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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 TUESDAY 17 JULY, 2018

AT 2.00PM

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

<ANDREW CARSON HARGREAVES, on former oath [2.00pm]

MS MITCHELMORE: Yes, thank you, Commissioner.

Mr Hargreaves, can I take you to page 277 of volume 26, I think you should have that volume in front of you still.

THE COMMISSIONER: 26 or – sorry.

10

MS MITCHELMORE: 26.

THE COMMISSIONER: 26, yes.

MS MITCHELMORE: Yes. Page 277 you'll see is an email from Mr Black to yourself and to Mr Stavris of 4 November, 2015, which provides the first of two emails with draft assessment reports and a request for assistance with completing some sections to be completed and consent conditions but consistent with the deadline that you had imposed for Mr Black - - -?---Yes.

20

- - - he's getting it in just after 5 o'clock on 4 November. Is that right?---It is.

And is it the case that you reviewed these drafts when they came in for the - - -?---I don't know that I would have reviewed them, I suspect I would have seen what he needed to have put in.

Yes.---I don't know that I would have read the reports. I would have reviewed them with a view of saying, well, what information does he need.

30

All right. So just going over the page to 278, you'll see this is a draft, and it's in the form of the council officers' report.---Yes, it's in the form of a report of, that would be referred to a council committee.

Yes, that's right. So using a standard template as it were of the council. ---Template, yes.

And there's a summary on page 278 and heading over the page.---Yes.

40

And then if you just want to have a look through, it conforms with the general content of an - - -?---Council report.

- - - officers' report. Is that right?---Yes.

Yes.---Yes.

Can I show you or ask you, Mr Hargreaves, to look at a document that was provided I think in the context of your record of interview, which is at page

58. You'll see, Mr Hargreaves, that's an email from you to Mr Gouvatsos dated 10 November, 2015 at 10.15am. Do you see that?---I've got a different document.

Oh, I'm sorry.---That's okay.

If you look at the document on the screen.---Sure, yeah.

Have you got that?---Yes.

10

You'll see that's an email from you to Mr Gouvatsos with the subject, Reports for 212-218 and 220-222 Canterbury Road?---Yes.

And it's 10 November at 10.15 and you've sent it to Mr Gouvatsos, attaching the reports prepared by Mr Black for the two sites?---Ah hmm. Yes.

20

And you indicate that you've read both and you've begun to make changes in red to 212 Canterbury, so that was the report relating to 212-218 Canterbury Road.---Yes.

Is that right?---Yes.

And you've indicated in the next paragraph that, "Notwithstanding if we support these two reports as they're written or not, (and I don't), there are two issues that require our action." And the first of those was the fact that reports were silent on the treatment of the setback from, and you said, "Our property," at 15 Close Street, being the bowling club. So that's the council property which was to the rear of these sites.---Yes.

30

Is that right?---Yes.

And the second issue that you've raised was referrals and that the amended plans have not been re-referred. Are you there referring to the fact that the plans that were submitted in September of 2015 hadn't been passed on to agencies that might have a role in reviewing the DAs?---I suspect that's what that means, yes.

40

And you've said there, "As far as Paul, Nina and Troy go, I can condition them." Are you able to tell the Commission who - - -?---Oh, certainly.

Or what agencies that they refer to?---So Paul is Paul Richardson who was our development engineer, Nina is Nina Kuraf who was our landscape architect, and Troy is Troy Leedham, who was our waste officer.

So they're internal to council?---Oh, yes, yes.

Yes. And then you refer to Sydney Trains saying that they hadn't concurred and requested amended plans which they haven't seen but you say, "I might be able to deal with this by deferred commencement." And can I ask what you meant by that? You might be able to deal with by deferred commencement?---It may have been that we could have issued the approvals by way of deferred commencement consent requiring Sydney Trains concurrence.

10 All right. Was that a course that was often adopted with respect to - - -?
---No.

I'm sorry, was that - - -?---No, it was not.

No. Why were you suggesting it in this case?---With a view of trying to achieve the time frame that the director had wanted.

So, that was IHAP on 24 November?---Yes.

20 And then you've indicated that neither DA went to RMS but did go to Sri.
---Sri, yes.

Sorry, Sri is?---He is our traffic engineer.

So, internal again, to council?---Yes.

And is it he?---He.

He had asked for amended plans, et cetera, which he hasn't seen.---Right.

30 So is it the case that the amended plans that were received in September
hadn't been forwarded on to internal council officers?---Correct,

Or to Sydney Trains, is that right?---Yes.

I see. So they were two issues that you raised with Mr Gouvatsos but otherwise you provided him with the report that you had started to make changes to one of them, is that right?---Yes.

40 Can I ask you, Mr Hargreaves, to now go to a new volume, volume 27 of
Exhibit 69. Now, I want to take you to page 2. You'll see, this is an email from you to Mr Black at Planning Ingenuity on 10 November at almost 4 o'clock in the afternoon, attaching the first half of the report for 212-218 Canterbury Road, is that right?---Yes.

And you're saying it contained feedback that could be used for both reports. So notwithstanding it was only one, they could translate the feedback on to the second of the reports and you've asked that they commenced amending both reports to reflect the matters shown attached, and you've indicated that

the second half of the report you suspected – in the last line – would be forwarded tomorrow as well as for all further amendments, is that right?
---Yes.

And if I can ask you to go to the next page, you'll see that this is a document that's got some handwritten annotations for 212-218. So, this was the draft report and can I just ask you, Mr Hargreaves, you'll see that there is handwriting on this document which appears to be from a number of different persons, and it might be best to look at the screen because it's got a colour copy. So, just asking you, you'll see that there's a strikeout of director (city planning) with a tick and, "Leave." Do you see that there?
10 ---Yes.

Do you recognise that handwriting?---It looks to be the handwriting of Spiro Stavis.

And what about the amendment to, or actually the words, "Chanine Design," in the table which says, "DA number." Do you know - - -?
---Yeah. That is the handwriting of George Gouvatsos.
20

And the annotation or the addition point that's been inserted under, "Summary." Do you recognise, is that Mr Stavis' handwriting?---It is.

And he's inserting there, "This report had been prepared by Planning Ingenuity Pty Ltd, an independent external planning consultant on behalf of council," is that right?---It is.

And just if I can ask you to look, perhaps just going through the document over the page, if you can identify any additional or handwriting of other authors aside from Mr Stavis on that page?---Mr Gouvatsos has written blue at the final dot point, "Director (city planning) has recommended that the application be approved subject to conditions," which has been scratched out in red.
30

And then just heading over the page – actually can I just take you back to page 4, Mr Hargreaves. You'll see that there's some mark-up on this page in terms of actual, in the word document. Can you see there's some track changes?---Yes.

40 Do you know who made the track changes?---I did.

You made the track changes?---Yes.

All right. So where there's track changes - - -?---Yes.

Yes. All right. So they're your track changes into the document directly?
---The previous email that I sent to George where I've said I've begun to make changes in red are those.

Thank you. So then just heading over to page, heading over the pages and I'll just ask you to identify, think you skipped over page 5 but can I just ask you just working through the document if you can identify handwriting that belongs to anybody other than Mr Stavis on any of the pages as we work through the?---Certainly. Possibly the T in site details may have been George's.

10 Oh, I see. Yes, yes. I don't think that constitutes handwriting.

All right. And then on page 6?---Is Spiro's handwriting.

Thank you. Page 7?---I don't know. Judging by the colour of the ink I would suggest the query against figure 5 is George's.

So that's where the circle and question mark is - - -?---And question mark is.

20 - - - in the margin?---Yes.

Thank you.---And the red tick I take to be Spiro's.

Thank you. Moving over to page 8?---The working "deferred com" I take to be George Gouvatsos's. That handwriting is Spiro Stavis's.

On page 9, yes.---Sorry.

30 And page 10?---The same. The handwriting in red is Spiro's and the handwriting in blue is George Gouvatsos's.

And then on page 11?---The same.

The same. Page 12?---That's George's handwriting.

Thank you. And then over the page 14?---In blue is George's handwriting and in red is Spiro Stavis's.

40 All right. And just pausing there. What Mr Stavis is commenting in terms of the left-hand margin is insert RFDC SEPP 65 compliance table.---Yes.

Is it the case that, excuse me, in council assessment reports the way that, as you can see at the bottom of the page table 1, compliance with guidelines such as the RFDC were done in a table format?---Usually yes.

And so did you understand the reference to insert SEPP 65 compliance table Andrew send to Ben - - -?---Yes.

- - - a reference to a request for you to send a table - - -?---Yes.

- - - that could be inserted into this part of the report?---Correct.

And then on the right-hand side Mr Gouvatsos has written, “Consider draft LEP on council land and setback from rear.” Do you see that?---Yes.

And that's consistent with your having drawn to his attention in your earlier email the fact that there was no content in this report dealing with that issue?---Correct.

10

All right. And then just moving on then through the report in terms of handwriting.---15 is Spiro's handwriting.

Yes.---The same on 16 except that's George's handwriting that says “check”
- - -

Check.--- - - - on the penultimate paragraph.

20 In the right-hand margin?---Yes. On 17 again that's some markings against methods which based on it being red I take to be Spiro's.

Yes.---The handwriting on page 18 is Spiro Stavis's. The same again on page 19.

Yes.---The handwriting in red on page 20 is Spiro Stavis's and in green looks to be George Gouvatsos's.

30 Yes. So in the left-hand margin - - -?---Yes, is Spiro's and on the right is George's.

And the right-hand margin is Mr Gouvatsos and is the query in the right-hand margin “is this enough justification for FSR”?---Yes.

Is that what you read there?---Yes.

And then can I ask if you can make out what it is in the right-hand margin?
---Is this condition.

40 Is this condition. Okay.---And some underlining in the final paragraph.

Yes.---And there's some underlined words that says “is this condition”.

Yes. All right. So that's the extent of the handwritten amendments that we have in relation to that report, Mr Hargreaves. Was it Mr Gouvatsos' practice to suggest, looking at the comments that he's made, were they consistent with his practice in terms of your understanding or your experience of his review of reports of this nature?---Yes. Draft reports for

IHAP or CDC would be referred to him as the manager for his initial review.

Yes.---The report would be amended to cater for those comments.

Yes.---Sometimes they were purely typographical matters, sometimes they wanted things expanded.

10 Yes.---The matter was then referred to the director as the report to either the City Development Committee or the Independent Hearing and Assessment Panel was the recommendation of the director.

And similarly Mr Stavis as the director would make amendments or comments - - -?---Yes, oh, yes.

- - - where he thought changes needed to be made or expansion - - -?
---Correct.

20 - - - required or clarification required. Is that right?---Yes.

All right. Can I just take you back to page 19, and Mr Stavis was raising an issue here with the fact that the proposed DA complied with the height and landscape, and on the existing development controls the FSR would be in excess of the FSR permitted under the control plan. Is that your understanding of his comment?---I believe what he is trying to say is that the, for want of a better word, building envelope controls established by setbacks and height would allow for a greater building than what the floor space ratio in our LEP would cater for.

30 Yes. And is that a matter that you gave consideration to at the time?
---No. Council did not have a building envelope control, it had a number of controls which catered, which allowed for a building envelope.

Yes.---Each of those controls were separate individual matters that needed to be considered.

40 Yes.---It's quite often that if you did have a building envelope control it would often allow for a greater building in terms of floor space ratio than what an LEP may have.

Yes.---That's designed to give flexibility to designers to create ideally something of architectural merit.

All right. So the fact that the FSR permitted by the building envelope might be greater was in your view not something that would justify an increased FSR - - -?---Oh, no.

- - - of the nature here proposed?---No.

You didn't consider the point that Mr Stavis was here making - - -?---Well, that's what he is trying to suggest.

Yes.---I take a different view.

You didn't agree with that - - -?---No, I don't.

- - - as a justification.---No.

10

Now, can I take you then to page 23 of this volume, Mr Hargreaves. You'll see at the bottom of the page an email on the 12th from Mr Black saying, "Updated Report and Conditions Attached."---Ah hmm.

Do you see that? The DA 168 and he'd have the other report and conditions shortly and there was an issue with the fact that the report wasn't attached and so he was attempting it again. If I can take you to page 26 you'll see the start of the report - - -?---Yes.

20

- - - the earlier draft of which we've seen part of, which I've just taken you to, and you'll see that it would appear that the comments, the handwritten comments that were made in the earlier version starting at page 3 appear to have been picked up for the greater part in this?---Some of them have been, yes.

Yes, noting that the applicant is still listed as Chanise Design.---Yes, Chanise, yes.

30

But for example, the first bullet point now says, "This report has been prepared by an independent external planning consultant" - - -?---Yes.

- - - "on behalf of council," which was an amendment suggested by Mr Stavis. Is that right?---Correct.

And going to page 27, there is now a reference to the external consultant having recommended that deferred commencement be issued in relation to a number of matters. Do you see that?---Yes.

40

And one of those matters was, "Submission of amended architectural and landscape plans increasing the building setback to three metres from the rear boundary, adjoining 15 Close Street." So, it's the case that this version of the reports had some allowance being made and some other discussion of the setback requirement for 15 Close Street, is that right?---Yes.

And that's consistent with Mr Gouvatsos having raised that in the earlier version of the report?---Yes.

And can I take you to page 37. At the bottom of that page you'll see a heading Flat Design Code and there is now a table which you'll see going over a number of pages, page 38 and 39. So, that is the insertion of what Mr Stavris referred to as the RFDG table, is that right?---Correct.

10 And you'll see on the top of page 38, there's a heading Building Separation and a reference to the fact that the buildings on the site are nine metres apart, noting that the only adjoining building is to the south west. "A nil side boundary setback is acceptable with the open plaza area providing adequate light and ventilation." But then noting to the south of the site is a property known as 15 Close Street, "Which is currently zoned RE1, public recreation. The propose building currently has a nil setback to this property however, it is proposed to be increased to three metres as result of the deferred commencement condition"?---Yes.

So, again making allowance for a setback to be built in to the design to satisfy setback requirements consistent with the RFDG, is that right?---Yes.

20 And if I can take you to the note on page 39, under the heading Building Separation. You'll see there's a reference to 15 Close Street and the fact that it was currently zoned RE1 with a nil setback and over the page was reference, as you had raised with Mr Black, that there was a draft LEP to rezone that area and that it was understood that that proposal was near finalisation?---Yes.

30 And then over, just skipping a paragraph, you'll see, "Rezoning of the bowling club would allow for residential apartment development and as such, building separation must be considered." And council had identified a nine metre setback to the common boundary with the subject, "Site under a draft master plan," and it was indicated or considered that it was appropriate to recommend the application be approved subject to a deferred commencement condition requiring a three metre setback to the common boundary which would create a 12 metres separation between the buildings, which was considered to be a reasonable compromise give the LEP hadn't been finalised. Do you see that?---Yes.

Was that a view with which you agreed at the time?---No.

40 Why not?---Because it doesn't meet the setback requirements of SEPP 65. SEPP 65 talked about effectively sharing the setback and it talks about having residential flat buildings being separated depending on their height of 18 metres. The theory behind that is that you have your common boundary and you move nine metres either side and that is your setback. That setback is to provide for visual and acoustic privacy as well as solar access, provision of canopy trees. This would not meet that and, if my understanding of the three metres setback is correct, would require that any building on the council owned property, if it were to be rezoned and

developed, would therefore have to be a 15 metre set, setback 15 metres from its common boundary rather than the anticipated nine.

So, if the building separation was shared equitably, as between the two properties, it would be nine metres from the boundary for both development on the applicant's side in this case and development on the council land?
---Yes.

10 But in this case what was being recommended was only three metres on the applicant's, a three metre separation from the applicant's boundary to its buildings, is that right?---It was, I think from memory it was zero for the first two levels and then three from the upper levels. Even if one discounts the lower levels, I'm not sure how three metres was arranged as a considerable compromise.

Do you recall any discussions about the three metre setback with Mr Black at all?---No.

20 Do you recall discussing it with Mr Gouvatsos?---Not after this report, no.

Did you discuss it before?---Well, yes, in that initial email that I sent where I said I didn't support them. That was the reasons including setback. I don't know that this addition to the report changed or has changed by view.

All right. Do you recall any discussions with Mr Stavis about the setback and building separation issues?---No.

30 And if we can just, just to complete this issue, if I can take you to page 63, Mr Hargreaves, you will see that there is a specific note dealing with the rear setback where again that issues is just being dealt with again and consistently with the earlier material at the bottom of page 63 then over to page 64 there was a recommendation that there be a deferred commencement condition requiring amended plans with a three metre setback to the rear. And then can I also just ask you about page 45. You will see there's a heading, I'm taking you backwards in the report, there's a heading titled FSR and you will see in the third paragraph underneath it says, "It should be noted that a proposal which complies with the setbacks, height and landscaping controls envisaged for the site on those an FSR of approximately 5.8:1 would be generated which is far greater than the max
40 FSR under the LEP and consequently it appears there's no correlation between the FSR standard and the other controls in the LEP and DCP." Do you see that?---Yes.

And that's consistent with the amendment that Mr Stavis suggested in his - - -?---It is.

- - - in the earlier handwritten annotations to the report and as you've indicated you didn't agree with that as a justification for an FSR - - -?---No, I didn't.

- - - which exceeded the control and the LEP?---No, I didn't.

10 Can I take you to page 68. You will see, Mr Hargreaves, that this is a version of the report which has the mark-ups from the version that Mr Black sent back on 12 November but it's got further handwritten amendments. Do you see that?---It does.

Including a reminder to change the name of the applicant.---Yes.

And you will see that it indicates that it was, there's a handwritten comment at the top "checked by George and Spiro 13/11/15". Do you see that?---I do.

20 Whose handwriting is that?---It looks to be Spiro's, Spiro Stavis's handwriting.

All right. And next to it is another note saying is it "Ta, Spiro 13/11/15"?
---Yes.

And is the blue handwriting correcting Chanise to Chanine is that Mr Stavis's handwriting?---I don't know. I don't recognise that handwriting.

30 All right. Taking you over the page then, are you able to identify anybody's handwriting on that page other than that of Mr Stavis?---No, it all appears to be Mr Stavis's.

All right. And then over the page at page 70?---No, that appears to be Mr Stavis's handwriting.

Page 71?---The same again.

All right. And then looking at page 74?---The handwriting in what appears to be black on the right-hand margin is George Gouvatsos's handwriting.

40 That's in the right-hand margin, yes.---Yes.

Is that condition required?---Condition required.

Yes. And is that the same over the page on page 75?---It is.

And then page 76, that's Mr Gouvatsos at the top of the page with "condition?"---Condition. And then - - -

Otherwise Mr Stavis' handwriting. Is that right?---In blue below, yes.

Yes. And then over the page, 77 in the right-hand margin?---Mr Gouvatsos' handwriting.

Yes. And the underneath at the bottom, that's Mr Stavis?---It does appear to be, yes.

And - - -?---I don't know what the red is on the left.

10

Yes. Thank you. And then looking at page 78, that's another Mr Gouvatsos condition?---Yes.

And then over the page on, sorry, page 81, that's just a check for consistency?---Yes.

Is that Mr Gouvatsos?---It is.

20

Yes. And over the page a similar comment's being made at the top of page 82.---Correct.

And the amendment of "suite" to "site." Do you recognise that handwriting?---That looks to be George's.

Thank you. Now, page 94, again is that Mr Gouvatsos?---It is.

And then page 108?---That appears to be Spiro Stavis' handwriting.

30

Thank you. And then the conditions commence, I think page 110 is perhaps out of order, if I can take you to page 111 you'll see that that's the start of conditions, and again it says, "Checked by Spiro and George." Do you see that?---I do.

And the handwriting, just going back to page 110 - - -?---The handwriting in blue and black looks to be George Gouvatsos'.

So that's the handwriting in blue in the - - -?---Yeah. The comments in red I don't recognise.

40

Thank you. And just going to page 111, the recommendation was that the development application be approved as a deferred commencement consent and there was a number of conditions for the deferred commencement which included in point 1, amendment of the plans to include or create a three-metre setback. Do you see that?---I do.

And plans were to be submitted allowing for future development potential of an isolated lot, being 224 Canterbury Road. Do you see that?---I do.

And there were further amendments dealing with built form but referring to in point 3 the need for referral to internal and external bodies including Sydney Trains?---I do.

Which picks up the point that you've made to Mr Gouvatsos back on 10 November. Is that right?---Yes.

10 And references to the need for amended plans as well as an amended SEE, statement of environmental effects, which addressed the issues that are raised in point 4.---Yes.

Can I take you now, Mr Hargreaves, to page 168. I'm sorry, Mr Hargreaves, before I do that can I just take you back to page 114, sorry, I just leapt over something. You'll see that 114 is the draft report for 220-222 Canterbury Road and 4 Close Street. Do you see that?---Yes.

And again it says it's been checked by George and Spiro on 13 November, 2015. Do you see that?---I do.

20 And again is it the case, just looking at the various pages, that the comments were variously made either by Mr Stavis or Mr Gouvatsos?---Yes.

And if I can now take you to page 168. Have you got 168 Mr Hargreaves? ---I do. Oh, sorry.

No, no. That is a follow-up email from Mr Stavis to Mr Black, checking on progress?---Yes.

30 And there's a reference in the top email to he can't stress how important the 9.00am deadline is. Do you see that?---I do.

This is sent on 15 November at 4.21pm. Do you see that?---I do.

Was the 9.00am deadline, was that an IHAP-related deadline to your knowledge?---I would, I would expect that it would be, yes.

40 Okay. And it's the case that there was only one IHAP meeting left for this year, is that right, for 2015, which was to be held on - - -?---I think there was actually two.

I see.---One on the 24th and one on the 25th. IHAP contains two panels, one that meets regularly, and then, for want of a better word, a reserve team if someone is ill, however we could have had two IHAPs running concurrently in order to move things through.

Thank you. Can I take you to page 171. And you'll see with five minutes to spare, Mr Black provides on 16 November the first email attaching the DA for 212-218 Canterbury Road. Do you see that?---I see that.

And you'll see at page 217 there was a further email sent at 9.14 which you'll see attached the draft report for 220-222. Do you see that on page 218?---218 is the - - -

I'm sorry, 220-222.---Oh, okay, thank you.

Yes, I'm sorry.---That's okay.

10 On page 218.---There we go, yes.

All right. Thank you. Now, it's the case that IHAP met on 24 November, 2015. Is that a - - -?---I can't remember the 24th or the 25th. I think it was, my memory is that there were two, one after the other.

On the consecutive days, 24 and 25?---Yes, yes.

20 Can I take you to volume 28. You might need to hang onto volume 27 because I'll come back to it, but just going to volume 28, page 160.

THE COMMISSIONER: Sorry, what page?

MS MITCHELMORE: 160, 160. You'll see that this is an extract of the IHAP recommendation in relation to the development application 212-218 Canterbury Road. Do you see that?---Yes.

And you'll see that it recommended that the development application be refused. Do you see that?---Yes.

30 And there were two reasons given. The first was that it exceeded the maximum permissible FSR provisions by over 100 per cent?---Yes.

And the grounds of the objection under clause 4.6 didn't demonstrate that the FSR controls were unreasonable or unnecessary, nor were there sufficient environmental planning grounds to justify contravening the development standard.---I see that.

40 And they were two criteria that needed to be satisfied in order to in effect vary the development control pursuant to clause 4.6.---Yes.

And you'll see that the vote was 5-nil in favour.---Yes.

And the panel's assessment is at the bottom of page 160 going over to page 161.---Yes.

And the focus was on clause 4.6 and the FSR and over the page at 162 there was a reference to the panel's view that the grounds advanced by the applicant are not particular only to the proposed development and to accept

a departure from the standard would not promote the proper and orderly development of land as permitted as contemplated by the controls applicable to the B2 zoned land and that was an objective of the EP&A Act that it reflect the orderly development of land?---Correct.

And then at, sorry, about halfway down the page the panel found it difficult to justify the variation and couldn't recommend approval but made a number of comments to assist with the redesign of the application. Is that right?---It has.

10

And is that something that the panel would ordinarily do in terms of making comments to assist in a possible redesign?---The panel may.

Yes.---It didn't always.

But that was something it could do?---It could do, yes.

20

Were you at the IHAP meetings?---I was not at the closed session. I did attend the meeting. It was my practice to attend the meeting it being the site inspection with the panel members effectively to introduced them to the site. To attend a pre-meeting with them if they had any questions arising from the report. To attend the actual meeting but their discussion was closed. It was only for members of the panel and the secretary.

Yes. Just pardon me one moment. And so when you're talking about the site visit, if I can just take you back to 160. So there's a reference in the panel, in the extract here to an inspection of the site being undertaken so you were present for that?---Yes.

30

And you were also present for the public address given by Mr Ziad Chanine? Is that right?---I was. Yes.

Was Mr Black present at all as the person who prepared the report?---No.

Did you consider he should have been?---No.

Why not?---Assessing officers don't attend IHAP.

40

I see. It's just more senior officers. Is that right?---Yes.

Thank you.---It's not beyond the realms of possibility for them to do so but it was not practice for assessing officers to attend IHAP.

Thank you. Can I then take you to page 164 in this volume. You will see that that is the IHAP recommendation for 220-222 and 4 Close Street. Do you see that?---Yes.

And again IHAP was recommending that it be refused again because of the exceedance of the FSR but in respect of this it was over 50 per cent rather than being over 100 per cent on this site?---Yes.

And that the grounds of objection under clause 4.6 didn't demonstrate again that the FSR controls were unreasonable or unnecessary nor were there sufficient environmental planning grounds to justify contravening the development standard?---It does.

10 And you will see at the bottom of the page that the panel was of the view that the same comments and arguments apply as those regarding the application for 212-218 Canterbury Road, so cross-referring to their discussion in relation to 212-218 Canterbury Road?---Correct.

Because it raised the same issue, namely, exceedance of FSR in circumstances where there wasn't appropriate justification pursuant to clause 4.6?---That's right.

20 Can I take you to page 260, I'm taking you back to volume 27, Mr Hargreaves, and just to remind you that in your email of 10 November you've raised an issue with Mr Gouvatsos about referrals including Sydney Trains. Do you recall that?---Yes.

And at page 269 you will see there's an email, the email at the top of the page on 269 is from Mr Stavis to Mr Marwan Chanine and you're blind copied in with Mr Gouvatsos. This is dated 26 November.---Yes.

And you will see that it forwards an email from Mr Jim - - -?---Tsirimiagos.

30 Tsirimiagos, thank you, of 25 November, it was sent at 10.19pm and Mr Tsirimiagos is dealing or raises the issue about the fact or concern that they were unable to consider deferred commencement. Do you see that?---I do.

And they may have considered that avenue of the issue to be assessed was purely the impact in the actual rail corridor but this site had a number of issues that needed to be addressed which resulted in too many unknowns, as you didn't have any, or Sydney Trains didn't have any documentation, which may also result in changes to the design, creating a development different to that approved by council. Do you see that?---Yes.

40 So, notwithstanding that you had thought that it might be able to be dealt with by way of deferred commencement, the email from Mr Tsirimiagos was indicating that that from Sydney Trains perspective - - -?---Was not the case.

That wasn't the case. And you'll see Mr Stavis' email at the top says, "FYI, maybe you can pass this to Mr Chanine. Maybe you can pass on to your legal team to review and advise." And then, "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.” Do you recall discussing that option with Mr Stavis at or around the time of this email?---I don't know that I would use the word discuss. Mr Stavis asked for what can be done and suggested that, or my recollection is that he suggested that we amend the recommendation such that once we obtained concurrence, as he said here, that the council delegate their authority to the general manager to issue a determination.

10 Was that an option that was regularly adopted by council?---No.

Had it been adopted before to your knowledge?---Not to my knowledge.

Did you have a view about its lawfulness?---I thought it highly irregular. I don't know that I turned my mind to its lawfulness, only with a view that the council wasn't actually determining the application. They were considering it and then issuing delegation to someone else once something else had happened it was not something I was overly comfortable with.

20 And did you, did you discuss or tell Mr Stavis that you weren't conformable with it and, and your reasons why?---If I did I have not committed them to memory, I'm sorry.

Can you recall discussing that issue with Mr Gouvatsos?---No.

You'll see in Mr Stavis' email that there was a suggestion that maybe Mr Chanine would pass on to his legal team to review and advise. Do you see that?---Yes.

30 Do you recall if there was any discussion of whether council should obtain some advice about this issue?---Not that I was involved in, no.

Thank you. Do you recall, Mr Hargreaves, that subsequent to IHAP the applicants provided council with their legal advice in relation to the setback condition?---Yes.

Can I take you to page 274 of this volume. You'll see that that is a letter dated 27 November, 2005 [sic] from Sparke Helmore Lawyers to Mr Ziad Chanine, do you see that?---Yes.

40

Do you recall seeing this advice at or around it was provided to council, which was on 22 November?---Yes.

And do you recall reviewing the advice at that time?---No.

Is it likely that you did review it at that time?---At the time I was asked to prepare a response for it so I assisted the director in doing so. I don't know that I, on reading it, agreed with it. That was the argument they were giving

us to support a three metre setback or even the removal of a three metre setback. As I wasn't happy with the setback or the rest of the development in its entirety, I don't know that this would have changed my view.

Can you recall whether this legal advice was provided to Mr Black at Planning Ingenuity?---I don't believe so, no.

10 Did you consider there was any reason to provide it to Mr Black as the author of the assessment report?---As the report had already been written I don't know what Planning Ingenuity would have been able to contribute to it. They had already written their report and that had been put onto the agenda, you weren't able to then amend the report. You could add to it in a, in a, in a supplementary report, but you couldn't then amend the actual report.

And what you're referring to there is after the report's been submitted to IHAP - - -?---Yes.

20 - - - it's not further amended - - -?---No.

- - - after that point, but one can supplement it with additional advice - - -?
---Correct.

- - - to the council when it makes its decision - - -?---Yes.

- - - subsequent to the IHAP decision or recommendation.---Yes.

30 Do you know if this legal advice was provided to the council's solicitors?
---Not that I know of.

Whose decision would it have been to take that course?---I imagine it would be Mr Stavis's.

Did you discuss the possibility of referring this advice to council's solicitors for them to review?---No.

Can I take you then, Mr Hargreaves, to page 293. You'll see this is an email from you to Mr Stavis of 30 November, 2015 - - -?---Yes.

40 - - - which copied in Mr Gouvatsos, and says, "Attached is a memo from the GM to all councillors about changing the recommendations for 212-218 and 220-222 Canterbury Road on Thursday's CDC meeting."---Yes.

"This memo includes a cover from the GM as well as a response to the opinion from Sparke Helmore and a revised recommendation for each DA." Insofar as that sentence refers to a response to the opinion from Sparke Helmore, I think you've just given evidence that you were asked to prepare that response. Is that right?---I wouldn't use the word prepare. I typed it.

I see.---I assisted the director in preparing that response.

You did the typing, but in terms of the content of the response - - -?---It was the director's, yes.

And there was a covering memo from the general manager, is that right?
---Yes.

- 10 And is the reason that the covering memo from the general manager was necessary was because only the general manager communicates with councillors?---Correct.

And you've indicated that also attached to the email was the Sparke Helmore opinion - - -?---Yes.

- - - in respect of which a response had been prepared, typed by you as directed by Mr Stavis. Is that right?---Correct.

- 20 Can you recall how it was that you came to prepare this package of documents, can you recall the circumstances which surrounded its creation or discussions that occurred around that time?---I imagine I would have been asked by Mr Stavis to prepare it.

Was there any discussion with Mr Stavis and Mr Gouvatsos about the appropriateness of the course that the memo recommended?---Well, not with Mr Gouvatsos, no. Mr Stavis asked me to prepare it and it was prepared.

- 30 Can I take you over to the actual draft of the memo which is at page 302. You'll see going through the volume that the advice of Sparke Helmore is first, but then at page 302 is a draft of that memorandum. Do you see that?
---Yes.

So again is it the case that you typed this memo?---Yes.

Are you responsible for its content?---I would say no.

Who's responsible for the content?---The director.

40

And was it the case that you were typing under dictation or what were the circumstances in which you typed the document?---I suspect it either would have been dictation or Mr Stavis would have left notes for me to do.

And the first paragraph you'll see the agenda item, I'm sorry, refers to particular agenda items and says that those items should each be approved as a deferred commencement consent. And you'll see the next sentence,

“Unfortunately we’ve obtained legal advice that prevents this.” Do you see that?---Yes.

Can you recall what legal advice is there being referred to?---No, I can’t.

Aside from the email from Mr Tsirimiagos about Sydney Trains not accepting a deferred commencement for reasons that he identified, can you recall any other communications about the lawfulness of a deferred commencement consent around this time?---No, I cannot.

10

And you will see the third paragraph, sorry, refers to – the second paragraph refers to a principal reason for the deferred commencement was concurrence.---Yes.

And that that couldn't, until that was received a determination couldn't be made. And then the next paragraph refers to a secondary reason that the applicant had to increase the rear setback to three metres. Do you see that? ---I do.

20

And then there’s a reference that since the matters were considered by IHAP we’ve received a legal opinion that increasing the setback from nil to three metres is unreasonable and this position is supported by the director (city planning). Do you see that?---I do.

And you will see that the recommendation of the general, or as it’s typed there was a recommendation that the committee determine each item as an approval in principle whereby once concurrency is received each application be approved by delegating authority to the general manager.---Yes.

30

That was consistent with the suggestion that Mr Stavis made to Mr Marwan Chanine that that might be a way by which the applications could proceed through the meeting. Is that right?---Yes.

All right. Now, can I show you another version – actually, no. Just pardon me a moment. Can I show you just, I think I want volume 28. If you still have volume 28.---I do.

40

Mr Hargreaves, just looking at page 3 you will see a further version or an email from you to Mr Stavis and again copied to Mr Gouvatsos of 2 December which attaches as you will see on page 4 a further draft of the memorandum to all councillors from the general manager about changing the recommendation on tomorrow night’s CDC agenda. Do you see that? ---Yes.

And you will see over the page on page 4 the draft memorandum and there’s now a reference in the memorandum to IHAP’s recommendation to refuse the applications for non-compliance. Do you see that in the second paragraph?---Yes.

And again there was a recommendation that the committee resolve to approve these in principle. Do you see that?---Yes.

And the order in the memo has slightly changed in that the reference to the Sparke Helmore legal advice is in the penultimate paragraph whereas before it was the second reason that was advanced for why the development could not proceed as a deferred commencement consent.---Yes.

10 Now, on page 5 if I can take you to that you will see there is the response to legal opinion and this was, if I can just take you back to page, to volume 27 you will see that a version, a draft of this was provided to Mr Stavis back on 30 November. Do you see that?---At page 303?

Page 303, yes.---Yes.

And I think you've indicated in your evidence that again you typed that document - - -?---Yes.

20 - - - but at the direction of Mr Stavis in terms of what it should say. Is that right?---Yes.

In terms of the views that are expressed in the response are they views that you agreed with?---No.

And did you raise the fact that you didn't agree with Mr Stavis?---I don't recall. I remember saying that I didn't support either the report when we received the draft from Planning Ingenuity.

30 Yes.---If I have advised Mr Stavis that I didn't support the matter I certainly haven't committed it to memory. I carried out the task he assigned me to do but no, I would not have supported it. Part of my job is to support him. He asked, tasked this to me. I carried it out.

All right. So, going back to volume 28, you'll see that that's a further version of that response. There are some, there were some amendments in it, some addition background was provided. You'll see in the second and third paragraphs, as compared to the earlier version of the drafts, it's just giving some more context in the response document but insofar as the
40 conclusion was concerned, that the view of Mr Stavis was that the opinion of Sparke Helmore was reasonable and that the three metre setback should be removed, that was consistent across that two drafts. Is that right?---Yes.

And can I then take you to page 64 of the documents that were attached, I think to your record of interview and you'll see, that's being brought up on the screen, page 64. It's on the screen now, Mr Hargreaves. You'll see that this is another version of the memo. If you look at page 65, it's not signed but it's dated 30 November and do you see that this version of the

memorandum appears to combine both the original covering memorandum but also the response document to the Sparke Helmore opinion. Is that right?---It does.

So, looking at the bottom of page 64 from the paragraph, "Each of the two DAs," a lot of the material from there down to on page 65, just before the heating recommendation has been transposed from the individual response document in to a combined document from the general manager, is that right?---Yes.

10

And if I can then take you to, going back to volume 28, page 167. You'll see that at page 168, this is the signed memo from Mr Montague to the mayor and all councillors of 3 December, 2015?---It is.

And consistent with the last version of the report that we reviewed, it's a combined document which had what you would initially draft, just the covering email and the response document put in to the one memo, is that right?---Yes.

20 And it attached the legal opinion from Sparke Helmore at page 169?---Yes.

And the recommendation of the general manager at page 168 was that the committee resolved to approve both applications and in relation to 212-218, it was that the general manager be authorised to issue the consent subject to the conditions as recommended in part B. Do you see that?---Yes.

And any additional conditions that arise as a result of Sydney Trains and RMS concurrence. Do you see that?---Yes.

30 And for item 15, the general manager will be authorised to issue the consent, that's for 220-222 and 4 Close Street, subject to the conditions as recommended in part B of the planning report and any additional conditions that arise. Do you see that?---Yes.

And that was then submitted to the committee for its consideration. You will recall that in the initial drafts of the memorandum, there was reference to the DAs being approved in principle. Do you recall that?---Yes.

40 The language at page 168 of the recommended resolution was that the general manager be authorised to issue the consent. Do you see that?---Yes.

Can you recall why that language changed?---No, I can't. I recall drafting, well, writing rather the first two memos.

Yes.---The signed one I don't. And I cannot find a copy in my records. So this one I recognise the words but I'm afraid I cannot provide any further guidance on it, but I can see that that has changed from approval in principle.

Yes. So, but you're unable to explain the change between the versions of the document in terms of that language?---No.

10 Just pardon me a moment, Mr Hargreaves. I'm sorry, Mr Hargreaves, just taking you back to the previous version that we looked at, which was at page 64 from the documents provided with the record of interview, you'll see that there was an additional page 65, you'll see that the recommendations had, that the reference to approved in principle was in - - - ?---Yes.

- - - both of the items, items 14 and 15. Do you see that?---Yes.

The language of authorised was also there. Do you see there, "That the general manager be authorised?"---Yes.

20 And the difference between this version and the version that was signed was the removal of the first part of the recommended resolutions insofar as it referred to those DAs being approved in principle.---Yes.

Can I ask you, Mr Hargreaves, just to have a look at page 17 of volume 28. You'll see that this is the start of business papers for the CDC meeting in relation to 212-218 Canterbury Road. I just wanted to ask you about page 35. Under the table you'll see there's a heading, "Clause 4.6 Variation." "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." Do you see that?---Yes.

30 Do you have any recollection of legal opinion being received by the council to that effect?---Not for these two DAs, no.

Do you recall a legal opinion on that issue more generally?---I believe we have received advise on another matter where an opinion was made that the extent of a variation is not a determining factor.

40 And can you recall when relative to these development applications going through the City Development Committee, when that opinion was received? ---I think it was the year before. I think it was, I think it was 2014/15 it was considered.

All right. And can you recall what application or matter that arose in respect of?---It was for, I know the site as the Bowerman site, 308-310 Canterbury Road.

Thank you. Just pardon me a moment. Mr Hargreaves, I just wanted to ask you, I think you've indicated that once a report has been prepared and submitted to IHAP the content of the report is not amended. Is that right? ---Yes.

And its subsequent material might be provided in terms of a supplementary
- - -?---Yes.

If I just ask you to assume that that first sentence was not in the version of
the report provided by Mr Black in advance of the IHAP meeting, are you
able to explain why it's been added?---No.

10 Do you have any recollection of it being added?---No.

Would it be unusual for content to be added?---Yes.

Are there circumstances in which it is added?---I don't recall it ever
happening. I think it would be very irregular. There's nothing wrong with
adding supplementary information but I don't think it's appropriate to
amend the actual report.

20 All right. It's possible that it was amended between the provision by
Mr Black to you and Mr Stavis and before it went to IHAP. Is that a
possibility?---Possibly, yes.

Thank you. Pardon me a moment. Mr Hargreaves, can I just ask you,
insofar as your evidence on this issue is concerned, can I just take you to
page, back to volume 28. We're in that same volume. Can I take you to
page 83. You will see that the report includes a reference to the IHAP
assessment and recommendation. Do you see that?---Yes.

And that is set out from pages 83 to 86.---Yes.

30 So it's the case isn't it that at least insofar as an IHAP recommendation is
concerned it is added to the report?---Oh yes, it's, yes.

Is that right?---Yes.

So that's an acceptable amendment in your view of the report?---Yes.
Because the report isn't being amended.

So it's just added to?---Yes.

40 All right. So that's the difference that you're explaining between something
that's been added at the end as opposed to some amendment being made to
the body of the report?---To the actual wording of the report, the
assessment, yes.

Thank you. Yes. Thank you, Commissioner. I have no further questions
for Mr Hargreaves.

THE COMMISSIONER: Mr Andronos?

MR ANDRONOS: No questions, Commissioner.

THE COMMISSIONER: Mr O’Gorman-Hughes?

MR O’GORMAN-HUGHES: No questions, Commissioner.

THE COMMISSIONER: Mr Drewett?

10 MR DREWETT: No questions.

THE COMMISSIONER: Mr Pararajasingham?

MR PARARAJASINGHAM: I have no questions, Commissioner.

THE COMMISSIONER: Mr Moses?

MR MOSES: Just three questions, Commissioner. Mr Hargreaves, Counsel
Assisting asked you earlier today in relation to whether you were of the
20 view whether anything would change if you were aware that Councillor
Hawatt had some form of non-pecuniary interest when making inquiries in
relation to the Penshurst property. Do you recall that question?---I do.

And I think you answered that by saying no, that is it wouldn’t have been
dealt with any differently, is that correct?---The assessment would not have
changed, no.

No. What I wanted to ascertain you from you, because the ICAC is looking
at measures that perhaps could prevent corruption in the future and also deal
30 with issues of conflicts of interest, do you think, though, not from your
perspective but from more junior employees, it would be useful for there to
be a note in relation to a matter if there is information that a councillor is
related to a person who has a development application going through
council?---Sure. Knowing that there is a, either pecuniary or nonpecuniary
conflict of interest I do not believe should affect the assessment of the
application. The assessment of the application is governed by the Act and it
doesn’t talk about conflicts of interest. It does affect the determination of
the matter if there a conflict of interest between a councillor or a council
officer, then, yes, it is determined in a different matter, in a different way,
40 rather. It doesn’t affect the assessment. It may be advantageous to know
from an assessment point of view that an officer is assessing an application,
a conflict has been disclosed. If another party subject to that conflict, for
example, if the owner or the applicant for a development application is a
relative of a councillor or a council officer, if that councillor or council
officer then contacted the assessing officer and said, “Can you let me know
how that's going?” the officer can then say, “Oh, it’s going fine but I note
that there is a conflict of interest that you have. You need to be made aware
of that.” It is something that I think would be difficult to manage in a

practical sense. It may be advantageous to know, I'm not sure how it would be policed.

Can I put it to you from this perspective. You've observed that, whilst working at council, this is in your statement evidence I think, that on occasion when a councillor becomes involved in enquiring about the progress of a matter there is generally some priority given to a matter they then enquire about. So all of a sudden, as an example, it would go from the bottom of the pile to the top and other matters would be displaced. So you could in effect get the councillor – these are my words, not yours – off your back, correct?---True.

So if you have a councillor enquiring about a matter to have it dealt with as to where it's up to, do you think it would be useful for an assessment officer to know as to whether that councillor has in effect an interest in doing so – because, for instance, the person they're enquiring on behalf of is their son-in-law – so that that matter then can be taken into consideration as to whether in fact this is a genuine constituent enquiry or whether this is a matter that a councillor is seeking to advance in favour of a relative? Do you think that would be relevant?---I, I think it would be, but again it would, it, it, it had advantages with regards to alerting council staff to conflicts of interest. It may, however, have the opposite effect if an application, particularly a junior planner was assessing a development application, even for a minor application, and noted that the owner of the land happened to be the mayor or the general manager, even though the mayor or the general manager might absent themselves from it entirely, whether or not there is a suggestion that that application ought to be dealt with in an expeditious way to the expense of others, I think I understand your, your, your question and I think there may be some merit to it.

Is it the other issue that, without cutting across what you're about to say, is that it would then put the junior employee on notice that if that councillor or the mayor makes contact with them about that file, that they should not share with them confidential or sensitive information concerning how that matter is progressing but to have some protocol within council that any enquiries by that person are to be directed towards the manager of that individual?---Possibly. Councillor enquiries generally came from the general manager or the director anyway and are fed out that way.

These are questions that are very much speculative in nature but I'm asking these questions to assist the Commission - - -?---No, I believe I understand.

- - - in terms of matters that they may wish to look at in terms of recommendations for the future. Okay. That was the first issue.

THE COMMISSIONER: Before you move on.

MR MOSES: I'm sorry, Commissioner.

THE COMMISSIONER: One of your answers was you could see it would be difficult to manage in a practical fashion.---Yes.

10 Why did you say that?---If an applicant lodges a development application I might for example amend the development application form to say at the bottom of the page, I, applicant, have no conflict of interest with councillors, council staff, et cetera, and will continue to assess, but it relies on that applicant knowing that there is a conflict of interest. It also relies on the person who is the third party, so the potential councillor, knowing that the application has been lodged as well. So it requires people to know things that they may not reasonably know. The option may have some merit but I'm not entirely certain how it would be able to be managed on a day-to-day level.

Thank you.

20 MR MOSES: Thank you, Commissioner. The next issue related to the Canterbury Road property which I think is referred to as the Doorsmart project. Counsel Assisting asked you some questions in relation to the document at volume 28, page 4. If that could be shown to the witness, Commissioner. Those words which are used in the fourth paragraph, "Approved in principle," they are not words which as it were obtained from any legislative guidance, do they?---No.

No. And in fact that's not a term that you've seen used within the council in terms of the way in which these matters are ordinarily dealt with. Is that the position?---Correct.

30 And in terms of that wording in relation to these matters, the wording there, and I think you've made this observation previously I think in your statement of evidence that it appeared that your observations were that Mr Stavis wanted this matter to be resolved in a manner that perhaps would give some comfort to the applicants that the council was supportive of their position?---Yes.

And those use of the words, "Approved in principle," of course were always subject to the concurrence being received from Sydney Trains, correct?
---Oh, yes.

40 And others, yeah. And the delegation of approval to the general manager, again that was not something that legal advice had been obtained on by the council, correct?---Not to my knowledge, no.

Okay. And had that been done to your knowledge before, within this council?---No.

Okay. Thank you. Just bear with me for a moment. I'm sorry, Commissioner, sorry, Mr Hargreaves, I have no questions, further questions for the witness, thank you.

THE COMMISSIONER: Thanks, Mr Moses. Ms Mitchelmore?

MS MITCHELMORE: Commissioner. I have no further questions for Mr Hargreaves. If he could be excused.

10 THE COMMISSIONER: Thank you for your evidence. You're excused.

THE WITNESS EXCUSED

[3.25pm]

MS MITCHELMORE: Commissioner, there's been a slight change in the witness order. I call Mr Brad McPherson.

20 THE COMMISSIONER: Mr McPherson. Do you take an oath or an affirmation?

MR McPHERSON: An oath.

MR MOSES: Yes, Commissioner, the terms of section 38 have been explained to the witness and he would like the benefit of that direction.

THE COMMISSIONER: Now, Mr McPherson, section 38 has been explained to you.---Yes.

10 I always emphasis that it's subject to a very important exception. If you would happen to give false or misleading evidence to this public inquiry you may be prosecuted for an offence under the ICAC Act. It's a very important offence. It's like a form of perjury. It brings with it an maximum penalty of a term of imprisonment.---Mmm.

Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by this witness and all documents and things produced by this witness during the course of the witness's evidence at this public inquiry are to be regarded as having been given or produced
20 on objection and there is no need for the witness to make objection in respect of any particular answer given or document or thing produced.

**PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY THIS WITNESS AND ALL DOCUMENTS AND THINGS PRODUCED BY THIS WITNESS DURING THE COURSE OF THE WITNESS'S EVIDENCE AT THIS PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING BEEN
30 GIVEN OR PRODUCED ON OBJECTION AND THERE IS NO NEED FOR THE WITNESS TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED.**

MS MITCHELMORE: Thank you, Commissioner. Your name is Brad McPherson. Is that right?---That's correct.

40 And you are the governance manager at Canterbury Bankstown Council. Is that right?---Yes.

And before 12 May, 2016 did you hold the position of group manager (governance) with Canterbury City Council?---I did.

And you'd held that position since 2005?---Yes.

And is it the case that you'd worked at Canterbury City Council for over 20 years?---That's correct.

Mr McPherson, have you made a statement to investigators in relation to this matter dated 20 February, 2018?---I did.

Can I provide you with a copy of that statement, Mr McPherson, and if you need to refer to it in the course of your evidence please do so. I wanted to ask you about the period of 2014-16. Taking you back to that time, are you able to explain briefly what your role entailed?---Yes. During that time I was the group manager (governance) with the council. It included many functions, governance functions, servicing the council committees, administering the IHAP, property transactions, risk management and insurance, procurement are the main, they're the main functions.

And I think you've indicated that your role included administration of the IHAP. Is that right?---That's correct.

That's the Independent Hearing and Assessment Panel?---Yes.

And did that include oversight of the council's interactions with the IHAP? ---With the council, when you talk about the council are you talking about the councillors?

Yes. The council as a body, yes.---Yes, it would have, yes.

Are you able just to identify for the Commission, we've been dealing a lot in this inquiry with the city planning division. Where did governance sit relative to city planning within the council?---It's the corporate services division so it was in a separate division to the planning division.

30 THE COMMISSIONER: So it doesn't appear on Exhibit 144.

MS MITCHELMORE: That's right, yes. That's why I was asking, yes. So it's a separate, corporate services is a separate division to city planning. Is that right?---Correct. When the IHAP was established they wanted to create some sort of separation between the planning division and the operation of the IHAP and that was the reason why it was put under my jurisdiction in governance.

40 And is it the case that there were officers of council who in effect formed a secretariat for the IHAP. Is that right?---That's correct. One of my staff was the secretary for the IHAP.

And who was that in the period 2014-16?---That would have been Chauntelle Mitchell.

Thank you. I think you've indicated in your statement, Mr McPherson, that the IHAP was established pursuant to a council resolution, is that right? ---Correct.

And are you able to explain generally to the Commission what its role was, the role of IHAP?---Yeah, sure. So its role was to consider the development applications that were submitted to it by the council. There was a certain criteria that had to be met for a DA, for a DA to be submitted to the IHAP for consideration. The IHAP would hold open meetings where it would take submissions from the applicant and objectors. It would also visit sites and do on-site inspections. Following the open meeting where it considered the submissions from the applicants and the objectors, it would then move into a closed session where the committee or the panel would discuss each particular application. They would then formulate a recommendation and a report to council, and that was, that, that, that recommendation report then reported through to the council. Or the City Development Committee, sorry, not the council.

The City Development Committee of council?---That's correct.

And are you able to say how many councillors sat on the City Development Committee?---All 10 councillors.

And I think you've indicated that IHAP's function was to make recommendations to the City Development Committee, is that right?
---Correct.

In respect of development applications that it looked at pursuant to the criteria that were set for it to review, is that right?---Yes.

Can I take you to volume 20 of Exhibit 69 and take you to page 266. You'll see, Mr McPherson, that that is a document titled IHAP Policy.---Yes.

And category Strategic Governance. And the policy owner is director (corporate services/governance). So that's consistent with your evidence that the IHAP sat within the governance area of the council, is that right?
---Correct.

And you'll see that it was adopted, policy was adopted by council on 23 June, 2011. Do you see that?---Yes.

And it was amended over time. The modification history of this document has two amendments, one on 28 February by council minute, and then on 12 December, 2013 by council minute. Do you see that?---Yes.

What was the status of this document as a policy adopted by council?---It was a policy that was endorsed by council, so it was a council policy rather than what we would call an operational policy.

And what's an operational policy, just to explain the difference?---An operational policy would be saying that it would be approved by the general manager. It would relate to the day-to-day operations of the council.

So this is a council policy endorsed by the council?---Correct.

Did it bind the council?---It did bind the council, but having said that, the council could take a further resolution to override the policy.

10 So you pre-empted my next question. Could the council depart from the policy? Your answer is it could.---Yes, yes, by resolution, yes.

By resolution. So is it the case, for example, that if IHAP made a recommendation, for example, that a particular consent be refused, if there was a resolution of council that departed from that, that would be consistent with your evidence that a resolution was required to override IHAP's policy?---Yes.

20 Can I take you to page 267. You'll see that the purpose and objectives of IHAP are there set out – sorry, of the policy are set out, which is to support the administration and management of IHAP meetings and to address the criteria for applications to be considered by the IHAP and applications for public address at an IHAP meeting. Do you see that?---Yes.

So it's the case that not every development application would be considered by IHAP? It was just pursuant to specific criteria, is that correct?---That's correct. It's just mainly the more important, the bigger applications went through to the IHAP.

30 And is that set out in clause 6.1, looking at the first statement, that "IHAP will consider development applications that meet the referral criteria established by council"? And then there's a series of bullet points. Does that set out the types of applications that would be considered by IHAP? ---Yes.

And it included in the last bullet point, "Applications involving significant development," which is then defined in the subsequent text on page 267, is that right?---Yes.

40 And over the page as well, I should say.---Yes, 268 as well, yes.

Yes. Can I ask you, looking at 6.4, you'll see, "Council consideration of DAs referred to IHAP." Do you see that on page 268?---Yes.

And there's a reference in 6.4.1, that, "Additional information provided to councillors between the IHAP meeting and the City Development Committee meeting will also be provided to IHAP members." Do you see that?---Yes.

Are you able to explain what the purpose of the provision of that material to IHAP members was?---Mainly for their information. Sometimes between meetings certain information came to light. There might have been something said at the IHAP meeting and there might have been additional information that the director of planning may have wished councillors to be aware of, so in that case the, the director – under the general manager's signature – would prepare a memo to the councillors and that memo to the councillors should have then gone back to IHAP just for their information as to why it's suddenly, their decision, their recommendation might have been varied for some reason. That sort of information would help explain to the IHAP a councillor's thinking in doing so.

So, it was an information purpose on terms of it going back to IHAP at that point?---Correct.

And then looking at 6.4.2, there's a reference to, "The CDC or council will provide reasons in its resolution of a DA matter on occasions when it does not support a recommendation from the panel. Do you see that?---I do.

So, it was open for the CDC not to support a recommendation from the panel?---Yes.

But it needed to provide reasons if it took that course, is that right?---Yeah. Under section I guess 268X of the planning regulations, council has to prepare a report to the Department of Planning, I think on a 12 monthly basis detailing the matters that's being considered by the IHAP panel and part of that report requires us to give reasons to the Department of Planning as to why council would not have supported a certain recommendation of the IHAP. So, that section was in there so it would allow my staff to be able to prepare that report to the Department of Planning.

So, it's the case that in effect, the Department of Planning requires something in the nature of an audit report detailing the matters that are being considered by IHAP, is that right?---Yes.

And whether or not the recommendations made by IHAP were supported by council or departed from my council, is that right?---Yes.

And in circumstances where the City Development Committee or council didn't support a recommendation, that departmental document required an indication of why council had departed from the recommendation of IHAP, is that right?---Yes.

And there's also a reference at 6.4.3, "That feedback will be provided to the IHAP members in a monthly basis following the City Development Committee meeting." Do you see that?---I do.

What was the form of the feedback that's referred to there?---Yep.
Generally it would be where council had not supported any recommendation of the IHAP. We would, would have provided feedback to the IHAP as to the reasons why they didn't support those recommendations.

You will see that there's a reference in 6.5 to the IHAP's constitutional rules being attached to this policy. Do you see that?---Yes.

10 And that the constitution of IHAP is over the page at 269?---Yes.

And you'll see that under the heading Constitution in parentheses that this constitution was adopted by council resolutions and was amended by a number of resolutions. Do you see that?---Yes.

What was the purpose of council resolving to adopt the constitution of the IHAP?---Going back, it just goes back to 2006, I'm just trying to refresh my memory. I, I, look, I, I can't, I really can't recall at the moment.

20 Did council need to adopt the constitution of IHAP?---Possibly. I don't think the general manager had delegations from the council to, to do it, so I think the safest course of action would be the council, for council to endorse the constitution.

All right. And you'll see that it's constituted under clause 2. Do you see that?---Yes.

And over the page the constitution sets out the aims and objectives of constituting the panel in section 4.---Yes.

30 And section 5 sets out the role and function of the panel. Do you see that?---Yes.

And can I take you over to page to 5.4. You'll see that there's a reference to, "Subject to any delegation of powers to the contrary the panel may act in an advisory capacity only." Do you see that?---Yes.

40 So does that mean or is your understanding of that that the IHAP could make recommendations but they couldn't make decisions on particular applications?---Yes, it is.

And looking at 5.4(c) "Recommendations and reports of the panel shall not have effect unless and until adopted by council." That's consistent to your understanding with the advisory nature of IHAP. Is that right?---Yes.

So until, unless and until they are adopted by council, the recommendations and reports did not have any effect?---Yes.

Can I take you to page 275, and you'll see this is a document titled Independent Hearing and Assessment Panel Operational Rules, and it was also adopted by council resolution. Do you see that at the top of the page?
---Yes.

And the object of the rules in section 2 was to provide for the proper and orderly conduct of the workings and meetings of the IHAP. Do you see that?---Yes.

10 And can I take you to page 278. You'll see in clause 18 under the heading Reporting to Council, that "The panel shall submit its advice and recommendations on any matter relating to the exercise of its functions to council for its consideration by means and in the form of a report signed by the chairperson and addressed to the general manager." So that was the mechanism by which IHAP recommendations were considered by council?
---Yes.

And looking at 19, in relation to records, you'll see that there was a requirement for the panel to ensure appropriate records were kept of its
20 proceedings in 19.1?---Yes.

And in relation to 19.2, you'll see there was a requirement that, "When additional information is sought by the panel, upon submission of that information the application will be referred back to the panel for final consideration prior to determination by the City Development Committee or council." Do you see that?---Yes.

30 So is it the case that clause 19.2 contemplated a situation where if the panel sought further information in respect of a particular application, that information would be submitted to council and referred back to the panel for final consideration?---Yeah. So the way it would work is that IHAP would make a particular recommendation that it would defer an item for further information. Council officers would then gather that further information from the applicant mainly and then would provide it back in a report to the, in a, in a same report as supplementary information to the next meeting of the, the IHAP.

And could council proceed to consider the application in advance of that process occurring?---Could it?
40

Yes.---Yes, it could, yes.

Did that happen very often?---Once from my recollection.

Only once?---Yes.

So it was the ordinary course that where the panel recommended that a matter be deferred pending the receipt of further information, the council

would not proceed to determine the matter until such time as that further information was provided?---Correct. And, and the way it would work is that my staff would prepare, once the reports and the IHAP were done, my staff would then prepare reports to the City Development Committee and my staff would not include a report in that, to the City Development Committee which the IHAP had recommended for a deferral for further information.

10 I'm sorry, I just didn't catch that. Was it the case that they would not prepare a report?---Correct. So my staff would not submit the report to the City Development Committee where the IHAP had recommended that it be deferred for further information.

20 So what would happen in those circumstances if the council did wish to consider a matter where IHAP had recommended that the matter be deferred?---There's two options. The general manager is responsible for matters which are put on the business paper for council meetings, so the general manager could put it on the business paper notwithstanding the IHAP recommendation. The second way to do it would be the council, or the City Development Committee, could call the matter up at its meeting.

So rather than going on the business papers, that could be something that could be done from the floor of council in the course of the meeting, is that right?---Correct.

Or in the course of the committee meeting. It might not be a meeting of council, is that right?---Yes.

30 THE COMMISSIONER: Sorry, can I just go over that? So if IHAP decides to or recommendation is to defer until further information is received, the general practice is that your staff who prepares the IHAP reports going to the City Development Committee just wouldn't include that matter in the reports?---Correct.

And for council to then consider it, it would either have to be put in the business papers by the GM - - -?---Yes.

40 - - - or, as you said, I take it if a councillor knew about the matter, the councillor could call the matter on from the floor of council?---Correct.

MS MITCHELMORE: Can I just ask, in relation to the reports coming out of IHAP, who prepared that material?---When you say coming out of IHAP, going to the council meeting?

Yes. So, for example - - -?---The committee meeting.

- - - in the course of this inquiry we've seen a number of reports – I might take you to a couple – where it sets out the decision or the recommendation

of IHAP and some reasons for the panel's decision. Who prepares that information?---My staff do.

Your staff. I see. And if it was the case that a recommendation from IHAP was that it be deferred, is it the case that a report would still be prepared of that decision of the IHAP?---So the way it would work is that for each report that went to IHAP, the same report went to the City Development Committee but with the IHAP report and recommendation in it. Also, also we put up a full report from the IHAP, which was a separate report that
10 went to the City Development Committee. So that would, that would have the minutes, the on-site inspection, public addresses, and the panel's recommendation.

So in relation to the first of the material that you identified, it would be tacked on, as it were, to the officers' report, is that right?---Yes. And going back to your question, if it was a referral, we wouldn't, that report wouldn't have been submitted to the City Development Committee meeting.

But if, for example, the general manager said, "I want that to go on the
20 business papers," is it the case that the IHAP report would consistently, with other reports going up from IHAP, would be included?---Yes.

As part of the officers' report. So tacked onto the end of the officers' report, is that right?---That's correct.

I wanted to ask you some questions, Mr McPherson, about a development application in relation to a property situated at 570-580 Canterbury Road, Campsie. And if I can take you – I'm actually still in this volume, volume
30 20, to page 188. You'll see that that's a business paper for the meeting of the IHAP. Do you see that?---Yes.

And you'll see that on page 191 there was a summary of the development application for 570-580 Canterbury Road, which was demolition, remediation and construction of a six-storey mixed-use development. Do you see that?---Yes.

And the director had recommended the application be approved by way of deferred commencement, subject to conditions. Do you see that?---Yes.

40 And do you recall, Mr McPherson, that this DA, when it was considered by the IHAP, a decision was made to defer the matter to allow the applicant to provide additional information?---Yes, I do.

And the council to assess any additional information and provide an updated report to the panel?---That's correct.

And one of the issues that was of concern to the panel was that the applicant hadn't sufficiently addressed the site isolation of the property located at 2

Chelmsford Avenue which was to the rear of the site. Is that right?---That's right.

And there were some additional issues with small design changes, some site contamination and garbage storage issues. Can you recall that?---Yes, I do.

Following that meeting do you recall being contacted by Mr Stavis, the then director of city planning, about the possibility of the report for the DA being put as a late report to the CDC for the same week?---Yes, I do.

10

And can you recall the discussion that you had with Mr Stavis?---Basically he put that proposition to me and I reminded him of the, the requirements of the IHAP policy whereby if a matter is deferred by IHAP it doesn't go to the City Development Committee meeting until the information that IHAP has requested is provided.

And did he respond to your pointing that out to him?---My recollection he said it's a governance issue and I should take it up with the general manager.

20

And can I show you page 263 of this same volume, volume 20. You will see that at about point 5 on the page there's an email from you to Mr Stavis of 10 August, 2015. Do you see that?---Yes.

And you refer to a conversation that you've had with him that morning about the possibility of the report on 570-80 being put as a late report to the CDC meeting on Thursday night. Do you see that?---Yes.

30

And then you set out the fact that IHAP had deferred the matter for the purposes of allowing the applicant to provide additional information as detailed in the report, the IHAP report?---Yes.

And that council was to assess any additional information and provide an updated report to the panel. Do you see that?---Yes.

And then you set out in the email the information sourced from the IHAP report about the details that it further required?---Yes.

40

And over the page at 264 after you've set out all of what was required you refer Mr Stavis to section 19(2) of the IHAP Operational Rules which we've already canvassed in your evidence?---Yes.

And you then say, "The IHAP rules form part of the council endorsed IHAP policy. The above provision requires the information to be resubmitted to the council prior to its consideration by the City Development Committee. Council staff will be in breach of this policy if the report is submitted to Thursday's meeting." Do you see that?---Yes, I do. In that top line where it

says should be, "to be resubmitted to the council", that should have been to resubmit it to the IHAP.

I was about to ask you that question. And it's the case, where you indicate that the council staff will be in breach of this policy if the report is submitted to Thursday's meeting, what was your understanding of the consequences, if any, that followed from a council officer breaching this policy?---There are provisions on the code of conduct for such breaches so it would be a matter that would then have to be considered by the general manager under the code of conduct.

And Mr Stavis in his response to you at page 263 said to you, this is an email on 10 August at 2.11pm to you and he blind copied Mr Montague who was the general manager, "Brad, this is a governance issue. It may need to be taken up directly with the GM." Do you see that?---Yes, I do.

And do you recall discussing this issue with the general manager, Mr Montague, at or around this time?---Yes, I do. I attended an executive meeting which was a meeting of the general manager and all the directors and I advised the executive in terms of my email to Mr Stavis. I don't recall much about the conversation but I do recall that the general manager said well, in his view he's got the, the authority to report the matter to the City Development Committee and he was going to make that decision and the City Development Committee then could make a determination as to whether it wanted to consider the issue or whether it would refer it back to the IHAP.

THE COMMISSIONER: And, sorry, that was the general manager said that to you?---That's correct.

MS MITCHELMORE: And so can you recall if that occurred, that the matter went to the City Development Committee that week, is that right? ---That's right.

And the City Development Committee proceeded to deal with the application on that day, is that right?---Correct.

And can you recall if any reasons were prepared as to why the council departed from the recommendation of the IHAP on that occasion?---Well, no, because the IHAP hadn't made any recommendation. Its recommendation was purely to defer.

Now, can I take you to paragraph 17 of your statement. You see there that you say you had concerns about council not reviewing the isolation issue, as you were mindful about the risk it posed to council, and you believed this decision put the council at risk from financial litigation from the owner of the adjoining site, which was 2 Chelmsford Avenue. Is that right?---Yes. That's right. 2 Chelmsford had the same zoning as the properties on

Canterbury Road, 570-580, which was B5. 4 Chelmsford and 4-6 Chelmsford had a lower zoning, which I think from memory was an R3 zoning. So therefore my concern was because 2 Chelmsford had a B5 zoning that if you didn't combine it with the 570-580, the site would become isolated. Or if it was developed with 4-6 Chelmsford, it couldn't be developed to its full capacity and therefore council might be subject to some sort of litigation from the owner of 2 Chelmsford because he couldn't get the full financial value from his property.

- 10 So insofar as you say in the first sentence you were mindful about the risk that it posed to council, that's the risk that you identify in the second sentence and that you've just elaborated upon in your evidence, is that right?---That's correct.

I wanted to ask you some questions, Mr McPherson, now about 548-68 of Canterbury Road. So that's adjoining 570-580. So it's a site adjoining the site that we've just gone through.---Right.

- 20 And the DA in relation to that site sought approval, the DA that I want to ask you about – there's a number of DAs approved in relation to this site – but the one I'm interested in sought approval for an additional two levels to an already approved six-storey mixed-use building, which comprised additional residential apartments. And can I ask you to be shown volume 22. And I wanted to ask you about 224.---Sorry, that was page 224?

Yes. Page 224. You'll see what I'm taking you to is part of the business papers for a meeting of the City Development Committee on 3 December, 2015. Do you see that?---Yes.

- 30 And you'll see that it includes a heading IHAP Assessment and Recommendation. Do you see that?---Yes.

And it says that the IHAP considered the application on 23 November, 2015, and their assessment and recommendation is provided below. Do you see that?---Yes.

- 40 And is that consistent – the inclusion of this material in the business papers, in effect tacked on to the officers' report – is consistent with what you've said that would be the ordinary course, where IHAP had considered a matter which was then referred on to the City Development Committee?---Yes, it is.

And you'll see that in this case the panel assessment was that, looking at this full paragraph under Panel Assessment, that it had considered both matters, and I should tell you, Mr McPherson, that there was also a modification application on foot with respect to particular aspects of what had already been approved - - -?---Right.

- - - so that was the other application being referred to, and you'll see that there's a reference to the fact that the extra floors DA depended on the modification application, so that's why they've been considered together. Do you see that?---Yep.

10 And that both these applications build on the existing development consent approved by the JRPP for the site, and the panel was of the opinion that these matters should be adjourned to enable the RMS to be fully consulted about the total development of the site. Do you see that?---Yes, I do.

Do you have any recollection of the IHAP's assessment and recommendation in respect of this matter?---No, I don't recall it.

You'll see under that first full paragraph there's a reference to the LEP history which was relevant to consider and the panel noted that there had first been a resolution to increase the height back in October of 2013.---Yes.

20 That that proposal was referred to the Department of Planning for a Gateway - - -?---Yes.

- - - in October of 2014, but that the RMS had raised concerns about increased heights on the site without further specified information.---Yes.

So there was a concern about the impact, if you take it from me, of the increased height on traffic, which was a concern raised by the RMS. ---Yes.

30 And that the council then omitted the site from the draft LEP because the RMS had raised that concern.---Right.

And you'll see in point E that the omitted sites, including this site, hadn't been picked up in any new draft LEP - - -?---Yes.

- - - and therefore the only support in the increase in height was the original resolution of council which goes back to October of 2013. Do you see that? ---Yes.

40 And so the panel was advised there was no current proposal to include the site in any planning proposal to increase the height controls.---Yep.

And the panel indicated that on the basis of that history the council resolution would only be relevant as a policy and without further consideration by at least RMS must be given little weight, because, well, one of the issues in the determination was that it breached the 18-metre height limit significantly. You can take it from me that what this DA sought to do was to take the height up to 25 metres.---Right.

And you'll see in the next paragraph that the panel was of the opinion that the traffic impact should be fully investigated and considered and in accordance with the objectives of the SEPP. Do you see that?---Yes.

And then over the page at page 225 there was a concern or an opinion of the IHAP that council cannot legally determine the development application until both the development application and modification application had been referred to RMS. Do you see that?---Yes.

10 And you'll see then that the recommendation of the IHAP was that the development application be deferred until the application has been referred to the RMS. Do you see that?---I do.

And was a recommendation that the DA, that a DA be deferred a recommendation that was generally referred to the City Development Committee?---No. If, if IHAP had recommended deferral, well then the matter wouldn't, wouldn't have been put back to council until they'd received the information they're after from the RMS.

20 I see. But I think consistent with your earlier evidence it could go to the CDC if it was requested by the, that that be included in the business papers, is that right, by the general manager?---That's correct.

But only in that circumstance, is that right?---Or if it was called by council, off the floor by council.

If it was called from the floor of council.---Yeah.

30 So in effect there is here a recommendation been made by the IHAP for deferral, so there is a recommendation been made, but it had the same effect as the previous report, namely that further information was required for the panel to consider before making a final recommendation to council. Is that right?---That's the way I would have interpreted it at the time, yes.

Can I take you to page 118 of this volume. You'll see that that's a letter to Statewide Planning, who were the planners for the applicant for this site, and you'll see at page 120, it's been signed by a Ms Lia Chinnery who was coordinator of governance. Do you see that's dated 27 November, 2015?---I do, yes.

40 And in terms of organisational structure, where did Ms Chinnery sit relative to you?---So, I'm the manager and I had at that stage three coordinators reporting to me and she was one of the three coordinators reporting to me.

And you'll see on page 118 that there's a reference to, in the second paragraph, what IHAP had done at its meeting, namely it had deferred the application until it had been referred to the RMS. Do you see that?---Yes.

And you'll see that it then sets out the details of the panel assessment that we've just gone through?---Yes.

And you'll see over the page, 119 towards the bottom, it says, "Consequently the matter will not be submitted to the City Development Committee as previously advised. Instead it will need to be reconsidered at a future meeting of the panel and you will be advised in advance of that meeting." Do you see that?---I do.

10 And it indicates that the IHAP meeting report will be on the agenda for the City Development Committee and is available on the website. Can you just explain what that means, that the meeting report would be on the agenda?
---Yeah, so what that report is, it's, it's a report of the whole meeting of the IHAP. So, it would talk about its onsite inspections, the public addresses to the hearing, the panel's views and also the panel recommendations. So, that goes up as one report to each CDC committee as a separate item to the individual reports.

20 Thank you. And is it the case that a letter of this nature, reporting to an applicant on the outcome of an IHAP meeting, would that go to an applicant as a matter of course?---Yes.

Irrespective of what the recommendation at the IHAP was?---Yes. It would, yes.

30 THE COMMISSIONER: Sorry, can I just confirm, so in the normal course, would this DA for 548, because the IHAP had said, "We want to defer until we get more information from RMS," what would go to the City Development Committee would be the IHAP meeting report, which would refer to that?---Yes.

But an individual report dealing with that particular DA wouldn't, would in the ordinary course, not be before the committee?---That's correct.

Unless the GM referred it or included it?---Yes.

Or unless it was called up by the committee?---Correct, yep.

40 MS MITCHELMORE: All right. And can I take you now, Mr McPherson, to page – actually no sorry. Can I take you to page 142 of this volume. You'll see that it's the title page for the business paper for the meeting of the CDC. Do you see that?---I do.

And you'll see that there is, at page 145, a heading, "Report summaries." Do you see that?---Yes.

And one of the reports that's included at item 18 is 548-568 Canterbury Road at page 157.---157. Yes, yes.

And you'll see that this is a summary of the report and over the page, 158, you'll see that there's a reference to the development application being recommended for approval subject to conditions. Do you see that?---Yes.

And there's a notation that the Independent Hearing and Assessment Panel deferred the matter until the application had been referred to the RMS. Do you see that?---I do.

10 And so that is in effect the report of the IHAP, is that right, in relation to this particular development?---Yes, it is.

And that was included as part of the papers, I think as you've indicated it would be, that a report of the IHAP would go to the council irrespective of whether or not the application was being referred to the council at the same time, is that right?---No, the way I see it is that the actual report, the individual report has been submitted to the City Development Committee.

20 THE COMMISSIONER: As an individual report, not as part of the whole meeting report by IHAP?---That's correct, yes.

MS MITCHELMORE: If I can just take you to page 161. You'll see that at the top of the page, under the heading City Development Committee, 3 December, 2015, there's a heading Independent Hearing and Assessment Panel Report, 23 November, 2015. Do you see that?---Yes.

30 So is it the case that, I think consistently with your earlier evidence, a report of its meetings would be submitted to the City Development Committee as a matter of course?---That's correct, yeah.

And you'll see that at page 161 there is the report on the development application for 548-568 Canterbury Road. Do you see that?---Yes.

And it was the case, though, I think consistent with the evidence you've just given, that at this meeting in addition the application itself was submitted to the council, or the City Development Committee, for approval. If I can take you to page 181.---Yes, that's right.

40 So this is a paper in relation to – looking at the summary – a report recommending that it be approved subject to conditions, is that right?---Yes.

And are you able to indicate, Mr McPherson, where's the additional bullet point on page 182 indicating that IHAP had deferred the matter, are you able to indicate who would insert that bullet point? We've seen it happen in a lot of reports, just indicating what the IHAP's recommendation was. Who would insert that bullet? Would it be someone from your area or from the planning area?---It would be from my area. It would be the, the IHAP administration officer.

And insofar as there's addition in relation to this development application, if I can take you to page 224, you'll see that there's a reference to the IHAP assessment and recommendation.---Yes.

And again, is that material that would be added by the administration officer?---It is.

10 And are you able to indicate what the process is by which the administration officer comes to put it in the report that goes to the City Development Committee? On whose direction do they do that?---Generally it's mine. Once the minutes of the IHAP are completed, we then feed the recommendations of the IHAP into the individual reports that are then put up into the City Development Committee meeting.

But in circumstances where the IHAP has made a decision to defer, would you make such a direction in the ordinary course?---No, my direction would be not to put it on the City Development Committee business paper.

20 THE COMMISSIONER: But it is in the business papers.---It's there.

MS MITCHELMORE: It is. Do you have a recollection of how this particular development application came to be before the City Development Committee, notwithstanding that the recommendation of IHAP was to defer?---No, I've got no recollection of it.

You have no recollection of this particular matter, is that right?---That's correct. Yes.

30 Just pardon me a moment. Can I just take you, Mr McPherson, to the minutes of the City Development Committee which start at page 226, so this is the minutes for that meeting on 3 December.---Yes.

And at page 229 you'll see the minutes for 548-568, do you see that?---Yes.

And you'll see that the resolution was that the general manager be authorised to issue the consent for DA 592/2014 once the suitable concurrence is received from the RMS.---Yes.

40 And that was subject to conditions as recommended in the director of city planning's report and any other conditions that arise as a result of the RMS concurrence. Do you see that?---Yes.

And there's a reference to the committee deciding not to accept the IHAP recommendation, given that the application has now been referred to the RMS and resolved to accept the officers' recommendation. Do you see that?---Yes.

So is point B or paragraph B what in effect is required by the policy, a statement of reasons as to why the committee has decided not to accept the IHAP recommendation?---It is.

And there's a reference there to the application having been referred to the RMS. Do you see that?---Yes.

10 Noting that that is not something that was in the business paper or in the report to IHAP, do you know where that would have been sourced from otherwise?---It would have come from the planning area, probably the director of planning.

I see. And that could be done perhaps verbally in the course of the council meeting or the committee meeting. Is that right?---That's one way. More than likely it may have been by way of a memo from the general manager to all the councillors.

20 I see. But is it something that might also have been indicated orally in the course of the meeting?---Yes, that possible, yes.

It didn't need to go by way of a written memo. Is that right?---That's right.

Mr McPherson, can I take you back to 125 of this volume, which might shed some light on what occurred. You'll see at page 125 there's an email from Mr Stavis to Andy. Is it possible that that's Mr Andy Sammut? ---I would take it as Andy Sammut, yes.

30 And what was Mr Sammut's position?---He was the director of corporate services, so I reported to him as manager of governance.

And you'll see that the email says, "Andy, the GM wants this DA to go to 3 December CD meeting and asked for it to be circulated as a late item, notwithstanding IHAP's deferral request." Do you see that?---I do.

And over at the bottom of page 124 you'll see there's an email from Andy Sammut to you which says, and it goes over the page, "Hi Brad." Over the page. "Please note instruction from GM re this item." Do you see that? ---Yes.

40 And you'll see at about point 5, sorry, the next email up at about point 6 on the page is an email from you of 30 November at 12.48pm back to Mr Sammut. Do you see that?---I do.

And that is reporting information that you appear to have obtained from the lawyer to the IHAP, Mr Anthony Hudson. Do you see that?---Yes.

And Mr Hudson had indicated or reported to you that it would be illegal for council to determine this application. Do you see that?---Yes.

And can you recall why Mr Hudson said to you that it would be illegal?
---No, I don't recall.

All right. Is it the case that Mr, or might it be the case that Mr Hudson was picking up material in the panel's report that there was an issue as to whether council could legally determine the development application without it being referred to the RMS?---Ah, yes, that's what it says further on down in my email, so yes, I would agree with that.

10

Yes. And do you have any recollection of this email exchange?---No, I don't actually.

And then you'll see at about point 5 the next email is from Mr Sammut to Mr Montague, which says that as per the instruction the report would be going to the 3 December CDC but was just making him aware of Mr Hudson's opinion that it couldn't be determined without referral. Do you see that?---Yes.

20 And there was then a reference at the top of the page to the fact that the DA was referred to RMS. That's only going from Mr Stavis to Mr Montague. Do you see that?---Yes.

So you don't have any recollection of that email exchange, but it may provide some explanation as to why it is that an IHAP report that had recommended deferral ended up on the agenda for the CDC meeting of 3 December, is that right?---That's right.

30 And just finally, Mr McPherson, I just wanted to ask you about a site at 538-546 Canterbury Road, Campsie, which was next door again on Canterbury Road. There was a development application lodged in 2015 which was considered in 2016, which as was the case with 548 had sought the addition of two storeys to an already approved six-storey development, and it went to IHAP on 29 February, 2016, and the IHAP recommendation was that the DA be refused for various reasons. It's the case, I think on your evidence, that notwithstanding that IHAP have recommended refusal, that would go to the CDC but just noting what the recommendation of IHAP was, is that right?---Yes, that's right. So the report, the individual report, would go with IHAP's recommendation plus the full IHAP report.

40

And it would be a matter for the council to determine whether or not it accepted the recommendation for refusal by IHAP, is that right?---That's correct.

And if it was to depart from that recommendation, you'd have to provide some reasons as to why it did so, is that right?---Yes.

Can I just take you to volume 17, page 273. You'll see that the resolution is the resolution of council under the heading City Development Committee Resolution 10, March 2016, and you'll see that they resolved to approve the development application. Do you see that?---That's right, yes.

And you'll see just above it was the IHAP recommendation that it be refused. Do you see that?---Yes. Yes.

10 And can I take you to page 278. You'll see section C. It said the Independent Hearing and Assessment Panel's recommendation was not supported and the City Development Committee adopted the officers' recommendation. Do you see that?---I do.

20 Was that a sufficient statement of reasons for departing from the IHAP recommendation?---I believe so. And it was, that was the majority of reasons when, when the two recommendations didn't match, that the council would, they obviously preferred the officers' recommendation over the IHAP. Now, we reported that to the Department of Planning over a number of years and they never come back and said that that was insufficient.

All right. Thank you. Are you able to indicate from your knowledge, Mr McPherson, what proportion of IHAP reports were not followed by the council in this period 2014-16?---Were not followed? From recollection it was – the normal, normal rate of the IHAP recommendation being supported by the CDC was around 95 to 98 per cent, and my recollection around this time it dropped down to around about 70 to 75 per cent.

THE COMMISSIONER: Sorry, not adopting the IHAP?

30 MS MITCHELMORE: No, I think it's adopting.

THE COMMISSIONER: Adopting.

MS MITCHELMORE: Adopting the IHAP.---Yeah. So - - -

THE COMMISSIONER: It's about 70-75 per cent it dropped down to? ---That's correct, yes.

40 MS MITCHELMORE: As at the period 2014-16?---Yes. More, more around the later period, more around 2015-2016 was the, the period that it topped significantly.

And insofar as you're referring to 2016, are you talking about the period up to amalgamation on 12 May, 2016?---Yeah. So all of 2015 and up to May, '16, yeah, that's my recollection.

All right. Thank you.

THE COMMISSIONER: Can I just ask, you spoke about providing an annual report to the department.---Yes.

Would that annual report contain those statistics?---Yes. What it shows, it shows every matter considered by the IHAP and the recommendation of the IHAP and council's resolution. So you would just take the number of reports, the number that were recommended for approval that weren't approved and you'd just come up with the percentage that way.

10

So you did actually do the maths in the report?---I didn't have to but I did jut for my own interest.

The other thing I wanted to ask you, when you were being taken to the constitution and rules of IHAP and you were asked about in circumstances where IHAP wanted further information and the general practice was it would be deferred and not referred to the CDC, I think your answer was that that was the general practice and you could remember one incident where that didn't occur.---That's right.

20

Was that incident 548?---No, it was 570-580 Canterbury.

570?---Yes.

And that's the only time you know of that happening?---That was the only time I could recollect but obviously around discussions today there was one other.

30

And your recollection is those two were the only ones that operated as an exception to that practice?---As far as I know, yes.

MS MITCHELMORE: I'm sorry, Commissioner, can I just ask a question arising out of those questions before you ask other parties. Did the report that was submitted to the department, was that identifiable by reference to any particular name, did it have a required - - -?---Well, it was required under section 268X of the Environmental Planning Regulations. So I don't think it had a particular title that I can recall.

40

All right. Thank you.

MR ANDRONOS: Just very briefly, Commissioner. Mr McPherson, my name is Andronos. I represent Mr Montague in this inquiry.---Yes.

Just very briefly, the report under section 268X that goes to the department, that's an annual report. Is that correct?---That's correct.

And what time, when in the course of the year does that have to be submitted?---Generally it's financial year so we start preparing it in, it's prepared in July for the previous financial year.

And there's a deadline sometime in the first part of the new financial year?
---Yes, that's correct.

10 And you have all of that time to bring to account all of the relevant decisions and matters for report over the previous 12 months running 1 July to 30 June of the financial year just passed?---Yes.

Now, Mr McPherson, I don't mean any disrespect by this question but you're not a town planner are you?---That's correct.

And you're not a lawyer?---That's correct.

20 When you expressed views in your statement that certain decisions were poor decisions you're not bringing – perhaps we'll just look at one occasion where you say it. In relation to the isolation of the Chelmsford Avenue site, 2 Chelmsford Avenue, you recall you made a, you expressed a view about that?---I do.

And you said that you thought that that was a poor decision. You recall that?---I do.

And in expressing that view you obviously weren't bringing to bear any, any town planning expertise were you?---That's correct.

30 That's correct. You were really expressing a view based on the procedures that you were charged with administering. Is that correct?---That's correct, in 30 years' experience in local government.

Essentially it's a procedural point you're making though isn't it?---Could you sort of explain what you mean there.

Sure, sure. Your decision, your view isn't a view which brings to bear any town planning expertise on the merits of the outcome?---I would say, yes.

40 You agree with my proposition?---Yes.

Yes. Now, I think you've agreed, you're not a lawyer, or have I asked you that question?---Yes.

Yes. You're still not a lawyer?---As far as I know.

MR MOSES: I think you need a coffee break.

MR ANDRONOS: As long as Mr Moses is buying. You expressed some views in your statement that you understood that there was a risk of litigation from the owner of an adjoining site, being 2 Chelmsford. Do you recall expressing that view?---Yes, I do.

10 Yes. And again, you're not expressing a view based on any assessment of the legal merits of any such claim, are you?---At the time I was council's manager responsible for risk management insurance, so my view was based on that, my, my, I guess expertise in that area.

Yes but you weren't, as I understand it, purporting to express a view of the merits of any claim that the owner of 2 Chelmsford could bring?---No. I was just raising a possibility.

20 Of course, of course. A possibility. Now, you've given some evidence concerning the policy, the IHAP policy and that policy has at least three constituent elements, hasn't it? It's got the policy itself, a constitution which is an appendix and operation rules, which are another appendix. Do you recall that?---Yep, that's correct.

Yes. Now, when you talk about breach of the policy, you refer to section 19.2 of the operational rules. I don't know if you need to see it but you're familiar with 19.2 of the operational rules?---Yes.

And when you said there could be a breach of the policy in respect of 19.2, you were treating the operational rules as if they were part of the policy itself, weren't you?---Yeah, which they are.

30 Your view is that they form a part of the policy and is it your view that they are of equal weight to the constitution itself?---Yes.

Yes. Thank you, Commissioner. They're my questions.

THE COMMISSIONER: Mr O'Gorman-Hughes?

MR O'GORMAN-HUGHES: No questions, Commissioner.

40 THE COMMISSIONER: Mr Drewett?

MR DREWETT: Just very, very briefly, Commissioner. Sir, you were asked a question in relation to the proportion of IHAP rulings that were usually adopted by council and you gave some percentages there.---Yes.

THE COMMISSIONER: Mr Drewett, sorry, could you maybe push up the microphone?

MR DREWETT: I'll do that.

THE COMMISSIONER: Thank you.

MR DREWETT: So you wish to ask the question again, Commissioner?

THE COMMISSIONER: Yes, if you could start again.

10 MR DREWETT: You were asked some questions, or a question, in relation to the percentage of the IHAP rulings that would usually be accepted and adopted by council, and you gave, I think you said 95 to 98 per cent.---I believe so, yes.

What's that belief based on, Mr McPherson?---It was based on an annual report that we did to the Department of Planning, where we would list all the DAs that were considered by the IHAP, and that figure would have been worked out from that report.

20 And I didn't quite get the figures that you said that it dropped to. I think you said 75 per cent to 78, was it, or something of that nature?---Around about 75, I think it was. Somewhere between 70 and 75 per cent, from recollection.

What's that figure based on? Is it just based on your recall or is that based on a document that exists somewhere?---It's based on the annual report that is provided to the Department of Planning on the IHAP recommendations.

30 So that annual report is dated when?---It's done every financial year. So there would be one for every financial year that the council's had an IHAP.

You gave a range, I think, in relation to the dropping off.---Yes.

Is that just based on your recall as you're giving evidence here? Or is that the range that is contained within that specific annual report that you've made reference to?---Yeah, that's my recollection. My recollection is taken from that report.

40 As I understand it, the IHAP panel is comprised of a number of people, is that right?---That's correct.

How many people? Just - - -?---At, at this time it was, there was five panel members plus five, well, in best words, reserve panel members. In case one of the principal panel members was unavailable, one of the reserve panel members would step up.

Based on your recall now, what would be the percentage of rulings by the IHAP panel where it was 5 to nil?

THE COMMISSIONER: In the period that we're interested in.

MR DREWETT: In the period of let's say 2015-2016.---Oh, look, I would say it would be close to 100 per cent.

That's fine.---I don't recall when it wasn't 5-nil.

10 Well, I was going to put that to you. It nearly always was, but you were saying it always was. Is that right?---To my recollection, as I say, I can't recall when it wasn't.

20 So can you explain how that came to be, given that one would assume that many of these matters that went to IHAP would contain issues, if I could put it in general terms, issues, things weren't always straightforward, why was it always 5-nil, was there a figure on the IHAP panel that carried more sway than the others and was able to bring the others into line?---Not to my recollection, and I really can't comment. I didn't attend the closed sessions when the panel made its recommendations.

All right. But you say that it was to your recall perhaps 100 per cent, that it was always 5-nil.---Be close to it, yeah, yeah.

Yes, thank you, Commissioner. I have no further questions.

THE COMMISSIONER: Mr Pararajasingham.

MR PARARAJASINGHAM: No questions, Commissioner.

30 THE COMMISSIONER: Mr Moses?

MR MOSES: Just two matters. Mr McPherson, in relation to IHAPs of course they no longer exist, that's correct?---That's correct. They've been replaced by Local Planning Panels.

And that took effect from 1 March, 2018?---That's correct.

40 And in relation to the make-up of the Local Planning Panels, they are panels of qualified independent experts. Correct?---That's correct.

And - - ?---Sorry, with a community rep as well.

That's right. And developers and real estate agents are prohibited from sitting on such panels?---That's correct.

And in terms of your role with council, do you play any role in relation to the work of the Local Planning Panels?---In what respect?

Do you have any role in terms of reporting to them or anything of that nature?---No.

Thank you. No further questions.

MS MITCHELMORE: Commissioner, I have no further questions, if Mr McPherson could be excused.

10 THE COMMISSIONER: Can I just ask you something. Mr Andronos asked you really about the interrelationship between the policy, the constitution and the rules.---Yes.

And my understanding of your answer was that you treated all three in a sense equally?---What I'm saying is that those documents made up the policy, they were part of the policy.

20 And what's that based on?---Those documents were prepared back in 2006 by a lawyer council employed at the time, so he prepared those, those, those documents.

All right. And they all had to be, all three documents had to be adopted by council?---That's right, they all were, yes.

All right. Thank you for coming to give evidence and you are excused. ---Thank you.

30 **THE WITNESS EXCUSED** **[4.38pm]**

MS MITCHELMORE: Commissioner, I note the time.

THE COMMISSIONER: Yes. We're adjourned until 9.30 tomorrow morning.

40 **AT 4.38PM THE MATTER WAS ADJOURNED ACCORDINGLY** **[4.38pm]**