.

- 40 And why did you propose Mr Stavis?---I don't know if I proposed Mr Stavis as I mentioned earlier.

I'm sorry, I'll have to get you to explain again. Why did you propose Mr Stavis?---I didn't necessarily propose Mr Stavis. The conversation, I couldn't recall if I had proposed him to Marwan or if Marwan had proposed him to me.

I'm sorry. Obviously you did think he was a person who was appropriate to approach. Is that right?---Correct.

There would have been a lot of other town planners in Sydney available who would have welcomed the work?---Yes, I presume so.

Was there a reason why Mr Stavis was approached rather than any other town planner of your experience, particularly one with whom you'd worked and had done good work?---I can't recall.

10

Now, before you've sent your first email to Mr Stavis on 25 October, 2014, did you know that the position of director of city planning at Canterbury was vacant?---I can't recall if it was prior to that time.

Do you recall learning that that position was vacant?---Yes.

What were the circumstances in which you learnt of that?---I can't recall specifically.

20

Do you recall learning that it was vacant before learning that there was any particular candidate for the job?---I think so. It may be possible.

Had there been any contact to you, or in your presence, from Bechara Khouri about there being a vacancy in the position of director of city planning at Canterbury?---Sorry, can you repeat that? I didn't understand it.

Yes. Bechara Khouri, had he said in your presence or otherwise indicated that there was a vacancy in the position of director of city planning at Canterbury?---It could be possible.

30

And that's because that's the sort of thing that you expected Mr Khouri to be across?---Not necessarily. It may have come up, may have come up in conversation.

But it was the sort of thing that you expected Mr Khouri to be across, wasn't it?---Not really.

40

Well, I think we talked on Friday about this and didn't you agree that Mr Khouri has an input into your and your brother's businesses in relation to regulation of your businesses, so far as they're concerned with particular projects in areas that he had contacts with?---More so with my brother than me.

Did your brother tell you that there was a vacancy in the position of director of city planning at Canterbury?---I can't recall. He may have.

Was the first contact that you had with Mr Stavis about the Kanoona Avenue project, the email that you sent on 25 October at 10.20am?---I presume so.

Well, did you have contact with him any earlier than that?---I can't recall.

Excuse me a moment. Now, your brother attended the lunch at the Tennyson Hotel with Mr Stavis at Botany on 28 October, 2014?---Yes.

10 As you understand it, why did your brother attend the meeting?---to talk to the planner about the project.

Why did your brother need to talk to the planner about the project?---It's not uncommon for a developer to talk to the town planner and the architect at the same time.

What input was there that your brother could provide in engaging a town planner to write a statement of environment effects?---It's the developer's project.

20

Yes, but - - -?---It's his vision for the site.

There are a lot of people who are employed to do work on a development project who never get to see or talk to the developer, aren't there?---There are but not in our instances, not in my instances. I work closely with many developers across Sydney and by and large, the majority of them would do something of a similar nature. That would be the ordinary throes of, of the business, they're going to sit down in meetings with the town planner to understand the framework of how we're proposing the building.

30

Were any documents provided to Mr Stavis at that meeting?---I can't recall.

Were there any documents provided to Mr Stavis to assist him in writing the report?---Yes, there would have been.

How were they provided?---I can't recall. Possibly email.

Did your brother employ a or retain a town planner generally in his business at that time, 28 October, 2014?---Internally?

40

Yes.---No.

Did you?---No.

But you had Mr Furlong, a person you retained on a regular basis?---We did a lot of work with Mr Furlong, amongst other town planners, but Mr Furlong we were comfortable with.

Was there a reason why you did not ask Mr Furlong to provide this statement of environmental effects?---He may have been away or busy at this time and that is maybe why the idea of using Spiro came about, possibly.

But do you have a recollection as to - - -?---I don't have a recollection, no.

10 Did your brother attend the lunch as you understand it because he wanted to touch base with Spiro Stavis about him applying for the job of director of city planning at Canterbury City Council?---I don't believe so.

Did you attend the meeting and indeed organise it for that purpose?---No.

How did you travel to the meeting at the Tennyson Hotel on 28 October, 2014?---By car.

Did you travel with your brother?---I can't recall. Possibly.

20 Well, you can recall that you travelled by car.---Yes. It would have been by car because I don't catch public transport generally, so that's - I just can't recall if I, if I went by myself or if I went with him, I can't recall.

Did you drive yourself in your car?---I don't recall.

Did your brother drive in his car?---I don't know, don't recall.

Where did the journey which terminated at the Tennyson Hotel around lunchtime on 28 October, commence?---I can't recall.

30 The likelihood is it commenced at Drummoyne?---Possibly.

Well, it's the likelihood, isn't it?---It's likely.

It seems a long way to go just to touch base with a town planner about the town planner potentially providing a statement of environmental effects, don't you think?---No, not at all.

40 Now, can I take you to the last page of Exhibit 116, that's page 11, and you can see that's an email to you from Mr Stavis on 8 December, 2014 at 12.02pm.---Yes.

And the last line says, the last line of the message says, "Call when you can." Did you call him?---I, I don't recall.

Is it likely you called him?---It's possible.

When was your next contact with Mr Stavis, that is to say after this message, this email on 8 December, 2014?---I don't recall specifically.

At a lunch with Mr Stavis did you and your brother tell Mr Stavis that you were happy he had applied for the position of director of city planning at Canterbury?---I don't recall that.

Is there a prospect that you did tell him that or that your brother did at that lunch?---I don't remember any of that.

10 Yes. Now what I'm asking is, thinking about – I withdraw that. Knowing as you sit there now that Mr Stavis had applied for the position, knowing Mr Stavis, knowing your interest in development at Canterbury, understanding the influence that the director of city planning at Canterbury would have on the fate of your projects in the Canterbury local government area, what do you think the prospects are that you told Mr Stavis that you were happy he had applied for the position?---I mentioned earlier that I wasn't sure if I had heard that he had applied at that particular time or whether it was afterwards, so I'd be speculating if I was to answer you. I can't recall whether, I don't believe he brought up the fact that he had applied at that particular meeting.

20

Now, as at 25 October, going back to the Saturday when you commenced the contact, you and your brother contemplated undertaking development project work in the Canterbury local government area on one site, that's the 212-222 Canterbury Road and 2 Close Street, Canterbury site, correct?---At that particular time?

Yes.---I presume so.

30 And there was also a project that your brother had, at 433-437 Canterbury Road, Campsie. Was that project on foot or in contemplation as at 25 October, 2014?---I can't recall.

Did you work on that project?---Our office did.

When did that project commence, as best as you can recall? And if we can't remember a date, then in relation to some event or stage of something else happening.---Not 'til I believe 2016-17 possibly.

40 Thank you. Was that development a block of residential units?---No.

What was it?---It was a hotel.

Thank you. Did your brother own the land at 433-437 Canterbury Road, Campsie or acquire it?---I believe it may have been an option to something along those line. I don't, I don't know.

Now, coming back to, oh I'm sorry, one more question about that 433-437 Canterbury Road, Campsie project, did it have an in-house project name?---No.

Not a nickname?---Not that I recall.

Now, you spoke on Friday about a partnership that had a relationship to the Doorsmart project, by way of ownership. Do you remember giving that evidence?---Yes.

10

And had you heard of a company called Arguile, A-r-g-u-i-l-e, Pty Ltd?
---Yes.

Now, was that company your client?---Yes.

And you were involved – I withdraw that. Were you involved in obtaining by way of purchasing the property?---No.

20

Were you involved in obtaining an option for the purchase of the property?
---No.

When I say the property, I mean the four properties that made up the site, you understand that?---Yes, yes.

Excuse me a moment. Could I take you, please to a document and just ask you to help us with it, please. At volume 25, page 4 of Exhibit 52. Oh, I'm sorry, Exhibit 69, I'm corrected. If you have a look at that document, please, and there's a copy on the screen, if it makes it easier too, to read.---It does, thank you.

30

Now, there's a, it is part of a conversation but the relevant part of it is, that I want to take you to is the top of page 4, and it's an email by Barry Barakat, dated 4 September, 2014 to Kathy Schinella, S-c-h-i-n-e-l-l-a. I'll ask you to assume she is a solicitor and Mr Barakat says, "Kathy, as you may know, the Canterbury vendor advised that his solicitor informed him that all contracts have been issued. Marwan and Ziad have advised you have not received all the documentation. Whilst we would never impose such a request of you, we really need, we really want to get to finalise this deal ASAP, as this is a critically urgent site for us to secure." Now, I'd ask you to assume that this is in relation to the Doorsmart project site. Do you know why Mr Barakat would have said to his solicitor that you and your brother had advised you had not received all the documentation?---No, I don't.

40

I'm sorry. Why she had not received all the documentation. My mistake.
---No, I don't.

It would seem though that Mr Barakat had been in some communication with you and with your brother so far as that email is concerned?---Not with me. Not to my recollection.

Where would Barry Barakat have got the idea from that you had advised that she had not received all the documentation?---I don't know.

Did you have any dealings with a solicitor by the name of Kathy Schinella in relation to the acquisition of the site?---I don't believe so.

10

Do you know the name Kathy Schinella?---Yes, I do.

Who is that person?---She is a, she works in the solicitor's office. I don't know her exact title, whether its paralegal or - - -

It does look here though as if you were a little bit more intimately involved in the acquisition of the site than you've given us to indicate doesn't it, from this email?

20 MR KIRBY: I object.

THE COMMISSIONER: Why?

MR KIRBY: I apprehend that the real question is that Mr Chanine, the witness, was more involved than he has just given evidence about. The statement that was made, that this email seems to suggest a more intimate involvement than the evidence, the answer cannot be probative of anything and so there is generally a relevance objection and in fairness to the witness the matter of the construction of the email and what emphasis is placed on the email is a matter for you, Commissioner, and not something which the opinion of this witness can bear upon at all.

30

THE COMMISSIONER: Mr Buchanan?

MR BUCHANAN: I press the question, Commissioner. Depending on what the witness's answer is, is of assistance to the Commission to get his view as to essentially whether it would be reasonable for the objective observer or indeed the Commission to look at this piece of evidence and conclude that the witness's evidence is not correct when he says that he was not involved and that his evidence on that subject is unreliable.

40

THE COMMISSIONER: Anything in reply, Mr Kirby?

MR KIRBY: No.

THE COMMISSIONER: I'll allow the question.

MR BUCHANAN: It does look from this email as if you were more intimately involved in the acquisition of the site the subject of the Doorsmart project than you have led us to believe wouldn't it?---No, I don't believe so.

10 Why not?---I'm reading it again. I can't, I can't understand where Mr Barakat's email is coming from but "informed him all contracts have been issued. Marwan and Ziad have advised we had not received all the documentation." I don't know what that's in relation to. I can't specifically say what that's in relation to.

Thank you. And sorry, before we part from that document, you would agree wouldn't you that Mr Barakat seems to assume that Ms Schinella will know who he is talking about when he uses the words "Marwan and Ziad"?---Yes.

And is it right that as at 4 September, 2014, you would have expected Ms Schinella to have known who was referred to by those two names?--- Yes.

20 Thank you.---Ms Schinella, if I may add, Ms Schinella works for Hunter Lawyers, Hunter Lawyers are in, were in Drummoyne, they were in the same building as we were, so we knew each other from working on the same floor.

And you mean to say that if she used the first name of anyone who worked in that building you'd expect us to know who she was, who he was referring to?---Sorry?

30 If Mr Barakat referred to anyone who worked in that building by their first name that you would expect that Ms Schinella would know who he referred to?---Well, Marwan was partners with Barry so she obviously knew who Marwan was, as to knowing who I am, she knows that I'm Marwan's brother. It's a very, it was a very small floor, there's only one level of commercial with about seven or eight suites on it.

But it's more than being Marwan's brother, isn't it?---It was being the architect.

40 You were his business partner on development projects, weren't you?
---No, I wasn't.

Would there have been anything wrong with you being a business partner with your brother on the Doorsmart project?---I don't believe so.

There wouldn't have been any issue with the Australian Taxation Office?
---I don't believe so.

Or with any other regulatory authority?---I wouldn't say so, to my knowledge.

Now, who was the development of these four properties that were the subject of the Doorsmart project?---Entity?

Yes, sir.---Arguile Pty Limited.

10 Did you understand your brother was retained by Arguile or that Arguile was carrying out the development, was the developer?---Arguile was the developer. Sorry, if I can I guess further elaborate or fix my, my answer to that. Arguile was the development as far as I knew. I dealt with four individuals as in the partners.

Now, can I take you to those individuals. If I could go to volume 28, please, page 325. This is a company extract for the company Arguile Pty Limited. Can you see that?---Yes.

20 And it goes over the page to, the pages I'd like to take you to anyway are 326 and 327 as well.---Sorry, those page numbers, are they the same in this folder?

Well, they may not be, sir. Can I just hold on and make sure I'm not – I'm told they are.---Yeah, okay.

So 325 you can see is the front page of the company search and then page 326 identifies Barry Barakat, Tanya Marie Chanine and Simon Srour as the directors.---Yes.

Can you see that?---Yes.

30 And then turning over the page, the shareholders are Camile Chanine, Barry Barakat and Simon Srour. Can you see that?---Yes.

Your brother doesn't appear to have owned any shares or to have been the director of that company.---Yes.

Is that consistent with your understanding?---I don't know the intimates of the shareholders directors et cetera.

40 Right. Can you see that one of the directors is Tanya Marie Chanine. Was she your brother's wife?---Yes.

And if we go over the page to 327 can you see that one of the shareholders was Camile Chanine. Was that your brother and your father?---That's correct.

Did, I'm sorry, did I, I might have misspoken. I meant the father of you and your brother?---Sorry, yes that's the way I understood it.

That's okay. Can I just ask, did your father own the shares that he held in the company, which is identified here on page 327 as 250 of the issued thousands shares, on behalf of anyone?---I don't know.

Did he hold it on behalf of your brother?---I don't know.

10 Have you ever understood that members of your family, by which I include the extended family of your brother and his wife, held interests in the entities that were pursuing developments in which you and your brother were involved on behalf of your brother?---Sorry, could you repeat that. I got a little lost.

Yes. Do you understand that anyone in your family or your brother's family held interests on behalf of your brother in respect of developments that you conducted or you were involved with?---I'm not sure.

20 Well, that seems a very, very difficult thing to understand, Mr Chanine. How could you possibly not know whether or not members of your family were holding interests in entities that were involved in the work you did for someone else? How could you not know that?---If I'm dealing with the individual, then I'm presuming that the individual is the person that I'm acting for.

And you never talked to your family, your father, your brother?---About these certain business dealings, no.

Your brother's wife?---No.

30 About who owns what or who had an interest?---No.

Or why, for example, your father or your brother's wife would hold these share holdings or directorships when, as you understood it, it was not them but your brother who had the relevant interest?---No. I'm looking at this today, so I didn't know who was director et cetera.

Sorry, do you mean to say this comes to you as a complete surprise?---It's not a complete surprise but I'm not, I'm not privy to the way they structure things.

40 When you say, "It's not a complete surprise," what did you previously understand in this regard?---I didn't understand anything because I didn't actually look into it, I didn't ask the questions and they weren't presented to me.

And are you telling us you had no interest in who held interests?---That's correct.

Can I take you to some other documents, volume 25 at page 69. No, I apologise, it's not the right page number. Could you have a look at page 6, in the first instance in volume 25. And that's a front page of a unit trust deed for a trust called BBCS Unit Trust. Is that name with which you are familiar?---No.

Have you ever heard of it before?---No.

10 Did you understand that Arguile Pty Ltd so far as concerned the sites the subject of the Doorsmart project and the development proposed to have been designed for those sites was merely the trustee for another entity?---I don't recall. I don't think so.

Excuse me. Could you go to page 60, please.---Yes.

You will see that's an email conversation.---Yes.

20 It starts on 17 September. This is a third of the way down the page and it's an email addressed to Barry Barakat, cc amongst others your brother and yourself.---Yes.

And it says, "I have attached a copy of the trust deed to give to your solicitor."---Yes.

30 And can you have a look then at the email at the top of the page replying to that from Mr Barakat to Ms Schinella, cc amongst others you and your brother, "Kathy, please be advised that our SPV for the Canterbury deal is Arguile Pty Ltd, ATF BBCS unit trust." ATF and BBC are two different words. Do you see that?---Yes.

And you know that ATF is an abbreviation and an acronym for acting as trustee for?---Yes.

It would appear that you were through this email, these emails informed that Arguile Pty Ltd was acting as trustee for a unit trust by that name?---It appears so, yes.

And you'd forgotten had you?---Yes.

40 Can I then take you back to the trust deed and ask you to go to page 46 of volume 25 and the initial – I'm sorry, my mistake – the initial unit holders of the BBCS unit trust are identified as three companies, Karantina, Destiny Australia and Hably, H-a-b-l-y, in each case Pty Ltd. Can you see that?---I see that.

You recognise Karantina Pty Ltd as being the name of a company which was controlled by your father?---Yes.

Destiny Australia, you recognise that as the name of a company controlled by Barry Barakat?---I believe so.

And Hably Pty Ltd, you recognise that as the name of a company controlled by Simon Srour?---I presume so.

Again, there doesn't appear to be your brother appearing there either by a company or otherwise as a unit holder of that unit trust. Do you see that?
---Yes.

10

Are you able to explain how that could be when you say to us that you thought your brother was a partner in the partnership?---I can't explain it.

An explanation would be that your father was holding the interest for your brother wouldn't it?---I don't know.

Was your father holding the interest for you and your brother?---Not for me.

20

You never had any conversation with your father that indicated and you never saw your father write anything or send you anything that indicated that he was holding an interest in the development in the Doorsmart project on behalf of either you or your brother. Is that right?---I don't believe so.

So all of this is a mystery to you?---Mystery in terms of who are the shareholders and who is behind the development?

Yes.---I wouldn't say a mystery but I have no personal knowledge of this.

30

Again, you and your brother were pretty close when it came to carrying out these developments generally speaking weren't you?---Relatively, yes.

And you were certainly very close to your brother in carrying out the development in the Doorsmart project weren't you?---Yes.

Why would he conceal from you the true ownership of the shares and the unit trust in the project?---I wouldn't look at it as concealing.

40

Never mentioned it to you?---No, I don't believe so. Most clients I work for when I do the work for a particular client I'm working for the individual and I'm working with the individual. Don't know who's behind them and who's what, what corporate structures they have set up and for what other reasons and what legal advice they have and accounting advice et cetera, so I don't know.

But on these documents the question has to be asked, why were you working for your brother?---I was working for my - - -

Why were you taking any instructions from him?---I was taking instructions from my brother and his partners.

Why were you taking any instructions from your brother at all in relation to the Doorsmart project?---Because I was working for him and, and the partners.

How did you know you were?---Sorry?

10 How did you know you were working for him?---I had met with him and with the partners, instigated the project that way.

Are you telling us that looking at all these documents now it would appear that he was pretending he had an interest when he never did?---I don't know.

Does this come as a shock to you?---I'm not shocked.

20 Why aren't you shocked?---Why would I be shocked?

Well, plainly you didn't know or understand the true relationship between your brother and the entities that owned the project.---It's not for me to know. In my capacity I don't need to know.

30 You don't need to know whether the person who purports to give you instructions is entitled to give you instructions?---There were four partners as far as I knew and the instructions came by and large across the board from the four partners. I would have regular conversations with my brother, the partners never said to me don't speak to Marwan about the project, so why would I think otherwise?

I appreciate that I might be jumping the gun a bit, but have you started doing any work on meeting the requirement that was given to you by the Commissioner at the end of the proceedings on Friday?---Yes.

Have you found any document that would meet the description of being an agreement between you and anyone to carry out the work you carried out on the Doorsmart project?---I haven't looked into that as yet.

40 Was there such a document ever?---I don't believe so. I don't know.

If you don't believe so, that would suggest that there was a practice whereby you were working so closely with your brother on these project that you didn't need to write down the agreement.---I would do that with several clients.

That's in business usually quite unusual, isn't it?---Not really.

I see.---Not when you're working with people that you build a relationship with and there's a trust over years.

The business you conducted on the Doorsmart project would have been worth to your company hundreds of thousands of dollars, wouldn't it?

---Possibly.

And you never did anything to secure that interest or value once the work had been done - - -?---No.

10

- - - with a written agreement?---No, I don't believe so.

Excuse me a moment. Thank you. Now, I want to take you to another document. Now, sorry, before I do I'll just ask you to just go back to volume 25, page 46.---Yes.

And you'll see there that there are three entities identified as being the initial share unitholders.---Yes.

20

Can I take you now to page 68 – sorry, excuse me a moment. Excuse me a moment. Excuse me. Yes, thank you. Volume 26. My reference was wrong. Page 68. Have you – sorry, sir. No, you don't need the volume at this stage, thank you. It's on the screen. You can see that that is Minutes of Trustee Meeting, Allotment of Units, BBCS Unit Trust. And if I can just skip down to halfway down the page, there are additional units allotted, and the first three entities are the initial unit holders each receiving initial units. And then there's an entity at the bottom of the page, which is a new entity, and its name is K & H Bech, B-e-c-h, Pty Ltd. Do you see that?---Yes.

30

Did you know that to be Mr Khouri's company?---I've seen the name before.

Did you know it to be Mr Khouri's company?---Yes.

And up at the top of the page you can see the date is 26 August, 2015. Do you know why it was that additional units were allotted to K & H Bech Pty Ltd on 26 August, 2015?---No, I don't.

40

Excuse me a moment. It would seem that there was a period of time that elapsed between the commencement of the entities that were the developer in the project and the allocation, or allotment more accurately, of additional units to Mr Khouri's company. Do you know why there would have been that period of time between the commencement of those entities and Mr Khouri obtaining a formal interest in them? Or in the unit trust, anyway. ---No, I don't. I don't, no.

Was there any concern that you were aware of on the part of Mr Khouri about being formally involved in the project before 26 August, 2014?---No.

But he was involved from the outset?---I believe so, yes, to my understanding.

He was part of the partnership as far as you were concerned.---As far as I was concerned, yes.

Can I ask you now about the DAs. If we could go back to volume 25, Exhibit 69, please, and go to page 224.---Yes.

10

Do you see that this is the development application for that part of the site it says here comprising 212-218 Canterbury Road?---Yes.

It's dated, just so far as the received stamp of council is concerned, 27 April, 2015.---Correct.

And if I could ask you to keep your finger on that page, and if I could ask you to turn to page 235.---Yes.

20

And that is the DA for 220 and 222 Canterbury Road and 4 Close Street, is that right?---Correct.

Again, dated, so far as the receipt stamp is concerned, 27 April, 2015? ---Yes.

In each case you were the applicant?---Yes.

And you signed the application, is that right?---No.

30

I'm sorry?---No.

So, I'm looking at page 226, that's someone else's signature. It's got "per"?---Per, correct.

Can I just ask for the record, whose signature is that?---I don't know to be honest.

But as far as you were concerned - - -?---It could have been an employee of the company.

40

You intended that someone lodge this in your name?---Lodge the application? Yes, and it's not in my name, it's in the name of Chanine Design.

Sorry, I understand what you're saying.---I am a contact person, yes.

I understand what you're saying. And it's the same with the application for 220-222 Canterbury Road and 4 Close Street?---Correct.

Thank you. Was there any discussion or awareness that you had before those applications were lodged about whether the project should process by way of one development application or more than one development application?---It was intended that they go in as two development applications.

10 When was that decision made?---I can't recall specifically. It would have been made through the, through the process very early on.

Who made that decision?---I believe the project partners.

Did you give any advice or participate in that decision?---I would have. I would have been asked opinion.

And what advice would you have given?---It's, two applications would have been fine.

20 Oh, I see. And it wasn't an initiative of yours that they be split into two applications?---I don't believe so.

Whose initiative was it?---I presume the partnership.

So, does that mean, in terms of the most active people involved, your brother?---Potentially.

30 Well, you tell us, do you remember one of the other three saying something to you about, please, or let's split the applications into two?---I can't recall specifically. Marwan would have possibly been instigating the idea of splitting it.

Now, what was the discussion that occurred on that subject?---It gives, and we do this often with developments of this sort of size with clients, that they want flexibility in the DA, they want flexibility rather than having one large development, breaking that up into smaller components.

40 And what are the advantages of that flexibility?---They can sell one side off and keep another. They can sell them both off separately, independently. Smaller number of, smaller number of units per development approval achieves a better price in general than a large major development of 100-plus units, for example. So, the smaller, smaller bite-sized pieces, essentially. Gives the developer greater flexibility.

Why not divide it into three parts, rather than two, in that case? Maybe even smaller?---In this particular instance it was difficult because of the access arrangement, to break it up into three, three components.

What do you mean?---Well the, the way the site was made up, from recollection, the way the site was made up, access was coming, vehicular access was coming in off Close Street, so there was only one, one point. So, one development would give a right of way to the development that was essentially becoming landlocked. The, and the number of properties, I believe, couldn't be broken down any further.

10 Now, at the time that these DAs were lodged, you understood that the threshold for determination of a DA by the Joint Regional Planning Panel, under the Environmental Planning and Assessment Act, was if the estimated cost for a development for any given DA was \$20 million?---Yes.

If the estimated cost of development was under that threshold, the DA was determined by the council?---Yes.

The total site for the development proposed in this case, comprised a series of adjoining lots, that's correct?---I believe so.

20 Comprising 212-222 - - -?---Yes, sorry, yes.

- - - and 4 Close Street?---Correct.

It would be fair to say wouldn't it that the interests of the partnership and yourself in this total site for the development application to be assessed and determined by council rather than the JRPP?---I believe so.

30 What were the advantages of that to you?---From recollection one of the factors was David Furlong, the town planner, was a sitting member of the JRPP. He was instrumental in the ideas and the thought process of this particular application so to have him act for us was of importance, act for us as planner was important on this particular application so that was one of the, one of the determining factors of keeping it out of the JRPP as well. That was an additional benefit I should say.

40 What would be wrong about the development being considered or the application for the development being considered by the JRPP minus David Furlong if he disqualified himself from being involved in its consideration? ---David was generally instrumental to the planning outcomes, to the planning arguments.

Sure, and for that reason because he would have a potential conflict of interest he would have to step aside?---Correct.

And someone else would take his place in the JRPP?---Correct.

What would be wrong with the JRPP minus Mr Furlong considering a single application for the development of the whole site?---My understanding was

it wasn't that David would step down from the JRPP per se. He wouldn't take on the actual application as well.

Yes. What was wrong - - -?---And we wanted him to take on the application.

I see. Was there discussion about this?---Sorry?

10 Was there discussion about this?---As to whether he would take on the application?

Whether he would be involved in it at all for you?---Only if it was over 20 million that he couldn't act.

Yes, but you wanted him to be involved in creating the application if I can put it that way?---Yes. As I, as I mentioned earlier that he would incorporated, involved in those early discussions with council very early on.

20 He was involved was he?---He was involved, yes.

And what was his involvement as you understood it?---As our town planner.

And who did he have discussions with as you understand it?---Myself, Marwan. He attended meetings with the general manager and the director of planning along with me and Marwan. I think I mentioned that as well on Friday.

I'm not saying you didn't.---Yes, no, of course. Just reiterating.

30 Thank you. So I'm still trying to understand, surely Mr Furlong would be able to do work in his practice and it go to the JRPP without him sitting on consideration, sitting on the JRPP considering the application. What would be wrong with that?---I wouldn't see anything wrong with it.

So why couldn't the application for this project be bundled up as one DA and considered by the JRPP?---It was two DAs for the fact as I mentioned earlier to give the developers flexibility with the development. So the mere fact that it came in under \$20 million was a benefit to them.

40 Now, are you saying that it's a mere coincidence that the two DAs came in under 20 million each?---Well, they came in, the costs came in where it came in. It wasn't a matter of starting off as one development and then breaking it up. It was two developments.

You see there's another way of viewing this isn't there, namely at the point in April, 2015 when these DAs are being lodged you had two friends on Canterbury Council, Michael Hawatt and Pierre Azzi?---No.

Neither of them were friends of you or your brother?---No, they're not friends of me, of myself.

What about your brother?---Don't know.

You genuinely say to us do you that as at April, 2015 you did not know whether your brother was a friend with Michael Hawatt or Pierre Azzi?
---Using the term friend I'm unsure.

10 You understood didn't you that as at April 2015 Mr Hawatt and Mr Azzi controlled the numbers on council at Canterbury, didn't you?---I believe so.

And because of your previous relationship with him, you had influence with Mr Stavis, didn't you?---I wouldn't say influence with him, no.

Can I suggest to you that those relationships that I put to you were a very good reason why you wanted to keep these DAs at council level for the purposes of decision-making, and that was a considerable advantage of splitting it into two DAs rather than leaving it as one.---It was an added
20 benefit.

Now, if we go back to the forms, page 25, sorry, volume 25 page 224, and if we - - -?---Sorry, what page was that?

Starting at 224. And if we go over to 225, so this is the DA for 212-218 Canterbury Road.---Yes.

And at page 225 against the words, "Estimated cost of the development"
- - -?---Yes.

30 - - - are the words, the numerals, \$18,919,800.---Yes.

If we go then to the second DA, volume 25, page 235, this is the DA for 220-222 Canterbury Road and 4 Close Street, page 236, Estimated cost of development, \$18,266,200.---Yes.

Do you see that?---Yes.

40 Those are figures that are very close, each of them, to \$20 million, aren't they?---Correct.

How were those figures arrived at?---I believe quantity surveyor's report.

And when you say you believe, what are you telling us, that you have a memory of it or that was your practice or - - -?---I have a memory of it.

And who were the quantity surveyors who did that work?---I can't recall. Don't remember the firm.

Who retained the quantity surveyors to perform those calculations?
---Maybe we did on behalf of the clients, we tend to do that sometimes,
either the client would engage them or we would engage them on behalf of
the client.

Did you have to pay the quantity surveyors for this work?---Yes.

10 So the likelihood is you would have engaged them perhaps?---Possibly, I
don't recall. We would generally, like, as I mentioned, we would engage,
we would engage clients sometimes on behalf of the client with the client's
approval of course, we don't, can't, we have to put fees et cetera by the
client and then they would either say yes or no and then depending who it is
in terms of the relationship either sometimes we would engage them on their
behalf or we'd ask them to engage the consultant direct.

20 And do you still have the product of the quantity surveyor's work for the
result that appears as the estimated cost of development in those two DAs,
two DA forms?---I'd say so.

Did you supply or anyone else to your knowledge supply council with any
documentation or data or expert opinion to support the estimates?---The
quantity surveyor's report?

If that was what was provided.---Sorry, I'm presuming a quantity surveyor's
report was provided to the council.

30 Why are you presuming that?---That, by and large most times that's what
would be the case.

Yes, but why would it be the case?---It would generally be required as part
of a submission.

Are you saying it was required of you to provide that documentary support?
---As part of the application, yes.

And that was your experience with Canterbury Council?---Generally, yes.

40 Did you lodge that material with the development application?---I'd
presume so.

Were you asked to provide that material by Canterbury Council?---I can't
recall.

Was it your practice at Chanine Design to provide a quantity surveyor's
report to support each DA when it came to the data provided as to the
estimated cost of the development?---Ourselves internally as the architect
give an estimate?

Yes.---No.

Why did you provide it in this case?---We didn't, as I mentioned.

I'm sorry?---We didn't, as I mentioned. That was provided by - - -

I misheard you, then.---Sorry, we did not.

- 10 You did not provide quantity surveyor's report, is that right?---Quantity surveyor's report, yes.

You did provide it?---From a, from a quantity surveyor, not myself.

Right.---So this figure is derived from a quantity surveyor.

Yes. But insofar as concerns providing the report to the consent authorities concerned, was it your practice - - -?---To provide that said report?

- 20 To provide that data, that documentation to the consent authority?---Yes. Yes, it would be required generally.

And was it always required by Canterbury Council?---I believe so.

Were you ever questioned – I'm talking about generally – were you ever questioned by any consent authority, Canterbury or otherwise, about the data that had been provided or the figure that had been calculated for estimated cost of development?---Not to my recollection, no.

- 30 And so no other consent authority that you can recall ever said, "Can we have a closer look at the figure, please, that's been provided for estimated cost of development?"---Not to my recollection.

So just to sum up on this, in your experience it's been the case that the figure provided in a DA, by your company anyway, for estimated cost of development has been accepted by the consent authority at face value?
---Correct.

- 40 But in fairness you say that it has been your practice to provide with the development application a quantity surveyor's report to back up the figure.
---Correct.

Now, was this development divided up into two DAs in order to minimise the risk that the application for development consent wouldn't be made by the council and instead might be made by the JRPP?---No.

Were either of the estimates in this case – that's the Doorsmart project – as to the cost of development deliberately calculated so as to ensure that the

DAs weren't determined by the JRPP and were instead determined by Canterbury Council?---I don't believe so.

Did you seek any equity in this project?---No.

Did your company seek any equity in this project?---No.

Did you receive any equity in this project?---No.

- 10 Now, of you and your brother was one or other of you more responsible than the other for liaising with council over the processing of the applications?---Yes. Myself.

Now, you told us on Friday that there was an initial meeting with Mr Montague and Mr Stavis about the concept and the issue of non-compliance, and you told us that again today. Was there any such meeting with Mr Montague about the project at 433-437 Canterbury Road, Campsie?---I don't recall.

- 20 Did you yourself have any meeting with Mr Montague about that project, 433-437 Canterbury Road, Campsie?---I don't recall. Don't believe so.

Do you know whether your brother had any meeting with Mr Montague about that project?---Not that I know of.

Did you have any meeting with Mr Stavis about 433-437 Canterbury Road, Campsie.---I believe so.

- 30 How many meetings?---I don't recall.

More than one?---It could be.

Was he director of city planning at the time?---I believe so.

Do you know whether your brother had any meeting with Mr Stavis about 433-437 Canterbury Road, Campsie.---I'm not sure. He may have been present with me at, at a meeting.

- 40 Now, just to assist to make sure that we're on the same wavelength in relation to the processing of the Doorsmart project development applications, in 2015 you understood the assessment and determination process for these development applications to involve the preparation of an assessment report by council in respect of each DA, is that right?---Yes.

A consideration of the assessment reports by the IHAP?---Yes.

And recommendations by the IHAP to council as to how they should be determined?---Yes.

Did you understand that there would then be, in between the IHAP recommendation and the council determination, a further report to council, or the City Planning Committee, by the officers or the director of city planning? Do you understand what I mean?---Yes, yes, yes. I'm just, yes, I did.

Right. And that council would receive that report and would then determine each DA?---Yes.

10

Now, in 2015, were you aware that, in respect of these two DAs, council outsourced to consultants the initial preparation of the assessment reports? ---No.

Is this the first you've heard of that?---No. I read it in the transcript as to who was assessing it.

20

And was that the first you knew?---Yes. Oh, I believe so. I can't quite recall but I read, I was, I read through the detail in the transcript. I can't recall at the time if it was advised to me that it was an external planner or not. It initially started out with an internal planner, internal within Canterbury Council. I don't recall, I don't recall whether they sent it, whether I knew that they sent it out at the time or whether it's what I read recently as to who it went to and what had transpired.

Did you understand that the assessment reports, in the first instance to the IHAP and the second instance to the council, would be signed off by Mr Stavis?---Yes.

30

And thinking back now to 2015, if you can, did you have an expectation that the DAs would be considered at any particular monthly meeting? When I say monthly, I mean a meeting in a given month of 2015 by the IHAP.---I, I don't recall.

Did you have any such expectation, in respect of determination by the council, whether it would occur at a particular meeting in a given month by the council?---I don't recall. I recall there being urgency and a push towards that backend of the year but I don't recall specifically.

40

I'd like to take you to August 2015, please, and I'll show you a document. volume 26, page 56.---Sorry, what page was that?

Page 56 in the first instance. We're going through to page 66. Just excuse me a moment. Now, if you flip through this document, it's a copy of a letter, file copy for council of a letter that's addressed to CD Architects, and although it doesn't have a date in it I'd ask you to assume that was sent in August 2015 and that your company received it in August 2015.---Yes.

Do you remember a letter to this effect?---Yes.

It commenced with the observation. I'm looking at page 56 under the heading Floor Space Ratio, "Both proposed developments significantly exceed the permitted FSR maximum, and this has not been sufficiently justified in the submitted clause 4.6 variations."---Yes.

10 The letter, if I can take you to pages 64-65, also drew attention to the response from a concurrence authority, namely Sydney Trains, with what could be called on those two pages a shopping list of issues. Shopping list of issues, not shocking.---Yes.

You see that?---Yes. From Sydney Trains, specifically?

Yes.---Yes.

And do you remember being made aware of that?---Yes.

20 And indeed if one reads just above the middle of the page, on page 64, it indicates that Sydney Trains essentially wasn't going to make a decision or even start to make a decision until the information listed in what I've called the shopping list was provided to it. Do you see that?---Yes, I do. That's pretty much standard practice from Sydney Trains at that point of the application.

Did you set about trying to pull that information together?---I believe so.

Now, on September 2015, if we could go to pages 99-105.---Yes.

30 You provided a response to council's letter, this letter commencing on page 99, dated 9 September, 2015.---Yes.

Together with amended and additional plans.---Yes, correct.

And a clause 4.6 submission supporting exemption of the proposed development at 212-218 Canterbury Road from the maximum building control height under the LEP. And that's page 81-98.---Was that building height?

40 Well, that's what I want to suggest to you. Maybe I've got that wrong. ---No, you could be right.

THE COMMISSIONER: Sorry, what page, Mr Buchanan?

MR BUCHANAN: 81-98 is my note, Commissioner. Do you see the - - -?
---Yes.

The document commencing at page 81. And it says clause 4.6 variation.

---Correct.

If you go into it, it does appear to be, page 83, second-last paragraph, a reference to applicable maximum building height limit. Do you see that?

---Yes.

And so that's the issue addressed by this document.---Correct.

Not FSR.---This particular document, correct.

10

Now, just trying to proceed chronologically to the extent that we can, can I take you to page 110?---Yes.

And we might need to start at page 111. Do you see there there's an email to you on 9 September? And you have forwarded it – then turning over to page 110, bottom of that page – to Mr Stavis, together with a message.

---Yes.

20

And then in the middle of the page, on 18 September, 2015, at 9.37pm, Mr Stavis responded, "Ziad, I apologise for not responding earlier but believe me that I only received your email today, which explains why Marwan was critical for not receiving a response when I spoke to him yesterday. Now it makes sense. I can honestly say I don't know why this happened, mate." This is another indication in the first instance of you and your brother operating pretty much in tandem in the processing of these development applications when it came to dealing with council. Would that be fair to say?---Yes. He's the developer. It's in his interest to push his applications.

30

And it also indicates a degree so far as Mr Stavis is concerned of intimacy that he presumes to have with you by calling you in this email mate?---I presume so.

And would it be fair to say that that presumption on his part was warranted?---We had a good, friendly working relationship.

40

Can I take you now to the month of October, 2015. You didn't become aware – no, I withdraw that. Did you become aware that initial reports had been prepared whether by consultants or otherwise which recommended refusal of both DAs?---I don't think so. I don't recall. I don't recall that.

Did you ever understand that your DAs were in some difficulty in the assessment process on the ground of excessive FSR and other failures to comply with development controls?---The letter that you took me to outlined that.

But you have no recollection of understanding that initial drafts of reports, the assessment reports recommended refusal?---I don't recall, don't recall that.

You would have been very unhappy if you had learnt that, I take it?---Yeah, of course.

You didn't have discussions with your brother about a difficulty that the DAs appear to have run into by way of draft assessment reports recommending refusal?---Not draft reports, I don't believe.

10 You didn't have discussion with anyone at council about such a topic?---I don't recall any.

Or with Mr Stavis or with Mr Montague?---I don't recall. Don't recall specifically, as you point out, about draft reports. I recall several conversations and meetings about the issues per se but not - - -

20 Now, if I can take you to page 150 of volume 26. And this conversation goes over to page 151. So it's the commencement of conversation at page 151. You can see on that page that there's an email from Mr Stavis to you and to the email address of your brother.---Correct.

And it indicates to you and your brother that council are missing a clause 4.6 variation – sorry, “variations” plural – for the FSR in relation to both applications. You see that?---Yes.

Did splitting the DAs up – I withdraw that. Was one of the costs to you of splitting the DAs up that you had to duplicate the work you did in the process of the DAs being processed by council?---Could you repeat that, please?

30 Sure. If you had to have a town planner's report, you had to have two town planners' reports addressing the issues specific to the sites the subject of each DA.---Yes.

And so on and - - -?---Yes, of course.

40 - - - that replicated itself all the way through the process, didn't it?---To a certain extent only because, by and large, a landscape plan per se you'd need two landscape plans, but invariably the two buildings are different buildings. They both need to be designed. They've both got independent designs, so therefore you would need to design in its entirety. So whether you designed it as one space and cut it up, or whether you design them as two separate spaces, the workload would be the same.

But certainly a consideration for you or the partnership in splitting the DAs into two for these four properties was that it increased your costs.---The developers' costs? Slightly.

And your costs.---Oh, my costs in terms of the work performed?

Yes.---A little. Not by much.

And that you had to pay out in terms of consultants.---We wouldn't pay out of our pocket for consultants generally. We're engaged as architects. By and large, generally, we're engaged as architects.

Yes.---We don't generally - - -

- 10 And so if you provided a clause 4.6 variation report, who paid for it?
---Generally the, the developer.

And would there be a paper trail? That is to say you would send or on-send the invoice, the - - -?---Yes.

- And would you then receive the amount of the invoice and remit that to the person who prepared the report?---No. Generally, generally speaking the client would pay the consultant direct. On occasion we would pay on their behalf and then we would get remunerated for that, or reimbursed for that, I
20 should say.

Thank you, Mr Chanine. I note the time, Commissioner.

THE COMMISSIONER: We'll adjourn until about 10 to 12.00.

SHORT ADJOURNMENT

[11.32am]

- 30 THE COMMISSIONER: Thank you, Mr Buchanan.

MR BUCHANAN: Commissioner. Mr Chanine, you've indicated that you and your brother did tend to work in tandem when it came to dealing with council in progressing these applications. Was there a division of responsibility as between you and your brother for urban planning input into the project?---Ultimately I guess that's, that was my domain.

But did your brother have the last word on those issues?---Yes.

- 40 So I was taking you to this email on page 151 of volume 26 - - -?---Yes.

- - - where Mr Stavis has written to you both on 14 October, 2015, about what he described as missing clause 4.6 variations, and you responded in the first instance, this is on page 150, on 14 October about them being in each statement of environmental effects?---Yes.

And can I just take you over then to page 152 where after your email, I'm sorry, after Mr Stavis's email to you of 14 October – my mistake, start the

question again. I'm looking at about just over halfway down page 152. You wrote to Mr Stavis stating that the variations were to be found in each statement of environmental effects and then Mr Stavis responded to that email by forwarding it to your brother. Can you see that?---Yes.

At 5.06pm. And he has cc'd you into it. Do you know why he forwarded it to your brother to have a bit of a go on the subject?---No, I'm not sure. I note that on page 150 - - -

10 150?---150. That same email of mine on 14 October advising that, "Hi, Spiro, the clause 4.6 FSR is included in each SEE," he's then forwarded that on to somebody else, Benjamin Black, and then when you go to page 152 it looks like he's picked up that same email and then corresponded to Marwan and then copied a whole (11.59.39 not transcribable) of people, including myself in. I don't know why.

Well, can I take you to the text of the email to your brother - - -?---Yes.

20 - - - on page 152. "Marwan, further to our discussion just now," pausing there.---Ah hmm.

It would appear that the two of them have had a telephone discussion on the subject. Is that right?---Appears so.

30 "As a minimum, can you please provide an urban design peer review of the development and especially in relation to the proposal's non-compliance with the front setback controls and DCP? In addition, can you please ask the planner to provide greater justification within the FSR clause 4.6 variation," and then he refers to a particular Land and Environment Court decision, "and planning grounds justification, specifically how in this particular case, there is a better planning outcome achieved as a result of the non-compliance. It cannot be a generic argument that can be applied in similar zoned sites, for example, site being close to station. The arguments have to be specific to this case." Is it the case that, as you understood it, Mr Stavis decided that when he wasn't satisfied with what you had to say on an urban planning issue in relation to progressing the applications, he went to your brother?---I don't believe so.

40 And you don't think this might be an indication of that?---No. I believe, from what I understand of this, it's he's, he's pressing the point about the FSR and the clause 4.6 variation.

Exactly. That he wasn't satisfied with your explanation that they were to be found in the statement of environmental effects.---I didn't prepare the statement of environmental effects and I didn't give that - - -

I'm not saying you did. You had emailed him saying that the 4.6 variation as to FSR were to be found in the SSEs.---Oh, sorry, now I understand the question. So, you're asking that he wasn't satisfied with the original - - -

With what you said, namely that this data was to be found in the statements of environmental effects.---Yes. So the original data he referred to - - -

And he then went, no, he wasn't satisfied with your response and so he went over your head to your brother.---Oh, possibly.

10

Now, there's something I need to take you to, in fairness, because I do want to go into this subject in a little bit more detail, as to division of responsibility between you and your brother as to urban planning work done on these DAs. But at page 199, on page 26, I'll start again. On page 199 in volume 26, do you see that on 19 October, there's an email from a person called Christopher Evans. Do you recall he had something to do with a neighbouring property?---Vaguely.

20

And it's addressed to Mr Stavis and he says in the second paragraph, "However Ziad had been ill," and he had a particular issue that he wished to take up, and a request that he was making. So, in fairness to you, it is possible that you had been unwell and your brother had taken over responsibility or more responsibility that he otherwise might for urban planning input at that point?---It could be. Marwan was very, very frontline and very hands-on in terms of his liaising with DAs and council and through that application process in general.

30

Thank you. Now, just to not miss something out, on 19 October, 2015, your brother provided council with clause 4.6 variations submissions, this is at page 161 and following of volume 26. If I could just ask that you be – can you see a document there, clause 4.6 variation to a particular clause of the LEP, dated 18 October, 2015?---Yes.

At page 163, it would appear from the second last paragraph, underneath the heading, Introduction on that page, that was in relation to FSR?---Correct.

And that was in relation to 220-222, then there's another report commencing at page 180 that appears to perform the same function.---Yes.

40

Again going to page 182 it would appear that that report is about FSR. ---Correct.

Thank you. Do you know who paid for these reports?---I don't recall.

Excuse me a moment. It would appear that it was your brother who provided them. Can I take you to page 200 of volume 26.---Yes.

And about, a bit above halfway down there's an email from your brother to Spiro. "Hi, Spiro, hope this email finds you will. Please find attached the updated clause 4.6 with regard to FSR." And then it goes on to talk about DCP non-compliance.---Yes.

Do you know why your brother would have provided the reports?---No. They were requested of him.

10 Now, just keeping page 200 open, do you see that Mr Stavis on 19 October at 3.32pm responded to your brother?---Sorry, what date was that?

Sorry, page 200.---Yes.

And it's an email from Mr Stavis to your brother?---Yes.

CC amongst others, if you look at the end of the cc field it includes you? ---Sorry, which, which, which date of email or which - - -

20 Sorry.---Sorry.

Do you see cc's, and then if you go to the last email on that line it's your email address?---Is that 16 October, the email sent on Friday, the 16th?

No, page 200.---Yes, I'm on page 200.

THE COMMISSIONER: Right at the top.---Sorry, my apologies, I was looking at the one in the middle. Sorry, Commissioner.

30 MR BUCHANAN: I'm sorry.---Yeah, sorry.

Just focussing on the one at the top, that's the reply it would appear? ---My apologise, yes, I see it.

And your cc'd in?---Yes.

40 And it says, "Hi, Marwan, thanks for the updated clause 4.6. In regards to the front setback as discussed previously, the non-compliance was not adequately justified. I note our agreement that you would provide independent design," I'm sorry, "Independent urban design advice in this regard. I'm not trying to be difficult, Marwan, and I would not ask if I didn't need. I need the ammunition. Please do so ASAP."---Yes.

It would appear from that, that Mr Stavis was really working very hard to get your DAs over the line, wasn't he?---Yes.

Now, will you just excuse me a moment. Can we go please to page 251 of volume 26. And having gone to page 251, I'll need to just take you to 252 quickly before we go back to 251. So first of all, page 251.---Yes.

And it's an email conversation, but if I take you back to 252 you can see that it's commenced by Mr Stavis?---Yes.

10 So back to page 251. On Saturday, 24 October, 2015, Mr Stavis emailed you, cc to your brother. "Hi Ziad, I refer to our meeting last Thursday." And my calendar tells me that that's Thursday, 22 October, 2015. "I refer to our meeting last Thursday and note that we agreed that two issues remain outstanding before our assessment can be finalised, namely, 1, justification of the proposal's non-compliance with the rear setback control under DCP, as you know, the site adjoins the Canterbury Bowling Club site at the rear which is the subject of an imminent rezoning proposal for high-density residential development, and 2, the submission of an urban design report justifying the proposal's non-compliance with the front setback control under the council's DPP. I have committed to reporting the DA to the November IHAP meeting, however in order to meet this deadline it's imperative that I receive the above information by the end of next week. Please call if you cannot meet this deadline and if I can assist in any way." Do you recall getting that email?---Yes, vaguely.

20

And you replied, if you can see the middle of the page?---Yes.

The next day. So this is Sunday, 25 October, 2015 at 10.51am and cc'ing in your brother as well as George at Canterbury.---Yes.

30 "Thank you for your email. I'll ensure these two items are with you early in the week." Can I just take you up while I'm still on that page, page 251, to the top. Can you see that that conversation has been forwarded by Mr Stavis to a Pierre Azzi at Canterbury and a Michael Hawatt? This is on Sunday, 25 October, 2015 at 8.44pm?---Yes.

"Hi, guys, see email below FYI, regards, Spiro Stavis." Just whilst I have you looking at that, do you know why Mr Stavis would have forwarded that conversation to Councillors Azzi and Hawatt?---No.

Does it surprise you that he would forward it to Councillors Azzi and Hawatt?---No.

40 Why doesn't it surprise you?---I presume that they would have been asking questions about the development, as I mentioned earlier, with regards to the advocating with issues earlier presented to them.

And so this email, the one at the top of page 251, suggests that Mr Stavis thought that Councillors Azzi and Hawatt needed to be brought up to speed on the subject matters of the emails he was forwarding?---It appears so.

Which would suggest that there had been some prior conversation involving Mr Stavis and those two councillors on the subject?---I don't know.

Do you know whether Councillors Azzi and Hawatt were in communication with Mr Stavis about progressing the applications?---I'm unsure.

Why are you unsure?---As to whether they - - -

Do you mean to say – I'm sorry.---Sorry, as to whether they made contact with him?

10 No, as to whether there was any contact between them.---Between the councillors and Mr Stavis?

Yes.---I would have presumed so.

And do you presume that because you read that email or do you presume that from other knowledge you had about communication between those two councillors and Mr Stavis about your project?---I presume that based on experience of when I may have spoken to them and they have made the point – sorry, when I say they, meaning the times I've spoken to Pierre Azzi
20 that he would take it up with Jim and with Spiro, the issues that is, take up the issues that I may have discussed with - - -

And did you, you obviously thought that – I withdraw that. It was your hope, was it, that in taking the issues up with the Councillor Azzi at least, he would take it up with Mr Stavis?---I would, I would approach or I would speak to Mr Azzi on the request of my brother, so whether my brother had spoken to him prior to, generally the case would be that my brother had spoken to him prior to advocating for the development, there would be, as I mentioned previously, certain issues that are outside his realm of expertise
30 that he may have wanted me to explain further and that would have been the case.

But what I'm just trying to understand is, how did it advance your project or these particular DAs at a stage when council isn't being asked to determine them, they're being processed, as you understand it, by council's assessment staff, and there are issues that have been drawn to your attention by the director of city planning? How would it have assisted progressing your application to have Councillor Azzi briefed in that regard?---My understanding is that the councillors had a lot of involvement with, through
40 the general manager and through the director, a lot of input in the Canterbury area.

Was it your understanding that Councillor Azzi, at least, was someone who would take things up directly with the director?---I believe so.

I'm just curious as to why, I withdraw that. Were you of the view that the director was posing unnecessary obstacles that you thought needed intervention by a councillor to set the director straight or what?---No.

Well, what was the advantage to your project of taking these issues up with the councillor when you were in, as we can see, regular and direct communication with the director?---I didn't instigate the conversation with the councillor.

Yes, but you did, from time to time, have conversations with Councillor Azzi, didn't you?---Generally, at the request of my brother.

10 Yes, but you would have understood the reason why, you wouldn't have just done anything your brother asked you to do, willy nilly?---No, of course not.

Well, did you understand that it was advancing a project- -?---Yes, of course.

- - - if you took it up with a councillor?---Of course.

20 And if it wasn't at a time when the council was called upon to actually determine the application, then what was it that you understand, at the request of your brother, you were achieving for your project by talking to Councillor Azzi?---As I mentioned a moment ago, he would have had, I presume that he would have conversation with the general manager and the director.

But how did that assist you? Why did you need that to happen?---Being an elected, being an elected member, he would have had conversations with the director and the general manager as to an elected member's point of view.

30 But why did you need that to happen?---I didn't need that to happen.

Why did, as you understood it, your brother need that to happen?---He would have had those, I presume he would have had those conversations on multiple levels, between councillor and the general manager as well, and the director.

40 Yes. I'm actually asking you a different question, Mr Chanine. I'm trying to ascertain your understanding of why, as you understood it, these contacts with Councillor Azzi at this stage, before it's actually before council for determination, why they needed to take place in order to advance your project?---I think I answer that question. The - - -

You haven't.---The council, the councillor had a lot of involvement in projects through the general manager's office and through the director's office through the course of the application process.

By why did you need that involvement?---Sorry?

Why did you need that involvement?---He's a representative. He's an elected member.

That simply is part of an explanation as to how he achieved the involvement.---He's an elected - - -

10 I'm asking a different question. As far as you were concerned, why did that involvement need to take place?---He, he was an elected member and my view would have been that his involvement would have been to advocate for the development.

Yes. In a way that would achieve something that wouldn't be achieved unless that advocacy occurred, I take it.---Not necessarily.

Well, why spend your time engaging in these communications with Councillor Azzi at all, if not otherwise?---Because you don't, because you don't just lodge an application and sit idle and just wait for council to potentially approve or sit on it for the next three years.

20 What is it, though, that assisted your project by having Councillor Azzi involve himself with the general manager and Mr Stavis.---I don't understand the question.

How did it assist your project to have Councillor Azzi talk to the general manager or Mr Stavis about your project?---If there were issues to potentially mediate.

30 Was there any issue that needed to be mediated?---Well, I, this points out to the setback issues.

Yes. Mediation suggests that there are opposing parties.---Yes.

All right. Council on one hand, the developer on the other?---Yes.

Councillor taking a different position, sorry, council taking a different position from the developer?---Yes.

40 And trying to bring the council's position closer to the position of the developer?---Yes.

And so you were hoping that by talking to Councillor Azzi, whether you were inspired to do so by your brother or otherwise, he would bring to bear on the general manager and the director of city planning influence to bring the council's position close to that of the developer on the subject being discussed at the time?---Not necessarily. I would have, I would have presumed that or I would have thought that his conversations would have been allowing his team et cetera, his senior management, the elected councillor's position on the development.

The question still remains, how does that assist you, why do you bother spending your valuable time talking to somebody unless they can assist you? Do you understand?---Yes.

And if it's of assistance to you it's advancing your project, isn't it?---Yes, of course.

10 And if part of what they're doing is intervening with staff and the general manager, then that is an intervention to get the general manager and the staff to move their position closer from their existing position to one which is aligned with your position or your brother's position. Is that correct?
---Potentially.

Now, can I take you please to page – excuse me a moment, I withdraw that question. Can I ask you in a little bit more detail about the issue of the rear setback to the development proposed on 218-222 Canterbury Road.---Yes.

20 What was proposed was a nil setback. Is that right?---Correct.

And you were being asked amongst other things by Mr Stavis for an urban design report – I withdraw that – for justification for the non-compliance with the requirement for a rear setback. Is that right?---Correct.

That requirement as you understood it was contained in the Residential Flat Design Code. Is that right?---No, not really.

30 You knew that the Residential Design Code was, Residential Flat Design Code was incorporated by reference in SEPP 65?---That's correct.

And the Residential Flat Design Code had requirements as to building separation between buildings on land. Correct?---Correct.

40 And there was in fact in the Residential Flat Design Code at that time, a requirement for a separation of 18 metres between developments that were eight storeys high or higher.---Depending on the, depending on the use of rooms and openings on a particular site or a particular section of the building, 18 metres was the maximum between habitable to habitable. So if you had non-habitable rooms on one side and habitable rooms on the adjoining development and they, you could get closer.

Can I just ask you, if there was a setback of 18 metres between developments on adjacent properties, then if it were to be done equitably, you would need a setback of nine metres on each side of the common boundary?---Correct.

Now, as you understood it the bowling club site at 15 Close Street at the rear of the proposed developments was owned by council?---Correct.

It was pretty much open space and it was at the time zoned RE1, public recreation?---Correct.

However, council had introduced a planning proposal to rezone it to R4 high density residential?---Correct.

And that proposal had received a Gateway Determination?---I'm unsure of that.

10

It had gone on public exhibition?---I believe so.

And I just want to suggest, gone on exhibition pursuant to a Gateway Determination?---No, I'm unsure.

Now, for that reason, that's to say, the reason it had gone in public exhibition, assessment of your DAs needed to take into account the likely future development on the old bowling club site, 15 Close Street, at the rear of the proposed developments on your land, your brother's land, correct?

20

---Our team didn't believe so.

I'm sorry?---Our team didn't believe so.

Your team didn't believe that needed to be taken into account?---Correct.

There was an argument otherwise, though, wasn't there?---That's correct.

Yes. And there was a master plan, as you understood it, for 15 Close Street?---Correct.

30

It allowed for an eight-storey building on the site, adjacent to 212-218 Canterbury Road?---I can't recall the specifics of the master plan.

It did allow for a development which would consequently require, under the Residential Flat Design Code, an 18-metre separation between buildings on the adjacent sites?---Correct. That would be presuming that the, that the planning proposal was certain and imminent. So for council to assess and take it into consideration, it needed to be certain and imminent, and at that point in time it wasn't. And we're now, history would show I think, whatever it is, three, four years later and it still hasn't been rezoned.

40

If the structures on 15 Close Street were 18 metres from the structures on 212-218 Canterbury Road, then there would need to be a nine-metre setback at the read of 218-220 Canterbury Road?---Depending on which windows were facing that particular property, it would be up to nine metres. It would be less if they, as I mentioned earlier, if they were non-habitable rooms.

If the development on your land or the land that your brother was developing was built right up to the common boundary, then if the 18-metre building separation requirement of the Residential Flat Design Code were applied, that would mean that the development on 15 Close Street would have to be built 18 metres back the common boundary?---Depending on which, as I mentioned, depending on what openings were presented to that particular façade. It could be less than 18 metres. 18 metres is the maximum between habitable to habitable.

- 10 And that would mean, obviously, less of the land comprising 15 Close Street could be developed?---Not necessarily, no.

Obviously, if there were an 18-metre setback of any development on 15 Close Street, that would be, result in an economic disadvantage to the owner of the land at 15 Close Street, as against a situation where there was say, a nine-metre setback?---I wouldn't say so. From my recollection, there was a, no, I wouldn't say so. I believe that it would still be able to be developed to its maximum potential.

- 20 And its maximum potential, though, would be, what, no setback?
---Pardon?

Are you saying that you envisaged that 15 Close Street could be developed to the point where it had no setback from the common boundary with 218-222 Canterbury Road?---No, it would have to have a setback of course.

And so it would have a setback but your development wouldn't?---Correct.

- 30 That obviously would not be equitable, would it?---We would be maintaining the status quo in providing or proposing a development at that point in time, which was in principle or in theory adjoining or continuing the edge of what council had approved in the adjoining development already, with a nil setback.

Did you at any stage make any enquiries of anyone such as the owners of the properties at 212-222 Canterbury Road, as to whether they'd received a notice from council, advising them of the proposal to rezone 15 Close Street?---No.

- 40 Did you learn that they had been so notified?---No.

So you didn't attempt to find out whether the owners of the property, who weren't your brother or any of the members of the partnership, correct?
---Correct.

Had in fact already been given notice of intention to redevelop, or sorry, to rezone to high density residential 15 Close Street?---No.

Is there any reason why you didn't?---It wouldn't be normal course of practice.

But wouldn't that have been relevant to a question of whether it would have been equitable to impose a rear setback of nil on your side of the common boundary with 15 Close Street?---No.

Now, can I take you to – I'm sorry, I'll just remind you on page 251 of volume 26.---Yes.

10

Just in the middle of the page you told Mr Stavis on 25 October at 10.51am, that you would ensure that the two items he sought would be with him early in the week.---Yes.

And then on Monday, 26 October, 2015, you provided some of that information to Mr Stavis, I want to suggest to you. If we could go please to page 255 of volume 26, please.---Yes.

20

And it's an email from you to Mr Stavis, cc to others including your brother, further to his request please find attached two letters addressing the two outstanding issues.---Yes.

And over to page 257 is the first of those letters.---Yes.

Is that right?---Correct.

Commencing on page 257, from AE Design Partnership?---Yes.

30

Were they consultants to you?---Yes.

And that goes over to page 259 and then page 260 a letter from your firm. ---Yes.

It's dated 23 October, 2015. Is that when it was prepared?---I don't know.

And Mr Yammine – I'm looking at page 266 - - -?---Yes.

- - - signed it. Was he an architect in your employ?---Yes.

40

That's Y-a-m-m-i-n-e. At around this time – I withdraw that. Can you think of time when these documents were being prepared and sent to Mr Stavis, around that time did you have a meeting with him or him and his staff?---It's possible.

I want to ask you to assume something. I want you to assume that there is evidence that the Commission has that Mr Stavis at around this time made it very clear to his staff that these two DAs would be supported by those staff.

Now, making that assumption, can you assist with any knowledge as to why Mr Stavis would have given that impression to his staff?---No.

Does it come to you as a surprise that there is evidence that Mr Stavis had given that impression to his staff?---He, he seemed to advocate for the development, advocate's the wrong term, through the course of the application he was workshopping issues with us and the like, so to, so as to get an outcome, and so I could presume that would be the case or that could be one possibility.

10

Would you have hoped that Mr Stavis would have given his staff the impression that these DAs were to be supported by them?---As opposed to him not supporting it?

As opposed to any alternative?---Because it's good for the director to, sorry, please ask the question again.

Yes, sure. Thank you.

20

Would you have hoped at this time that the director of city planning would have given his staff the impression that they were to support these DAs? ---Yes. Ultimately the director is the one who gets the final, the final say, the final say in the reporting. I've had applications go, recommended for, where a subordinate, or lack of a better word, would write a report, even with a recommendation for approval it goes up before the director and the director, the director decides to take it down a different path and sends it back in multiple councils across Sydney or vice versa, so to have somebody that, so to know that that was the case yes, it would be good.

30

Do you think that it would have been a more appropriate position for the director to take to allow his staff to provide and express their professional opinions about your DAs without influence by him as to the position they should take?---Potentially.

Why would that not have been appropriate in the case of your DAs?---What do you mean, sorry?

40

Well, you say potentially. What do you mean by that? Potentially it would have been appropriate for him to have done that but that suggests a qualification of some sort.---In general practice the, the officer himself, themselves would write the report and then it goes up to, through the channels to a manager and then to a director, et cetera, but I know of many incidences where the directors work closely with their staff and their team to put together the report so the, the outcome is not something that is of a surprise.

But that's different isn't it from a situation where the director is influencing the professional opinion of staff to a particular view?---I don't know if he's, if he had done that.

THE COMMISSIONER: I think you were asked to assume that.---Oh, sorry. My, my apologies. I got lost in the, sorry.

MR BUCHANAN: So if you assume - - -?---If we assume that - - -

- - - for the purpose of my question that - - -?---Sorry, can you ask me what I'm assuming again. Just I got myself a bit lost.

10 That Mr Stavis made it very clear to his staff that these DAs would be supported by them.---Yes.

And making that assumption was that appropriate in your view having regard to the function that both the director and the staff perform in the assessment of DAs?---No.

But it doesn't come to you as a surprise that Mr Stavis, making that assumption doesn't come to you as a surprise that Mr Stavis would have done that in this case?---Correct.

20

And why is that?---He was very hands on from my experience with him, hands on in the application process. He was the type of person that was, would workshop to get outcomes whereas many, many of the staff would not necessarily workshop through solutions. It's easier to say no than to, to sit around a table and workshop an idea. I'm presuming, I'm presuming or from my observations of working on the other side of the table with him that he would workshop through issues, workshop through problems as opposed to just saying no to get outcomes.

30 And getting an outcome means getting an outcome that isn't refusal?---Yes.

Necessarily isn't it?---Necessarily. Correct.

And if it isn't refusal then it's an approval of some shape or form?---Some shape or form.

Which obviously is a better thing for the developer than a refusal?---Of course.

40 Can I take you to the month of November, 2015 now and can I ask you were you involved in a meeting with Mr Montague and Bechara Khouri about this development?---I don't recall.

Did Mr Khouri assist you in the 433 Canterbury Road, Campsie development and it being dealt with by Canterbury Council?---I believe so.

Now, it doesn't come to you as a surprise I take it from the evidence you've given that Mr Stavis took a hands-on role in finalising the report to the IHAP about these two DAs, that's what you would have expected?---Yes.

Did you have contact with Mr Stavis at the time he was finalising the reports?---I don't think so.

10 If I can ask you to assume that on 13 November, if you could keep that date in mind, on 13 November Mr Stavis signed off on a review of the draft reports and the draft reports contained the recommendation that the DAs be approved with deferred commencement subject amongst other conditions to the rear setback to the common boundary being changed from nil to three metres. I'm sorry, I'm being asked to make it clear which project we talk about. I'm talking about the Doorsmart project.---Okay. Yes. Sorry.

I'll start the question again to make that clear.---Thank you very much.

20 On 13 November, 2015 I'd ask you to assume Mr Stavis signed off on the drafts of the reports which recommended that the Doorsmart DAs be approved with deferred commencement subject to, amongst other conditions, the rear setback condition being changed to three metres. Just before that, a meeting was scheduled, the entry being made in a calendar, the entry being made on 10 November, 2016 [sic], for a meeting between you and your brother and yourself at 9.30am on 11 November, 2015. ---Sorry, you lost - - -

THE COMMISSIONER: Sorry, between who?

30 THE WITNESS: Yes.

MR BUCHANAN: Between Mr Stavis and Mr Ziad Chanine and Mr Marwan Chanine.---Possibly.

Well, do you have a recollection of having a meeting with Mr Stavis in which he told you what would be in the reports?---No, not specifically.

40 Were you ever, did you ever become aware of what would be in the reports before they were published in the council business papers or in the IHAP business papers?---I don't recall.

When did you first become aware of what was recommended in the reports? ---I believe when I read it online.

And in what - - -?---When it was going to the, when it's published to go to the, prior to going to the IHAP panel.

So that must have been then the business papers for the IHAP?---Correct.

Now, you did say to us that there was some urgency and push towards the back end of the year to get the DAs determined. Is that right?---Yes.

How did that urgency and push come about?---There's always an urgency with DAs.

Yes.---So when you say how - - -

10 But how did it occur in this case?---I don't quite follow, sorry.

Well, you've said you knew that there was some urgency and push in the processing of these DAs towards the back end of 2015. Do you remember saying that?---Yes, correct.

Now, how did that urgency and push occur, what was it that caused that urgency and push to occur in this case?---I don't know specifically. I'm presuming timing-wise it came about, Christmas was coming up, council wouldn't reconvene till potentially February, delays in the project.

20 You don't have a memory of that being an issue?---As I just pointed out then, that's my memory of the issue.

Well, I'm sorry, I thought you said, "I don't know, I presume."---Yes.

I've now turned the question around and asked - - -?---Yes.

- - - you don't have knowledge of that? Is it an assumption or is it knowledge?---It's an assumption.

30 It's an assumption.---It's an assumption.

So where did you get the knowledge from that you told us about that there was some urgency and push towards the back end of the year in the processing of the DAs?---It's an, it's an assumption. It's an assumption because there's always a push with the DAs, whether it's Marwan or other clients, were constantly getting, we and the council are constantly getting pushed to find out what's happening with the DA and to progress the DA as fast as possible.

40 Was there any consideration given to what the impact might be of amalgamation of Canterbury City Council with any other council?---I don't know.

When did you first understand that there was a proposal or a possibility that Canterbury Council might be forcibly amalgamated with another council? ---I don't recall the exact date.

Leaving aside whether you recall an exact date, when is it, as best as you can recall, that you became aware of that proposal or possibility?---I don't recall.

Was it in 2015?---I don't recall.

Do you recall discussing the possibility or proposal that Canterbury Council be amalgamated with anyone ever?---Yes.

10 All right. Who do you recall discussing it with?---Many people.

And why did you discuss it with them?---Because it's the unknown. It was an issue of the uncertainty and the unknown and we had those same conversations across many LGAs.

And were you, did you ever have a concern that in any amalgamation of Canterbury Council, that it might end up being the junior partner of the amalgamation, that is to say, the other council would be imposed over it?
---Yes.

20

Were those considerations, I'm sorry, were those concerns a consideration in relation to the processing of these two DAs?---I don't know.

Of course if Canterbury Council was amalgamated with another council and got the worst end of the stick, then you would lose the advantage you had in the processing of DAs in that area that you had of these contacts with councillors, the general manager, the director of city planning, correct?---To a, to a certain extent but we had a good working relationship with Bankstown Council as well.

30

So, I just want to be clear about that. Was it in your mind a concern in later 2015 that if there was an amalgamation with Canterbury Council it would be Bankstown it would be amalgamated with?---Yes.

Did you, before the amalgamation occurred, I'll withdraw that. If I ask you to make an assumption that amalgamation occurred on 12 May, 2016, and you know it was with Bankstown Council, did you have any meetings with Mr Stewart, the general manager of Bankstown Council, before that amalgamation date?---In relation to?

40

Anything.---Anything. I don't recall.

So, you don't recall meeting him in respect of any proposal for a development in his local government area?---Potentially.

Sorry, potentially you don't recall?---Sorry, I, no, I didn't want to cut you off. I was going to jump back in after I answered the first time, to say that

it's not unusual that I would have met, I would meet with Mr Stewart from time to time in relation to development applications in his council area.

Right. And I should have asked another question just to lay the ground for that. You did have applications in the Bankstown local government area?

---Yes, we did.

10 All right. How frequently before amalgamation, in May 2016, did you meet with Mr Stewart about development applications?---I can't really put a number on it, but I had met with him several times.

Had you, when you had met with him, had your brother present?---For projects that he was involved with, yes.

After amalgamation, did you have meetings with Mr Stewart as general manager, acting general manager of the amalgamated councils?---Yes.

20 In relation to these two DAs, the Doorsmart DAs?---Maybe once in relation to these DAs and other projects as well.

And did Mr Khouri organise that meeting?---I believe he may have organised one of the meetings that I attended.

Did he organise the meeting, or any of them that you had with Mr Stewart before amalgamation?---I don't know. Sorry, my apologies, in relation to meetings regarding other developments in the Bankstown area?

In the Bankstown local area?---I'm not sure, I'm not sure.

30 Now, did you have any contact with Mr Stavis or with Mr Montague to expedite assessment of these two DAs?---In those meetings that I have mentioned that we had, that had taken place it would be mentioned that timing would be critical.

And that you would be asking Mr Stavis or Mr Montague as the case may be, both of them if they're at the same meeting, to move things along a bit more quickly please?---As quickly as possible please.

40 And to your knowledge was there any contact with Councillor Azzi or Councillor Hawatt to try to expedite assessment determination of the DAs? ---I'm not sure.

When you're saying you're not sure- -?---I did not.

You did not?---I don't believe so.

Do you know whether your brother did?---I don't know.

Can I – yes, sorry, go on.---I was going to say it's a possibility.

Excuse me a moment. Now, do you recall an occasion when you were going to meet up with Mr Stavis late on a Friday afternoon in November, 2015?---Not specifically.

Do you remember being held up by traffic on the Anzac Bridge?---Not specifically.

- 10 Could we go to page 268 in volume 27, please. I'm sorry. I should have asked - - -?---It's on the screen. That's fine. Thank you.

And it should be, it is on the screen in front of you now. It's a very short email conversation by you to Mr Stavis on 20 November, 2015 at 4.14pm, "Sorry, stuck in traffic on Anzac Bridge but I am on the way."---Yes.

Sent from your iPhone and then Mr Stavis responding at 4.33, "Okay." Now that you see that exchange do you recall the occasion?---No.

- 20 You would accept that it would be a reasonable interpretation that you had an agreement to meet up with Mr Stavis and you were late?---Yes.

Did you often have meetings later on a Friday with Mr Stavis?---Not often.

So you can't recall this one?---No, I don't.

What would it have been about?---It would have been about a particular application.

- 30 Did Mr Stavis tell you what the recommendations in the officer's, the DCP's reports would be in relation to the Doorsmart project DAs?---I don't believe so.

Did you have any contact with Councillor Hawatt or Councillor Azzi about the recommendation in the report to the IHAP that there be a deferred commencement approval subject to amending the plans in relation to the rear setback?---Possibly.

- 40 And did you have any contact with either of them about the same recommendation as it appeared in the report that went to council?---Sorry, I was lost as to the distinction between the two.

My first question was about the IHAP.---Yes.

IHAP met first.---Yes.

It made a recommendation.---Yes.

But then you know it went forward to the council.---Correct.

And there was an officer's report to the council.---Correct.

The same recommendation was in the officer's report to council.---Correct.

Did you have any conversation with Councillor Hawatt or Councillor Azzi about that recommendation in the report that was made to council?

---Possibly.

10

Now, when you say possibly - - -?---It's possible.

And on the basis of what thinking?---On the basis that the three metres, the proposed three metres was arbitrary, as you pointed out earlier, if it's habitable to habitable, it should be nine metres yet council wanted to impose a condition that it be three metres. Where did the three metres come from, what was the benefit of three metres, if you're providing three metres it's still not nine metres, so therefore it's just an arbitrary number that council was putting on.

20

Yes. Another construction that might be reasonably open is that it was a compromise that had been arrived at to favour you, that instead of nine metres it would be three metres. A distinct advantage, wouldn't you agree? ---Not really.

Well, it's certainly better than nine metres, isn't it?---Three metres is better than nine metres, but it's not better than zero.

30

Did the figure of three metres to your knowledge or your belief arrive as a result of anything, any contact you had with anyone?---No.

There was no conversation that you're aware of that involved, well, please don't make it nine metres, if you're going to make it anything, make it three metres, or a discussion like that?---I don't recall.

40

You don't recall any negotiations to try to cut down the setback from what might on one view be required by the Residential Flat Design Code of nine metres to a more, in your view, reasonable figure of three metres, no conversations, no negotiations?---I presume there would have been conversations because council had asked us to look at that issue and provide justification, there would have been surrounding that justification conversation that took place.

And was there negotiation that cut it down to three metres?---Not that I recall.

Now, I want to ask you to assume that there was a meeting by the IHAP on a date on late November 2015 which was probably 24 November where the

IHAP considered the two DAs. As you understand, the business papers contained the reports by the director on those two and they contained, if I can ask you to listen to this, a particular passage. The passage read, “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.” Would you just excuse me a moment. And what I'm going to do is just arrange for you to see this first before asking you to comment on that. We've only got it electronically at this stage. Just trying to find it, sir. We'll do it after lunch, if it's of any assistance. Commissioner, would you mind taking an earlier adjournment than usual and at 2 o'clock we'll have the document on the screen.

THE COMMISSIONER: All right. We're adjourned until 2.00pm.

LUNCHEON ADJOURNMENT

[12.59pm]