

DASHAPUB3994
15/08/2018

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pp 03994-04052

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INDEPENDENT COMMISSION AGAINST CORRUPTION

PATRICIA McDONALD SC
COMMISSIONER

PUBLIC HEARING

OPERATION DASHA

Reference: Operation E15/0078

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY 15 AUGUST 2018

AT 9.40AM

Any person who publishes any part of this transcript in any way and to any person contrary to a Commission direction against publication commits an offence against section 112(2) of the Independent Commission Against Corruption Act 1988.

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

MR MOSES: Commissioner, I appear with my learned friend Ms Chordia today for the council and its named employees.

THE COMMISSIONER: Thanks, Mr Moses.

MR BUCHANAN: If we could recall Mr Stavis, please.

THE COMMISSIONER: Thank you.

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MR BUCHANAN: Mr Stavis, yesterday I was asking you questions about contact you had with Mr Khouri in relation to the two DAs in relation to 212-222 Canterbury Road and 4 Close Street. Can I pass on from Mr Khouri to Mr Azzi and Mr Hawatt. Did you have contact with either of them in relation to those DAs?---Yes.

10

And what sort of contact did you have with them?---It was many and varied throughout the process of the application, or the application itself. It was in the form of telephone calls, meetings and so forth, yes.

MR BUCHANAN: Commissioner, if I could make an application to vary a non-publication order, please, in respect of evidence given by the witness on 21 November 2017 commencing at page 1318 line 17 and concluding on page 1319 line 33.

20

THE COMMISSIONER: I vary the non-publication order made on 21 November 2017 in respect of the evidence of Mr Stavis to exclude the evidence recorded in the transcript at page 1318 line 17 and finishing at page 1319 line 33.

I VARY THE NON-PUBLICATION ORDER MADE ON 21 NOVEMBER 2017 IN RESPECT OF THE EVIDENCE OF MR STAVIS TO EXCLUDE THE EVIDENCE RECORDED IN THE TRANSCRIPT AT PAGE 1318 LINE 17 AND FINISHING AT PAGE 1319 LINE 33

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MR BUCHANAN: Mr Stavis, as before, I'll read to you from the transcript of evidence that you gave to the Commission on 21 November 2017. If you could listen to me reading that out, and then I'll ask you some questions about it.---Sure.

40

It starts:

So this is an email. Subject header is 212-220 Canterbury Road DA.---Yeah

It's an email sent from yourself to Ziad Chanine and you've copied in Eva, George Gouvatsos, Marwan Chanine. Then you've

blind-copied Pierre Azzi and Jim Montague. And I'll let you read the contents of the email.---Yeah

Why did you blind-copy Mr Azzi and Mr Montague?---I don't know. I really - - -

10 *Is there a reason why you would do that?---Not really. I don't know why I did, to be honest with you.*

All right. Did any councillors apart from Mr Azzi have an interest in this development?---No, he was the main one for this one.

20 *And did he express his interest in this development in any other ways apart from the telephone call you've told us about?---No, just every time we used to meet he would make inquiries about not only this one but a number of other applications, from what I recall.*

This was one of the ones on Mr Azzi's list?---Yes, definitely.

30 *And what about Mr Montague? Did he express any interest in this application?---Yeah.*

And what was the nature of Mr Montague's expressions of interest?---Well, it was basically just to hurry up and find a solution.

Right.---Yeah.

40 *Consistent with other applications you've told us about?---Correct.*

Did Mr Montague attend any meetings about this development?---I'm just trying to think whether he did. Not sure. Can't remember, sorry.

Was Mr Montague present in meetings where

Mr Azzi would come along with his list of developments that he would ask about?---Yes, yes.

Was Mr Hawatt also present?---Yes.

Was there anyone else present?---No, it was mainly them two and, and some occasions the applicant would be there as well.

10

Were there any meetings which either of the Chanines attended at council while you were there?---Yeah, yeah.

And who else would attend those meetings?---I'm just trying to think. I'm not sure. Maybe Jim Montague.

Right.---Yeah.

20

Did councillors ever attend meetings with the applicant on this development?---On this specific one?

Yes, specifically this one.---It wouldn't surprise me if they did, but I, I really don't recall, sorry.

30

All right. And do you recall whether Mr Hawatt had any interest in this development?---Yeah, like I said before, they were working usually in tandem. I'm just trying to think whether he's, he'd be, yeah, I believe he did. I believe he did.

How did Mr Hawatt express that interest?---Again, through meetings, discussions, yeah, in the normal way he would.

40

Mr Stavis, you heard me read that extract from the transcript of your evidence on 21 November 2017. Was that evidence true and correct?---In essence, yes.

Is there any modification that you would make or addition that you would provide today?---Just that bit that you read out about me saying that it was only Pierre Azzi who had an

interest in that, I think, from memory, early on.

The passage, "No, he was the main one for this one"?---He was, but also Mr Hawatt definitely expressed interest in this one as well.

10 Was Mr Azzi more actively involved in contact with you on 212-222 Canterbury Road than he had been in relation to some of the other developments where Mr Hawatt had taken a leading role, such as, for example,
15-23 Homer Street?---Absolutely. Yes.

20 Now, can I take you, please, to volume 25 if you have it there, page 249. You can see that that's an email from you to Ms Pettenon, to Ms Rahme, to Mr Gouvatsos and to Mr Azzi dated 19 May 2015 in relation to 212-222 Canterbury Road. If you could just sort of take in, peruse the contents of it on that page. My question is: was this the sort of letter that was generated when a DA was received and it
20 concerned a site within the ward that was represented by a councillor, or was Mr Azzi cc'd in to this for a different reason?---To be perfectly honest with you, I don't recall - - -

I'm not suggesting it was in his ward. Sorry, I don't want you to misunderstand me.---Sure.

30 I actually don't know the answer to that at this stage.---Okay, okay. It looks like a really different format than we would ordinarily place, but I'm just - if I can just have - - -

40 Yes, by all means.---If I'm going to be honest, this is not something that I would have ordinarily done, to be honest with you. It is - I assume that I'm - just looking at who I've sent it to, that I've actually wanted to notify the general manager that an application has been received for these properties in light of the conversations we spoke about yesterday in terms of the pre-DA meetings that we had - - -

THE COMMISSIONER: Sorry, how would you - - -?---Sorry?

Who on the address list - how would you achieve that? Is it Christina?---Yeah, that was the GM's PA, yes. And Pierre Azzi - look, I don't know, to be honest with you, but I can only assume that it was likely that he had made

some inquiries prior to that about this particular site.

MR BUCHANAN: The body of the text of the email commences, "Dear Pierre"?---Yes.

Which suggests that the primary purpose was to talk to him?---Yes.

10 It's almost as if it's a form letter that is sent to a councillor in particular circumstances?---It looks like it, but it's - to be honest with you, it's not something that I would ordinarily send in that format, yeah.

You've annotated it on two different days in handwriting, it would appear. Do you see the handwriting at the top of the page and the bottom of the page?---I do, yes.

20 And looking at the bottom of the page first, the date of that handwriting is 25 June 2015?---Yes.

And reads:

*George see me about this with the file.
Ta. Spiro.*

Do you see that?---I do, yes.

And at the top of the page, the writing reads:

30 *Hey, Sean, see me re these please. Spiro.*

And it's dated 26 May 2015?---Yes.

Was that sort of request to see the manager and to see a file officer the sort of request that you normally made when a DA came to your attention as having been lodged in council?---Not - no.

40 Do you know why you put that writing on that page in this case?---I can only assume that it was because of the pre-meetings that we had with the general manager about this.

What was the nature of the contact that you had with Mr Gouvatsos about it?---I really don't recall at that early stage.

Are you able to tell us what would have been or what would likely have been the nature of the contact you had with Mr Gouvatsos about it at that stage?---My normal practice would have been, if there was a GM interest or a councillor interest in a particular application, that I would call in George with the file, and we'd go through it and discuss it and I would make it, I guess - I have no - I guess I would have asked him to look at this and prioritise it because of those interests, yes.

10

When you say "because of those interests", are you referring back to the interests of the general manager, Mr Hawatt and Mr Azzi that we spoke of earlier, or are you talking about something else?---No, those interests, yeah.

Would there have been any reference by you to Mr Gouvatsos about the pre-meetings with the general manager and the applicant?---Ordinarily I would, yes. Yes.

20

Is there any reason why you wouldn't have in this case?---I don't believe so, no.

Would you have indicated to Mr Gouvatsos the general manager's interest in the applications?---Yes. Yes.

At this stage, was there any indication you'd received from Mr Montague as to how the matter should proceed or how you should deal with it?---Not that I can recall.

30

This is a matter, I think, where certainly by the - towards the end of the assessment process, you received an indication from the general manager that the matter needed to be progressed quickly to a deadline. Do you have a recollection of that as you sit there now?---There were numerous meetings, and I'm just trying to think if - and there were meetings that involved the general manager as well. And the general - I don't recall specifically, to be honest with you, but the general flavour of those meetings was that this was an application that had to be expedited, yes.

40

I'll take you to documents later that might assist your recollection towards the end of the assessment process. My question at this stage, though, is really to just try to ascertain from you whether you have a recollection of when you first received, assuming you did, a direction from the general manager that this matter was to be progressed to

approval ASAP?---Progressed, yes, early on in the process. So, I mean, I don't want to speculate, but it was early in - you know, once the application was lodged.

I just want to ask you, then, when you gave that answer, you left out the words "to approval" that was in my question.---Sure.

10 Are you saying that you can't say, as you sit there, that the direction was to progress it to approval ASAP; just to progress it ASAP?---The inference from the general manager at the time, when he said to progress an application, was to actually find a solution ultimately that would lead to a recommendation for approval, yes.

20 The general manager wouldn't have been interested, when having such conversations with you, about a particular DA in progressing it to refusal; that doesn't make much sense?---That's correct.

Can I ask you to turn, please, to page 262 in volume 25. If you flip over to pages 263 and 264, do you accept that these three pages are a fee proposal by an entity called Planning Ingenuity dated 14 July 2015 in respect of these DAs?---Yes.

30 You decided that the DAs should be sent out to an external planner for assessment?---I did, because - because of the urgency. I think I've given evidence before about similar circumstances where certain applications were required to be progressed as quickly as possible, and we didn't have the resources to do that, yes.

Had you been given a deadline at the stage this fee proposal was dated, 14 July 2015, for the submission of the assessment report to council or the CDC?---Not that I can recall, but it was made clear to me that it was an urgent one that needed to be processed, yes.

40 Just for clarification, who made that clear to you?---The general manager.

Did Marwan or Ziad Chanine have a conversation with you about the timeline for the assessment of these DAs?---Again, there were numerous meetings and discussions with them during that process. I'm not sure if it was early on in the process, but at some point in time I do

recall them expressing an urgency to processing their applications, yes.

10 When you referred a DA out, generally speaking, for external assessment, was it usually a case where you did so on the assumption that the applicant had provided an adequate set of plans and supporting documentation?---Ordinarily - again, I would not ordinarily have carriage over these. It would be referred initially to an assessment officer, and I would task that assessment officer to actually collate and compile the information and submit to the external consultant.

But you didn't have a system in your head whereby you only sent it out for external assessment where you believed that the material provided by the applicant would have been sufficient to allow a full and proper assessment to take place?---No, I left that up to staff to do, yes.

20 Can I just take you back in time to 3 July 2015, pages 260 and 261 in volume 25. You can see there that Sydney Trains - indeed, it's Mr Tsimiagos - wrote a letter to council on that date referring to council's letter of 19 May 2015 in relation to the development application that was for the site at 212-218 Canterbury Road. So you'd accept that your staff had provided the notification that should be provided in such a case to Sydney Trains?---It appears so, yes.

30 Can you see that in the third paragraph Sydney Trains said:

[It] is not in a position to make a decision on the granting of concurrence until Geotechnical and Structural documentation that meets Sydney Trains requirements are prepared and submitted to Sydney Trains for review.

40 *Therefore Sydney Trains advises that it must "stop-the-clock" on the assessment of this proposal, until such time the following initial information is submitted ...*

And then there is a list of various materials that were identified in the letter as being required. Going to page 261, the letter continued:

In addition to the above, and subject to the outcome of Sydney Trains review of the above documentation, Sydney Trains may also require the preparation of a numeric modelling analysis which assesses the different stages of loading-unloading of the site and its effect on the rock mass surrounding the rail corridor.

10

Sydney Trains requests that the above items and development application documentation package be forwarded in pdf format on CD to enable Sydney Trains to undertake the required internal review within the required statutory timeframe.

Were you aware of that letter when it came in?---I don't recall seeing it, to be honest with you, no.

20

Is it the sort of letter that would have been drawn to your attention having regard to your interest in this particular couple of DAs?---No, I don't think so, because it looks like a pretty standard sort of response. It's not uncommon for these sorts of things to be requested from various authorities.

But it would have gone on file and you would have expected it to be copied or its contents to be copied to the applicant?---Yes, yeah.

30

If I can take you forward in time, then, to 15 July 2015, page 269 in volume 25. The principal of Planning Ingenuity was a Benjamin Black or Ben Black; is that right?---I'm not sure if he was the principal. He was pretty high up.

He was the person you were dealing with in Planning Ingenuity on these DAs?---Correct, yes.

40

And can you see that we're looking at an email from Mr Black to a kim@kjplanning.com.au?---Yes.

If you look above, you can see the bottom of a reply email, which on page 268 can be seen to be dated 20 July 2015 from Kim Johnston from KJ Planning?---Yes.

Can you see from the nature of the email of 15 July 2015

and the response by Ms Johnston on 20 July 2015 that Mr Black outsourced the work to Ms Johnston?---It appears that way, yes.

Were you aware that he did that or was going to do that?---No. No.

10 Would you have had a view about whether that was a satisfactory development in the assessment process?---Appointing, like, a third party?

Yes.---No, I wouldn't have - I wouldn't have - I mean, I'm not saying that I - to the best of my recollection, I was not aware that that had happened, but I would not have endorsed that unless - because I - you know, we engaged Planning Ingenuity to do the assessment, not a third party person.

20 If I can take you to volume 26 - I don't know if you have it there - in exhibit 69?---Yes.

30 Thank you. Page 3. I'll be coming back to this series of emails later, but I just want to draw your attention to the fact that at the bottom of page 3 there's an email from Ms Johnston to Mr Black, and she provides an update as to where she's at in her work. This is 20 July 2015 at 10.33am. On the top of page 4 is the second half of her email, asking Mr Black to chase council up on particular issues that she identifies. She has a couple of dot points there: site contamination and site isolation. Do you see that?---I do, yes.

If you would go, then, to the middle of page 3, you can see a reply from Mr Black to Ms Johnston on 20 July at 5.19pm saying:

Thanks Kim, I have forwarded to Council.

40 Assuming that Mr Black did that - and it's likely, isn't it, that he would have, if he's being told by the person to whom he's outsourced the work that further information is required - he would be at least seeking that information from council, if not forwarding the request?---I assume so, yes.

But that didn't result in it coming to your attention that the job had been outsourced by Mr Black?---In all honesty,

I have no recollection of that. This has come as a bit of a surprise to me. But, look, it was a long time ago, but as I sit here today, I don't remember knowing that.

We'll come to it in a bit more detail, but it came to your attention, didn't it, that the draft report that Mr Black provided was one which recommended refusal of both DAs?---I can't remember that, to be honest with you.

10 If I could then take you to volume 25, pages 266 to 267. If I can ask you to have a look at the email at the bottom of page 266 and going over the page, it's from Ms Johnston to Mr Black on 21 July 2015 at 9.38pm saying that she had undertaken her full assessment of No 212-218 Canterbury Road, and, she emphasises:

... cannot support the DA due to the significant variation to FSR.

20 She goes on to provide details and then says:

Therefore, my recommendation will be for refusal.

Then she says:

The main reasons I cannot support the variation to FSR include. ...

30 And then going over to page 267, she provides a series of reasons. She identifies then a series of non-compliances with the DCP. Do you see that?---I do, yes.

Then she says:

To complete the report I need the following information from Council ...

40 And there's five dot points there of further material that she seeks. Do you see that?---Yes, I do.

She then seeks some information about other variations. She says:

I have attempted to look at other recent approvals in the area to see if such variations have been granted by Council

elsewhere, however, the DA tracker is down still and there are only a few DAs on the JRPP website that have an FSR control for comparison - which all complied. I assume the 2 DAs were split to avoid pushing up the CIV which would require delegation to the JRPP (which are hesitant to approve such large variations).

10 *Does Council have any background on why this variation should be supported that may be of assistance in this matter?? (And/or other similar variations???)*

She says:

20 *Let me know if you want someone else in the office to review and/or whether you wanted to give the Council a heads up. I haven't completed my detailed assessment of site 1 ...*

She means 220-222 Canterbury Road and 4 Close Street:

... however, the FSR variation is similar and so it is likely that I would be recommending refusal of that one too.

30 Mr Black responded on 22 July 2015 - this is page 266 - at 11.01am:

Thanks Kim. I have discussed this with Council and forwarded a copy of your email. The Council officer indicated that there was a conflict of interest, hence the reason for referring the DA for external assessment, and was not surprised by our position.

40 Now, the council officer is likely to have been Mr Flahive?---I believe so, yes. Yes. Sean, yes.

Do you know what was meant or intended or what the reference referred to when Mr Black said:

The Council officer indicated that there was a conflict of interest, hence the

reason for referring the DA for external assessment...

?---I have no idea what he meant by that.

10 Did you indicate to Mr Flahive, when you saw him, when you asked him to come and see you with the file on 25 June 2015, that you (a) were going to send it out for external assessment, but (b) you knew the applicant?---Certainly (a); (b), I'm not sure whether I did say that to him, no.

Could Mr Flahive have drawn an inference from a belief that you had a relationship of some sort with the Chanines and thought that that must have been the reason why you wanted it to be assessed externally?---I don't believe so, no.

20 But you can't assist us at all as to what that reference to a conflict of interest for the external assessment decision could mean?---Not at all, actually. Not at all. It's got me dumbfounded, to be honest with you.

Just for reference purposes, in Ms Johnston's email of 21 July 2015, in the second-last dot point on page 267, when she said, "I assume the 2 DAs were split to avoid pushing up the CIV which would require delegation to the JRPP", was CIV, as you understood it, a reference to "capital investment value"?---Yes.

30 And that's a reference to the estimate of the cost of works?---That's correct.

Now, was it your understanding that by this stage, the FSR sought in one case was over 100 per cent greater than the FSR control for the site and that the other one was over 50 per cent greater than the FSR control for the site - of that order?---Yeah, at that point in time, I'm not sure if I was aware of the exact value, but I knew that it was over, yes. I accept that.

40 Over by a large degree at that stage?---I'm really not sure if it was at this stage or a little bit later, but, yes, I was aware that it was significantly over.

Thinking now simply of the knowledge that you have as you sit there today, it was not an unreasonable view for a planner to have, was it, that if the DAs were for developments which would exceed the planning controls by

such significant margins, and if, as you know from looking at the DA forms, the estimated cost of works in each case was just below \$20 million in each case, it was not an unreasonable view for the planner to say, "I assume the 2 DAs were split to avoid pushing up the CIV, which would require delegation to the JRPP (which are hesitant to approve such large variations)"?---No, I agree with that.

10 THE COMMISSIONER: I'm sorry, you agree with that?---Yeah, if the question was, as I understood it, that it was split to basically be below the JRPP value, I mean, I think that's fact, to be honest with you, yeah.

MR BUCHANAN: The additional fact, though, that the planner in that case, Ms Johnston, included in her opinion was that the JRPP is hesitant to approve such large variations?---Look, I can't comment on that because I don't know, but that's her opinion.

20 Do you know of anything different from that? That is to say - - -?---They have approved, in the past, exceedance in heights and FSRs and the like that I'm aware of.

But of the order of more than 100 per cent?---I can't state that to a fact, no.

30 Can I take you back, then, to Mr Black's email to Ms Johnston of 22 July 2015 at 11.01am, which is in the middle of page 266, and take you back to the statement that appears in that email:

The Council officer indicated that there was a conflict of interest, hence the reason for referring the DA for external assessment ...

40 To the east of the sites the subject of these DAs was 15 Close Street, which was owned by council, the former bowling club?---Yes, that's to the rear of those sites, yes. Yes.

Is it possible that you said something to Mr Flahive about the fact that the property adjoining the sites the subject of the two DAs was council property and that given the question of the impact on neighbouring sites is always relevant to assessment, it might be appropriate in this case to send the matter out to a third party for assessment

rather than have council be a judge in its own cause, as it were?---I can't recall that, to be honest with you, if I did actually mention that. But Sean was well aware that, obviously, the site adjoining was council owned, but I really don't recall whether I instructed him that that was one of the reasons why we should be referring it out to an external consultant.

10 Did you indicate to Mr Flahive that the fact that council owned an adjoining property was a matter that needed to be sensitively considered or taken into account?---I really don't recall ever saying that to him, to be honest with you. To the best of my recollection, I did have discussions with - I was aware that, obviously, we owned - or council owned the land.

20 There was a planning proposal in the works?---There was a planning proposal in the works and it had progressed to a certain extent, but I can't, as I sit here today, tell you in all honesty whether I actually said that to Sean about that.

And you don't have a memory of making the decision that it should be sent out to an external assessor for that reason?---Not that I can recall, no, I'm sorry.

30 I apologise if I've already asked you this, but why did you make the decision to send it out to an external assessor?---Because of the resources. We had a lack of resources, and obviously it was a matter that needed - under the GM's instructions, needed to be expedited, and the only way we could do that was to outsource the assessment.

And it was a large matter, a big job?---It was a big job, and it would have taken a lot of internal resources.

40 Can I ask you, please, to go to page 265. I'm sorry, I should take you to the email at the top of page 266 before going to page 265. Do you see that that's from Mr Black to Ms Johnston dated 22 July 2015 at 3.02pm, and it says:

Hi Kim.

Council want to meet with me to discuss our position. Some time before lunch tomorrow,

could you please email me whatever you have completed in terms of the DA assessment reports so I can be across the relevant issues?

Do you see that?---I do, yes.

10 Had there been contact with Mr Black with a view to arranging a meeting to discuss their position?---There was at some point, but I'm not sure if this email refers to - whether this email resulted in a meeting with Sean or myself. I'm not sure about that.

20 If I can take you then to page 265, there's an email here of 23 July, so it's after that email that's printed on the top of page 266, at 11.49am. It's from Ms Johnston to Mr Black in relation now to 220-222 Canterbury Road and 4 Close Street. She attaches her draft report for that DA. She identifies, under the heading "In summary, the following are issues I would like you to discuss with Council if the opportunity arises" - do you see five issues there?---I do, yes.

Then she says:

In summary, the recommendation for refusal is based on:

30 ** FSR being an excessive variation and not supported (54.2% and 105.4% variations for Sites 1 and 2 respectively) - other recently approved developments in the area either comply with FSR or have relatively minor exceedances (outlined in report - the FSR zone of 3:1 is quite small and most sites appear to have development consent).*

40 Her second point as a reason for recommendation for refusal was:

The C1 4.6 does not adequately demonstrate why it should be varied.

Then at the third dot point, she deals with a series of DCP controls. Do you see that?---I do, yes.

Can I take you, please, to page 287. This is part of the

draft report that Ms Johnston provided to Mr Black in respect of 220-222 Canterbury Road and 4 Close Street. The first page of that is at page 272 of volume 25.---Yes.

I just want to take you to the material that she has drafted on the subject of whether the requirements of clause 4.6 had been satisfied at the bottom of that page.---Of 284?

10 Page 287, sorry.---Sorry, 287. Yes.

She said:

It is considered that the requested variation to the FSR development standard by 3,937.05m2 over the permissible gross floor area does not demonstrate an appropriate degree of flexibility in applying certain development standards.

20

And she has italicised "appropriate degree of flexibility in applying certain development standards". Do you see that?---I do, yes.

She goes on:

Varying a standard by more than double the adopted permitted is not the flexibility envisaged by Clause 4.6. A better outcome for the site would be a more compliant development with upper level setback and greater relief in the building facade, particularly along Canterbury Road frontage.

30

She provides further material on that subject on page 288. In the second paragraph:

The proposal is inconsistent with the objectives of the floor space ratio standard ...

40

And then she proceeds to give reasons, including that it's a significant departure from the development standard. In the third full paragraph, she says:

The applicant has provided a written

justification for the variation to the FSR in accordance with Clause 4.6(3), however, it is considered that this variation has not adequately demonstrated why the development standard is unreasonable or unnecessary in the circumstances of the case, nor has there been sufficient planning grounds established to justify the contravention (Clause 4.6(4)).

10

I'm not suggesting that those are the only reasons, but did you see this draft report?---Not that I can recall, no.

20

Did you have conveyed to you the gist of this report or the report for 212-218 Canterbury Road, which is volume 26, pages 6 to 38?---I do remember Mr Black coming to me at some stage in the assessment of this application and telling me that there were certain issues. Floor space I believe - floor space ratio I believe was one of them, but I don't believe I've seen this, this report, to be honest with you.

30

If I can take you, please, to volume 26, page 277, I just want to jump ahead a bit. First of all, I suppose I should show you the report by Ms Johnston in respect of 212-218. That commences at page 6 of volume 26, and under the summary on page 6, the last dot point indicates that the proposed development doesn't comply with the maximum floor space ratio standard applicable to the site. The next page, page 7, the first dot point on that page:

The Clause 4.6 variation to vary the FSR ... is not supported.

40

If I can take you to page 38, which is the last page of the draft for that DA, which we have, it would appear to be incomplete, but I'm going to suggest you can get the gist of the recommendation from what appears under the heading "Recommendation" on page 38. You can see that recommendation 1 concludes:

... as the development will not achieve the context, scale, built form and aesthetics related principles of the SEPP.

That's SEPP 65. Recommendation 2:

... it is considered that the proposed development does not satisfy the specific objectives contained in the [LEP] ...

Then she indicates that the floor space ratio control has been breached. She goes on to say at recommendation 4 that there are non-compliances with provisions of the Canterbury DCP. At number 5:

10 *The proposed development is unsatisfactory ... providing an undesirable and unacceptable impact on the surrounding natural and built environment.*

At number 6:

... the proposed development is excessive in terms of bulk and scale.

20 Then it would seem it's probably the last paragraph, but it's cut off and we don't get the end of it. You can get the tone of it and you can probably guess quite easily that the recommendation that followed was that the DA be refused?---Yes.

Can I take you now, by comparison with that, to page 277 in this volume. You can see that that's an email from Mr Black to you and Mr Hargreaves of 4 November 2015, so we've jumped ahead a bit in time?---Yes.

30 It's in relation to 212-218 Canterbury Road. Mr Black says:

The first of 2 emails with draft assessment reports attached.

If you turn over the page, you can indeed see a draft assessment report, and if I can ask you to go to page 279 you can see the third dot point is that:

40 *The development application is recommended for approval subject to conditions.*

?---Yes.

So that's 212-218 as at November 2015?---Yes.

If I can take you then to volume 27, page 114, this is a draft of an assessment report for 220-222 Canterbury Road and 4 Close Street and it has been annotated by, amongst others, you and dated 13 November 2015. Can you see that?---I can, yes.

If you go, please, to page 115?---Yes.

The second-last dot point:

10

Subject to compliance with deferred commencement conditions, it is considered that the proposed development has been designed appropriately ... The development application is recommended for approval subject to conditions.

Do you see that?---Sorry, what page was that?

20

I'm sorry, page 115.---Yes.

Third dot point.---Oh, okay, yes.

"Subject to compliance with deferred commencement conditions"?---Yes.

Then the last sentence reads:

30

The development application is recommended for approval subject to conditions.

?---Yes, I see that.

40

So the situation was that the draft report as at 23 July for these properties recommended refusal. By November, the draft report recommended approval. Can you assist us as to how that came to pass?---There were numerous discussions with Mr Black about the proposal. I don't have any recollection of him thinking that it was going to be refused, to be honest with you. As I said before, I knew that there were issues that he had with the applications, and it was a matter of - I believe we relayed a lot of the issues of concern that Mr Black had to the applicant and gave them an opportunity to submit amendments, I believe, and then it ultimately was to our satisfaction, I guess.

The draft reports in November were drafted by Mr Black,

weren't they?---The - sorry?

The draft reports - - -?---In November?

Yes.---I'm not sure. Look, I always assumed that Mr Black was writing these reports or his firm was writing the reports.

10 You don't have a recollection of having your attention drawn to draft reports recommending refusal?---Not as I sit here today, no, I'm sorry.

It would be an unusual situation, wouldn't it, that your external assessor, on the one hand, in one month recommends refusal and then some months later recommends the opposite, approval?---Not necessarily, because to the best of my recollection there were a series of amendments that were made to the proposal from the one that was originally proposed.

20

I'm not suggesting that you're wrong about that.---Sure.

What I'm asking is about your memory where you say you can't remember Mr Black drawing your attention in any way to the fact that he had draft reports which recommended refusal, and I'm just asking, are you saying, "No, Mr Black never drew my attention to that, and for that reason I don't have a memory of that because it would be very unusual"?---Like I said before, as I sit here today I don't recall him mentioning to me that he was going to recommend refusal.

30

He didn't indicate to you that he had reports indicating refusal?---Not that I can recall, no.

Even though you would accept that it is inevitable that the reports Mr Black had commissioned would have been sent to council and, at the very least, put on file?---The original ones in July, you're talking about?

40

I'm asking about the ones in July. Isn't that what should have happened?---I can't speak for what he - how he - I - I wasn't aware that he had outsourced it to someone else.

Is it possible you've forgotten that, learning that he had done that?---No. Look, as I sit here today, I don't recall that at all being brought to my attention. I don't know

how he ran his business. I mean, he may have not forwarded those refusal reports to us. I'm not sure. I can't answer that with any sort of certainty.

But you've seen that there's an email of 22 July 2015 in which Mr Black told Ms Johnston that he had been contacted by council, who wanted to discuss with him "our position", to use his words?---Yes, I did, yes.

10 Can you tell us anything about what that would have been a reference to?---Like I said, I can't recall whether it was Sean who contacted him or whether it was - he made contact with me. I'm not sure. I can't remember.

You weren't keeping a closer eye on this matter because of (a) its value - I mean monetary value and size - and (b) because it was a matter in which Mr Montague had evinced an interest, if not also Mr Azzi and Mr Hawatt, and (c) it was a Chanines proposed development?---Not every day, and the
20 ordinary practice would have been for council, my staff at the time, to advise me if there were issues with those sorts of, I guess, interested applications.

Being told or, indeed, forwarded a draft report that recommends refusal of a DA would be, to your mind, an issue with the DA, wouldn't it?---Yeah, absolutely.

So you would expect it to have been drawn to your attention?---I can't recall it being drawn to my attention.
30 Would I expect it? Yes.

If I can ask you to go to volume 26, page 39. If we could enlarge the top part. This is a timesheet from Planning Ingenuity. The job number is provided at the top of the page, and it's identified as "Canterbury DA's". Do you see that?---This is page 29, you said?

Page 39.---Sorry, sorry. Yes.

40 Can you see that there are a series of itemised entries for the months of July, August, September, October and November 2015?---Yes.

The first entry for July describes the work as "Prepare FPs", probably fee proposal, "and email Spiro". Do you see that?---Yes.

14 July, "Email Spiro". Do you see that?---Yes.

22 July, "Liaise Sean, review email advice and send to Council". Do you see that?---Yes.

24 July, "Meetings" is the work code, and the work description is "Meeting at Council" and the time is two and a quarter hours. Do you see that?---I do, yes.

10 Do you know whether that is a reference to a meeting that you had with Mr Black at council on that date?---Not on that date, but I'm - I did have meetings with him, yes. I'm not - I can't confirm on that day.

What happened in the first meeting that you had with Mr Black about this matter?---I'm just trying to think. The only - well, I remember having one meeting with Mr Black where he came to see myself and Sean, and I believe George Gouvatsos was present at that meeting as
20 well, and pointed out issues of concern that he had with the proposal and deficiencies and inadequate information. So that was probably, from the best of my recollection, the first meeting, but I can't confirm that it was on 22 July.

24 July?---The 24th, sorry. Yes.

Can I take you to another document, please. Can I take you to volume 28, page 2. That's a Planning Ingenuity tax invoice addressed to you at Canterbury Council dated
30 2 December 2015?---Yes.

It's in respect of the Canterbury DAs, and it identifies work done under the heading "Fees for Professional Services to 30/11/2015" and provides an invoice amount. Do you see that?---I do, yes.

Can I take you then to page 1. This is the email to you from Mr Black of 2 December 2015 to which that invoice as attached, and it reads:

40

Hi Spiro.

Please find attached our invoice for assessment of the 2 DAs relating to the above properties.

I should put on the record that those properties were

212-222 Canterbury Road, Canterbury.

As discussed with you by phone, the invoiced amount is more than anticipated and this relates to a meeting held in the Council chambers on 24 July 2015 and full rewrite of our report from the original refusal determination into a recommendation for approval, subject to conditions.

10

Happy to discuss further should you require.

Do you remember getting that email?---No. Sorry, I don't.

Do you accept that you received that email?---Yes, I do. Yes.

20

You don't have a memory of writing back to Mr Black and saying, "What are you talking about? Nothing of the sort occurred at a meeting between you and me on 24 July 2015", do you?---No. Sorry.

Do you accept that what Mr Black says there is likely to be an accurate description of what followed from the meeting that you held with Mr Black in council chambers on 24 July 2015?---Yeah, I have no reason to doubt it, no.

30

It's likely, isn't it, therefore, that you were told that the draft reports recommended refusal of the DAs?---No. As I said before, I was not - to the best of my knowledge, I was not aware of those reports. I was aware that he had issues of concern, and as I said before, it was, I guess, relatively early in the assessment process. But as I said also, those issues were relayed to the applicant and I believe that there were subsequent amendments that were made to the proposal.

40

Mr Stavis, no record of the meeting of 24 July 2015 has been found in council records relating to these DAs. Do you know why that would be?---No. I have no idea.

Was anyone taking notes at the meeting?---Not that I can recall, no.

Did you cause a file record to be created of the meeting?---Not that I can recall, no.

You suggested that Mr Flahive and possibly Mr Gouvatsos were present?---As I sit here today, that's my memory, yes.

The meeting concerned the draft reports that had been received from Mr Black, didn't it, the day before?---Look, like I said before, I don't remember seeing those reports at all. I was aware that he had issues of concern, but I really don't remember seeing those reports.

10

At the meeting with Mr Black on 24 July 2015, did you give him a direction to allow the applicant to have another go at providing better information?---I probably did, yes. I acknowledge that.

And did you say to Mr Black words to the effect, "Let's give these guys another chance at getting it right. Let's not refuse it"?---I don't remember using those words, I'm sorry.

20

Do you think it's likely that you used those words?---Well, as I've pointed out on numerous occasions, it was likely that I was trying to find a solution, yes.

Did you do that to favour the Chanines, to assist them in avoiding a refusal of their DAs?---No. I do that with everyone.

30

The fact of the matter was, wasn't it, that you know that the Chanines would have been very unhappy with you if their DAs had been refused?---They would have been unhappy, yes, absolutely.

And you knew that Mr Montague would have been unhappy with you?---I accept that.

And you knew that Mr Hawatt and Mr Azzi would have been unhappy with you?---Eventually, yes. I'm not sure if it was early on in the piece, but yes.

40

The clear message you were sending to the consultant in relation to these DAs was that you wanted reports to recommend approval of the DAs, wasn't it?---No. No. I was asking him to assess the application and make recommendations on how he saw what needed to be changed.

My suggestion to you is that if you are paying their bill

and your consultant is given a message to the effect of, "Let's give these guys another chance at getting it right. Let's not refuse it", you would expect them to understand that they should ensure that the reports recommended approval?---Yes, but not at the mercy of their beliefs in whether they could support a proposal. I mean, it's - you know, that firm is a reputable firm, so I would expect that if they were going to write a report in support, that they would actually believe what they were writing.

10

After 24 July 2015, were Chanine Design asked to provide further material?---I believe at some point they were, yes.

Well, did you have a conversation with Ziad Chanine or Marwan Chanine saying, "Listen, the material you've provided isn't good enough"?---That's likely to be the case, yes.

20

And did you indicate that what was required, amongst other things, was a decent clause 4.6 submission that wasn't buried in their statement of environmental effects?---I really don't recall the actual specifics.

30

Did you indicate to them that amongst the further material required was an independent urban design advice in respect of the front setback to the development?---I remember asking them for a series of additional information. Whether or not that included an urban design report I'm not sure, but, yeah, sorry, that's the best recollection I have on that.

Can I take you, please, to volume 26, page 56. This is the first page of a letter to CD Architects. That's Chanine Design. Do you see that?---Sorry, what page is that on?

Page 56.---Sorry.

It's 10 pages long.---Yes.

40

It goes through to page 66. On page 66 you can see it's signed by Mr Flahive, and can you see that it starts out, in the second paragraph:

Preliminary assessment of the proposed developments has concluded and a number of significant design issues have been identified, as outlined below.

?---Yes.

The first item is floor space ratio?---Yes.

And the identification of the exceedance in relation to permitted FSR. Do you see that?---I do, yes.

10 There are further issues. If I can skip over some of them until we get to item 4, full compliance with the DCP requirements is required. Can I just draw your attention to the way it has been expressed. This is the first paragraph under the heading "4. Building Depth, Setbacks, Facade Design & Articulation, building separation". Can you see that?---Sorry, what page are we on now?

Page 58. At the top of the page:

20 *Council requires full compliance with DCP provisions ...*

Et cetera. Then the next sentence reads:

Compliance with these aspects of the DCP will assist in substantially reducing proposed FSR to a more acceptable level.

30 *Full compliance with the RFDC [Residential Flat Design Code] separation distances is required, including internal separation distances. Again, this will assist with reducing the proposed FSR.*

Do you see that?---I do, yes.

40 If I could draw your attention then, on page 61, there are design issues in relation to - it's under the heading "Landscaping", but significant design issues are identified there, with requests to amend the design proposal to address a series of non-compliances that go over to page 62.---Yes.

That's in respect of 212-218, and then the same occurs in respect of 220-222 on pages 62 to 63. Do you see that?---Yes.

Page 64, under the heading "Sydney Trains":

This application was referred to Sydney Trains for concurrence. The following issues were raised ...

You can see there what's likely to be an extract from that letter from Sydney Trains that we saw earlier?---Yes.

Then if I can take you to page 65, "Conclusion":

10

IN summary the proposed FSR variations are substantial and this has been created by a number of factors which primarily relate to DCP and RFDC non-compliances. It is requested that the design be amended in accordance with the issues raised here in. An FSR variation would generally not be supported in circumstances where other non-compliances occur particularly in relation to height, setbacks and separation distances, all of which act as determinants of the envelope of the development.

20

Do you see that letter?---I do, yes.

If I can just ask you - - -?---Can I just ask one question?

Yes, certainly.---Is there a date on this letter?

30

Good question, and that's why I'm going to take you to the next document. There isn't a date, as I see it, but I'm going to suggest it's in August 2015, and that's informed partially by another document.---Sure.

We'll just pull it up on the screen for you.---That's okay, no problem.

40

It's another calendar entry. It's for 7 August 2015, but it is not part of exhibit 85, Commissioner. If we could enlarge that, can you see that's a calendar entry for a meeting in council chambers on 7 August 2015 where the participants are identified as Mr Gouvatsos, Mr Flahive, yourself and Ziad Chanine in respect of both DAs?---Are we sure that Ziad Chanine's - the required attendees was just - doesn't have him.

Oh, I see. Are you suggesting that the fact that

Ziad Chanine is in the body text, as it were, isn't indicative of the fact that he would be likely to be there?---I can't be certain, to be honest with you. Normally with such entries, we would include the applicant as an invitee. It may have happened, but I'm just pointing it out, that's all.

I want to suggest that that's not what we've seen in the evidence.---Okay.

10

We've seen a string of calendar entries where Mr Maroun, for example, and Mr Demian are plainly going to be attending the meeting, if only because - - -?---Okay.

- - - there are preceding telephone messages seeking a meeting, and there's no email to them against "Required Attendees". Their name simply appears in the same sort of position as Mr Ziad Chanine's name does in the instance of this calendar entry.---Okay. Look, I accept that. That's not a problem.

20

In any event, I take your point.

MR BUCHANAN: Commissioner, can I please tender the calendar entry for a meeting at 2pm on 7 August 2015 in relation to 212-222 Canterbury Road, Canterbury.

THE COMMISSIONER: The calendar entry for the meeting to be held at 2pm on 7 August 2015 concerning 212-218 and 220-222 Canterbury Road will be exhibit 217.

30

**#EXH-217 - CALENDAR ENTRY OF MEETING SCHEDULED AT 2PM
7 AUGUST 2015 IN RELATION TO 212-218 CANTERBURY ROAD,
CANTERBURY**

MR BUCHANAN: Now that you see this calendar entry, does that assist you at all in understanding the likely period or at least month of the preliminary assessment letter that Mr Flahive sent out that starts at page 56 in volume 26?---And the application was lodged in July, I think you mentioned, did you?

40

No, June.---June. Okay.

June? I'll just check that.---That's okay.

I want to make sure I'm not confusing it with another. April. I was wrong. 27 April 2015 was the date of the DAs.---I would have thought that the letter would have been probably prepared before that meeting.

10 The meeting in the calendar entry?---Yeah, because ordinarily what used to happen was you'd send the letter out and inevitably when there were issues, the applicant would contact for a meeting. So I think that's more likely than this letter being sent out in August.

So is it possible, then, having regard to the meeting with Mr Black on 24 July in which you said, "Let's give the applicant another chance at approval", that this letter might have been prepared some days after that, like late July, more like late July than August?---I think that's probably more likely, yes.

20 There's no record that the Commission has been able to find in council records of what happened at the meeting on 7 August 2015. Do you know why that would be?---No, to be honest with you.

30 Should there be a record?---Look, as I've said plenty of times before, it wasn't a strict practice to actually keep notes on things. When you're engaging with an applicant and identifying issues - and in this case it's likely that we would have gone through this letter - in a lot of cases no-one actually took any notes. I'm sure you haven't - if you haven't found from George or Sean as well, and you've got my exercise book, that's probably likely to be the case.

40 Doesn't that place council at a disadvantage, though, both in terms of the work it has to do in processing the DAs but also in later trying to find out what happened in the processing of DAs?---Yeah, I mean, look, if you're asking me whether there should be more vigilance in actually taking records, I agree with that, yes, for the reasons you expressed.

I suppose it's only a statement of the obvious, but you're the person who was responsible for ensuring that systems like that were in place?---Yeah, I accept that. I accept that.

Is it possible that that meeting on 7 August 2015, if it included Ziad Chanine, was a presentation to him of this letter?---It is possible, yes. He would have probably had it before, I would imagine. Otherwise - and in all likelihood that's why he would have organised the meeting, so - - -

To discuss the contents of the letter?---Correct, yeah. That was normal practice.

10

If you go then to page 106 in volume 26, you can see there's a council form for additional plans to go to Mr Flahive from Chanine Design.---Sorry, what page was that? I missed that.

106.---Okay. Yes.

20

The receipt date is 15 September 2015. If you go over the page, because there are two DAs, you can see there's two forms?---Yes.

Can I ask you to have a look at page 108, the next page. This is a copy of another page in one of your exercise books?---Yes.

30

At the bottom of the page, the heading is "Pierre Azzi "and the date is 17 September 2015. If you go over the page, you can see that it's likely to be the next page, page 109, because the next date is the same date, 17 September 2015?---I accept that, yes.

There's a reference in the third item at the bottom of page 108 to 4 Close Street, Canterbury?---Yes.

40

What happened in relation to that contact with Mr Azzi?---I believe at that point in time Mr Azzi was making me aware that they had submitted some amended documentation, so I guess - I believe he was following up on that.

When you say you believe, do you mean that you have a recollection?---I do. I recall him ringing me - I'm not sure if it was in the office or on my phone, my mobile phone, but I recall him ringing me shortly after the amended package was received by council.

And he was making sure that it had been received and that

you were going to action it, I take it; is that right?---Correct.

Can I take you to page 110. At the bottom of page 110 going over to page 111 is an email from - I'm sorry. I'll start this question again.---That's okay.

Page 111 is an email from a Dewi Kentjung of 9 September 2015 to Mr Ziad Chanine:

10

Hello Ziad

Do you know who in council can Benny contact in regards to 212 Canterbury (doorsmart) for information, since the planner have left?

Can I just pause there. The date is 9 September 2015. Mr Flahive had left by that stage?---I can't confirm that.

20

Do you remember that he left?---I remember that he left, yes, absolutely.

And Mr Ziad Chanine forwarded that email to you, going over to the bottom of page 110, on 9 September at 11.47am:

Hi Spiro

30

Could you advise who our traffic engineer needs to get hold of at council pertaining to traffic counts and the like so that he can address the Traffic Issues in councils letters?

Your help would be appreciated.

And you responded on 18 September 2015 at 9.37pm:

40

Ziad

I apologise for not responding earlier but believe me that I only received your email today, which explains why Marwan was critical for not receiving a response when I spoke to him yesterday. Now it makes sense. I can honestly say I don't know why this happened mate.

Anyway FYI I did speak to him yesterday and clarified.

Again, my apologies.

Am I being too precious in asking you why you used the word "mate" in that email to Ziad Chanine?---I think so.

10 You tell me why. I'm happy to receive criticism.---Sorry, I didn't want to criticise you. I use the word "mate" in reference to a lot of people, just general - that's my nature. That's who I am.

Well, I want to suggest that we've seen a lot of correspondence of yours now, and whilst it certainly is a word that is sprinkled through your conversations with Michael Hawatt, it's not a word we've seen in your written correspondence before. I'm not saying it didn't
20 appear.---Sure.

But we just haven't seen it in your written correspondence before, and we have seen quite a lot. So I'm just wondering whether it's indicative of the relationship which, as at September 2015, you thought you had with Ziad Chanine? He was a mate of yours?---No. It's a word that I use commonly.

I'll just make myself clear. The reason I suggest we see
30 it here, but we haven't seen it previously, is that you considered that Ziad Chanine was a mate of yours and that's why you were prepared to use that word in your written correspondence on this occasion with that man?---No. I disagree.

Can I take you to page 112. It's 112 to 113 in the first instance. Can you see at the bottom of page 112, it's in very small print - we might be able to blow up the bottom of the page to make it easier for you to read on the
40 screen.---I can read it here. That's okay.

Can you see that there's an email dated 9 September 2015 from Christopher Evans, which reads:

Hi Spiro

We refer to the above DA 169-2015 for

No. 4 Close Street, Canterbury.

We own No. 6 to 8 Close Street, and as such submitted comments during the advertising period.

10 *Sean Flahive sent us an email on the 01/07/15, stating he would respond to us after his "initial assessment". We tried to contact Sean several times from late August to ask about progress. Finally Steve Pratt rang us on Thursday last week, saying that (a) Sean had left Council and (b) he, Steve, had been overseas on holidays. Steve said the job had been handed onto external consultants and that he would respond to us by Friday, because he was also leaving Council. Steve didn't manage to get back to us, and we assume he is now officially outside Council's management team.*

20

Spiro, could you please let us know who we should contact in relation to this matter.

Regards Chris.

Do you see that?---I do, yes.

30 I read all of that out because I just wanted you to take in the nature of Mr Evans' inquiry. It was an inquiry of you as to who in council they should be talking to in relation to the DA?---Yes.

If I can take you then to the middle of page 112, on 18 September 2015 at 8.57pm, you forwarded Mr Evans' email to Marwan Chanine saying:

40 *Please see below FYI.*

They own the property next door and would like to talk to you about as they are looking at redeveloping their site as well, just FYI.

Do you see that?---I do, yes.

Mr Evans' email didn't say that, did it?---Mr Evans and I had a conversation, I recall that, where he wanted to talk to the adjoining landowner because he had plans of redeveloping his site and he wanted to see whether or not - how what they were proposing on the adjoining site would impact his site. So I remember those conversations with him.

10 Was there a reply that you sent to Mr Evans - apart from forwarding it to the developer of the property next door, was there a reply you sent to Mr Evans about who he should contact at council?---I can't remember if there was, but I remember discussing it with him, and he had made contact with Marwan Chanine, or tried to, anyway.

20 If I can take you, please, to page 117 in volume 26, this is a letter by Andrew Hargreaves to Planning Ingenuity forwarding fresh material from the applicants. Can you see the second-last paragraph on page 117?---Yes.

It states:

Both DA's are expected to be considered by our Independent Hearing and Assessment Panel meeting on 2 November 2015. With this in mind we require your completed report by Friday 16 October 2015.

?---Yes.

30 Would that letter have been sent on your instructions?---I really don't recall.

40 Can you tell us how the November meeting of the IHAP, rather than a later meeting of the IHAP, was selected as the meeting to which the DAs would be submitted for consideration?---That would have probably come from instructions from the general manager that we deal with the matter in a timely manner.

Well, I should have taken you to - I'm not suggesting you're wrong.---Sure.

I just want to explore that a bit. Page 118, the letter from Mr Hargreaves is dated 23 September 2015?---Yes.

And the IHAP meeting is to be on 2 November 2015, and

you're requiring a completed report by 16 October 2015.
It's a very tight time frame, isn't it- - -?---It is.

10 - - - for such a big matter, and it's not just one report;
it's two reports?---Look, I've written plenty of these
reports in my time, and he - there was already the basis of
a report that had been done, albeit, from what you've shown
me, for refusal, but the main contents were there. I don't
think that's an unrealistic expectation, to be honest with
you.

20 Could I just explore, though, your answer that the fact of
the November meeting being the meeting of the IHAP to which
the reports were to go probably came from Mr Montague.
What do you base that on?---There were numerous - there was
numerous contact between myself and Mr Montague in relation
to this application and I do recall - I can't be definitive
in terms of that particular date, but the urgency expressed
would have been - was because the general manager expressed
it to me.

And if the general manager had not expressed that urgency
to you, would you likely have allowed the matter to go to
the succeeding meeting of the IHAP rather than the November
meeting?---If there was no urgency, and given the resources
we had at the time, it's hard to say, but I probably
wouldn't have insisted so much, yes.

30 Because you knew, didn't you, that it wasn't just a matter
of the report being drafted, but you would have to vet it,
vet them, that is to say, read them and satisfy yourself
that you would be happy for them to go forward to the IHAP
and to the CDC under your name?---Absolutely, yes.
I accept that.

So it was work required of you as well as of the person
drafting them?---I accept that, yes.

40 There's no reference in the letter of 23 September 2015 by
Mr Hargreaves to Planning Ingenuity to material being
received in relation to the requests for material from
Sydney Trains?---Doesn't appear to be the case, no.

And, indeed, the question of whether - the request from
Sydney Trains for material before they could start to
conduct their assessment isn't addressed at all?---In terms
of the amended package or - - -

In terms of the letter.---The letter itself?

The letter itself?---No.

10 It doesn't say, "By the way, there is an outstanding issue and we still don't have material that is required by Sydney Trains", nothing like that?---Yeah, but that's not uncommon, though, because this letter appears to be a general sort of letter to the consultant. Now, I'm not sure whether or not the package - and I assume that the letter, the original letter that was drafted by Sean, would not have been forwarded to Planning Ingenuity, the external consultants, so they would have been aware that there were issues about that. So it's not unusual, because I've noticed here that there's not other stuff that was requested in the letter from Sean included in this letter as well, sure.

20 Wouldn't the consultant drafting the letter, though, need to have the conditions proposed by a concurrence authority or requested by a concurrence authority for the purpose of drafting conditions to go with an approval?---Ordinarily yes, yes.

Nothing of that sort, though, was being provided at this stage?---I can't be certain of that.

30 Well, not by this letter?---No, not by that letter, no.

Given that the IHAP meeting was so close, wasn't the question at this stage in September 2015 of approval by the concurrence authority, Sydney Trains, an important issue as to whether you were going to be able to meet that deadline?---To be honest with you, I left that up to staff to sort out. I didn't know if that was the case.

MR BUCHANAN: I note the time, Commissioner.

40 THE COMMISSIONER: We'll take the morning tea adjournment and resume at 5 to 12.

SHORT ADJOURNMENT

[11.35am]

MR BUCHANAN: Mr Stavis, could you go, please, in

volume 26 to page 149. This is an email on 23 September 2015 at 7.25pm, when Ziad Chanine wrote to you:

10 *I know you spoke to Marwan about this but the idea of the applicants surveying all Canterbury Town Centre for traffic modelling etc so that we can provide reply to Councils letter is excessive. Is Council in a position to provide the applicant the required information/modelling collated ...*

You replied at 8.09pm:

This request came from councils Traffic Engineer as part of the referral process. I'm chasing for you.

20 And then back on page 148, there was an email from Ziad Chanine at 8.15pm to you, "Thank you", that he appreciated it. You forwarded that email conversation to Wayne Cooper, is that right, at council at 8.22pm?---Yes, that's correct.

You said:

Hi Wayne

30 *Please see email trail below. Can you see if this is really necessary or if we can assist? GM is really keen to progress as well.*

When you said "GM is really keen to progress as well", where did you get that information from?---Oh, that would have been from the GM.

40 Were you conveying Mr Montague's views on the subject to Mr Cooper in the hope of getting a prompt response out of him?---Yes.

Volume 26, page 150. Page 151 I should take you to in the first instance. It's an email from you to Ziad and Marwan Chanine on 14 October 2015 at 12.40pm:

We are missing clause 4.6 variations for the FSR (variation for building height has

been provided) - could you please email to me asap.

At 1.51pm, Ziad Chanine responded:

Hi Spiro, the Clause 4.6 Variation for FSR is included in each SEE. Hope this helps. Please advise if this is sufficient.

10 Then if I can take you then up to the middle of page 150, at 4.19 you emailed Mr Black:

Ben,

See below. Is this true?

And then Mr Black replied to you at 4.53pm:

20 *Further to our discussions, as a minimum can you please ask the applicant to provide greater justification within the FSR Clause 4.6 variation i.e. [the Ashfield Council case] and planning grounds justification.*

Do you see that?---I do, yes.

Then at page 152, at 5.06pm the same day, you emailed Marwan Chanine:

30

Further to our discussion just now, as a minimum can you please provide an urban design peer review of the development and especially in relation to the proposals non-compliance with the front setback controls in the DCP.

40

In addition, can you please ask the planner to provide greater justification within the FSR Clause 4.6 variation i.e. [the Ashfield Council case] and planning grounds justification ...

Then you provide details as to what should be provided. You were confirming in that email to Marwan Chanine a conversation you had just had with him shortly before 6 minutes after 5 on 14 October 2015?---I believe so, yes.

You provided him with quite a bit of detail as to what it was that was needed for a clause 4.6 submission in relation to FSR; is that fair to say?---I wouldn't say "quite a bit of detail". I mean, I've just stated the case that he needs to refer to, and in particular to establish whether there is a better planning outcome achieved as a result of the non-compliance.

10 There are three particular aspects that you warned him about?---Sure.

How in this particular case there is a better planning outcome achieved as a result of the non-compliance?---Yes.

It can't be a generic argument that can be applied in other similar zoned sites, for example, a site being close to a station. And the arguments have to be specific to this case?---Yes.

20

This is a fair degree of hand-holding of the applicant to try to ensure that their DAs were approved, isn't it?---Was I assisting? Yes. Yes.

Do you think that it was appropriate, having regard to the fact that you were the director of planning of the council that was required to undertake an assessment and ultimately a determination of the DAs to, to use a word that has been used before, massage the material being assessed and on the basis of which there is to be a determination to improve the chances of an approval being the outcome?---I don't see it as being inappropriate, no.

30

You don't think it crossed the boundary of being, on the one hand, the person who is responsible for the assessment and making a recommendation and, on the other hand, being the person who is responsible for the material being assessed?---No.

40

You don't think there's a potential for a conflict of interest there?---No, sir, I don't.

You don't see any prospect of a potential for a conflict of interest?---No, sir.

If I can take you to page 157, you were chasing Marwan Chanine in this email of 16 October at 7.01pm; is

that fair to say?---7.01, is it? Yes. Yes - oh, is it 7.01?

THE COMMISSIONER: No, it's 9.01.---Yes.

MR BUCHANAN: Thank you, Mr Stavis. Thank you, Commissioner.

10 But you were chasing him for these materials?---Yeah, because, as we saw earlier, we were on a tight time frame to actually put it up to an IHAP, I believe, from what we saw.

You were essentially acting as the supervisor or the manager of the preparation of the DA that was to be assessed, weren't you?---I certainly had a hands-on approach, yes.

20 Did it occur to you that that might be inappropriate?---No. What was occurring to me at the time was that we had to expedite the application, given the GM's instructions, and that's why in most of those cases I took more of a hands-on approach.

30 But it's a hands-on approach in putting the material to be assessed into a shape where you believe that the outcome is likely to be approval, isn't it?---Look, at the end of the day, it's a matter for their planner to actually take on board the issues that I raised in those emails. So I really don't agree with that, no.

But it was more than it being a matter for their planner. You were identifying the materials required and then chasing them up when they weren't provided. You weren't leaving it up to their planner, in other words. You were taking an active role to try to make sure that the DA had the content that you believed it needed in order to be approved?---I think that's fair comment, yes.

40 If I can take you to page 159, you sent yourself at 8.04pm on 16 October a copy of that email conversation, which included the request to Marwan Chanine for an update. Was that in order to provide you with a reminder to chase him up again if need be over the weekend or early on Monday?---I really can't say with any sort of certainty, to be honest with you, but it's likely. It's likely.

Is there any other explanation that you can provide?---Not really, no.

You really didn't want their DAs to fail, did you?---No, I wouldn't say that. I didn't want there to be any delays in the processing of those applications. That was more my way of thinking. And, yes, I was looking for solutions, obviously.

10 But the DAs could have been assessed on the basis of the material council already had as at 16 October 2015. There was no obstacle to that, was there?---It could have been, yeah.

20 So it was not just trying to make sure that a deadline was met. It was trying to make sure that, by the deadline, an approval could be granted?---Like I said, I mean, my job was to try and find solutions to applications. This was one of them. And that was always at the - sort of at the background of - the back of my mind, especially when I was given instructions from the GM when he takes an interest. I mean, there was an inference - I think I said this before. There was an inference that, you know, we'd find solutions which ultimately would be a recommendation for approval, yes.

Page 200 in volume 26. About a third of the way down the page you can see that it's an email from Marwan Chanine to you at 2.56pm on 19 October 2015:

30

Hi Spiro

... please find attached the updated C1 4.6 with regard to the FSR.

40

With regard to the issue of DCP non-compliance with the Canterbury Road secondary setback, this non-compliance was justified by CD Architects with the additional information previously lodged (along with 3D modelling).

You replied to that at 3.32 on 19 October:

Thanks for the updated C1 4.6. In regards to the front setback as discussed previously the non-compliance was not

adequately justified. I note our agreement that you would provide independent urban design advice in this regard. I am not trying to be difficult Marwan and I would not ask if I didn't need. I need the ammunition. Please do so asap.

Do you see that?---I do, yes.

10 Do you recall that exchange? Do you have a recollection of it?---I do recall asking for an urban design report or advice, but I don't recall the specifics of this exchange, sorry.

You knew that these DAs were going to be considered by the IHAP, didn't you?---Yes, of course.

20 Is it fair to say that - it's a statement of the obvious - you couldn't control what the IHAP did with a DA, could you?---No, no.

You could influence it to the extent that you provided a report to the IHAP, which it needed to consider; correct?---That's fair, yes.

But otherwise the IHAP was independent of you, and it was certainly independent of Mr Montague and Mr Azzi and Mr Hawatt, wasn't it?---Correct.

30 And you wanted to make sure that the two DAs for these sites didn't fail to get approval; is that fair to say?---I think that's fair comment, yes.

You thought that you needed to put their DAs into a state where they had the best chance of receiving a recommendation for approval from the IHAP?---Yes, but more importantly for me was to satisfy myself that there was - it was an appropriate development.

40 Mr Stavis, I want to suggest that if you had ever thought that, that time had long passed by October 2016. It wouldn't have entered your mind?---Okay, look, I accept that. I accept that.

You, by the email you sent at 3.32pm on 19 October 2015, were trying to ensure that Mr Chanine, Marwan Chanine, provided the material required as soon as possible to

enable you to put the DAs into the best possible shape before they went before the IHAP for consideration?---Yeah, that's fair comment.

Other development proponents wouldn't have got that degree of assistance to get them over the line, would they?---No, that's not correct.

10 The Chanines got this degree of assistance because you favoured them, for whatever reason, you favoured them over other development proponents, didn't you?---No.

And the Chanines had given you extra work in the past; is that right to say?---They'd given me work, yes.

And at a time when for financial reasons you needed extra work?---I don't believe at that point in time that we had any financial difficulties, no.

20 You still had debts, plural, of some order, didn't you, by mid-2015? I'm sorry, I withdraw that question. You still had debts of some order by mid-2014, when you received the consultancy work from the Chanines?---I don't believe so, because, as I've said before, my wife was working and I had a full-time job.

Yes. That doesn't mean to say you didn't have debts to pay off.---Of course, like everyone else, absolutely.

30 Well, you might have had a few more, perhaps, as a result of the outcome from the private practice that you had been running up until the time that you went back into the public sector?---Yeah, I think that's fair, yes.

Did you feel that at least in part, through Bechara Khouri, the Chanines had helped you get the job of director of planning?---No.

40 You knew, didn't you, in 2014 and 2015 that Bechara Khouri worked for the Chanines, amongst other developers?---I didn't know whether he worked for them. All I can gauge was that he was acting on behalf of them and turned up to meetings with them, but I didn't know their financial arrangements or anything like that.

Did you think he was doing it for free?---I didn't really think about it, to be honest with you, but I don't suppose

he would have been doing it for free, no.

You didn't feel that because of the tutelage you'd been provided by Bechara Khouri that in part you had obtained the job of Director City Planning through the Chanines?---No, I didn't think that at all.

Did you feel, to a degree, obligated to the Chanines for the job?---No. No, sir.

10

If I can take you, please, to page 209 in volume 26. At the bottom of the page, there's an email that we saw earlier from Marwan Chanine at 2.56pm on 19 October. You then forwarded the material that Marwan Chanine had provided you to Benjamin Black, can you see that, on 20 October at 12.33pm?---I can, yes.

20

That material included, looking at page 211 to page 229, a clause 4.6 submission in respect of FSR for 220-222 Canterbury Road and 4 Close Street, Canterbury. Do you see that?---I do, yes.

Then if you look at page 230, it also included a complementary document serving the same function in respect of the DA for 212-218 Canterbury Road?---Yes, I see that.

Those are both dated 18 October 2015?---Yes.

30

If I can take you, please, to page 251, can you see at the bottom of page 251 there's an email from you to Ziad Chanine on Saturday, 24 October 2015?---Yes.

It is cc'd to Marwan Chanine and also to George Gouvatsos. You said:

40

I refer to our meeting last Thursday and note that we agreed that 2 issues remain outstanding before our assessment can be finalised ...

And then you identified them:

1. justification of the proposals non-compliance with the rear setback control under the DCP.

You explained about the proximity to the Canterbury Bowling Club - - -?---Yes.

- - - which is the subject of an imminent rezoning proposal for high-density residential development. And:

10 2. *the submission of an urban design report justifying the proposals non-compliance with the front setback control under councils DCP.*

You then explained that it was imperative that you received that information by the end of the succeeding week?---Yes, yes.

Mr Ziad Chanine responded at 10.51am on Sunday, 25 October 2015, saying:

20 *I will ensure these two items are with you early in the week.*

Do you see that?---I do, yes.

At the top of the page, can you see that you then forwarded that email conversation to Pierre Azzi and Michael Hawatt, that is to say, at 6.44pm on Sunday, 25 October?---8.44?

30 Thank you. I stand corrected. Do you see that you forwarded that conversation to those two gentlemen?---I do, yes.

Why did you do that?---It was - I don't recall, to be honest with you, but I believe it was a way in which they could be informed, because as you know, as I've said before, they took an interest in these applications. So this was a way of keeping them informed.

40 Had there been a contact between you and Mr Azzi and/or Mr Hawatt shortly before 25 October 2015 as to how the matter was progressing?---I'm sure there was, but I can't recall the detail. But I'm sure there was, because there was numerous contacts from them.

I appreciate we've covered this sort of thing before, but if I can just ask, you didn't send this email to any other councillor?---I don't believe so, no.

And why did you send it to them and not any other councillor?---Because they're the ones that were always inquiring about this particular application.

Can I go back to the email to Mr Chanine, to Ziad Chanine, on 24 October at 9.18pm. It's at the bottom of page 251. Can you see that in the first line of the email you refer to "our meeting last Thursday"?---Mmm-hmm, yes.

10 Where there was agreement that two issues remained outstanding, and you proceeded to identify them. If I inform you that that meeting does not appear in your electronic calendar and that there is no file note of that meeting, does that come to you as a surprise?---Probably, yes.

20 And why?---Ordinarily I would put those - any meeting in the calendar, but I can't say with any degree of certainty that I did it all the time, because a lot of the times they would just ring and I'd, you know, come out or whatever. But, yeah, I'm not sure why I didn't.

30 Were all the meetings that you had with Ziad and Marwan Chanine about these DAs once they had been lodged with council and before they were determined held at council chambers, or were any of them held off premises?---No. Most of the meetings were held at council in our - we had a meeting room on our floor. So most of those - or outside where the counter is, there's a couple of meeting rooms there.

But that's still in council chambers?---It is, yes.

40 Were there any meetings held off premises, outside of council chambers, with these two gentlemen between the time when the DAs were lodged and determined?---Yes, only those meetings that were held at Mr Azzi's house, I think I've given evidence before, where Mr - or Marwan Chanine would be present when I had arrived, yes.

No other venue?---Not that I can recall, no, no.

Were there any lunches that you had with them?---No, not that I can recall, no.

Is it possible that you had a lunch with them between the time that the DAs were lodged and determined?---I don't

believe so, no.

Can I ask you this: in that email to Ziad Chanine at 9.18pm on Saturday, 24 October, you identified as the first issue justification of the proposal's non-compliance with the rear setback control under the DCP, and you went on to explain why it was an issue. When did that issue first come to your attention as an issue?---I really don't remember when.

10

Are you able to say when in relation to the stage things had reached?---It was - I'm not sure if it was identified early in that letter that you showed me before from Sean.

It wasn't.---Okay. I can't say with any degree of certainty when that came up, to be honest with you.

But certainly by 24 October it had come up. How had it come to your attention?---That I can't remember.

20

I appreciate you say there "the rear setback control under the DCP". Was that question raised with you by Mr Black? I'm not suggesting it was. I'm asking.---No, no, of course. I believe it was at some point.

So do you think it's possible he was the first person to raise it?---It could be. It could be, yeah, because he was the one assessing the application, so it could be.

30

I'll just posit this for your consideration. One need not even be an architect or a planner. Provided you were aware of requirements for setbacks, whatever their source, then all you had to do was look at the plans to see, oh, there are no setbacks at the rear?---I believe there was a lot of debate about the setback to the rear, internally.

Internally, where?---Council, with staff.

40

In your department?---In our department, because there was the uncertainty of the Canterbury Bowling Club being rezoned. I'm not sure if it's actually been rezoned, to be honest with you, and there was also a precedent for a development that was maybe two doors down, I think from memory, that had a nil setback at the rear. So there was always debate about whether that control in the - and I take your word for it - DCP was actually relevant, given those circumstances.

You know, don't you, that in the case of 212-220 Canterbury Road, the source of the requirement for a setback at the rear was the SEPP and the Residential Flat Design Code rather than, as this email said, the DCP?---No, I don't know that at all, because the zoning of the land was not residential at the back. It was open space, from memory, or community.

10 You're talking about 15 Close Street now?---No, no, I'm talking about Canterbury Bowling Club, at the back.

Yes, 15 Close Street.---Sorry, is it? Sorry, I didn't recognise the address.

20 That's okay. That's okay.---At that point in time, SEPP 65 did not - I believe, anyway, I can't - it's been a while since I've looked into this. Because it wasn't residential, you didn't need that separation that you would otherwise be faced with if you have a residential or business - a residential block of land next to a residential block of land.

But you knew that there was a planning proposal for rezoning of the land at 15 Close Street, the old bowling club?---I did, yes.

And you knew it had gone to public exhibition?---I did.

30 And that the planning principles required that if it had gone to that stage of processing, then one had to take into account the imminent rezoning?---No, it wasn't imminent. I mean, it never even received Gateway Determination at that point in time, from my - - -

How could something have gone to public exhibition and not received Gateway Determination?---Sorry. Look, I - I don't have the information in front of me, but I - I can't recall.

40 I'll ask you to assume it had gone to public exhibition after having received Gateway Determination.---All right, okay.

And it was for rezoning to high-density residential R4?---Right, okay.

At that stage. Now, in addition, there was a master plan for the site, wasn't there, that allowed for an eight-storey building on the site adjacent to 212-218 Canterbury Road?---There was a building, but I don't recall the height of the building, I'm sorry.

10 If you could have a look, please, at this document. I'm showing you an email from the top of the page - it's two pages - headed "Planning Proposal Canterbury Bowling Club" from a Michael Conway at Canterbury Council to a Jim Davies at Canterbury Council dated 29 April 2016. Do you see that?---I do, yes.

If I could just ask you, first of all, to have a look, please, at the second page of the document. The second page is the start of the conversation. It's from Michael Conway to Mr Davies on 28 April 2016 at 5.43pm:

20 *Hi Jim,*
Call me in the morning on x326.

Sorry, my mistake, Mr Stavis. I should have taken you to the originating email from Mr Davies dated 28 April 2016:

30 *Hi Michael sorry I missed your call.*
I am assessing amended plans for a DA next to the bowling club site. I wondered if you could give me a bit of background on the PP and where it is at. I am aware it is awaiting gazettal.

Can we have a chat tomorrow?

40 It was to that that Mr Conway responded, saying, "Talk tomorrow." Then on the first page of this sheet are two emails. Looking in the middle of the first page, it's from Mr Davies on 29 April 2016 at 10.15am to Mr Conway:

As discussed can you please comment on the DA 168/2015 ... especially the proposed through site link along the railway boundary of the development site, with regard to its potential to connect or not, with pedestrian links planned on the former bowling club site. Would you please also

confirm that publication of the rezoning and reclassification of the bowling club site is imminent.

I would appreciate your comments by 9th May 2016.

10 *Below is a link to the apartment design guide, which must be considered when a DA is determined for apartments, when there is 4 or more dwellings or three or more storeys proposed, per SEPP 65 - link also provided below.*

Then at the top of the page, Mr Conway responded. Can I just pause here before going into that response. Mr Davies, did he work as a planner in your department?---Yeah, I believe he was a consultant planner. Yes.

20

And Mr Conway?---Michael Conway - I don't know his official title, but he worked in the property section, in governance, I think.

As in council's property?---Correct, yeah.

And Mr Conway responded to Mr Davies on 29 April 2016 at 3.52 saying:

30

As discussed, the Department of Planning has formally advised Council that they have received an Opinion from Parliamentary [Counsel] and that the plan to rezone and reclassify 15 Close Street, Canterbury can be legally made and that it is being progressed to request the Governor's approval.

40

Given that the rezoning and reclassification of 15 Close Street, Canterbury is imminent, we request that the 9 metre setback at the adjoining property at 212-218 Canterbury Road, Canterbury be adhered to. The previous DA which was recently approved by Council for the adjoining development at 220-222 Canterbury Road, Canterbury will be built

10 to the boundary of the property. This may
 cause issues with the site setback for
 15 Close Street, Canterbury as the
 Department of Planning's Apartment Design
 Guidelines state that "for buildings five
 to eight storeys require 18m setback
 between habitable rooms/balconies". The
 masterplan for 15 Close Street, Canterbury
 allow for an eight storey building adjacent
 to 212-218 Canterbury Road, Canterbury
 which suggests that an 18 m setback would
 be required on 15 Close Street in order to
 comply with the Department of Planning's
 guidelines.

20 He then went on to talk about the through site link that
 had been raised by Mr Davies. You see that email
 conversation. Does it remind you that there was a master
 plan for 15 Close Street, Canterbury that allowed for an
 eight-storey building adjacent to 212-218 Canterbury Road,
 Canterbury?---I see no reason to doubt that that was the
 case, no.

 MR BUCHANAN: I tender, Commissioner, the email
 conversation which, on the first page, starts with an email
 from Mr Conway to Mr Davies of 29 April 2016, "Re: Planning
 Proposal Canterbury Bowling Club".

30 THE COMMISSIONER: The email chain between Michael Conway
 and Jim Davies on 28 April 2016 and 29 April 2016 will be
 exhibit 218.

**#EXH-218 - EMAIL CHAIN FROM DAVIES TO CONWAY TITLED
"RE: PLANNING PROPOSAL CANTERBURY BOWLING CLUB" DATED
29 APRIL 2016**

40 MR BUCHANAN: Now, what I want to suggest is that SEPP 65,
 with the Residential Flat Design Code which it incorporated
 by reference, was the source of the requirement for
 a setback of 18 metres between residential buildings of
 eight storeys or more. Does that ring a bell at
 all?---I can't say with any degree of certainty, I'm sorry.

 We can show you on the screen a copy of the then
 Residential Flat Design Code.---Yes.

As you saw from that email from Mr Davies to Mr Conway that we looked at earlier, it was replaced by the Apartment Design Guide for the purpose of SEPP 65 a bit later, I think, in 2015?---I recall there was an amendment to SEPP 65, which included some apartment guidelines, yes.

10 But at the stage that we're talking about in October 2015, I want to suggest to you that the source of the requirement was the Residential Flat Design Code and we'll just see if we can bring it up on the screen. We'll just show you the front cover first. Do you recognise that cover as being the front of the Residential Flat Design Code in that era?---Yeah, I remember the orange cover, but the words, yeah, I don't.

20 Then we'll take you to page 28 in the paginated pages of the document, and it's headed "Primary Development Controls". What I suggest to you is that particularly from the material in the second half of the page, it's well illustrated by the diagram on the bottom left-hand side of the page that, as it says there, "for habitable terrace on 9th storey building separation below applies", and it indicates an 18 metre separation between buildings. What I suggest to you is that that is what the outcome is for a building that exceeds eight storeys in the material under the heading "Designing the controls", which is on the right-hand side of the page. Do you recall that?---My reading of that is that the controls that they stipulate there is for internal courtyards and between adjoining sites.

30 Yes. We're talking about adjoining sites, aren't we?---We are talking about adjoining sites.

40 Then if I can just take you to "nine storeys and above/over 25 metres", the second item, "18 metres between habitable rooms/balconies and non-habitable rooms". Do you see that?---I do, yes.

That is illustrated, I suggest to you, by the figure on the left-hand side of that text?---The only difference is that I can see - oh, no, sorry. I agree. I agree.

MR BUCHANAN: I tender the Residential Flat Design Code. It's dated 2002.

THE COMMISSIONER: The Residential Flat Design Code dated 2002 will be exhibit 219.

#EXH-219 - RESIDENTIAL FLAT DESIGN CODE DATED 2002

10 MR BUCHANAN: Now, that you knew to be incorporated by reference into the requirements of the SEPP 65?---When you say "that"?

The Residential Flat Design Code.---Yes, sir.

20 Accordingly, if the 18 metre building separation requirement were to be equitably applied to the rear of a proposed eight or nine-storey building which faced a similar building on or planned to be constructed on an adjoining property, it would result in a distance between the two buildings of 18 metres, in the first instance?---Mmm-hmm.

And a setback for the subject proposed building from the common boundary where the buildings are located on adjacent properties of 9 metres?---On a common boundary, yes.

30 Yes. If the subject development proceeded with a nil rear setback and the building separation requirement of 18 metres between eight-storey to nine-storey buildings were to be applied when the bowling club site was developed, then the structures on 15 Close Street would need to be 18 metres from the common boundary with 212-222 Canterbury Road?---That's assuming that it was rezoned, yes, to residential.

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

40 If there was required to be an 18 metre setback from the common boundary of the building constructed on 15 Close Street, that means less of the land comprising 15 Close Street is available for development than if the setback was, say, 9 metres?---In that context, yes.

That would obviously be a significant economic disadvantage to the owner of the land?---For Canterbury Road or for Close Street?

The land, 15 Close Street.---Okay. No, because my recollection is that that was a very big parcel of land, and what you've got to remember is that there was already development on the adjoining properties and it was abutted by numerous properties. So we're talking about two properties for the length of - I'm not sure how long that common boundary was. So I think there was considerable land that would not be detrimental to the economic benefit of the landowner at 15 Close Street.

10

But there would necessarily be less land for the owner of 15 Close Street to develop?---I don't agree with that, no.

Mr Stavis, I think I need to give you another opportunity of trying to persuade us - - -?---Sure.

- - - how you don't lose out if the amount of land which you have available for development is reduced by 18 metres from the common boundary?---Because you've got a lot of scope to design buildings on a large parcel of land, like the Canterbury Bowling Club site was.

20

But it's the owner of 15 Close Street who has to make those adjustments in a case where no rear setback has been allowed on the adjoining property, isn't it?---You're assuming that the residential zone applied at the time.

That's a different argument.---I don't believe so. I don't believe so, Mr Buchanan.

30

We're going to come to a document which will put that to rest, so just put that to one side for the moment.---Okay. Okay.

How could the owner of 15 Close Street not lose out by a requirement that they build 18 metres back from the common boundary instead of 9 metres back?---It wasn't a relatively long boundary for those properties and there was scope to design the building - design buildings on 15 Close Street to achieve the same yield, so I don't see how that would be detrimental to 15 Close Street - or the owners of 15 Close Street.

40

But it is the owner of 15 Close Street who has to make the adjustments, isn't it, consequent upon the building separation requirement necessitating that it start building 18 metres back from the common boundary on that side?---To

the best of my recollection, there was also a thoroughfare that was proposed along that boundary, a public thoroughfare.

It is the owner of 15 Close Street who has to make the adjustments to accommodate the fact that it can't start building until it's 18 metres back from that common boundary, isn't it?---It is. Okay, I accept that.

10 Can I take you, please, to page 255. Do you see that this is a response by Mr Ziad Chanine to your email of Saturday, 24 October 2015, Mr Chanine's email being of Monday, 26 October, at 3.41, saying:

Further to your request please find attached two letters addressing the two outstanding issues ...

20 Those being the issues that you had identified in your email of 24 October?---I do.

If we go then to page 257, that's the first of those documents. Pages 257 to 259 is an urban design advice from a Rohan Dickson of 23 October 2015. Then there is a letter commencing at page 260, dated 23 October 2015, from Jacob Yammine - if you go to page 266, you can see the signature there - of CD Architects?---Yes.

30 You would have read Mr Yammine's letter?---Probably. I don't recall reading it, but it's likely that I did.

It's a letter which sets out a number of matters, but at the end of the day the only argument or reasoning in it is, I suggest, on page 265 at a bit over halfway down the page, commencing on the right-hand side of the first full paragraph there, which says:

The subject redevelopment ...

40 Do you see the first paragraph? Halfway down that paragraph, the sentence commencing:

The subject redevelopment of 15 Close Street ...

?--- Yes.

He goes on to say:

10 *... is not inhibited in any manner by the proposed developments at the 212-218 and 220-222 Canterbury Road being proposed built to the southern boundary and can be achieved to ensure appropriate SEPP 65 separation is maintained between future proposed buildings on the 15 Close Street site and those proposed in the current DA's for 212-218 Canterbury Road and 220 Canterbury Road Canterbury.*

Do you have a recollection of reading it and finding that there was a convincing argument in there?---No, I don't, sorry.

MR BUCHANAN: I note the time, Commissioner.

20 THE COMMISSIONER: We'll have the lunch break and resume at 2pm.

LUNCHEON ADJOURNMENT

[1.00pm]

30

40