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INDEPENDENT COMMISSION AGAINST CORRUPTION

PATRICIA McDONALD SC
COMMISSIONER

PUBLIC HEARING

OPERATION DASHA

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON MONDAY 9 JULY, 2018

AT 2.00PM

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

THE COMMISSIONER: Mr O'Neill.

MR O'NEILL: Yes, Commissioner.

THE COMMISSIONER: This is what I propose to do. The transcript of Mr Chanine's evidence today won't be downloaded on to the website and also
10 Exhibit 118 won't be downloaded as well. What I would like to do is consider your application in more detail and, I'm sorry, could you just excuse me. Mr Buchanan, can I enquire through you, the transcript will be forwarded to Mr O'Neill so he can consider any redactions that he may wish to include in the application?

MR BUCHANAN: Yes, Commissioner.

THE COMMISSIONER: All right. And what I propose is, can you put on written submissions as to why I should make – sorry, identifying first what
20 is covered by it and, in respect of Exhibit 118, does it include all the entries in the spreadsheet for example? So, if you could identify with precision what you would seek to be covered by the 112 order. If you can put it in writing to me, I am going to need more details about the litigation. The indication you gave to me is that it hasn't been commenced yet.

MR O'NEILL: That's right.

THE COMMISSIONER: So, I am a bit concerned about, not wanting to put this in a pejorative way, rather kind of maybe possibly nebulous litigation.
30 So if you can set out in detail what is anticipated, if it's anticipated that, for example, a statement of claim or some kind of originating process will be filed within a certain date, et cetera, and also why it is in the public interest for me to make the order.

MR O'NEILL: Certainly. How I've done it previously, this may assist or it may not, is I simply get the transcript sections and just mark them with a colour, not scratching them out, where I wish the redactions to begin and end so that you, Commissioner, have a clear articulation of those over which
40 the order's sought and then I can do written submissions. My only concern I that I need to adduce evidence on that, if you required evidence, that may have to be done in a private session or if you wish for me to obtain statements from relevant persons, for example, both the witness but also his legal advisor.

THE COMMISSIONER: Can we start with the written submissions. I would prefer to avoid making this - - -

MR O'NEILL: As would I.

THE COMMISSIONER: - - - bigger than the public inquiry. If I can get written submissions, then if it's a matter where I think I would be assisted by evidence or, indeed, if I need to be assisted by further oral submissions by you, you'll be notified. But I will schedule it for either 9 o'clock in the morning or 5 o'clock because we really need to proceed with the substantive public inquiry.

MR O'NEILL: May it please.

10

THE COMMISSIONER: Now, those submissions, when could you get them to me? We anticipate Mr Chanine's evidence will finish by – maybe not, sorry. Counsel Assisting's - - -

20

MR O'NEILL: So, this raises another issue, is that I'm not available tomorrow. I have tried to shift my diary around. The witness was originally to be called on Thursday, I think, the week before last and so I've constantly done the shifting and I appreciate that my convenience is just one tiny part of this very big machine, but that's because I'm in court tomorrow in Canberra. I am available Wednesday. I, I understand that the public interest is to get these done as quickly as possible, so if it is that you need me to do them by Wednesday morning, or give me quite a late time on Tuesday night, I can do that because I had already contemplated the structure of the objection, I just hadn't yet articulated it into writing.

30

THE COMMISSIONER: All right. On the application for a direction under section 112, could you get me – I'm sorry, withdraw that. Could you get Ms Ellis, the solicitor at ICAC, a copy of the submissions by 9 o'clock Wednesday morning?

MR O'NEILL: I will. And if I can't do that, I'll let Ms Ellis know immediately.

40

THE COMMISSIONER: All right. But it would be good if you could do that and then depending on what you raised, et cetera, as I said it might be a matter of bringing you back either at 9 o'clock or 5 o'clock. On the matter of the progression of Mr Chanine's evidence, what I suggest is we will resume his evidence now and we'll see how far we get today and then I can take on board the issues with your availability tomorrow.

MR O'NEILL: May it please.

THE COMMISSIONER: Thanks, Mr O'Neill. Mr Buchanan.

MR BUCHANAN: Thank you, Commissioner, In 2014-2015, Mr Chanine, did you have an understanding that Mr Stavis might have had financial problems?---No.

Was your brother involved in securing the special purpose vehicle's interest Arguile's interest in the development in the first instance? Negotiations, instructions being given?---Quite possibly. To the best of my knowledge, he may have been involved in assisting myself in that part of the transaction.

10 So would it be fair to say that your brother at least in regard to this development took an active role in the arrangements that were made to secure the interest by way of the option for example and the like, at least to the extent that you have?---No, he didn't really have an active role in, in, in that process leading up to when any option agreement would have been signed. He may have had some small role in assisting me, but I don't recall him having an active role at that point in time.

If you assume that he was cc'd into emails around that time, what's your understanding as to why that would have been?---If he was, it quite possibly would have been for an action of the Chanine portion of the joint venture to act upon something, and if my memory serves me correct, is that the 2014 period?

20 Yes.---Yeah, at that point in time our office was right next door to the office of the lawyers that were acting for us - - -

Yes.--- - - - so if something needed to be actioned and I wasn't around, quite possibly he could have been cc'd in for that purpose, to action something on my behalf.

30 Can I ask you a question about the development applications themselves. They were lodged on 27 April, 2015, I'd ask you to assume. You know that they were lodged by your brother and that they were lodged for in respect of one DA, 212-218 Canterbury Road and separately, for 220-222 Canterbury Road and also for Close Street. You recall that?---Yes.

Was there any discussion of which you were aware before the DAs were lodged as to whether the project should be the subject of one DA or more than one DA?---Yes.

40 What discussion occurred?---There would have been multiple discussions from the outset which would have been I think early 2014 and it would have been my suggestion, when you look at this block of land, and once again I call it unique, it was made up of multiple lots but it had one owner, and that's very, very rare in, in our field, in the development field, where we were able to negotiate with one owner of multiple lots, and it then turned my attention from a strategic point of view where we would be able to procure development applications on this block of land, rather than having one large development application, because of the way the lots were split up as individual lots we were able to split the land, so to speak, and prepare two development applications without impeding any potential yield that could be achieved through design on the, on the land.

But what was the advantage of splitting the project into two applications?
---That gives us two different advantages. At that point in time this was probably one of the largest sites this group had ventured into and when I saw that there was an opportunity to split the site without inhibiting the yield that could be achieved, I made the suggestion that we split the sites because it gave us greater flexibility if we wanted, if we were to roll the tape forward and assume we achieved approval on both the sites, it would give us the flexibility to either sell one site and keep one site to develop or sell both sites or develop both sites, just depending on our financial position at the time and depending on the current marketplace.

Wasn't the prospect of flexibility inhibited somewhat by the fact that according to the plans there was to be a common parking basement for the two sites?---My recollection of the plans was that they were two independent basement parkings for each development application and one particular application was to provide a right of way and an easement to the future basement of the application neighbouring it.

20 But that wouldn't have been necessary if it had been put in as one DA, would it?---Of course not.

You see an advantage of putting it in as two DAs was that you were able to spread the cost of the works across multiple DAs wasn't it and get - - -?
---No.

Take the decision making as to consent for the applications away the JRPP and make it Canterbury Council?---Not at all. I've had many applications before the JRPP that have been quite favourable.

30 But that's not to say that you didn't maximise your prospects of a favourable decision by ensuring that the consent authority was Canterbury Council rather than the JRPP. Isn't that the case?---That was never on my mind for why I wanted to split the sites.

But you did maximise your prospects of a favourable result for the project because you had friends who were on council, Mr Hawatt and Mr Azzi. Correct?---I wouldn't call Mr Hawatt a friend but that is correct what you're saying.

40 He's a person that you knew you could work with to achieve favourable results for your projects?---Yes.

You understood that Hawatt and Azzi controlled the numbers on council?
---No, I didn't.

You didn't understand that?---No.

Is that an honest answer, sir?---Yes, it is.

You had a relationship with Mr Montague didn't you?---Yes.

And you had, and it was a relationship in particular through the person who worked for you, Bechara Khouri?---Yes.

10 And you had a previous relationship with the person who popped up as the director of city planning by March, 2015, Spiro Stavis, didn't you?---Yes, you're correct in everything that you're stating but where you're missing the point is the process that went through my mind as to why I want to split up these sites and for the purpose of it, everything you're referring to with my relationships is subsequent to that point in time. My clear avenue for this site was to split the sites from day one, before we even actually put pen to paper to purchase the properties. That was my clear plan of attack.

20 The development applications were lodged in April, 2015 which is after Mr Stavis had commenced working at council as director of city planning so you already knew about that relationship at the time you lodged the applications?---Yes.

You already knew about your relationship with Mr Montague and you already knew about your relationship with Messrs Azzi and Hawatt?---Most definitely.

So all of those things were things that you knew at the time when you were considering will we formulate this as one application or as more than one application?---No, that's not correct.

30 Why isn't that correct?---Because we negotiated these dealings on the land, to the best of my knowledge it would have been middle to late 2014. I can't recall what date we ended up signing up the options on the land but at no point in time was my course of action to split these development applications to keep them under an assessment of Canterbury Council.

And of course you didn't have those sorts of relationships, at least so far as concerned Mr Montague and Mr Hawatt and Mr Azzi, when it came to the JRPP did you?---No.

40 Each DA form submitted provided a figure as to the estimated cost of development?---It would have, yes.

Were you involved in the calculation of those estimates?---No.

Each came in at just below \$20 million, the threshold for sending it off to the JRPP. That's right isn't it?---Yes.

It was in your interests for the threshold not to be exceeded in the case of the development application made in respect of these properties wasn't it?
---I have no control over how those numbers are calculated.

But nevertheless the outcome in terms of their calculation coincided did it with your strategic decision that the application should be split in two?
---Correct, but that strategic decision had nothing to do with whoever the ultimate assessing authority would be, whether it was council or the JRPP. Even with the development applications being split it could have quite
10 possibly gone off to the JRPP as well.

There was no likelihood that it would have gone off to the JRPP, was it, was there, if the applications were split?---There was a strong likelihood because the figures, to the best of my knowledge, are close to that \$20 million threshold.

But you controlled the calculation of those figures.---No, I didn't.

You and your brother did, didn't you?---No, it was done by an independent
20 quantity surveyor.

Did you receive any query from Canterbury City Council about the estimated costs of the development that were provided in the development applications?---Not that I can recall.

Have you ever received a query by a council about the estimated cost of development in a development application in which you've been involved?
---No.

30 Can I just very quickly ask about another development, 433-437 Canterbury Road, Campsie.---Yes.

When I say development, that was a project of yours that you and your brother had going at the same time. Is that right?---It's a development project that we have with the same group of shareholders on the Doorsmart project.

And when I say at the same time, I don't want to mislead you, as I understand it in 2015-16 it was running at the same time as the Doorsmart
40 project?---I don't believe so, no.

No?---No, I don't believe it was running at the same time.

When was it running then? That is to say, when was it under consideration by council?---I think it would have been around 2017.

What's your best recollection as to when it was lodged?---It may have been December of '16 that it was lodged and I'm pretty sure it was a 2017 application, but it may have been lodged in December of '16.

Did that project have an in-house name like Doorsmart?---The hotel.

Thank you.---Yeah.

10 Thank you for that. Now, just taking a step back from these two development applications, generally speaking as at 2014-15-16 you understood that the assessment and determination process for the applications would entail preparation of an assessment report in respect of each development application?---By council?

Yes.---Yes.

By the, by council.---Assessing authority, yeah.

20 Yes.---Yes.

Consideration of the assessment report by the IHAP?---Yes.

And recommendations by the IHAP as to determination of the applications? ---Yes.

And you understood that it would involve a further report by council to council itself or its City Development Committee when it determined each development application?---Yes.

30 Thinking now of these two development applications, were you aware that in 2015 council outsourced to consultants the initial preparation of the council reports?---No, I don't think they did.

So you had no understanding that council had, whether before or afterwards, sorry, whether during or afterwards you had no understanding that council retained consultants to draft the assessment reports?---I think the officer at the time, if my memory serves me correct, may have been a consulting officer but not an actual firm.

40 Yes.---A consultant planner.

Who's the person you're thinking of?---I can't remember the gentleman's name but - - -

Benjamin Black?---No, no.

Sean Flahive?---No. He's an older gentleman, I do recall what he, what he looks like, but no, to the best of my knowledge he may have been a consultant town planner but whether it was a firm or not, I'm not sure.

Planning Ingenuity Pty Limited, does that name strike a chord with you in relation to these two DAs?---No.

You understood that the assessment report would be signed off by Mr Stavis before it went to the IHAP and then as revised went to council or the CDC?
10 ---Ah, yes, yeah.

He would be in a position to exercise close control over the contents and recommendations made in the reports?---Yes.

Did you ever have an expectation that the DAs for the Doorsmart project would be considered at a particular meeting in 2015 of the IHAP?---My recollection, I can't recall if there was a particular push for a particular date but there was definitely from our end a push to have the matter I guess brought up before a meeting. If my memory serves me correct we, at that
20 time as well we may have been staring down the barrel of the option on the site running out of time prior to a determination along with potentially not meeting a deadline in our, our contract of sale, our on-sale of the land because I believe at that point in time we may have already entered into a deed with a particular party to on-sell the land. So I, I clearly remember there was a big push at the backend of 2015 from us to get these matters dealt with and it had to do with timing based on our contractual obligations.

In August, 2015, thinking of that month. If I can ask the witness be shown a document in volume 26 of Exhibit 69, page 56. It's a multiple-page letter to
30 CD Architects that according to the best information the Commission has was sent to your brother's firm in August, 2015. We can go through to page 66 and there's a signature by a Sean Flahive, F-l-a-h-i-v-e, if I pronounce it correctly, but there's no date on the document itself. My question is you're likely to have been made aware of this I suggest?---I'm sure I would of.

Because what it does is raise a number of issues as far as council is concerned with the development applications. Do you recall that? If you just have a flick through the letter under, on page 56, Floor Space Ratio,
40 "Both proposed developments significantly exceed the permitted FSR maximum and this has not been sufficiently justified in the submitted clause 4.6 variations." Do you see that?---Yes.

Page 57 under the heading Site Amalgamation, "Insufficient information has been provided justifying that number 224 Canterbury Road is unavailable for redevelopment." 3 on the same page, "Additional information clarification is requested about staging and construction", et cetera. Page 58 under the heading 4 Building Depth Setbacks Façade Design and Articulation Building Separation, "Council requires for

compliance with DCP provisions,” and if I can continue going down. “Full compliance with the RFDC”, Residential Flat Design Code, “separation distances is required including internal separation distances. Again this will assist in reducing the proposed FSR.” And then other issues including if I can take you to them. On page 61 under the heading Landscaping where it was said the proposal doesn’t comply with setback requirements along Canterbury Road and again on page 62 the same complaint is made. Then on page 64 under the heading Sydney Trains, “This application was referred to Sydney Trains for concurrence. The following issues were raised.” And then there’s a shopping list of issues that goes over onto page 65 and at the start of that extract from what can be assumed to be a Sydney Trains’ communication to council the statement is made, “Sydney Trains is not in a position to make a decision on the granting of concurrence until documentation that meets requirements is prepared and submitted to Sydney Trains for review.” And then it indicates the information that’s required. Do you recall being made aware of that letter?---Most definitely.

And it raised issues for you in the expeditious approval of the development applications?---It did, but nothing that was extremely concerning or nothing that was new to, to me.

Was there anything which you did about it so far as talking to council was concerned?---I’m sure, I’m sure we would have, our, our normal, this, a letter of this nature is not concerning at all, we receive a letter of this nature pretty much on every development application lodged, no doubt I would have sat down with the architecture and planning team and tore this letter apart bit by bit to see where we can justify something and where we can’t justify something, to see where things needed redesigning and where they wouldn’t need redesigning and then from there we would have contacted council for a meeting to go through the issues and provide our responses.

Right. In fairness to you if we could go to volume 26, page 99, please, in the same hard copy volume you’ve got there, sir. There’s a letter from CD Architects dated 9 September which goes for a number of pages, and in the form of a schedule addresses the issues raised.---Yes.

And has additional material supplied through to page 105. Do you see that?---Yes.

And then if you could just go to the next page you can see that additional plans were also provided in a council form that bears a receipt date of 15 September, 2015.---Yes.

Can I ask you about an email addressed to you by Mr Stavis on 18 September, 2015, page 112. Just looking at the bottom of page 112 in the first instance, please, thank you, and it will run over onto page 113, but it’s an email there from a Christopher Evans who essentially says he’s the owner of an adjoining property, and it’s written to Mr Stavis and complains

essentially that they've tried to contact the council officer, Mr Flahive, several times but he'd left council and another council officer was away on holidays because he's also leaving council, someone else didn't get back to him. "Spiro, could you please let us know who we should contact in relation to this matter. Regards, Chris." Do you see that?---Yes.

10 Now, in the middle of page 112 is an email to you, forwarding Mr Evans's email to Mr Stavis, in which Mr Stavis says to you, "Please see below FYI. They own the property next door and would like to talk to you about as they are looking at redeveloping their site as well, just FYI." Do you understand why Mr Stavis said that, given that there's nothing in the email to that effect?---No.

20 It does seem as if Mr Stavis is, if not trying to ingratiate himself with you, trying to give you assistance in your development project by providing you with that characterisation of Mr Evans's email that he forwarded to you, doesn't it?---I don't think so. I can only assume, if my memory serves me correct, because of them being the owners of 6-8 Close Street that they may have been affected or there may have been some issue from our proposed development onto theirs, hence why he was forwarding their details to me. I'm not sure. I can't, I can't even recall speaking to them to be honest.

But what I'm asking you to assist us with, if you can, is why it would be that Mr Stavis would characterise Mr Evans as wanting to talk to you or would like to talk to you as they, Mr Evans, are looking at redeveloping their site as well.

MR O'NEILL: I object.

30 MR BUCHANAN: Just for your information.

MR O'NEILL: I object to that question. It really seems to me that question's better directed towards Mr Stavis. I understand that we're in an inquiry and the rules of evidence don't apply but this question is really aimed at, "Can you tell me why Mr Stavis is doing something about another third person." This is one step beyond even, "Can you tell me why one other person's thinking that." It is, "Can you tell me why someone else is thinking this about someone else." I mean, this is really getting into unfair territory in my respectful submission.

40

THE COMMISSIONER: Mr Buchanan?

MR BUCHANAN: Commissioner, that's not the question I asked the witness. What I'm trying to ascertain is his understanding as to why Mr Stavis would have sent an email like that about and with Mr Evans' email to Mr Stavis.---I can't recall why.

What I'm inviting you to respond to is that – this is a suggestion that I am making, that it indicates that the nature of the relationship Mr Stavis thought he had with you at this time was one whereby he would assist you with your development even to the point of enabling you to consolidate your development with another site.---No. That's completely in correct.

It's certainly not the role of a council planner, is it?---Oh, I wouldn't say it's their role, definitely not.

10 I'm sorry, you wouldn't?---I wouldn't say it's their role.

No. There's nothing in your knowledge of the relationship you had with Mr Stavis that would otherwise explain why he should send Mr Evans' email to you with that information is it?---No. Like I said, to the best of my knowledge I think, if I do recall correctly, there was already an existing approval on that site.

Yes, but we're not talking about that, we're talking about your relationship with Mr Stavis. Why should Mr Stavis - - -

20

MR O'NEILL: Commissioner, I object. The witness has started to give an answer on to a very open question and then he's interrupted mid answer when he's about to explain why it is. And so, in my respectful submission, the witness should be allowed to answer the question that was asked in the open-ended fashion, it was responsive, and then learned Senior Counsel Assisting can deal with the answer after that point.

MR BUCHANAN: In my submission it was not responsive, Commissioner. I'm not asking a question about what Mr Evans' motivations might have been, nor am I asking this witness about what he might have been thinking about doing in respect of an adjoining property. What I'm asking about is his understanding of and explanation for, if he can give it, the indication this email appears to give of the nature of the relationship that Mr Stavis thought he had with the witness as at September, 2015.

30

MR O'NEILL: That's exactly what I was trying to impress upon you, Commissioner. It's a very broad, speculative, open-ended question that may require explanation as to the connection between this witness, another person, Mr Stavis, Mr Stavis' perceived connection or otherwise with the other person. There is a range of possibilities in relation to that and the witness was about to give an answer and then he's cut off from giving that answer on a redirect.

40

THE COMMISSIONER: My concern was that the way that he started answering from my perspective didn't seem responsive to the question Mr Buchanan asked. If it was a matter that – if he could answer the question first. If it needs further explanation because of something that he knew, then he can obviously give that explanation but I would prefer that he

actually answer the question first and then if he needs to explain it further he won't be cut off. But, Mr Buchanan, could you ask your question again and, Mr Chanine, if you can answer it. If you need to explain something when you answer the question, that's fine, start explaining it.---No problem.

And if it's not being responsive, I'll either pull you up or - - -?---No problem.

- - - Mr Buchanan will.---That's fine.

10

We just, because you're being asked a question we need the answer to the question and then we need to determine whether you need to explain that further.---Understood.

MR BUCHANAN: Mr Chanine, you know the sort of relationship you had with Mr Stavis as at September 2015, don't you?---Yes.

20

And was that a relationship in which Mr Stavis was trying to ingratiate himself with you from time to time?---Sorry I don't understand the definition of that term.

Are you able to give us any explanation as to why Mr Stavis would have forwarded Mr Evans's email to you asking about who to talk to at council and say that he, Mr Evans, would like to talk to you as they are looking at redeveloping their site as well, just for your information?---I have no idea.

30

Now, when did you first become aware of a report by council in respect of the assessment of these development applications, be it a draft or discussions about, whatever stage it might have been at.---It would have been towards the back end of the application process, so I believe that applications were determined, please correct me if I'm wrong, December of '15, so it may have been three months prior to that, that I would have, would have been made aware of any reports being prepared or finalised.

And who made you aware?---I can't recall.

40

And what were you made aware of?---It would have been the, the summary or the conclusion of the report. It may, may even have been a document that was published online, I just can't recall.

When you say that, are you referring to council's website?---Yes.

I'm talking about an earlier time than that. You weren't aware that there was an initial report drafted recommending refusal of both DAs on the grounds of excessive FSR and other failures to comply with planning instruments?---Not at all. The, the only reports that we would have ever seen of the council reports would have been those that were going before the IHAP or the council themselves. We would have been issued many letters,

such as the one you asked me to look at in the folder, but never a formal report as such.

And it was never indicated to you, whether directly or indirectly, that your DAs were in difficulty during the assessment process and might in fact be refused?---No. Apart from the formal letters that we received from council that did tell us that there were issues with the DAs and that they could or could not be in jeopardy.

10 So I just want you to – just one more question on this subject. I’d ask you to assume that there was a stage in October 2015 when draft reports recommended refusal of both DAs on the grounds of excessive FSR and other failures of compliance with applicable planning instruments. No one made you aware of that?---No, that, that is very surprising to me.

Excuse me a moment. Can I ask you to go to page 152 of volume 26, and there’s a copy on the screen in front of you, on page 153 is the commencing email from Mr Stavis on 14 October, 2015. “Hi Ziad/Marwan, we are missing clause 4.6 variations for the FSR, variation for building height has
20 been provided. Could you please email to me ASAP.” Then an email to you, this is on page 152, the top of page 152, the same day, “Further to our discussion just now, as a minimum can you please provide an urban design peer review of the development and especially in relation to the proposals’ non-compliance with front setback controls and the DCP. In addition can you please ask the planner to provide greater justification within the FSR clause 4.6 variation, et cetera.” Do you see that?---Yes.

Explaining then what needs to be done by way of the clause 4.6 submission. Do you recall this correspondence?---Yes.

30 And did you have a discussion with Mr Stavis that he implies you did?---It could have been a discussion or a meeting prior, yes.

And did he in the meeting give you – sorry, did he give you any idea that there was an issue with the likely success of the development applications?
---No.

Can I ask do you know why – I apologise. I withdraw that question. Can I ask you to go to page 200 of volume 26. Again it’s on the screen if that
40 assists. The conversation in the emails commences on page 201. There’s 14 October, 2015 email then there’s another email from Mr Stavis to you on 16 October and then on 19 you said, and this is towards the top of page 200, “Please find attached the updated clause 4.6 with regard to the FSR with regard to the issue of DCP non-compliance with the Canterbury Road secondary setback. This non-compliance was justified by CD Architects with additional information previously lodged along with the 3D modelling. Thank you.” Do you see that email of yours?---Yes.

Now, can I take you to the reply on 19 October at 3.32. This is still on page 200. “Hi, Marwan. Thank you for the updated clause 4.6. In regard to the front setback as discussed previously” – sorry, I’ll re-cite that. “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 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 a.s.a.p.” Do you recall this email?---Yes.

10

Did it come to you as a surprise?---No.

Were you having difficulties in dealing with Mr Stavis at the time?---At various times I did have difficulties dealing with Spiro, yes.

He indicates there was agreement however that you would provide urban design advice in this regard. Do you recall what that agreement was?---If my memory serves me correct, and it doesn’t serve me all the time quite well, but there would have been a meeting a council with Spiro and we would have discussed various issues and he would have requested that I provide urban design advice regarding that non-compliance of the setback. In that meeting because he refers to it I quite possibly would have said yes but then when I revert back and go back to the office and look through the file I believe we would have already provided that justification hence why I didn’t send him any urban design advice.

20

THE COMMISSIONER: Mr Chanine, this isn’t being critical but sometimes you commence answers with “would have”, “We would have had a meeting.”---Sorry.

30

And sometimes people say “would have” when they actually can’t recall, that that’s what they anticipate happened. Do you actually have a recollection of this meeting?---Yes, I do. Yeah, sorry about that.

No, that’s fine.

MR BUCHANAN: So, thinking of that meeting, what’s your recollection of it so far as concerned that particular urban design advice that Mr Stavis was seeking?---I can recall that we had a meeting at council and we were working through some of the issues and one of the issues was that front setback, and when I see that email now in front of me it does jog my memory to the fact that Spiro requested an urban design report to further justify that noncompliance, and I assume I would have agreed to it at, at that point in time, that I would provide it, but then going back to the office and looking over the file I would have seen that we had already justified that report and there was no need – sorry, justify that noncompliance and there was no need to engage a further consultant to provide another report. So that, that would be the agreement he’s referring to.

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Now, I just want to focus, if I can, upon the last three sentences. "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." Is it the case that when Mr Stavis was being difficult in your experience it could be attributed to him doing his best to help you and he is finding difficulty in helping you unless you provide him with the bullets?---There, there's no doubt that he did need, for lack of a better word, ammunition in able to support justification because justification has to come with the ammunition so to speak, to be able to review it and either consider it and accept it or consider it and refuse it.

But the approach Mr Stavis appeared to be taking, tell me if I've got this wrong in terms of your impression of it, was he was bending over backwards to help you but that if you didn't help yourself, there wasn't very much he could do?---I, I, I definitely say that he was working very hard to help with the application. I, I wouldn't say he was bending over backwards but it's not too dissimilar to the healthy relationship I had with him at his tenure at Canterbury Council.

At Strathfield, you mean?---No, no. At Canterbury Council.

Oh, I see, yes.---Because he was involved in multiple applications of mine and it was a, I'll call it a very healthy relationship in the sense that he didn't always agree with me, nor did I always agree with him, and hence why I turn to people such as the general manager if I couldn't get somewhere with Spiro.

Did he recommend that any of yours or your brother's applications be refused?---There's one that clearly rings a bell.

Could you tell us what that was?---Sorry, there's, there's two that clearly ring a bell where Spiro wasn't as fruitful as I would have liked him to be. One of those applications wasn't being supported by council. It was on Canterbury Road. It was an application similar to Doorsmart, which I call unique, where it had certain characteristics.

Just the name of the project or, better still, the address if you wouldn't mind?---I can't recall the address but it's on Canterbury Road in Canterbury. That - - -

When was the refusal?---I, I think that came as a deemed refusal because I lodged the application to the Land and Environment Court. The particulars of that site was it had – the particular property had a nine-metre frontage where the DCP required us to have a thirty - - -

What was the nearest cross street, just trying to get the address?---I, I think it's called Wonga, W-o-n-g-a. I think that's the nearest cross street. This particular site had a nine-metre frontage which where council's DCP

required it to have a thirty-metre frontage and, to the best of my knowledge, Spiro wasn't supportive of it and I lodged an application to the Land and Environment Court. Subsequently the court approved the application. There was another application on Canterbury Road in Roselands. I can't recall the number. It was recommended for approval but there were certain conditions imposed by Spiro that I, I was not happy with at all and he didn't want to change his views on them and that went to IHAP and then subsequently council. I addressed the IHAP and requested those conditions get removed prior to going to the council meeting and IHAP did take on board my concerns and made recommendations to council to approve the development with the removal of those particular conditions that Spiro didn't want to change.

When was that, sir?---That would have been around '15/'16, in that period.

And the deemed refusal of the project on Canterbury Road with a near cross street of Wonga Street - - -?---Yes.

- - - when was the deemed refusal or can you remember when you lodged the appeal?---To the best of my knowledge we would have lodged about 2015, sometime in 2015 and I think it was, the appeal went through the courts and I think it was approved either '15 of '16.

Now, can I ask if you could go to page 251 of volume 26 and if we just go over to 252. You can see that it's an email from Mr Stavis to you on - I'm sorry, to your brother cc to you on 24 October, 2015 and Mr Stavis said that at a meeting last Thursday he says "we agreed that two issues remain outstanding before our assessment can be finalised." And then he identifies them as, "Justification proposals, non-compliance with the rear setback control on the DCP." And he talks about the Canterbury Bowling Club which is the subject of an imminent rezoning proposal for high-density residential development and 2, submission of an urban design report justifying the proposal's non-compliance with the front setback under council's DCP. And you indicated to him on the next day, 25 October, "Thank you for your email. I'll ensure that these two items" - I do apologise. Your brother indicates to you on 25 October that those two items would be with him early in the week. Can you see the conversation was then forwarded to Councillors Azzi and Hawatt by Mr Stavis. This is on Sunday, 25 October, 2015. Do you see that?---Yes.

Do you have any understanding as to why Mr Stavis would have done that? ---I have no idea. I can, I can only speculate if I was to answer but I have no idea.

So you hadn't been having conversations with Councillors Azzi or Hawatt about the progress of the development applications?---That would have been the time when I would have, would have been approaching the councillors about issues we had had with the application and, and certain assessment of

the application but whether it was forwarded to them to alleviate questions they were asking or to update them I'm just not sure. I have no idea why Spiro would have forwarded that.

If I could just ask you to go then to page 555 of volume – sorry, that's obviously the wrong number, 255 is more likely of volume 26. At the top of that page you can see that your brother provided letters addressing the two outstanding issues on Monday, 26 October. Can I ask did you have a meeting with Mr Stavis and a George Gouvatsos and your brother at about this time, towards the end of October, 2015?---Quite possibly, yes.

Does the name Gouvatsos ring a bell?---Yes.

The manager of development assessment at council?---Yes.

Did you meet with him in relation to progressing these development applications?---I do recall him being at certain meetings, when and what meetings I can't recall, but he was definitely there.

20 I'd ask you to make this assumption, if you would, for the purpose of my next question. Could you assume, please, that around 31 October, 2015, Mr Stavis made it very clear to his staff that these two DAs would be supported by his team. Now, making that assumption, can you assist with any knowledge as to why Mr Stavis would have given that impression to his staff?---I can only assume that he had a premeditated decision already made in his mind if he was to share that with his staff.

Had that been communicated to you by Mr Stavis?---No.

30 Was there any expectation on your part at the end of October 2015 that Mr Stavis would ensure that these two development applications were approved?---No.

And you don't know of any communication you had with anyone, including Mr Montague or Mr Khouri or your two councillors as to why Mr Stavis would have formed that view?---No.

40 Now, I can give an exhibit reference for the purposes of my question to assist the Commission and my colleagues, Exhibit 85, page 18, but I'd like you to assume that on 6 November, 2015, Mr Montague was scheduled to meet with Bechara Khouri and possibly about you, but more likely with you. Do you understand?---I understand.

Can you assist with any knowledge as to why that meeting would have been scheduled?---(No Audible Reply)

So a meeting with Mr Montague and Mr Khouri on 6 November, 2015?

---I can't recall a particular meeting taking place, although I don't refute the fact that it may have taken place, but just based on the chronology of dates that you've just recently provided me, I can assume that I would have, and I would be speculating, but it sort of ties in with the dates that you're referring to, I would have requested Bechara organise a meeting with the general manager about those two issues in late October that Spiro was raising about the setbacks, because as I stipulated earlier, I didn't like to step on anybody's toes and go to a power above them until the discussions with that party were exhausted and whilst Spiro may have a preconceived determination in his mind, there were certain conditions that he looked to be imposing that I wasn't happy with, so I can only assume that that's what the meeting with the GM at that point in time would have been.

And can you recall a meeting with Mr Montague and Mr Khouri irrespective of what the particular subject matter was?---I don't recall Bechara being at a meeting in that point in time.

You do recall him being present at meetings with Mr Montague from time to time?---Very rarely, but from time to time, yes, he would be present.

What was the role that Mr Khouri performed by reason of attending the meeting, as far as you were concerned or as you understood?---A lot of the time he attended only purely for the fact that I asked him to organise the meeting, other than that he really didn't add too much information that was required to the meetings, if I could call it that.

Do you mean that in those circumstances he would attend as you understand it because he was the person who formed the link between you and Mr Montague?---Correct.

Now, I'd like you to assume that around this time, so the first two weeks in November, 2015, that Mr Stavis took a hands-on role in finalising the officers' reports to the IHAP about the two DAs, took a very active personal role himself. Did you have any contact with him that is consistent with that assumption, consistent with him – you understanding that he was taking a very active role in finalising the reports?---I believe he, Spiro had a very active role on that particular application from, from the onset, from early on in the piece, not, not to a particular time.

I'd like you to assume that he signed off on the review of the draft reports on 13 November, 2015 and that the – I withdraw that. I'll put a different chronology to you. On 11 November, 2015, that there is evidence that there was scheduled to be a meeting between you and Ziad and Mr Stavis at 9.30am. Excuse me a moment. Thank you. This is not in Exhibit 85. Can I tender as a separate exhibit – just for the Commissioner, I'm not actually showing it to the witness, I'm asking him to make the assumption. So, a calendar entry for a meeting on 11 November, 2015 at 9.30am of Mr Stavis with Marwan and Ziad Chanine.

THE COMMISSIONER: All right. The calendar record of a meeting with Ziad and Marwan Chanine, organised by Mr Stavis on 11 November, 2015, be Exhibit 119.

#EXH-119 – CALENDAR RECORD OF MEETING WITH ZIAD AND MARWAN CHANINE RE 212-220 CANTERBURY RD DAS ORGANISED BY SPIRO STAVIS

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MR BUCHANAN: Now, it doesn't say what it's about, that record, it's just a calendar entry.

MR O'NEILL: No. It does say.

MR BUCHANAN: I'm sorry.

MR O'NEILL: It says (not transcribable)

20

MR BUCHANAN: Oh, yes and maybe you can tell us a bit more about it in that case.

MR O'NEILL: This is the problem when you cross-examine people off documents you don't give them. Is the assumption, is this an assumption about – if it is to be done in assumption, then the assumption can be put and the witness can answer it. If it's not, then the document can be put and we can elicit an answer. All that I pointed out to learned Senior Counsel Assisting was that there was information in that document which would

30

MR BUCHANAN: I'll go the long way around it if that's what my friend would like. Can I show you a document.

THE COMMISSIONER: Is this Exhibit - - -

MR BUCHANAN: Can I show the witness a document, yes. This is a copy of Exhibit 119.

40 THE COMMISSIONER: Oh, sorry. You can show the witness.

THE WITNESS: Thank you.

MR BUCHANAN: Can you see that it's a printout of a calendar entry for a meeting by Mr Stavis with you and your brother?---Yes.

In relation to 212-220 Canterbury Road DAs?---Yes.

What was it about?---I can't recall. I can speculate if you'd like me to.

No. Thank you. You can't recall. Now, that's 11 November, 2015. I'd like you to assume that on 13 November Mr Stavis signed off on a review of the draft reports for the DAs and that those drafts included in them a 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. Did you have a meeting with Mr Stavis in which he indicated that that was likely to be the case or possibly would be the case?---Quite possibly that could have been a meeting that was held at council and it could have tied in with that particular meeting you refer to on 11 November.

Do you have a recollection of having a meeting with Mr Stavis on the subject of a recommendation that the DAs be approved subject to deferred commencement with a condition to change the setback at the rear from nil to three metres?---I don't think the actual contents of any report was discussed but I think Spiro made it clear that he wasn't supportive of the rear setback in the form that it was submitted and he wanted to provide a condition in his report with reference to that rear setback. What that condition was we didn't know until the report was published. But he did make it clear to us that he wasn't supportive of it in its current form.

Did you try to do anything about that?---Yes.

What did you try and do?---Tried to convince him otherwise.

And did you succeed - - -?---No.

--- at that meeting?---No.

And was there any further step that you took after the meeting on that subject?---Yes.

What did you do?---Once the report was made public and I was able to read the recommendation being made and understand the recommendation being made I have no doubt at all that I was disappointed with that recommendation and I would have most definitely contacted Councillor Azzi as to the issue that I had with the recommendation being made.

Now, the stage we're talking about it is the reports going to the IHAP. You understand that at this stage, that that was the recommendation - - -? ---Yes.

- - - in the reports as you understood it signed off by Mr Stavis going to the IHAP?---Correct.

Just to assist you with timing, the date of the IHAP meeting was in late November, 2015, quite probably 24 November, 2015. Just keep that in your mind. The business papers contained the reports by the director of city planning on those two DAs and the reports contained the following passage, “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.” Now, you know that the IHAP recommended refusal of the DAs on the grounds that the FSR was excessive?---Correct.

10

More than 100 per cent in one case, more than 50 per cent in another case? ---Correct.

So plainly if there was a legal opinion that the extent of non-compliance wasn't a relevant consideration in determining reasonableness of a clause 4.6 submission, then that was quite significant. You'd accept that?---Yes.

Do you know anything about that legal opinion?---Yes, I do.

20

In fairness to you I need to – I'm constantly asking you to make assumptions. Are you thinking of the Sparke Helmore letter?---I am.

I'd ask you assume it's not in that letter.---Oh. Okay. That changes my perspective.

Yes.---I'm not aware of any other legal advice, no. Sorry.

30

You're not aware of any legal advice that was provided orally or in writing to council or to Mr Stavis on the subject of the extent of the exceedance of a development standard such as FSR not being a relevant consideration? ---Not at all.

Did anyone say to you around this time that the extent of non-compliance wasn't a relevant consideration?---No.

And you certainly didn't say that to Mr Stavis and your brother didn't say that in your presence?---No, it's something new to me, to be honest.

40

Now, shortly after 24 November you became aware that at its meeting the IHAP had agreed to recommend the applications be refused on the basis of excessive FSR and that the exceedances had not been justified under clause 4.6 of the LEP.---That was their reasoning, yes.

So can I just ask you to consider this. That after 24 November, I want to suggest to you there were three outstanding issues for you and your brother in relation to these development applications. One was the recommendation by the IHAP that they be refused, secondly, the deferred commencement condition recommended for both DAs that the plans be amended to sit the

proposed developments back from the boundary by three metres, and thirdly, the outstanding concurrence and were concurrence to be granted, outstanding conditions from the concurrence authorities, the RMS and the Sydney Trains. Now, you pause - - -?---I'd agree with you, I'd agree with you on two of them but not the last one.

Okay. Did you understand that under the planning legislation there were what are called concurrence authorities - - -?---Yes.

10 - - - who had to concur in an approval, be it on conditions or otherwise, before the consent authority could grant approval?---Yes.

Did you understand that the RMS and Sydney Trains were two concurrence authorities in respect of these two - - -?---Yes.

- - - applications?---Yes.

As at 24 November, 2015, there had been no concurrence by those two bodies, had there?---No.

20

And so what that means was that council could not consider the applications because there hadn't been concurrence by the concurrence authorities. You understood that?---Not really, no. The, the - - -

Did you think council could approve the development applications even though there had been no concurrence by relevant concurrence authorities? ---As a deferred commencement my understanding is that it could. I may be incorrect, I'm not sure, but that's why any concurrence that needs to come from RMS or Sydney Trains, to be honest doesn't pose an issue to me, but conditions recommending additional setback and IHAP recommending a refusal of my application did raise concerns for me. That's why I agreed with two of your, your three concerns raised there.

30

Now, you told us that certainly in respect of the deferred commencement condition - - -?---Yes.

- - - as to the setback at the rear, you or your brother contacted Councillor Azzi.---I would have, I think I would have.

40 When you say I would have - - -?---Sorry.

- - - do you recall the contact?---I don't recall the contact but I'm sure I would have contacted Councillor Azzi about that condition.

What makes you think you did contact him about that condition?---Because I needed somebody to act on a particular condition and to the best of my knowledge, apart from the GM or a councillor, no one had that authority to make an amendment to a, to an item in a report, so I would have contacted

Councillor Azzi, most definitely, when I knew that that was a report that was going before the IHAP and subsequently going before the council.

And what did you ask Councillor Azzi to do?---I would have asked him to look into it to see if there's any way I can have that condition removed from the report when it went up to council.

10 Did you ask Councillor Azzi to get it removed?---I can't recall if I, if I would use the words, to get it removed, I would have asked him to see if there was anything that he could do in order to remove the report or subsequently change the condition as I, as I - - -

You mean remove the recommendation?---Sorry, remove that recommendation as, as I didn't agree with that recommendation being made.

Obviously if the recommendation were implemented, then either you didn't go ahead with the development or you went ahead with the development with a reduced lot yield.---Correct.

20 Did you do anything about the recommendation by the IHAP, the outcome of the IHAP meeting?---There's no doubt I would have spoken to Councillor Azzi about that recommendation, and I would have asked him to look favourably on council's recommendation rather than the IHAP recommendation.

Did you contact or, to your knowledge, did your brother contact Mr Montague in relation to these two issues or either of them?---I'm not sure. He may have.

30 Did you ask Mr Khouri to contact Mr Montague in relation to either of those issues?---Quite possibly.

And when you say quite possibly, what is it that you would have expected Mr Khouri to do?---If I did request that of him, it would have been to see if Mr Montague could exercise any of his functions in order to seek what I was trying to achieve out of those conditions.

Now, you know that the deferred commencement condition was removed. ---Yes.

40 Don't you?---I think it was.

Yes.---I think it was.

Well, you would have a memory of it if it had gone forward to council and been approved with a requirement to amend your plans to insert a three-metre setback, wouldn't you?---Yes, but I, I'm replying ever so sheepishly because, if my memory serves me correct, on one of the applications there

were some subsequent redesigns which included additional setbacks at the rear. So that's why I - - -

Well - - -?---I think one application there were no setbacks but I, on, on one of the neighbouring applications, for some odd reason, my memory is pointing me to the fact that we actually made design amendments to (not transcribable) some setbacks and redesign the back of the building.

10 Can I ask you to tell us, please, what is it that happened, having spoken to Councillor Azzi, possibly having spoken to or having Mr Montague spoken to, what is it that happened between those events and the outcome as far as you were concerned?---Sorry, when you say what had happened, what had happened with what?

Well, what do you understand was the outcome at council or the City Development Committee?---If I recall correctly, the applications were approved as a deferred commencement. I think some conditions were changed. I can't pinpoint exactly what had happened as the final outcome.

20 Was it an improved outcome as far as you were concerned on the situation as at 24 November, 2015?---Yes.

And in what way was it an improved outcome?---It was definitely improved because it was no longer a recommendation by the IHAP for refusal to be taken on board. It was a, I think a motion was passed to approve them in accordance with the director's report, rather than taking on board the refusal recommendation.

30 And what director's report are you thinking of? I'm not saying you're wrong. I'm just asking - - -?---Sorry, I'm just - - -

I'm asking your memory - - -?---There's only one director's report, which would have been the one that - - -

I'm sorry.--- - - - goes - - -

Yes?---Sorry, do you want me to continue?

40 No, no, you're quite right. You're quite right, Mr Chanine. Please proceed. ---My understanding is that the report that goes before IHAP is the same report that is put before council as well, and council – to my understanding – has a decision to make whether they take on board council's recommendation in the report or whether they further take on board IHAP's additional recommendations, and in that particular case it, it was for a refusal but in other circumstances they could require additional conditions to be put to the council.

And what was it that happened to your memory that explains how things changed after 24 November?---There's no doubt I would have contacted the councillors to discuss the issue with them.

Any councillors other than Councillor Azzi and Councillor Hawatt?---No.

10 All right.---But to my recollection they did, they did discuss it with other councillors. I was not present but to my understanding they would discuss it with other members of council because it was one of those tricky ones for them where the council is, or the council staff I should say are recommending approval and the IHAP's recommending refusal. So I, I do recall that they advised they would talk to other councillors about it but I only spoke to Councillor Hawatt and Councillor Azzi about it.

Was there anything that you understood that Mr Stavis did that contributed to the situation changing after 24 November?---Not that I'm aware of.

20 Was there anything that you understood Mr Montague did that contributed to the situation changing after 24 November?---Not that I'm aware of.

30 So if I tell you that on 3 December, 2015 the two development applications were approved without any deferred commencement provision and without any condition requiring amendment of the plans to insert a three metre setback, are you able to assist us as to how it came to be that that occurred? ---Yes. To the best of my knowledge they were approved as deferred commencement consents so with regard to that I don't think anything needed to be done and you may correct me if I'm wrong but I'm, I'm pretty sure of that. But with regard to the condition of the setback I think at that time a motion was put to the floor of council to remove that condition and I think it was voted on by the councillors to remove that condition and that would have - - -

And do you know how that - - -?---Yeah, that would have - - -

40 - - - motion was formulated, that is to say, where did it come from, who moved it?---I can't recall who moved it and where it came from but there's no doubt that I would have requested the councillors put that motion, or not put that motion but I would have requested the councillors remove that condition and what the councillors do or did behind closed doors I have no idea.

So if I tell you that a recommendation was made by Mr Montague to the City Development Committee that instead of being given deferred commencement approval subject to a three metre rear setback condition the DAs be given ordinary conditional approval with no condition requiring amendment of the plans to show a three metre rear setback, you don't know anything about that?---No, I do.

What do you know about that?---That was an issue raised at the council meeting or on the night of the council meeting.

Well, that went before the council but it was framed by, or involving Mr Montague in the days preceding 3 December. Do you know anything about that?---No. Like I said, my predominant contact would have been with the councillors in that period and what they did, I say behind closed doors, what they did with other councillors or with anybody else in that period in the council I'm not sure but my request to them was that that condition be removed as I found it unjust to the reason as to why they wanted that setback.

So there's no communication that you had with Mr Montague that would explain why he would have made that recommendation to council?---I, I may have contacted Mr Montague at the same time I contacted councillors to let him know of my concerns and that I wanted that condition removed. But anything beyond that I'm just not privy to.

And do you know why the IHAP outcome was not adopted?---No. No.

You certainly didn't want it to be adopted, that is to say, refusal?---Most definitely.

But you don't know, you can't explain, you can't help us to understand how come council didn't adopt the IHAP recommendation?---No. Nine times out of ten when a, and I'll use this generally, just to give you a better understanding, if an application by the council is recommended for approval, we would request that council take on, adopt the recommendation and approve an application. So, in this particular instance, there was a recommendation by the council staff, as we know it, to approve the application and there was a recommendation by the IHAP to refuse the application. So, there's no doubt we would have been harping on the fact that we wanted council to adopt the recommendation for approval and, if they see fit, remove that condition with the rear setback.

Now, we talked earlier about the Sparke Helmore lawyer's opinion. You obtained one dated 27 November, 2015. So that's three days after the IHAP report. Do you know where that legal opinion came from, apart from the fact, obviously, it was authored by Sparke Helmore Lawyers? How come it came into existence?---that would have been off the back of my instigation for it. I go back to, if my memory serves me correct, that letter in its main reference is with regard to the rear setback of the property, and knowing, knowing that council was making a recommendation to implore that rear setback, I would have sought the advice of our lawyers as to why we didn't need to have that rear setback and I would have lodged that letter to council as additional information as to why we don't need to provide that rear setback.

Did you instruct Sparke Helmore Lawyers or did your brother instruct them?---I'm pretty sure I would have because it would have turned to our or my strategy to have this letter shown on the floor of the council and that would allow me to address the councillors at the point in time and refer to the legal advice obtained on my part.

10 If the recommendation to council that instead of the deferred commencement approval the DAs be given ordinary conditional approval with no three-metre setback requirement was drafted by Mr Stavis or at his request, do you know anything that would assist us in understanding why he would have done that?---No. No, I wouldn't. And that three-metre setback, it's quite interesting that you ask that because, to the best of my knowledge, the numerical control of enforcing a three-metre setback does not mean anything with regards to building separation distances or anything in council's DCP. So that's why I was so against about the recommendation for a three metres setback because if it was a constructive condition of three metres I would have accepted it and swallowed that bitter pill, but it, it just seemed to be a number that was plucked out of the air.

20 You didn't think it might have been considered to be a compromise between a requirement for a nine-metre setback from a common boundary and your nil setback?---It could be seen that way but that was never brought to my attention as a compromise.

It didn't occur to you that that might have been what Mr Stavis might have had in his mind at the time that the three-metre setback requirement was formulated?---No, it wasn't. I was fairly adamant and fairly firm that we did not require a, a setback at the rear hence why I went out and sought the legal advice. So, I, if in Spiro's mind it was a compromise, I have no idea.

30 You do know of the figure nine metres in terms of half the building separation of 18 metres required for buildings of the height that you were proposing on your site and a similar-height building in an adjoining property, don't you?---It's not as black and white as you say.

40 Oh, I'm not suggesting it's black and white. But you know of such an argument?---There is a prescriptive requirement for a nine-metre setback depending on what is designed on a particular site and how far away it is from what is designed or can be designed on a neighbouring block, but those numerical controls constantly vary and nine metres is one of those controls.

Can I ask that the witness be shown volume 27 in Exhibit 69, please, page 269. This is an email conversation that commences on page 270, but for the purposes of my question you can see that at the bottom of page 269 there's an email to Mr Stavis dated 25 November, 2015 from a Mr Tsirimiagos, T-s-i-r-i-m-i-a-g-o-s, at, you can see the address of Transport New South Wales.gov.au?---Yes.

And it's setting out, if you can skim it, an explanation that Sydney Trains is unable to provide a quick concurrence to the development applications for a number of technical reasons. Do you see that?---Yes.

10 Then at the end it says, "In other similar situations in other LGAs, some councils have decided to endorse the development as presented but delegate the determination of the DA to the GM once concurrence was obtained and not substantial changes needed as a result. This way councillors can give it a tick without actually issuing a determination. Is this possible?" Do you see that?---Yes.

Then that seems to have been forwarded to you by Mr Stavis at 12.31 on 26 November, 2015, at the top of page 269, and he says, "Hi, Marwan. For your information. Maybe you can pass on to your legal team to review and advise. As we said, worst case is that we add to the recommendation that council delegates determination of the DAs to the GM once concurrence et cetera is obtained." Did you receive that email?---Yes.

20 Did you pass it on to your legal team?---No.

Was there a reason why not?---I didn't see that it needed any legal advice. The concurrence agencies generally don't worry me because you always have to tick certain boxes to get their concurrence, so whether it came early on or later on, it didn't really bother me. It was mainly the conditions that council was imposing that were to be heard at the council meeting that I was focussing on.

30 Was the suggestion that Canterbury Council could be asked to delegate the determination to the DA – sorry, delegate determination to the GM once concurrence was obtained and not substantial changes needed as a result, something that you discussed with Mr Stavis?---It would have been, yes.

And did you indicate to him that you were agreeable to that idea?---Yes.

40 I want to give you the opportunity of responding to this proposition, Mr Chanine, that it's open to the Commission to conclude that Mr Stavis and Mr Montague took unusual measures to try to progress your DAs to approval. Have you knowledge as to why Mr Stavis took the steps he took to try to progress your DAs and ensure they were approved?---No. I wouldn't call them unusual. I, I, I don't see there being anything out of the ordinary as to what transpired with this application and what functions both the director and the general manager would have played, in comparison when I compare it to other DAs that I've been involved with in other LGAs.

And so did the same apply to your opinion if I tell you that it is open to the Commission to conclude that Mr Montague approved a number of Mr

Stavis's unusual measures that were taken to progress these DAs to approval?---Sorry, can you ask that again?

10 Yes, sure. I'd like you to assume that Mr Montague approved of a number of the steps that Mr Stavis took to progress the DAs to approval, and that it is open to the Commission to conclude that a number of those steps were unusual.---I wouldn't say the steps were unusual, but I have no doubt in saying that Mr Montague would have supported the, the process or the procedure that his director was putting forward. But they're definitely not unusual.

Do you say that it's not unusual, for example, for a recommendation to be made by the general manager to the council which overturns an IHAP decision and overturns the council report to the IHAP and the council report to the council?

20 MR O'NEILL: I object. It's the word "overturn". I don't think he's got any power to overturn. That question, that is not fair, in my respectful submission.

THE COMMISSIONER: Mr Buchanan?

MR BUCHANAN: Commissioner, I'll reframe the question. Mr Montague, I want you to assume, approved steps taken by Mr Stavis to ensure these DAs were approved. Do you understand that?---Yes.

And I want to suggest that it's open to the Commission to assume that a number of those steps were unusual.---I don't agree that they were unusual.

30 Can I just take you up on that, then? Do you say that you have experience with councils other than Canterbury Council of, for example, council reports being ignored and IHAP recommendations being ignored in the same development application being approved by the council?---Sorry, you've confused me there. Could I ask you to ask that again?

40 Are you saying that in your experience it's quite usual for intervention by general managers and the director of city planning to change the situation that would otherwise go to council which would be distinctly unfavourable to the developer?---I wouldn't say it's usual but I wouldn't say it's unusual. It has happened before.

How often has it happened in your experience?---A few times.

What councils?---Strathfield Council would be one.

Yes. And what are you thinking of?---I am thinking of a development application I had probably in 2004 at Strathfield. It would have occurred in Rockdale Council.

And what did these involve?---These involved the involvement of a director of planning and the general manager intervening on an application in order to facilitate an outcome that wasn't able to come to fruition through the, if you want to call it, standard practice.

10 In order to facilitate an outcome that was favourable to the developer that wouldn't have been favourable absent that intervention?---I would say that both directions would have been favourable to us as the developer.
Obviously one direction is more favourable than the other.

Obviously the outcome of a three-metre setback at the rear – I withdraw that. The development of these proposed buildings on the Doorsmart sites without any rear setback would have been to the disadvantage of the developer of high-density residential premises on 15 Close Street, the old bowling club, wouldn't they?---Sorry, could you ask that again?

20 Yes, sure. You understand that there was a requirement for an 18 metre separation between buildings, residential buildings?---On this particular site or in general?

On this particular site.---No, I don't agree with that at all.

And do you say in that case that the developer on 15 Close Street could as far as you're concerned built up right up to the back of your development? ---No, they couldn't build anything because of its zoning.

30 But you knew that there was a zoning proposal to convert from R3 to R4 high-density residential didn't you?---I did and that was something that was referred to as imminent and at that point in time, in 2015 it was referred to as imminent and to the best of my knowledge it was before the department for a part of three years and as of today they still call it imminent with no clear outcome as to what that rezoning is. That's why I don't agree with the comment made about the rear setback there. So it's been imminent for the best part of the last six to eight years.

You knew it had gone to public exhibition didn't you?---Yes.

40 And do you say that it would have been quite fair as far as you're concerned for your development to go up on the Doorsmart properties and then for the developer on 15 Close Street to have built right up to the common boundary?---They wouldn't have been able to.

Why wouldn't they have been able to?---Because the property was not zoned for it.

But I'd like you to assume that the zoning went ahead.---Yes.

That it was a lawful development.---Yes.

Assuming that you would have been quite happy for the developer on 15 Close Street to have built right up to the common boundary with your development?---They wouldn't have been able to.

Would you have been quite happy?---I wouldn't be happy about it nor would I be sad about it. Sorry, I'm not following where your question is leading to.

10

You understand exactly where it's coming from. You talked earlier, Mr Chanine, I want to suggest to you about you being happy where there was a balance between stakeholders' interests being arrived at by a solution that might be conjured, put together by a council planner such as Mr Stavis in the case of the Liverpool Road development in Strathfield.---Yes.

20

Well, if that is applied equally to what occurred at the Doorsmart project then it was a distinctly unfavourable outcome so far as the interests of council in 15 Close Street were concerned wasn't it?---I don't agree with that hence why I firmly stick by our justification made as to why there is no need for a setback at the rear and I wouldn't be pressing the point if I didn't have the support of my town planners, urban designers and, and legal team as well.

After the DAs have been approved on 3 December, 2015 you had dealings with Mr Stavis whilst he was on staff at council in relation to the Doorsmart project did you?---I would have, yes.

30

Canterbury Council was amalgamated with Bankstown Council on 12 May, 2016. Around July/August 2016 did you learn that Mr Stavis was no longer with Canterbury Bankstown Council?---Yes.

Did you have any contact with Mr Stavis after he left council?---I may have. I'm not sure.

What would the circumstances have been in which you may have had contact with him?---It might have been a telephone discussion with him to ask him what he was doing or where he was moving on to.

40

When you - - -?---I can't recall. I can't recall.

Well, when you use the words "might have", is that in the same sense as you've previously used it indicating yes, this is something that did occur? ---I can't categorically say that I, I did have contact with him, no.

Did you offer him any work?---No.

Why not?---I didn't require his services.

Did you require the services of any town planner after August, 2016?---Yes.

Why not approach Mr Stavis and offer him consultancy work as a town planner?---I didn't need to.

10 Why didn't you need to?---I had other planners that were conducting our work and there was no reason to approach Spiro. If you go back to 2014, the main reason or really the only reason why I suggested to approach Spiro to work for us on a particular report was that he worked in that council and he would understand their codes and policies quite better than anybody else available in the public realm. Outside of that particular project, I've never worked with Spiro.

Did you need the services of a town planner for any of your projects in the Canterbury local government area after August 2016?---Yes.

20 Why not hire Mr Stavis?---Good question. I, I've never thought of that. Never thought of that.

Well, what it suggests is your professed motivation for approaching Mr Stavis in 2014 in relation to the Kanoona Avenue project might have had something to do with something other than the fact that he could provide town planning services with a knowledge of the council in which the project was situated. Do you see what I'm getting at?---I can see where you're getting at but I didn't see any need to approach him for work, especially as it was and still is a transition in council.

30 But he knew it well, didn't he?---He did.

Why not take advantage of that and hire him?---Because I didn't need to.

Even though you were running projects in the local government area, the amalgamated local government area?---Well, to the best of my knowledge he was actually employed at council on all of my projects in that council. So it would seem very unusual that I would offer him a job to work on a, a DA that was under his supervision at council. Just, it's, that's - - -

40 When you say unusual, what do you mean?---If I had an application before Canterbury Council where he was the director of planning at Canterbury Council and subsequent to that he had left Canterbury Council, I wouldn't ask him to then come and work for me on that particular project. It's just odd.

What is unusual or odd about it?---The fact that he was the director at council which supervised, if you want to call it, my development application. So why would I offer him that job to supervise that application as my consultant town planner thereafter? It just seems very odd.

Would there have been something wrong with it?---I don't think there's something wrong with it. It just seems very odd.

What is your most recent contact that you've had with Mr Stavis? The last time you had any contact with him.---It would have been around the time that he had moved on from the amalgamated council. So it would have been the best part of two years ago.

10 Now, you have told us that you had dealings with Mr Hawatt, a business relationship in relation to a property at Penrith.---Yes.

31 Santley Crescent, Kingswood.---Yes.

If we could turn, please, to volume 8 in Exhibit 53. Page 202. I'm sorry, I misspoke. It's Exhibit 52. Thank you. 201. Thank you very much. These are SMS messages extracted from Mr Hawatt's mobile telephone, sir, and if you have a look at page 201, item 4, you can see that there is set out there an SMS on 17 September, 2015 at 7.44pm, from you to Mr Hawatt, reading,
20 "Michael, can you please resend me the address for the property in Kingswood. Thanks and regards, Marwan." Do you see that?---Yes.

And there are subsequent messages that I'll take you to in a moment. Well, no, sorry, I will take you now. Can I take you to 19 September, which is item number 7. "Kingswood can work at 1.5 million with terms as a hold for me. Please let me know if you would like to discuss further," and that's from you to Mr Hawatt. Do you see that?---Yes.

30 When did you first communicate with Michael Hawatt about this property?
---It would have been possibly a month before those messages.

Yes, and what were the circumstances in which the property came to your attention?---To the best of my knowledge, Michael mentioned to me that he had a block of land in Penrith and if I would be interested in looking at the block of land to acquire and he would have sent me the address and I would have done my usual due diligence on the property.

You did do your usual due diligence on the property?---Yes.

40 And what was your conclusion from that due diligence?---It wasn't a particular site, development site that I was interested in.

It was?---It wasn't.

Was not?---Yes, sorry, was not.

When did you come to that conclusion in relation to the date or dates of these texts that I've taken you to in September?---Oh, it, it would have been fairly soon after Michael had raised the property with me.

Say, back in August, 2015?---Quite, quite possibly before that. So, very, very soon after Michael had raised it with me, I would have procured my own due diligence and advised him that it's not something I'm really interested in.

10 Right. So, are you able to assist us as to why on 19 September you say, "Kingswood can work at 1.5 million with terms as a hold for me"?---Yes. If you go to the message that's prior to that, where it says, "Can you please resend me the property?" I had a friend, or I have a friend of many years who's been requesting or he's seeing how I procure developments and he's seen to the volume and success of it, and he's requested if I'm able to put him in one of the deals and help him out. And that, and at that particular point in time, my friend had approached me yet again and that's why I went to Michael and said, "Can you please resend me the address so I can look at it again?" Whilst I was referring to me, I had no intention myself of
20 purchasing the property. I was, if you want to call it, acting on behalf of a friend.

Why didn't you say that?---To whom?

Michael Hawatt.---Because my friend's never negotiated a property deal before and if I was to put him in front of Michael, Michael would have eaten him alive with the negotiations, with all due respect.

30 In August, 2015, you received a letter from Canterbury Council as to noncompliance of the design of the two sites in the Doorsmart project with the various requirements, including the permitted FSR and insufficient justification for variation from the FSR requirement had been provided. Remember that?---Yes.

Did you make this offer in September 2015 to try to assist Michael Hawatt in coming to the position that he should look favourably upon the Doorsmart project - - -?---Not at all.

40 - - - as far as you were concerned?---Not at all.

It's simply a coincidence in timing, is it?---Yes.

Certainly the letter that you received in August indicated that unless council could be persuaded to change its mind, your developments could be in some serious, your development proposals could be in some serious difficulties so far as the Doorsmart project was concerned.---Correct.

And you didn't think that it might assist you if you got Michael Hawatt thinking favourably towards you by offering him a deal in which this property would be purchased, whether it was by somebody like you or somebody like you on someone else's behalf?---No. Like I said, that letter that came from council was not unusual, to raise so many issues, and there is no way at all I would have approached Michael Hawatt in that manner, not at all.

10 Having performed your due diligence in August 2015, was there any product of that due diligence, that is to say, who conducted it?---I would have conducted that due diligence myself.

And did you keep any notes?---Quite possibly, quite possibly.

And where would those notes be now?---If I, if I do still have them they would be in my office or they could just be emails as well, so I'm not sure of the nature of them but I would have definitely had something.

20 If they were emails, with whom would you have been communicating?
---Either my brother's architectural firm or a town planner.

Now, this friend was John Christou. Is that right?---Correct.

Who was he in relation to you?---He, to the best of my knowledge, is a project manager or development manager for a friend of mine, so an employee of a friend of mine.

30 And when you say project manager or development manager, in what industry?---Sorry, in, in property. So a friend of mine is a property developer and John Christou is employed by him.

And Mr Christou, despite working in the industry, would have been incapable in your opinion of negotiating the purchase of a property from Mr Hawatt?---Most definitely.

If you were negotiating the property on behalf of Mr Hawatt, what was your understanding as to when you would indicate that to him?---Sorry, I wasn't negotiating it on behalf of Mr Hawatt.

40 I'm sorry, I do apologise, on behalf of Mr Christou, my mistake.---That's okay.

My mistake. If you were negotiating with Mr Hawatt on behalf of Mr Christou, did you have an idea in mind as to when you would reveal to Mr Hawatt that you were not the purchaser, but that somebody else was?
---Yeah, quite, yes, I would have, and it would have been probably at the time of the exchange of documents, contract documents or just prior to the exchange of the contract documents.

So are you saying that essentially you were pretending to Mr Hawatt that you were personally interested in the property and proposing to buy it from him yourself?---Sorry, could you ask that again?

Yes. Are you telling us that at this stage in September 2015, you were pretending to Mr Hawatt that you were negotiating on your own behalf to buy his property?---No. I, I think I might have outlined that it was for somebody else.

10

Yes you did say that to us, but what I'm trying to get at is, that's not apparent in the communications that I've taken you to, is it, and indeed you use the word, "for me, as a hold for me." Looking at item 7 on page 202. ---That's fair to say.

So you were pretending to Councillor Hawatt that you were negotiating on your own behalf with him at that stage?---Yeah.

Is that fair?---That's a fair assumption.

20

And so as far as you can assist us Mr Hawatt would have thought you were negotiating with him on your own behalf at that stage?---Yes.

When did that change?---It would have been at a point in time between then and the actual contractual exchange of the documents because John did end up purchasing the property so it would have been at some point in time between then.

30

Yes, but have you got any recollection of Mr Hawatt dealing with you and expressing surprise, oh, you're not the purchaser but somebody else is?---I don't think there was ever surprise, no.

Why wasn't he surprised?---It's a real estate transaction that he wanted a sale and there was a purchaser from our part so as long as the transaction goes through I don't think he cared who was the transacting party. He wanted to sell a block of land.

40

And do you have any recollection that you can assist us with as to when it was or in what circumstances it was that you revealed to Mr Hawatt that you were not the purchaser, that somebody else was?---I can't recall.

Were you planning – I withdraw that question. You see that, still on page 202, on 22 September, 2015, this is item 9 on that page Mr Hawatt sent you a text asking what your email address was so that he could send you the contract?---Yes.

And then on 28 September, this is item 10, could the two of you catch up for coffee regarding Kingswood?---Yes.

Then the next page, item 13, 13 December, 2015 from you to Mr Hawatt, “Hi, mate. I’ll meet you at 11.00am for coffee at Canterbury Leagues. No need for Ziad at the moment. We can also discuss Kingswood. Is that time okay?” Do you see that?---Yes.

Now, when you say no need for Ziad at the moment, was that because you were proposing to talk to him about something else involving Ziad?---Quite possibly, yes.

10

Was Ziad involved at all in the negotiations for the purchase of the Kingswood property?---No.

Was he aware of the negotiations for the purchase of the Kingswood property?---Yes, he was.

And why was he aware?---By me procuring my due diligence on the property I would have no doubt sought his advice regarding what could be developed on the property.

20

Then on 28 – I’m sorry, I’m looking at item 15.---Yes.

In the middle of the page. On 28 December, 2105 Mr Hawatt sends you a text, “Hi, Marwan. When are we going to finalise Kingswood? Have you spoken with Karl re Godfrey? Signed Michael.” Now, leaving aside the second sentence.---Yes.

You received that text from Mr Hawatt. Is that right?---Yes.

30

And then two days later, item 16, a text you sent Mr Hawatt, “Hi, mate. Sorry about the mix up. I can meet after 6.30.” There was some mix up about the venue, the time and date of the venue. Is that right?---I recall that, yes, yes.

There is nothing to indicate that by this stage you had revealed that you were acting for somebody else in the negotiation, so far as concerned those texts anyway?---Correct.

40

Excuse me. Can I ask you also to have a look at page 71. Excuse me a moment. Excuse me. Volume 25, sorry for the lack of notice, page 253 and this is in Exhibit 69.---Could I just refer to the screen because there's too many folders here.

Of course you can.---They might just fall off the bench and - - -

Looking at page 253 of volume 25 in Exhibit 69. There is a reproduction in item 11 of this schedule of text messages extracted from Mr Hawatt’s phone of your texts on 17 September, asking Michael, “Can you please resend the

address for Kingswood?” And then at item 13, “Kingswood can work all right 1.5 million with terms as a hold for me. Let me know if you’d like to discuss further.” Now, when you said with terms as a hold for you, what did you mean?---I don't recall what I meant by, “Terms as a hold for me,” but I definitely recall the \$1.5 million figure.

Was it a reference to an option?---The terms, yes. Sorry, the terms, yes.

10 So, looking then at item 14, a text to you on 20 September, 2015 by Mr Hawatt, “Hi Marwan, do you have a generic option contract? Michael.” Do you see that?---Yes.

And then item 15, the same day, you reply, “I do but these deeds can be generated and tailored to any needs. I'll bring one along on Tuesday.” So, you were proposing to purchase by option?---Call option, correct.

And had there been discussion at that stage with Mr Hawatt about what the option price would be?---I believe so, yes.

20 And what discussions were held on that subject?---To the best of my knowledge, once again because it wasn't one of my particular developments, when I spoke to John about it, my advice to him was that this land is probably worth around \$1.3 to 1.4 million but at the 1.5 that Michael's requesting, it can definitely work as a call option. To the best of my knowledge it was a two-year call option and it was a minimal fee, \$10, maybe 20,000 for the granting of that call option.

30 Are you talking about now the negotiations with Mr Hawatt about the call option that you had?---Yes.

So you negotiated a call option for a, what you've described as a minimal fee, \$10 or 20,000 as you recall it. You didn't think, after having done the due diligence, that the property was suitable for your needs?---Correct.

Did you think the property was suitable for Mr Christou's needs?---Yes.

40 What made you think that?---It was one of these things where under a call option you are not obliged to physically enter into and purchase the property. So, it gave the utmost flexibility to John as a first venture of his. And also the quantum of money involved – because every transaction in development is a risk – the quantum of money involved if John was to, for instance, walk away from the site come two years' time, which is what he actually did, the quantum of money involved was, for lack of a better term, negligible in the overall scheme of the transaction.

But to what use could the property have been put, as you understood it, by Mr Christou?---When you say to what use, as in what he would have - - -

Yes, what could he do with it?---He could, he could and he did lodge a development application for a mixed-use development.

THE COMMISSIONER: So he didn't end up buying the property or exercising the option?---No. Most recently the two years was up and John called me and said, "What do I do, the two years is coming up?" And I said to him, "Well, your DA has been refused. You now know what the issues are from that particular council," I said, "Just ask if you can get an extension to the option." Which he did. And he asked, "What kind of a fee do you suggest I pay?" I said to him, "No more than what you paid originally." And he contacted me to say he put it through the lawyers for an extension and a fee of \$100,000 for that extension was requested and I told him, "My advice is walk away from the deal, they're dreaming if they think they're going to obtain \$100,000."

MR BUCHANAN: Did you ever get the impression from Mr Hawatt or any other source that Mr Hawatt was negotiating for the sale of that property to anyone else?---Yes.

20 When did you first get that impression?---There would have been a point in time where we were obviously discussing this transaction and at one point in time I clearly recall Michael trying to push me to an outcome by saying, "There are other people looking at this property," and the way I diffused the situation was telling Michael, "If you've got somebody else there to purchase, see it to them."

Did he give you any indication as to who else was looking at the property?
---No.

30 Or what relationship they had to him?---No.

Or what price they were offering or considering?---No.

Now, if you just think forward to February 2016, were you still proposing in February 2016 to pay 1.5 million to Mr Hawatt for the property?---Yes, that, to the best of my knowledge that was the figure that was negotiated and that never changed.

40 Now, can you tell us, please, what were the circumstances in which you indicated to Mr Hawatt that there was a person on whose behalf you were negotiating?---At what point in time, sorry?

Yes.---Like I said, I can't pinpoint a point in time. It was definitely before the contracts went to exchange, but how long before, I'm just not sure.

And what - - -

THE COMMISSIONER: And when you say contracts - - -

MR BUCHANAN: I'm sorry .

THE COMMISSIONER: - - - are you saying the call option?---The, the option agreements, yes, sorry.

MR BUCHANAN: In what circumstances did you disclose that to Mr Hawatt?---I can't recall what the circumstance was. It may have been in person at one of our meetings at Canterbury Leagues, I, I just can't recall.
10 But it was definitely disclosed to him.

Did you have intention to develop the property yourself, even though Mr Christou might purchase it?---No. When it was first put to me the idea was in my head, yes, hence why I went ahead and did - - -

Back in August 2015?---Or prior to that, yeah.

Yes.---And then it was of no interest to me so I left the matter until I had that subsequent discussion with John and thought that that was an
20 opportunity that I could look at for John.

But when you say, I could have a look at for John, in what sense, anything more than negotiating the purchase via an option?---No.

What I'd like to do is play an audio tape if we can, please, of a telephone conversation recorded on 28 April, 2016, LII 07591.

AUDIO RECORDING PLAYED **[4.20pm]**
30

MR BUCHANAN: Commissioner, I tender the audio tape and the transcript of the extract from the telephone conversation.

THE COMMISSIONER: All right. The audio file and transcript of TII 07591 recorded on 28 April, 2016 will be Exhibit 120.

#EXH-120 – TRANSCRIPT SESSION 07591
40

MR BUCHANAN: Sir, I should have said at the outset that is an extract of a telephone conversation. There was a conversation before that that didn't involve you. At the outset you have the extract, the transcript of the extract in front of you. Did you recognise Pierre Azzi's voice as saying Marwan, and then in Arabic, wants to talk to you?---Yes. I, there was a lot of talk at the beginning that I sort of didn't catch onto.

We can play it again. I'm very happy to play it again if that will assist.
---Maybe just that beginning part because - - -

Certainly.---Yeah.

Certainly.

AUDIO RECORDING PLAYED

[4.23pm]

10

THE WITNESS: Yeah, that's enough. I just didn't hear that initial part of it.

MR BUCHANAN: That's okay. That's fine. Does that enable you to assist us as to recognising the voice of Mr Azzi as is suggested in the transcript?
---Yes.

20

Saying Marwan, and then in Arabic, wants to talk to you?---Yes.

And the other two voices were yours and Mr Hawatt?---Correct.

The conversation is after you have disclosed to Mr Hawatt that you were negotiating on behalf of a third party?---It seems that way, yes.

30

And can I ask you, if we could go to page 4 of the – sorry, if we can go to page 3 of the transcript. Yes. Thank you. You see on page 3 of the transcript after the jest about whether Mr Christou could increase it to 50, you said to Mr Hawatt, “Look one, one, once he gets his hands on it I want to try and turn it over a lot quicker.” And Mr Hawatt said, “Okay, that, then that'll be good.” Do you see that?---Yes.

40

What did you mean by “I want to try and turn it over a lot quicker”?---I remember that quite clearly because John was being granted a two-year call option. My advice to John was a two-year tenure would eliminate a lot of the risk involved in the transaction, because it would allow him ample time to turn over the property – that is get a DA and onsell the property. So Michael was hesitant at providing a two-year call option for a minimal fee because in essence he was locking in his property for a minimal fee for two years, and that's where I said to him I'll try and get it turned over quicker, meaning quicker than the two-year period. So if John was able to procure a DA and onsell the property, for instance, within 12 months rather than 24 months, the way a call option works means that somebody stepping into John's shoes to purchase the property could settle the property quicker than the two-year period. Sorry, did that make sense? It was a little bit all over the place.

Well, I just want to ask, that doesn't appear to explain why you would want to try and turn it over a lot quicker.---I have no, no reason to say why I would like to turn it over a lot quicker.

But that's what you did say.---That is what I did say, correct.

A reason would be if Mr Christou was a front for you in the purchase and development of the property.---No. Not at all.

10 When you said, "I want to try and turn it over a lot quicker," were you indicating that you proposed to develop the property and that Mr Christou's purchase of it was required before you could do that?---No.

The plans for the proposed development were drafted by your brother's firm, weren't they?---Correct.

Your brother drafted your plans, correct? Generally.---Yes. Yes.

20 That would support a conclusion – I withdraw that. The fact that your brother's firm drafted the plans for Mr Christou's development application would support the suggestion that one could infer from that telephone conversation of an intention by you to develop the property using Mr Christou as a front.---That is not the case, no.

Certainly, and just looking at the transcript, it would appear that Mr Hawatt thought it would be good if you can turn it over a lot quicker. He didn't seem to think you were talking about Mr Christou either.---Because I was the front man negotiating the transaction.

30 Because of what you told him. "I want to try and turn it over a lot quicker." He says, "Okay, then. That'll be good. That'll be good if you can do that."--You've got to understand, Mr Buchanan, that John's a first-time developer so he was highly taking on board and highly regarding my advice to him, my involvement with him, who he used as an architect on the project, who he used as a town planner on the project, who the lawyers that he engaged who he would use. So whilst I can see that you're picking certain words out of that discussion, it was never the case that John was there as a front at all.

40 Did you have a history with Penrith City Council at all?---No.

Did you have any financial or tax reason to want to use John Christou as a front for the purchase and subsequent development of the property?---No.

Did you have a financial relationship with John Christou in relation to the site?---No.

Or the development application?---No.

THE COMMISSIONER: You said, "John Christou was the project manager for a friend of mine." Who was the friend?---A gentleman by the name of Louie.

Who?---Louie. L-o-u-i-e. Louie Armenis. He's a friend of mine. He's a developer and John's one of his project or development managers that works for him.

10 MR BUCHANAN: You knew that your brother's firm provided the architectural services for the development application?---Yes.

Who paid Chanine Design Architects for that work?---I don't know. I wasn't privy to that.

Were you involved in some financial arrangement to ensure that Chanine Design Architects were remunerated for that work?---No.

20 Did you have any equity in the development or proposed development of 31 Santley Crescent, Kingswood?---No.

Can I just ask you some brief questions that should ensure that, if we can sit on Commissioner, we should be able to finish the witness today, if there's no objection to sitting on.

THE COMMISSIONER: Does anybody have a difficulty with that?

30 MR BUCHANAN: Thank you. Mr Vella, you had dealings with Mr Vella in relation to potential projects entailing the purchase of a property at Greenacre, is that right?---Yes. Not with regard to the purchase but with regard to a property in Greenacre.

Thank you. And a property at 34 to 38 Restwell Street, Bankstown, is that right?---Correct.

You were going to talk to Khal, K-h-a-l Asfour, A-s-f-o-u-r about that site? ---Correct.

Did you?---I think I did, yes, yes.

40 Did you go with – did Mr Khouri arrange that?---No. It might have just been a phone call or a, a face-to-face meeting with Khal. I just, I can't recall.

Did you have a business association with Councillor Hawatt or Godfrey Vella in relation to potential developments at either that site at Greenacre or the site at Bankstown?---I wouldn't call it a business association. Michael made an introduction to Mr Vella and advised Mr Vella that I may be of assistance to him. To the best of my knowledge, he had owned these pieces

of land for a very long time and he was seeking the advice of somebody or potentially a joint venture from somebody as to the best way to develop his land and that introduction was made by Michael.

And thinking back on it now, who was he introducing to whom? You to Mr Vella or Mr Vella to you or - - -?---He was, he was introducing Mr Vella to myself.

10 So, he had an association with Mr Vella already, did he, as you understood it?---My understanding was, yes.

You had meetings in about December, 2015 with Michael Hawatt at Godfrey Vella, is that right?---Yes, correct.

And did the projects go anywhere?---No.

Do you know of a company called Bella Ikea Strathfield?---Yes.

20 You were involved in developing 549-557 Liverpool Road, Strathfield? I appreciate you don't remember the number now.---Yes.

But Liverpool Road Strathfield?---Yes.

Was Bella Ikea Strathfield also involved in developing that property?
---They – to the best of my knowledge, they were the party that purchased the DA approved site from my family and I believe they went on to develop the land.

30 Were you involved – sorry, as in supervise the construction?---No, I had nothing to do with that construction.

Oh, my mistake. You understood that they went to supervise the construction, is that right?---Oh, to the best of my knowledge, they were – that company was the purchaser of that development site from my family's SPV at the time. So, that Bella Ikea Strathfield was the purchaser of the site.

Were you involved in negotiations to sell the site to Bella Ikea?---Yes.

40 With whom did you negotiate?---At that point in time, it would have been the, the owner of Bella Ikea Strathfield.

Well, if I tell you three names, you tell me if you recognise any of them as being a person with whom you dealt in those negotiations. Mohammed El Badar?---No.

Hossam Matar?---Yes.

Abdullah Osman?---The, the, the second name rings a bell.

Hossam Matar?---Yes. The name Hoss rings a bell.

Abdullah Osman?---No.

A lender to that company was Talal El Badar.---No.

10 Did you have any dealings with Talal El Badar ever?---No.

About anything?---No.

When was the land transferred, when did the sale occur?---I can't recall.

20 Was it a sale?---It would have been an assignment or a nomination of a call option. So it was a sale but it's not in the traditional form of where it's a contract for sale. My family's SPV would have held an option over the site and we would have nominated Bella Ikea Strathfield to enter into the contract to purchase that site through the rights that we obtained through the call option.

Were you aware at any stage of the thought that Bella Ikea was owed money by Mr Hawatt?---Until recently reading the transcript, Mr Buchanan, I had no idea of anything that was taking place, but after reading the transcripts at the last couple of weeks I've come to know that I can understand where all of your questions are coming from. So at that point in time, no, I didn't, but most recently I can, I can see what has transpired in that period.

30 Yes. And what I actually would like you to do is just think back to that period - - -?---Yes

- - - 2015-2016. Did Mr Hawatt ever give you to understand that he owed money to Bella Ikea Strathfield?---Never.

If I ask you to assume that in July 2016 Bella Ikea Strathfield received \$100,000 essentially from Mr Hawatt, do you know where that money came from?---No.

40 You accept, do you, that – excuse me a moment. Excuse me. You accept that you and your brother had a degree of influence with Canterbury City Council by reason of your connections with Councillors Azzi and Hawatt? ---I, I wouldn't say, I wouldn't use the term influence, no.

You were certainly hoping to influence planning decisions made on the Doorsmart project DAs though, weren't you?---No, we weren't looking at influencing planning decisions, we were looking to, to the councillors to use their discretion when we needed them to vote on the application.

Mr Chanine, you don't seriously expect the Commission to accept that evidence, do you?---With respect, Mr Buchanan, I do.

And do you say that you and your brother did not have influence with Canterbury City Council by reason of your connections with Councillors Azzi and Hawatt?---I would agree with that.

10 And you didn't have influence over Canterbury City Council by reason of your connections with Jim Montague and Spiro Stavis?---No, I wouldn't use the, the term again influence.

It's plain that you had influence. You had, you organised in the space of a few days a terribly adverse decision to turn into a quite positive decision in respect of the DAs, didn't you?

MR O'NEILL: I object to that question. That's not the evidence at all. That is, that is nowhere near the evidence and it doesn't fit with the timeline. The timeline is that they had, that there was a report that was prepared that then had to go to IHAP in the interim, and Mr Buchanan has
20 asked questions about this, there was legal advice being sought, there was a whole range of things that were being done, there was nothing of the sort of a couple of days to change anybody's opinion. That is just simply not, that is simply not the evidence. It's simply not how the chronology has been, has played out at all.

THE COMMISSIONER: Mr Buchanan?

MR BUCHANAN: I press the question, Commissioner.

30 THE COMMISSIONER: Mr O'Neill, my recollection of the evidence is that, and it was clearly put by Mr Buchanan, that within a period of 10 days there were three decisions that had to be overturned. Mr Chanine didn't agree with one of them but there were definitely two that had to be overturned and within a relatively short period of a number of days that was successfully done so I'm going to allow the question.

MR O'NEILL: May it please.

40 MR BUCHANAN: You understand my question don't you, Mr Chanine?
---Yes.

In the circumstance of changing a situation which as 24 November, 2015 was distinctly unfavourable to you in three different respects to a situation that by 3 December was completely favourable to you in all respects, plainly you had influence with council through those two councillors and the general manager and the director of city planning that facilitated that change didn't you?---With respect, Mr Buchanan, I say no because the process was complete at that time. I didn't have influence on it. The only thing that I

would have influence on is anything that I was to say to a councillor which would have been Councillor Azzi or Councillor Hawatt with regards to their predetermined position on where they stand with the development.

Well, you - - -?---And in turn – sorry to cut you off.

10 Yes. No, no, go on.---In turn I would, I would seek their influence on the other councillors to have a position where they would support my application. So it wasn't influence on the, the council and the process per se, it was influence on the decision makers at the council at a council meeting.

20 And what I've suggested to you is that you, having told us that you intervened with Councillor Azzi to in particular get rid of the deferred commencement condition and succeeded, that you plainly influenced the operations of Canterbury City Council in respect of those DAs?---No. Once again I disagree because there was nothing there that I was doing outside my right as an applicant to talk to a councillor to persuade him and in turn hopefully persuade the other councillors to vote favourably for my application in the form that I'd like it to be voted, that I'd like it to be voted upon which had in there certain conditions being removed from a recommendation for approval.

30 I want to suggest to you just to make it quite clear that with Councillors Azzi and Hawatt and the General Manger, Mr Montague, and the Director of City Planning, Mr Stavis, you and your brother to your knowledge had influence on the planning decisions that related to your development applications that ordinary citizens in respect of their development applications did not have?---I disagree.

You became aware in late 2015 of proposals by the State Government to amalgamate councils?---Yes.

In late 2015/early 2016 Canterbury Council seemed to be at risk of that? ---Yes.

40 Where you ever concerned that amalgamation of Canterbury City Council might result in a dilution of complete loss of influence that you had with the council?---No.

Were you ever concerned that it might result in a loss of influence with the consent authority for the geographic area in which you were trying to carry out developments?---No. My only concern that I had with that particular amalgamation was that I had certain development applications before the council that would have sat in abeyance through that transitional period. That was my main concern.

On Wednesday, 11 May, 2016, the day before amalgamation in fact occurred, you received a text message from Michael Hawatt that I want to put before you by way of an additional document. If we can show an extraction from Michael Hawatt's telephone of a text message he broadcast to a number of people.

THE COMMISSIONER: And this isn't in evidence?

MR BUCHANAN: I'm sorry?

10

THE COMMISSIONER: This isn't in evidence?

MR BUCHANAN: This is not in evidence and I will be tendering it, but whilst I tender it I'd just like to, excuse me, please, take the witness to page 3, item 10. The same message was sent to all the recipients that are listed under Party in the third column from the left on this extraction. There are 20 of them. I tender the extraction report with copies of a text message sent by Mr Hawatt on 11 May, 2016 at 8.12pm to some 20 recipients.

20

THE COMMISSIONER: The extraction report from Michael Hawatt's phone recording text messages sent to 20 recipients on 11 May, 2016 will be Exhibit 121.

**#EXH-121 – EXTRACTION REPORT FROM MICHAEL
HAWATT'S PHONE SENT TO 20 RECIPIENTS ON THE 11/05/2016
AT 8:12PM**

30

MR BUCHANAN: Have you had a chance to have a look at the text message that you were sent?---Yes.

Do you remember receiving it?---Yes.

Do you have any understanding as to why Mr Hawatt would have sent that to you?---Um, no, and to the best of my knowledge I don't recall replying to that message because I would have assumed that it would have been a generic message that he would have sent to everyone in his phone and just by seeing this it sort of cements that view that I had.

40

In it, Councillor Hawatt indicated, "We may stay on as advisors only with continued payments of fees, all power would be left to the administrators, that's what I have, not good news so far." It seems that Councillor Hawatt you and the other people to whom he sent this text message that he, and we can assume Pierre Azzi, are going to lose power, a matter that he thought would be of interest or concern to the recipients of the message. Do you agree with that, do you accept that?---I accept that, yes.

Why did he include you as a recipient?

MR O'NEILL: I object to that question.

MR BUCHANAN: Do you know why he included you as a recipient?
---No.

Does it surprise you that he sent it to you?---No.

10 Why does it not surprise you?---Like I said, it wasn't a message that was particularly targeted to me so, it doesn't surprise me. My recollection of this at the time or my thought process would have been that he sent this to everybody in his phone.

But it would seem from reading of it that Michael Hawatt seemed to think that you as one of the recipients would share or at least understand his view that it would be not good news if he and the other councillors lost all power on Council?---Like I said earlier, it was a message that I received, I read, and quite possibly just deleted.

20

Did you think it was good news or not good news that he and the other councillors would lose all power on Council?---I thought that it would not be good news because there would be nobody to then turn to if I had any issues with my current applications which were before the Council.

Not because you would lose a person who could influence planning decision making at Canterbury, that would influence your business?---No.

Thank you Mr Chanine.---Thank you.

30

THE COMMISSIONER: Ms Bulut?

MS BULUT: No questions Commissioner.

THE COMMISSIONER: Mr Tyson?

MR TYSON: No questions Commissioner.

THE COMMISSIONER: Mr Andronos?

40

MR ANDRONOS: Nothing, Commissioner.

THE COMMISSIONER: No, I'm sorry, is it Ms Bennett?

MS BENNETT: Yes. No questions, Commissioner.

THE COMMISSIONER: Mr Drewett?

MR DREWETT: I've got no questions Commissioner.

THE COMMISSIONER: And Mr Pararajasingham?

MR PARARAJASINGHAM: Just very briefly, Commissioner. Sir, can you hear me all right?---Yes.

10 I appear for Mr Stavis. There's just one aspect of your evidence I'd like to clarify, if I can. You gave some evidence about your dealings with Mr Stavis when he was at Strathfield Council.---Yes.

In particular you gave some evidence about a development application concerning a property on Liverpool Road?---Yes.

Is this the position, that you originally submitted a complying DA?

20 ---For lack of a better word I would say complying, because no development application I've ever lodged is completely complying, but it would have been, I can't recall the word I use, yes I can, by and large it would have been a complying development.

Okay. And notwithstanding that it was by and large a complying development, you understood that there were some residential objections?

---Yes, there was a resident action group against the development.

Okay. And it's the case that it was in response to that, that Mr Stavis made some suggestions as to how that development application could be amended?---Correct.

30 And the suggestion made was to satisfy the residential objection, to increase the setback and then use that yield to place on top of the property?
---Correct.

And that was also to your satisfaction?---Correct.

Yes. Thank you, Commissioner.

THE COMMISSIONER: Mr O'Neill.

40 MR O'NEILL: Commissioner, could I just take one minute to discuss with my client, I don't need you to adjourn, if you could just permit him just to step down and I can just seek instructions on whether I need to put anything to him?

THE COMMISSIONER: All right. That's fine. I can just pop outside if that would give you - - -

MR O'NEILL: I don't, I don't, I don't necessarily need an adjournment. It won't be a very long conversation.

THE COMMISSIONER: All right.

MR O'NEILL: May it please.

10 MR BUCHANAN: While that's occurring, Commissioner, can I just indicate to the rest of the hearing room that Exhibit 121 will be uploaded to the public website this evening. Unfortunately we don't have hard copies to hand out at this stage.

THE COMMISSIONER: Okay. Thank you.

MR O'NEILL: I have no questions, Commissioner, thank you for that time.

20 THE COMMISSIONER: Now, Mr O'Neill, I don't intend to excuse Mr Chanine at this point. I want to see at a minimum your submissions in respect of the direction you're seeking under section 112.

MR O'NEILL: Yes.

30 THE COMMISSIONER: My understanding, and this also was raised in respect of another witness, if ultimately everything can be resolved, I do have the power to excuse Mr Chanine from giving further evidence in his absence, but at the moment I won't excuse you, Mr Chanine, which means you're still subject to the summons and if I require you to come back and give some further evidence you'll be notified by your legal representative. ---No problem.

MR O'NEILL: May it please.

THE WITNESS STOOD DOWN **[4.53pm]**

THE COMMISSIONER: All right. Mr Buchanan, no other administrative matters to deal with?

40 MR BUCHANAN: There probably is, but I can't remember what they are at the moment.

THE COMMISSIONER: All right. And look, thank everybody for staying back after 4.30. We stand adjourned until 9.30 tomorrow morning.

AT 4.53PM THE MATTER WAS ADJOURNED ACCORDINGLY
[4.53pm]