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INDEPENDENT COMMISSION AGAINST CORRUPTION

PATRICIA McDONALD SC
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PUBLIC HEARING

OPERATION DASHA

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY 16 AUGUST 2018

AT 9.40AM

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

THE WITNESS: Commissioner, I apologise for being a little bit late. There was traffic on the way here. Sorry.

THE COMMISSIONER: Mr Stavis, I'm sure at morning tea everybody else in the courtroom will say to you that the Commissioner was running a little bit late this morning.

10

MR BUCHANAN: If the witness could be supplied with a copy of exhibit 117 and, as well, volumes 27 and 28. Mr Stavis, in exhibit 117, which is the bundle of papers with the bulldog clip on it in front of you, if you could turn, please, to page 23, just to remind you where we are at, and if you could also put a finger on page 93.---Yes.

20

Do you recall that in the business papers for the meeting of the IHAP on 24 November 2015 in relation to the DAs for 212-218 and 220-222 Canterbury Road and 4 Close Street, consideration was given to the submission that there should be a variation of the FSR control under clause 4.6 of the LEP?---Yes, sir.

And that on page 23 the heading "Clause 4.6 Variation" appears and that underneath that appears the paragraph:

30

Council has received legal opinion that the extent of non-compliance to a Development Standard is not a relevant consideration in determining the reasonableness of any Clause 4.6 submission.

You can see that that was in the officer's report for 212-218 Canterbury Road?---Yes, sir.

40

And the same paragraph appeared on page 93 of the business papers in the officer's report for 220-222 Canterbury Road and 4 Close Street?---Yes.

You accept, I think, that the extent of the FSR variation from the FSR control in the LEP for the proposed development in these DAs was considerable?---Correct.

And I asked you some questions late yesterday about who was responsible for the insertion of those paragraphs in those officer's reports. Do you remember those questions?---Yes,

sir.

I informed you that the Sparke Helmore Lawyers letter, which was subsequently produced by the applicant, dated 27 November 2015 did not contain that opinion?---I don't recall that, I'm sorry, sir.

10 But you didn't have that letter until some time after these officer's reports had been provided to the IHAP, did you?---Yeah, I believe that letter was provided after, yes.

Yes. The letter, indeed, came into existence as a result of the IHAP report on these two DAs?---I'll take your word for it. I just - I can't recall, to be honest with you.

20 I just want to suggest to you that it's impossible for the legal opinion which is referred to in those paragraphs in the officer's reports that were made to the IHAP and subsequently to council in respect of these DAs to have contemplated that the Sparke Helmore letter was the legal opinion concerned?---I accept that, okay.

Yesterday we went to another legal opinion which is in evidence, and that is the McEwen SC advice of 14 July 2015 in relation to the application of clause 4.6 in the case of 548-568 Canterbury Road.---Yes.

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

30 The one that had your annotations on it?---Yes.

You saw that that legal opinion did not appear in Mr McEwen's advice, either?---Which legal opinion?

Do you see on page 23 in front of you in exhibit 117 - - -?---Oh, sorry, yes, yes, yes.

It states:

40 *Council has received legal opinion that the extent of non-compliance to a Development Standard is not a relevant consideration in determining the reasonableness of any Clause 4.6 submission.*

That legal opinion.---Yes. Well, I'm not sure what other legal opinion would have been referenced as part of this

paragraph other than Mr McEwen's legal opinion.

10 In which case, this paragraph in the officer's reports misrepresented Mr McEwen's advice; that's true, isn't it?---Look, as I said yesterday, I don't believe that's the case. My interpretation - and I'm not a lawyer. My interpretation of Mr McEwen's advice was that the extent of the non-compliance was something for a matter that council would consider. It's not - as I said yesterday, it was not a restrictive issue as it used to be under the old SEPP 1 provisions, which talked about a maximum of 10 per cent. That was just my interpretation at the time. Now, I'm not suggesting for one minute that I put that in there, but that's my - - -

If you did, that would have been your thinking; is that what you're telling us?---If I did, that would have been my thinking, yes.

20 Of course, it is a question as to whether you did insert it. Firstly, we've established it wasn't inserted into any of the drafts prepared by Mr Black. Do you want me to go through them all?---Only if I - - -

Do you doubt that it is not in Mr Black's drafts?---I'm not sure, I'll be honest with you.

30 Do you want me to go through them with you?---If you don't mind, just one.

Right. You can see where this is. The location of it in the officer's report is underneath the compliance table for the LEP.---Yes, sir.

Volume 27 I think is in front of you?---Yes.

40 Page 236, at that location in the third draft of the report for 220-222 Canterbury Road, do you see the compliance table?---Yes.

And the subheading "Clause 4.6 Variation"?---Yes, sir.

You can see that that paragraph about council having received a legal opinion is not there?---Yes, yes.

Page 189 in volume 27. This is the third draft of the report for 212-218 Canterbury Road, and the end of the

compliance table for the LEP controls is at page 189. Underneath that is the subheading "Clause 4.6 Variation". The paragraph about council having received a legal opinion is not there, is it?---No, it's not.

There really isn't any doubt about it, is there: you inserted that paragraph?---Sir, I don't recall, as I said yesterday.

10 That's one way of approaching it. Another way of approaching it is through whose hands was the draft passing before it was provided to governance to be provided to the IHAP?---Ordinarily it would go through obviously whoever the assessing officer was, who was obviously coordinating the external consultant. Then it would go to, I believe, his team leader, whoever that was at that time. It may have been Andrew Hargreaves. And then from there it would have gone to George Gouvatsos to vet and ultimately would have come through me at the end of the process, yes.

20 And you would have been scrupulous to ensure that you were satisfied with the content of the document that was being submitted to the IHAP in the case of these two DAs, wouldn't you?---Well, I - I was vigilant, yes, yes.

And you yourself had direct knowledge of what was in the McEwen legal advice on the subject, didn't you?---Yes, I did, and so did all my staff.

30 Can I ask you about another document. I'll come back to this.---Sure.

That's all in relation to volume 27 at the moment. Can I take you, please, to some fresh documents. I'll show them to you on the screen. This is a document that went to Peter Jackson at Pikes & Verekers Lawyers and you can see it bears a receipt stamp of 19 May 2015 and it is on the subject of "Request for Legal Advice - Extent of Variation using Clause 4.6". Do you see that?---I do, yes.

40 If you go four lines down from the subheading "Background", you can see that it's being sought in respect of property at 308-310 and 312-320 Canterbury Road and 6-8 Canton Street, Canterbury?---Yes.

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

Can I ask you to go to the second page. Under the heading "Request for Legal Advice", you can see that commencing at the end of the first line, it reads:

10 *We are seeking your review of the proposals involved and more specifically seeking your advice on whether the use of Clause 4.6 for the variation proposed to the building height standard is reasonable in the case of the subject development, given the significant extent of the variation.*

?---Yes.

Do you see that?---Yes, sir.

20 Can I take you, then, to an email dated 26 May 2015 from a Roslyn McCulloch to Ms Nakhle and cc'd to Mr Jackson that is in respect of 308-320 Canterbury Road and 6-8 Canton Street, Canterbury. Do you see that?---I do, sir, yes.

Can I take you to the first and second paragraphs:

The question of whether a clause 4.6 ...

I'm sorry, I should go to the bottom. Roslyn McCulloch signs herself as Special Counsel, Pikes & Verekers Lawyers. Do you see that?---Yes, sir.

30 Did you know Ms McCulloch?---Not that I can recall, no, I'm sorry.

Do you see that Ms McCulloch has written:

40 *The question of whether a clause 4.6 variation should be supported is not a legal question but one that should be decided having regard to the constraints in clause 4.6 (referred to in our advice) and considerations under s.79C EP&A Act.*

The degree of variation from the standard is a relevant consideration, but there is no bright line to decide when a variation is too great. Equally, just because a request for a variation is made does not imply that it ought be granted. It will

depend on the context of the proposed development. It is also relevant to have regard to the fact that the zoning instrument is relatively new (2012) so the standards it contains might be expected to reflect the desired future scale of development in that zone.

You will see that opinion?---Yes, sir.

10

Can I ask you, then, to go to another page, page 9. This is an email conversation between Ms McCulloch and Rita Nakhle on 26 May 2015. Ms McCulloch says at the bottom of the page:

*Please see attached letter of advice.
A hard copy will follow by DX.*

Ms Nakhle responds:

20

Dear Roslyn,

Thank you for your email below and attached advice.

30

I have discussed the advice with the Director of City Planning, Mr Spiro Stavis, and we seek your further assistance of whether in your opinion/experience with similar matters, Council should support the proposed significant variation under Clause 4.6 in this instance ...

I stop the quotation of the extract there. Do you recall having a discussion with Ms Nakhle about the advice that Ms McCulloch had given in that case?---No, I'm sorry, I don't.

40

You accept that Ms Nakhle would have, having said that she did, discussed it with you?---I don't doubt that, no.

And the advice relevantly was, back on page 3 of these pages, "The degree of variation from the standard is a relevant consideration". Do you see that?---Yes.

That's the opposite of what appeared under your name in the officer's reports in respect of 212-222 Canterbury Road,

isn't it?---I think - no, I tend to disagree, because it goes on to say "but there is no bright line to decide when a variation is too great."

Mr Stavis, do you think you have an obligation, as you sit there in the witness box, to be frank with the Commission in the evidence that you give?---Absolutely. Absolutely, sir.

10 You are not being frank, are you, in your answer to the question as to whether the opinion expressed by Ms McCulloch in that email of 26 May 2015 to council is the opposite of what was stated in your reports to the IHAP and to council in respect of 212-222 Canterbury Road on that question, are you?---No, I disagree, sir.

You're obfuscating, aren't you?---No, I disagree, sir. It's clear, in my opinion, based on the advices that we got from Chris McEwen and even based on this advice, that there is no - - -

20

Why are you changing the subject? Why are you changing the subject?---I don't know what you're asking me specifically, so - - -

The words I'm asking you about are, "The degree of variation from the standard is a relevant consideration", not the next clause in the sentence. I'm asking you about that clause, "The degree of variation from the standard is a relevant consideration". Why can't you - - -?---It is, it is. I accept that.

30

- - - answer the question as to whether or not that's the opposite of what went into the officer's reports in respect of 212-220 Canterbury Road under your name?---Do you mind if I have a look quickly?

You certainly can.---Okay, thank you.

40 Page 23 in exhibit 117.---Okay, I accept that. I do. I apologise if I was - I didn't understand the question, to be honest with you.

You were being defensive about the existence of that paragraph on page 23 of exhibit 117, weren't you?---Sir, my interpretation of the legal advice, as I said yesterday, was that there was no limit in terms of the extent of

a variation under clause 4.6, so hand on heart - and I agree that this probably should be worded differently, but hand on heart, that's what ultimately I believe.

The reason you were being defensive about it is because you have a guilty conscience about the appearance of that paragraph in these reports?---No, I disagree with that.

Don't you?---No, I'm sorry, I disagree with that.

10

You don't feel in the slightest bit responsible for putting that material into the reports?---The wording, yes, absolutely.

20

MR BUCHANAN: I should tender the documents from which I took the witness to pages. These are the documents concerning a legal advice to council in respect of 308-320 Canterbury Road and 6-8 Canton Street, Canterbury, commencing with the letter dated 18 May 2015, and the advice, being an email dated 26 May 2015 and a subsequent email dated 26 May 2015 between Ms Nakhle and Ms McCulloch. That's a rather large title.

30

THE COMMISSIONER: That's all right. The bundle of documents consisting of a request for legal advice to council concerning applications at 308-310 and 312-320 Canterbury Road and 6-8 Canton Street, Canterbury; the advice provided by Ms McCulloch on 26 May 2015; and subsequent email between Ms Nakhle and Ms McCulloch dated 26 May 2015 will be exhibit 221.

#EXH-221 - CORRESPONDENCE WITH PIKES & VEREKERS LAWYERS CONCERNING REQUEST FOR LEGAL ADVICE REGARDING EXTENT OF VARIATION USING CLAUSE 4.6 BETWEEN 18 MAY 2015 & 27 MAY 2015

40

MR BUCHANAN: Could we put in front of the witness another page or two from exhibit 221, please, pages 10 to 12. Can you see that in front of you is a page which has the pagination 10 in the bottom right-hand corner, and in the middle of the page is an email from you to Mr Jackson, dated 27 May 2015, in relation to advice in relation to 308-320 Canterbury Road and 6-8 Canton Street, Canterbury?---Yes, sir. Yes.

Can you see that you have said to Mr Jackson:

Please see below.

Gary Green has provided such opinions to me in the past. We need something similar. Can you please call me when you can.

?---Yes, sir.

10

Do you see that the email that you are referring to when you say "see below" is the email from Ms McCulloch dated 26 May 2015 at 7.28pm, which, going on to page 11 of the print, says in the second paragraph:

The degree of variation from the standard is a relevant consideration, but there is no bright line ...

20

Et cetera?---Yes, sir.

So there is no doubt about it, you were aware of that legal advice from council's lawyers, is there, at the time that you submitted that report in relation to 212-222 Canterbury Road and 4 Close Street to the IHAP and to council?---Sorry, is that in relation - this is in relation to 308 Canterbury Road?

Yes. You were aware of Ms McCulloch's advice:

30

The degree of variation from the standard is a relevant consideration ...

?---I'm not sure of the timing, sir, okay. So if you don't mind, I just want to make sure that I'm going to answer properly.

Can you see that that email by you is dated 27 May 2015?---Yes, sir.

40

Can I take you now to exhibit 117. Can you see that your reports to the IHAP and council are in respect of a meeting for the IHAP on 24 November 2015?---Yes, sir. Okay.

So you were undoubtedly aware of the advice from council's lawyers as to the relevance of the extent of variation when considering the reasonableness of a clause 4.6 submission,

weren't you?---Given the timing, you're right. Probably I was, yes.

MR BUCHANAN: Commissioner, could the marking for exhibit 221 extend to pages 10 to 12 to include those emails of 27 May.

10 THE COMMISSIONER: Yes. Exhibit 221 will now include the pages referred to as 10 to 12, which includes email exchanges on 26 and 27 May 2015.

MR BUCHANAN: Did you cause Pikes & Verekers Lawyers, council's lawyers at that time, to be consulted for their opinion as to the accuracy or otherwise of the legal opinion to which reference was made in the officer's reports to the IHAP and subsequently to council in respect of 212-222 Canterbury Road and 4 Close Street?---I can't recall that, I'm sorry.

20 Does that mean that you have no recollection of doing anything of the sort?---In respect of those applications?

Yes.---Yes, I don't, sorry.

30 In respect of those paragraphs under the heading "Clause 4.6 Variation" in those reports to the IHAP and subsequently to council, you caused the IHAP and council to be provided with seriously misleading information about a factor relevant to their consideration of these development applications, didn't you?---No. As I said before on numerous occasions, I believed that there was no, I guess, impediment in terms of the extent of the variation. I accept that, from what you've shown me today and partly yesterday, it was relevant. But at the end of the day, I think it's clear that the advice received is that, whilst it's relevant, still there is no impediment in terms of what - the extent in which the variation could be sought. And that's - I honestly believed that at the time. I wasn't trying to be misleading in any way, shape or form.

40 I need to be clear about it with you, Mr Stavis. You knew as at October/November 2015 that legal opinion was that the extent of variance was a relevant consideration when considering a clause 4.6 submission, didn't you?---Look, at that point in time I didn't. I interpreted it differently.

Can I take you, please, to volume 27, page 268. We've seen

that the meeting for the IHAP was scheduled for 24 November 2015. This is an email to you - looking in the middle of the page - on 20 November 2015 from Ziad Chanine at 4.14pm. It reads:

*Sorry stuck in traffic on Anzac bridge but
I am on the way.*

10 I can inform you that 20 November in 2015 was a Friday.---Okay.

You responded shortly afterwards "ok". Do you see that?---I do, yes, sir.

You met up with Mr Chanine, who was on his way but delayed on that occasion?---It's likely, but I don't recall.

20 Where did you meet him?---I really don't recall. I assume it was at council.

The meeting, if it occurred at council chambers - that's in Canterbury, isn't it? He wouldn't have got there until after 5 o'clock?---I'm not sure. I mean, he says he was on the Anzac Bridge. It takes about 20 minutes or so from Anzac Bridge, depending on traffic, I guess.

30 This meeting does not appear in your electronic calendar. Is there a reason for that?---It's probably because he called me or as you've - as this shows, it was sent from his iPhone. I don't remember any pre-arranged meetings with him at that time, to be honest with you - or that day, I should say.

There's no file note of any such meeting in council's files.---Sure.

40 Why would there be no file note of this meeting with the applicant?---I think I've said this plenty of times in my evidence, that, you know, I wasn't vigilant in doing file notes, so it doesn't surprise me that there were no file notes.

The consequence for that, as I think we might have canvassed before, is that it wasn't possible for your staff, or anyone coming along afterwards, to work out what had occurred between you and Mr Chanine at this or any of the other meetings which weren't noted up; is that

right?---It's possible. There were a lot of occasions where I did relay messages to my staff about meetings that I had that they weren't present at, but I'm not sure about this one, I'm sorry.

10 My question is, thinking of the date, 20 November 2015, having regard to the fact that the IHAP meeting was scheduled for 24 November, the officer's reports had already been submitted, hadn't they?---I would imagine so, yes.

So why was there a need for you to have a meeting with the applicant or the applicant to have a meeting with you at that stage?---I really don't recall, to be honest with you.

Yes, you don't recall, but can you assist us - - -?---Sure.

20 - - - as to what it might have been in respect of, or what it is likely to have been in respect of, given that the officer's report had already been submitted and, at the end of the day, all you were doing was waiting on the IHAP report?---If he had received the report in advance or been notified of it, it's quite possible he wanted to discuss the report. I'm not sure.

The officer's report?---Yes, yes.

30 How would he have received a copy of the officer's report to the IHAP?---I really don't know. I don't recall.

Did you provide him with a copy?---I'm not sure, sir.

Is it likely that you provided him with a copy?---I'm not sure, to be honest with you. I don't recall.

So it's possible that you provided him with a copy?---I really don't know. I really don't.

40 Why would you not have provided him with a copy?---I stand to be corrected, but I think most applicants received copies of the IHAP reports in advance of the meetings.

You mean the officer's report to the IHAP?---Yes, yes.

That's not an answer to my question. My question was why would he not have received a copy of the report?---I don't know. I really don't.

So the likelihood is that he would have received a copy of the report, on what you now tell us?---On the basis of what I said, yes, absolutely.

Do you think there is a possibility or that a possible explanation for this meeting was that he wanted to discuss with you what was in the report?---Possibly.

10 Do you have a memory of Mr Ziad Chanine expressing a particular view about anything that was in the report or any of the issues canvassed in the report?---I'm not sure at that point in time, but - no, look, to the best of my recollection, the first memory I had that there was an issue with the report itself was that conversation that I had with, what's his name, Pierre Azzi. I can't be a hundred per cent certain on that and I don't discount the fact that maybe we discussed - or if we did in fact meet, we discussed the contents of the report. I just can't
20 recall, sir, to be honest with you.

Could it be that it wasn't a very congenial meeting because Mr Ziad Chanine was saying, "What's this about a deferred condition, a deferred commencement, rather than an outright approval?"?---That I don't recall.

Do you recall Mr Ziad Chanine at any time expressing with you less than complete happiness with the recommendation in the reports, the officer's reports?---No, no. No, my first
30 recollection, as I sit here today, was from Pierre Azzi expressing concern about it.

Can I make it clear I'm not suggesting that's wrong.---Sure.

I'm just asking about your memory of dealing with Ziad Chanine.---Sure.

The outcome in the officer's reports was one which was less than completely favourable to the applicant, wasn't
40 it?---Yeah, I accept that.

In two respects: firstly, it was a deferred commencement rather than a conditional approval?---I don't think the deferred commencement is an overly onerous impediment on their approval, only from the point of view of timing, as I said yesterday, because obviously they would need to

satisfy the deferred commencement conditions first before a consent would be issued.

But you understand, don't you, that by and large development proponents don't like extended periods of time before they can get going with construction?---I accept that.

10 And it's because it's a financial burden, the carrying costs and interest payments?---Most likely, yes.

Did Mr Ziad Chanine ever express unhappiness about that with you?---Not that I can recall, no, I'm sorry.

20 Mr Ziad Chanine didn't take up with you the condition for the deferred commencement requiring amendment of the plans to show a 3 metre setback at the rear of the proposed developments?---It's possible. It's possible. I just can't remember.

Are you quite sure that that's truthful evidence? How would you not remember the applicant expressing their views on the subject of what would amount to a significant reduction in yield?---Sir, it was three years ago.

How many arguments did you have with Ziad Chanine?---Oh, quite a few. Quite a few.

30 Did you have one about this?---I can't be a hundred per cent sure. I don't recall a specific time or event when I did. I do recall Mr Azzi ringing me about it. Look, in all likelihood - their approach to things was a little bit different in the sense that they would always go through the councillors. Right?

Councillors?---Councillors, sorry.

THE COMMISSIONER: That's the Chanines?---Yes.

40 MR BUCHANAN: The councillors being Hawatt and Azzi?---Yes. In this particular case, it was mainly Azzi. So that's why - I know it sounds a little bit, I don't know - that's why I have that recollection, I guess.

Did Ziad Chanine canvass with you, at a time after the reports had been submitted to the IHAP and before the IHAP meeting, what solutions might need to be found for the

deferred commencement condition?---I'm not sure if it was before the IHAP or after the IHAP meeting that there was a discussion that I had with the Chanines about - or Ziad mainly about the setback issue. But that was, like - I can't be certain of the timing of that, to be honest with you.

10 What was the discussion or discussions that you had with Ziad Chanine about the setback requirement?---Look, as I said yesterday, I was neither here nor there with that setback, to be honest with you, okay, because of the precedent - the properties next door, but his view was that, obviously, the 3 metres wasn't appropriate and that there would be a need - and I said, "Well, look, if that is the case, you need to provide us with justification for that, because we have got a condition on there that says 3 metres at the moment." But I'm not sure if - I think it happened after IHAP, to be honest with you.

20 At the meeting that it appears you had on Friday evening, 20 November 2015, with Ziad Chanine, did you have a copy of the officer's reports with you?---I really don't recall if I did.

Do you recall showing him what was in the officer's reports?---I don't, I'm sorry.

30 Do you recall him having a copy of the officer's reports - - -?---No.

- - - and showing it to you?---No, I don't.

Can I just canvass, then, what the other possibilities are to explain this meeting.---Sure.

You were having a post-work drink with your friend Ziad Chanine?---No, I don't believe so. No.

40 Why not?---He's not a friend of mine.

Why not?---Because he's not a friend of mine.

You were certainly closer to him than practically any other development proponent that you dealt with?---Absolutely not. As I said yesterday, I was closer to other people than him.

Not many, though?---Well, it doesn't take many, sir. I'm sorry, I don't have many friends, to be honest with you.

But this was the man that had provided you with work and who had had lunches with you, along with his brother - that's right?---To discuss possible work, in my opinion, as I thought at the time, yes.

10 But thinking now of the February 2015 lunches that you had with Ziad and Marwan Chanine, was that to discuss possible work for you from them?---February? I believe so, yes, because that was a time when I wasn't sure whether I had a job or not.

Marwan and Ziad Chanine discussed with you projects on which they could provide you with consultancy work at either or both of those lunches, did they?---I thought that was the case, yes, when I went - - -

20 When you say "I thought that was the case", what do you mean?---When the meetings were arranged, I went - and I think I said this yesterday, I went there under the pretence that I thought that we'd be discussing work, but in actual fact they were just discussing the fact that they had projects in Canterbury and so forth. We canvassed this yesterday.

30 So are you saying that they didn't raise the subject of work for you at either of those lunches in February 2015?---I would have remembered - I don't believe so, no. I don't believe so.

But you certainly went to the second of those lunches on 23 February 2016 in the hope - do I have it right - that they would canvass with you providing you with additional income by way of consultancy work at that time?---Well, given the fact that I had done work for them in the past, yes, that was, I guess, my expectation, yes.

40 Not so much the reason why, I just want to clarify that was what was in your mind, or one of the things that was in your mind, at the time you went to the lunch on 23 February 2015 with the Chanines at Frappe, I think it was, that you hoped to get paid work from them at that time?---I accept that.

And did you discuss any prospect or possibility or the

subject of doing consultancy work for them at that lunch?---I really don't recall, to be honest with you, no. I really don't. I mean - - -

Do you recall coming away from the lunch being disappointed?---I really don't remember, to be honest with you. I really don't.

10 But you do remember going to the lunch with a hope - tell me if I have the wrong word - in your mind that they would canvass with you providing you with paid work when you saw them at lunch; you do remember that?---It wasn't hope. Obviously my employment was up in the air. It wasn't out of desperation or anything like that, but I assumed that that's what they wanted to discuss, yes.

That was an assumption on your part?---Correct.

20 THE COMMISSIONER: You assumed that the Chanines wanted to discuss with you - - -?---Work.

- - - work?---Yes.

MR BUCHANAN: Is that because at the earlier lunch in February, they had discussed work with you?---It's possible, but I don't recall, to be honest with you.

30 Well, did you have a source of income at all between the time that you finished up at Botany and your first pay day at Canterbury?---Yes, my wife works.

Did you have a source of income by productive income?---No.

That is to say, you exchanged your labour for payment of a fee?---I can't recall if I did any other little private jobs, but we really weren't in a - we really didn't need to, to be honest with you. We were doing okay at that point in time.

40 So you really didn't need the income from the Canterbury job, either; is that what you're telling us?---The Canterbury job?

Yes.---You mean Canterbury Council?

Yes.---Look, I mean, it was obviously a lucrative job, yes. Who wouldn't need the job to supplement their income? But

at that point in time, we had - you know, I had my wife working and we were pretty much clear of most of our debts, so we were comfortable.

10 When you finished up the lunch on 23 February 2015, what arrangement, if any, was there for future contact - like another lunch or a drink or a meeting or some sort of contact about work? Anything. What arrangement, if any, was there for taking the relationship forward in time?---With the Chanines?

Yes.---Nothing.

You can remember that, can you?---Yeah, I do remember that.

Did you, in that case, have a discussion about work with them at that lunch? If you can remember - - -?---Yeah.

20 - - - what you were thinking when you went to the meeting and you can remember the outcome of the meeting, surely you can assist us with what happened during the meeting at this lunch on 23 February?---Sure. As I said before - I think I said this already, that my expectation was that they were going to - the meetings were called to, you know, talk about projects, but I don't remember them raising projects or asking me to do any particular jobs at that meeting, no.

30 Did they canvass with you your availability to do future jobs?---No, not that I can recall, no.

Did you indicate your availability as to whether or not you were available to do future jobs?---I don't remember that, no.

Do you remember how you were asked by Ziad Chanine to do a job at Leichhardt?---That was his house, I believe.

Yes, that's right.---Yes.

40 You sent an email to the effect of, "Sorry, I can't. I've just been told I've been appointed director of planning at Canterbury"?---Yes.

So you were indicating to him then, "I'm not available to take work"?---That's fair.

Did you indicate to Ziad or Marwan Chanine on 23 February

at lunch that you weren't available to take work because of the Canterbury job?---I can't remember that, no. I don't - I don't remember ever saying that, no.

You would have a memory of knowing that you were going to be starting work quite soon, wouldn't you, if that had been the case?---No, because at that point in time I didn't have a job, as far as I was concerned.

10 Yes, that's not what I'm asking you.---Sure.

What I'm asking you is if you had an expectation as at 23 February that you were going to be starting work quite soon- - -?---Yes.

- - - then that is the sort of reason that you would give to the Chanines on that day, isn't it, for not being able to do future work for them?---That's fair comment, yes.

20 Do you have a memory of indicating that to them on that occasion?---No, I don't, sorry.

Do you have a memory of indicating to them that you expected to start work quite soon?---No, no, because I didn't expect to start quite soon at that point in time. You know, as I said before, it was up in the air.

30 How soon before you started work at Canterbury was it that you knew you were going to be starting work?---That I can't be certain of, I'm sorry, sir.

40 Do you have a recollection just of your feeling as to whether you had a day's notice, a week's notice, a month's notice, an hour's notice?---I believe it was after - as I've given evidence before, I believe, I had representation, legal representation, about that, my employment, and then I believe there was representation made on my behalf from the union, and it was maybe a week or two after that that I became aware that, you know, I would get the job, I guess.

A week or two after what?---Look, I stand to be corrected, okay, because the chronology is a bit hazy, but in my mind as I sit here today, it was after - there was legal representation - sorry, not legal, but representation made on my behalf from the union rep.

You were aware of that representation being made at the time, were you?---Yes, because they made contact with me.

And it was about a week after that that you were told you were going to start work?---I can't be a hundred per cent sure.

10 How did you find out that you were going to start work?---I don't recall, to be honest with you. There were so many - it was quite a volatile time, to be perfectly honest with you. There were a lot of people that were calling me, and so forth, and that included Mr Hawatt, Bechara Khouri, obviously my legal representatives at the time, so I'm not sure who actually first told me about the fact that I, you know, had the job. I do recall that the general manager rang me, and he in fact sent me a text, I remember, but - - -

20 THE COMMISSIONER: What did the text say? Was this that you got the job?---I believe so. I believe so. I believe so.

MR BUCHANAN: Did it tell you when to turn up for your first day of work?---I think that was done through the council 's legal representatives - I believe, anyway.

30 What's your best recollection now of how long before the day you started work it was that you learned that you were going to be starting work. - that you had the job and you were going to be starting work?---Maybe - - -

Actually, I should interrupt you. I think I might have elided two different subjects. Is it possible that you learned that you had the job and then separately from that learned when you were going to start work? In other words, I don't want to suggest to you that they were one and the same communication if that it wasn't the case?---It's possible, yes. It is possible.

40 That they were separate communications?---Yes.

Do you remember now?---Like I said before, there were so many people that were calling me, and so forth, at the time, I really have no memory of who was the first person to tell me that, "Hey, you've got the job."

It could have been Mr Khouri?---It's quite possible. It's

quite possible, but I'm not a hundred per cent sure.

Do you mind me asking, when you say it's "quite possible", what's the basis on which you give that answer?---Because they - he was in contact with me during that period.

But you've indicated to us that a lot of people were?---Sure.

10 So why is it quite possible that it was from Mr Khouri that you learned that you had the job?---Look, well, it's possible that it was him, but it's also possible that it was Mr Hawatt and it's also possible that it was the general manager.

Thank you for your assistance on that. Can I take you then back to 212-222 Canterbury Road and 4 Close Street. The IHAP meeting occurred on 24 November and recommended that the DAs be refused; do you recall that?---Yes, I do.

20 If I could ask you to go to volume 28, please, page 160. Do you see there an extract from the business papers of the city development committee for its meeting on 3 December 2015?---Yes, sir.

It goes through to page 163.---Yes, sir.

This appears to be the report of IHAP from what would have been its meeting on 24 November 2015 in respect of
30 212-218 Canterbury Road?---I accept that, yes.

If you look at the material under the heading "IHAP Recommendation", you can see it is that:

... Development Application DA-168/2015 be Refused for the following reasons ...

The reasons are identified as:

40 * *The proposed development exceeds the maximum permissible floor space ratio provisions of clause 4.4(2) of the Canterbury Local Environment Plan 2012 by over 100%.*

* *The grounds of the objection under clause 4.6 (relating to exceptions to*

development standards) provided by the Applicant did not demonstrate that the FSR controls were unreasonable or unnecessary nor were there sufficient environmental planning grounds to justify contravening the development standard.

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

10 Then at page 162, in the middle of the page, the panel said that:

For these several reasons there is no justification for derogating from upholding this development standard to protect the public benefit of development ...

Then:

20 *The Panel found it difficult to justify the variation in those circumstances.*

The Panel cannot recommend approval of the application in its current form. In order to assist in a possible redesign ...

The panel made the following comments, and they went over to page 163 of volume 28 and were 11 in number. Do you see that?---Yes, sir.

30

If you go to page 164, you can see another extract from the papers for the city development committee meeting of 3 December, this time the IHAP report for 220-222 Canterbury Road and 4 Close Street, and the outcome was identical, although the reason was slightly different. In the first case:

40

The proposed development exceeded the maximum permissible floor space ratio provisions of clause 4.4(2) of the Canterbury Local Environment Plan 2012 by over 50%.

Do you see that?---Yes, sir.

Did you attend the IHAP meeting?---No.

Did you get a report of the outcome of the meeting the next day, 25 November?---I'm not sure if it was the next day, but I did get - it was ordinary practice for me to get a copy, yes.

10 Just thinking about learning of the outcome of the IHAP meeting on 24 November 2013 - just thinking of that - when was it in relation to that that you got the angry call from Mr Azzi?---I think it was when - so it may have been when the actual business paper was produced.

For the city development committee?---Yeah, yeah.

Which would have been after the IHAP report had been incorporated into the business papers for the CDC meeting?---I believe so.

20 Leaving aside that phone call and just thinking of the time that you learned of the outcome of the IHAP meeting that occurred on 24 November, did you have contact with Ziad or Marwan Chanine after the outcome of the meeting?---It is possible. It is possible.

Did you telephone either of them to inform them of the outcome?---I don't discount that, no.

Is it likely that you did?---It probably is, yes.

30 To whom did you talk - Ziad or Marwan or both?---Ordinarily if it was design related, it would have been Ziad, but I'm not sure if I also spoke to Marwan at the time.

40 What was said in the conversation with Ziad Chanine?---The actual detail is really hazy. It would have probably been around, I guess, the findings of IHAP. But the thing is that they - I'm not sure if I instigated a call or they rang me, because as you can see from this report, Ziad Chanine actually attended the meeting. So I'm not sure if I rang him or he rang me or - yeah.

What happened in the phone call?---Look, I - to the best of my recollection - actually, I don't recall. I mean, I really don't recall the specifics, to be honest with you. It probably was to discuss the proposal of sorts and maybe, in his opinion, the views of IHAP, I guess. Now, whether that was Ziad or Marwan or both I'm not sure. But I just don't remember exactly what was discussed.

Was there any discussion with either or both of them about what might or should be done, what the next step might be?---Moving forward?

Yes.---Probably, yes.

10 And what was discussed on that subject?---Look, I don't recall whether it was at that point in time, but at some point in time - or whether it was after the CDC agenda or business paper was produced, but I do recall that there was discussion around that setback at the back.

20 What was discussed in terms of what might or should be done?---I think I said this before, that there was concern - obviously he had concern - well, they had concerns about the 3 metre setback from the rear and I said that - I believe I said, "You need to provide justification for that, if you want us to consider." There was also a discussion about an urban design report, from memory.

Sorry?---An urban design report.

Why was that discussed?---I'm not - look, probably to look at it from an urban design perspective in terms of massing, bulk, scale and so forth.

30 In respect of the FSR variance?---No, I think it was more a case of the setbacks.

Re the setback?---Yes.

Was there any proposal discussed as to how to deal with the reasons that were given by the IHAP for recommending refusal of the DAs - namely, the exceedance of the FSR limit and the failure of it to be justified under clause 4.6?---I can't remember that, I'm sorry. I don't recall that.

40 Why would there have been discussion about moving forward in respects that weren't identified by the IHAP as being a reason for recommending refusal of the DAs?---In respect of FSR?

Yes.---I don't know. I don't recall. There may have been, but I don't recall that. What sticks in my mind is the 3 metre setback was an issue for them.

But the fact that the IHAP had recommended refusal was not an issue; is that your memory?---For them?

Yes.---I can't say one way or another. I don't remember them expressing that point of view at all, yeah.

10 Was there anything said about whether the fact that the IHAP had recommended refusal because of the FSR exceedance was a matter that would be taken care of in another quarter, say by Councillors Azzi and Hawatt, by Mr Montague?---Not that I can recall.

Did you discuss with them the IHAP recommendation for refusal?---It's likely that I did, yes.

And what was their response?---I don't remember, to be honest with you. Obviously they wouldn't have been happy.

20 But it sounds as if they didn't see you as the person who was going to provide them with a solution in that regard; correct?---I think that's fair.

Which suggests that they would have been looking for a solution elsewhere?---I think that's fair.

30 What they were concerned about was your recommendation in the officer's reports, which pre-dated the IHAP report?---To the best of my recollection, they were concerned about the 3 metre setback.

Well, that's your report, isn't it, not the IHAP report?---Correct, sir, yes.

40 Thinking again, if you wouldn't mind, please, of the time when you knew, you'd discovered what the recommendation was by the IHAP when it had met on 24 November 2015, what contact, if any, did you have with Mr Hawatt after that?---By telephone.

At all.---Sorry?

At all. Any contact at all. What contact with Mr Hawatt did you have - - -?---No, no, I'm answering. By telephone.

I apologise, I misunderstood.---That's all right.

You had contact by telephone?---Yes.

And what was that contact?---I believe he rang me a couple of times about it.

What was said?---It was expressing concern about the 3 metre setback at the rear. I vaguely remember him at one of those conversations talking about the IHAP report as well.

10

And was there anything discussed between you and Mr Hawatt as to what might or could or should be done in respect of the IHAP recommendation?---No, I - - -

Or what would be done?---I don't recall that, but I do recall him or me in one of those conversations - it was after I had spoken to either Ziad or Marwan about the fact that I said to them, "Look, the 3 metres, if you want us to reconsider that, you really need to provide X, Y and Z", that he mentioned that, as well, and was questioning me about that.

20

That is to say, a solution that you had proposed to the Chanines' unhappiness with the deferred commencement condition to amend the nil rear setback to a 3 metre rear setback?---It wasn't a solution. It was a clarity that they needed to provide further justification for that.

Why?---Sorry, sir?

30

Why did you make that suggestion?---Because it was part of the meeting that we had, or the discussion that we had at the time. They raised that as an issue of concern, the Chanines. I can't remember if it was Ziad or Marwan or both.

THE COMMISSIONER: I'm sorry, this is further justification for a nil setback at the rear?---Correct, correct, because that's what they were ultimately proposing, obviously.

40

MR BUCHANAN: With what purpose in mind was it that you suggested that they provide additional justification and an urban design report?---Well, to see whether, from an urban design perspective, from a planning perspective, it was supportable, I guess.

Then what would be done with that product?---Well, assuming that it was at that time supportable, given the fact that I was indifferent to the setback from the rear, given the precedent that happened, you know, two doors down, we would put it back up to council.

When you say "we would put it back up to council", in what way?---I can't remember how we did it, to be honest with you.

10

Well, at the moment I'm not thinking about what actually happened.---Sure.

20

I'm just thinking about your thinking at the time you were talking to the Chanines and to - I'm not saying it was the same conversation, but also to Michael Hawatt about what the Chanines can or should or would do in order to alleviate their unhappiness with the deferred commencement condition for a 3 metre setback. What, in your mind, was the purpose of those suggestions, if I can call them that, if it wasn't to somehow intervene in the process and change the outcome from the outcome that you had recommended in your report?---Obviously the outcome would be that - the thinking was that he would - it would be - provided there was adequate justification, that we would - given the fact that I was indifferent to the setback at the rear, that we would put it forward to council. That was my thinking, as long as the justification was there.

30

But I just want to explore, if you wouldn't mind, your thinking that it would be put forward to council. How would that occur, given that the stage you were at was that, as you have told us, the recommendation of the IHAP and its report would go to the city development committee, your officer's report would go to the city development committee - how would you putting that forward, this additional product from the Chanines forward, in any way change the fact that what the committee would have had before it would have been the IHAP recommendation for refusal and the officer's report with a recommendation for a deferred commencement with a 3 metre setback?---In those circumstances, ordinarily you would put it up as a late item with additional information.

40

With a view to what?---Presenting the facts to the council, saying that, "Hey, we have received X, Y and Z as justification to remove the setback from the rear, and

please consider it." That's how it normally worked.

With the recommendation?---I can't remember if it was. Probably.

I'm not thinking about what actually happened.---Sure.

10 I'm just asking what you contemplated would be the mechanism by which this material would be put before the council.---Probably with a recommendation, yes.

A recommendation for what?---Well, for approval, obviously, because that's what I think I had originally recommended, anyway, yeah.

For a conditional approval, not a deferred commencement approval?---I can't recall, to be honest with you, what form that took in the end.

20 No, I'm not asking you what happened at the end. We'll come to that later.---Sure.

It's what you were thinking and/or proposing to the Chanines and/or discussing with Mr Hawatt as to what would be done with these two items that you were suggesting they procure - additional justification for the nil setback and an urban design report on the setback?---I don't recall. But the idea was, insofar as that 3 metre setback, that that would be ultimately deleted, that condition, and then
30 put forward to council as an amendment.

Deferred commencement?---I can't remember if it was deferred commencement, sir. I'm sorry.

Well, you know that it turned into a conditional approval, don't you?---I can't remember, I'll be honest with you.

40 I'm not interested at the moment in what you recall actually happened at council. What I'm interested in is what you thought was going to be done with this additional material that you were advising, I want to suggest, the applicants be procured and provided to council. With what outcome in mind?---I believe at that time, at that point in time, as I sit here today, it was only to remove that condition.

And to leave it as a deferred commencement?---Yes,

I believe so.

You got the call from Mr Azzi?---Yes.

10 Can you do your best - I have made a suggestion to you a long time ago as to what it was that Mr Azzi was upset about, but I'd like you to tell us, if you can, what it was that Mr Azzi was concerned about in that phone call? What was it that he wanted you to fix?---It was in relation to the setback at the rear.

Yes.---And, as I've expressed before, he's not a very articulate sort of fellow. He was very emotional, he was very angry, but I took that as being, you know, "You need to fix the problem", and I took that meaning the 3 metres, given the fact that I had previous meetings - or discussions, I should say, with Ziad and Marwan about the 3 metre rear setback.

20 In which they expressed unhappiness with the recommendation?---Correct, correct.

I just want to drill down a little bit, if we can.---Sure.

Did Mr Azzi express concern in that phone call with the fact that the recommendation was for a deferred commencement rather than an ordinary conditional approval?---Yes.

30 As well? I know that the 3 metre setback condition was a deferred commencement condition, but you're clear in your mind, are you, that Mr Azzi was unhappy about both the requirement for changing the nil rear setback to a 3 metre setback and the fact that it wasn't a conditional approval as would ordinarily, or might ordinarily, be the case, but instead was a deferred commencement condition; is that right?---He didn't articulate it in those terms, but I got the gist of it, yes.

40 There's no doubt in your mind, is there - we have visited this before - that a deferred commencement is a more onerous approval for an applicant than a conditional approval?---Absolutely.

Can I turn to Mr Montague.---Yes, sir.

Thinking again of the time when you learned of the outcome

of the IHAP meeting on 24 November 2015, did you have contact with Mr Montague about the outcome of that meeting, that IHAP meeting?---I'm not sure if it was after that meeting - sorry, during that or shortly after that meeting, but at some point after that meeting, I did, yes.

What was the contact that you can recall?---I believe I was called up into his office and he asked me, "What's going on and how are we going to fix this?"

10

Did he identify what it was that he considered needed to be fixed?---It was - again, from the best of my recollection, it was the 3 metre setback which was the main sticking point. At that point in time, I don't recall him ever mentioning anything about deferred commencement conditions or anything like that.

Do you recall him mentioning anything about the IHAP recommending refusal?---Yes.

20

When he was indicating to you that there was a problem that needed to be fixed, did you understand him to be including as part of the problem the IHAP recommendation for refusal?---No, because, as I've pointed out before, the IHAP is just a recommendation. It goes hand in hand with my report, the business paper. So it wasn't so much that. It was more the 3 metre setback.

30

Did Mr Montague indicate to you whether he had been in receipt of any communication or contact from anyone about this subject that caused him to raise it with you?---I take it as - on face value, that every time Mr Montague would call me up to his office, he would have had contact from someone.

Did he indicate in this contact?---No, I don't recall him doing that, no.

40

Was the contact with Mr Montague before or after your contact with Mr Hawatt on the subject?---That I'm not sure about, I'm sorry.

Was it before or after your contact with Ziad and/or Marwan Chanine on the subject?---It was definitely after that, yes.

How long after?---It was around about the same time as when

Mr Hawatt contacted me about it. So, yes, I'm not sure if it was before Mr Hawatt or just after, but - yeah.

When you had the contact from Mr Hawatt, was it one contact or more than one contact?---It wasn't very many from Mr Hawatt, to be perfectly honest with you.

Was it face to face or was it on the phone, or was it otherwise?---I think it was on phone.

10

What was the gist of what Mr Hawatt said? What's the effect of what he said?---It was basically inquiring about what's going on and, like most cases, "How can we fix this problem? What can we do?"

Did he use words which indicated he was identifying, as far as he was concerned, what the problem was? What did he say was the problem?---He did. He mentioned that rear setback, yes, as the main issue.

20

So basically the complaints you had from the applicant, Mr Azzi, Mr Hawatt and Mr Montague were about the recommendation in your report rather than the outcome of the IHAP meeting?---Correct.

Did you say to Mr Hawatt what could be or would be or might be done to fix the problem?---It's likely that I spoke to him about the discussions I had with the Chanines. I think there's a good chance that I did that, but I just don't recall exactly what I said to him at that time.

30

Did you indicate to Mr Hawatt that the solution was in hand, as it were, and steps were being taken to address it?---That I can't remember, no.

Did you talk to him about the suggestions you'd made to the Chanines about providing additional justification for the nil rear setback and an urban design report?---That's certainly possible.

40

Had the Chanines, in discussions with you, agreed to your suggestions?---I believe so, yes. I believe so.

Had they indicated to you whether there was any other step that they proposed to take?---Not that I can recall, I'm sorry.

Thinking now of your conversation, at least in the first instance when you were called up to Mr Montague's office, with Mr Montague about this, did you indicate to him whether there was anything in hand to fix the problem?---It's likely that I did, because I recall that it was after I met with the Chanines, yes.

10 I'm not trying to be picky, but you just said "I met with the Chanines"?---No, no, sorry, in discussions with the Chanines. I can't remember - - -

That's okay. That's okay. I want to take just a step back from that. Thinking about it for a moment, did you have a meeting with the Chanines, or either of them, about this?---I can't remember.

Is it possible you did?---It's possible, yes.

20 Which do you think is more likely?---Probably phone conversations, to be honest with you.

Was there any discussion involving Mr Montague about any other problem in relation to these DAs?---Not that I can recall, no.

30 So it's likely that you indicated to Mr Montague that you had taken steps to address the recommendation for a deferred commencement for a 3 metre setback by making these suggestions to the Chanines, and the Chanines were agreeable?---Yes.

Was there anything else that was said with Mr Montague on that occasion?---Not that I can remember, sorry.

Can I take you to volume 27, please.

40 THE COMMISSIONER: Just before we go there, your discussions post the IHAP meeting with the Chanines, is it correct that they focused solely on further justification for a nil setback, not the 3 metre setback?---As best I can recall, yes.

And also the issue of whether it would be a deferred approval?---I don't remember them actually raising that with me during those discussions, but it was obviously raised after, yes.

But that was going to be the focus on the work they were going to undertake - some kind of study to justify the nil setback?---Correct, correct.

10 In the IHAP report, they set out about 11 different matters - for example, at pages 165 and 166 - which I think you can say they were concerned about, and make suggestions for some kind of redesign. Were any of those discussed with the Chanines?---I believe - I'm just trying to think. I can't remember if they were discussed, but I believe in the ultimate submission that they put in, there were modifications that potentially addressed some of those issues. But I stand to be corrected. I'm not a hundred per cent sure.

20 When you say their "ultimate submission", this is the one that eventually went to CDC?---I believe so. I'm not sure if they just submitted plans. But, anyway, I do remember talking about the contents of that report, yeah.

THE COMMISSIONER: Thank you, Mr Buchanan.

MR BUCHANAN: If you could go, please, in volume 27 to page 269. At the bottom of page 269, going over to page 270, is an email from you dated 25 November 2015 at 3.35pm to Mr Tsirimiagos at Sydney Trains in relation to 212-218 Canterbury Road. Do you see that?---I do, yes, sir.

30 If you could go over to page 270, you say:

Hi Jim

I left a phone message for you today.

I need an URGENT favour regarding this matter.

40 *My staff have not followed up Sydney Trains' concurrence and this DA is already on the agenda to be determined on the 3 December 2015 council meeting. It is recommended for approval.*

Is there any way you can please provide concurrence before the 3 December 2015 subject to conditions even if they are

deferred commencement conditions. Any assistance would be greatly appreciated and I apologise for any inconvenience caused. The DA has to be determined on 3 December 2015.

You had left a message during the day of 25 November with Mr Tsirimiagos, it appears?---It appears so, yes.

10 This is the same day that you would have learned of the IHAP meeting outcome?---Probably, yes.

What caused you to be leaving a phone message for Mr Tsirimiagos on 25 November 2015 and sending that email? What was it that happened?---I can't recall, to be honest with you, but it's likely that I was made aware from my staff that some sort of mishap may have happened with getting a referral back from Sydney Trains. I'm not sure if that's the case, though. I can't recall.

20

You yourself left a telephone message for Mr Tsirimiagos and sent him that email. Why did you not ask your staff to do that, such as the person who had failed to follow it up?---No, I believe that they did. I believe that they did, and this was just me acting as the boss ringing Jim. I've worked with Jim in the past whilst I was with other councils, as well, and when I was in private practice, so he knows me, yes.

30 What was his job at that time at Sydney Trains?---I think he was the manager of - he was a manager and he was mainly in charge of council referrals.

We've seen Mr Tsirimiagos's response to you at 10.19 that night before, basically saying, "You're not going to get an approval out of us", and then in the last paragraph:

40

In other similar situations in other LGAs some Councils have decided to endorse the development as presented, but delegate the determination of the DA to their GM once concurrence was obtained and not substantial changes needed as a result. This way Councillors can give it the tick without actually issuing a determination. Is this possible?

Is that something that Mr Tsirimiagos and you had ever discussed before?---No.

So this was an additional issue for you on top of the issues that had been raised with you by the Chanines, Mr Azzi, Mr Hawatt and Mr Montague in relation to the 3 metre setback deferred commencement condition?---Yes.

10 Can I just take you to some evidence that you gave earlier. In relation to 538 Canterbury Road, I asked you about the discrepancy between the IHAP report in that case and the officer's report and what you might have done as a result of receiving the IHAP report in that case. If I can quote to you page 3964 of the transcript, line 45:

20 *Did you think to yourself, "Oh, this is going to be a problem. I've got some people out there who are not going to be happy about this"?---No, because as I have said, the reports that we put up had the IHAP's recommendations in there and also the recommendations of the Director City Planning. So their ultimate decision was for the council to make the decision on which recommendation to go with, but I can't specifically recall any sort of contact regarding it by - or thinking that way, I should say.*

30 *So did Mr Maroun contact you to ask what happened?---I don't discount it.*

Did Mr Hawatt contact you to ask you what happened?---I don't discount that.

Did Mr Azzi contact you to ask you what happened?---I don't discount that, either.

40 *Did Mr Montague contact you to ask you what happened?---With Mr Montague, it probably would have been myself conveying to him rather than him contacting me.*

Did Mr Montague say anything when you conveyed it to him?---Not that I can recall, sorry.

The approach that you told us you took in respect of an IHAP report that didn't coincide with the officer's recommendation in the case of 538 Canterbury Road is not the same as the approach you took in this case, is it, on what you've told us?---I'm not sure, sorry.

10 Well, you've told us basically that you don't remember doing anything and, as far as you were concerned, it would be up to council because they would have the IHAP's recommendations and also the recommendations of the Director City Planning, so ultimately it was their decision as to which recommendation to go with. That's the top of page 3965.---Right. I'm sorry - - -

That's not the approach you took in this case?---I'm not - I don't recall, I'm sorry. I thought it was, that we had two recommendations.

20 Well, you had two competing recommendations.---Yes. They were different from each other.---Yes.

In the one case, you said, as far as you were concerned, you'd leave it up to council; it was up to them to decide which recommendation to go with?---Yes, absolutely.

30 In this case, you were taking steps to vary a recommendation or to procure a situation which would justify a variance of the officer's report recommendation; is that right?---No, they would have been furnished with all that information for them to make an ultimate decision.

But, I'm sorry, I thought you told us that you made suggestions to the applicant as to what to do to procure a circumstance where council could be provided with a third option, that is to say, a recommendation to approve without a requirement to amend the plans to substitute a 3 metre setback for a nil setback?---That's correct, yes.

40 So you intervened in this case?---Yes.

And is the reason for that because of the pressure you received from the applicant and from Mr Azzi and Mr Hawatt and Mr Montague?---No. Look, as I said, that 3 metre setback for me - there was pressure, don't get me wrong, from all of the above, but for me it was a matter that I was indifferent to that 3 metre setback, for reasons that

I've stated previously, so I was - - -

Which never appeared in the report that you signed off on?---I understand that and I've accepted that.

10 Which then suggests that you were quite happy with what went forward to the IHAP in the officer's reports and weren't indifferent about it, because you were recommending a more onerous outcome for the applicant than would otherwise be the case?---I was happy with the 3 metres and I am happy with a nil setback because of the precedent. So therefore I was happy with the 3 metres to be - - -

20 It seems strange that at the time you were indifferent about it - at the time, that is to say, as you submitted the officer's report to the IHAP - when you didn't provide the IHAP with the information that there was a precedent to the contrary?---I'm not sure if that was included in the report or not.

Just assume that it wasn't.---Okay.

30 Why wouldn't it have been provided to the IHAP if you were in fact indifferent about it and you thought that there was competing information that a decision-maker would take into account if they were provided it?---Sure. It's probably an oversight. But IHAP panel members attended - did site visits before the meetings, accompanied by our staff, so they would have walked around and had a look and seen the surroundings before they actually convened the meeting.

Are you certain?---Yes. So they would have been aware.

You assumed that, did you, when you omitted from the officer's report the information about a countervailing precedent?---No. Like I said, it's probably an oversight, sir. I don't - I did not deliberately leave that information out.

40 It just seems strange that you would leave it out when it would have favoured the applicant?---Well, yeah, it does, and if you're describing the context of the surrounds, really, it should have been put in.

The fact that it would have favoured the applicant and that you didn't include it suggests that it wasn't in your mind at the time that you submitted the officer's report?---No,

no, because we had discussions about the 3 metres right through the process internally and with the external consultant.

Did you?---Yes - the setback at the rear, I should say.

10 Not right through the process. We went through this yesterday. The 3 metre setback didn't appear until something like the second draft of Mr Black's report?---That's not to say that we didn't discuss it before.

If you were aware that there was this requirement of SEPP 65 and the RFDC for a 9 metre setback if it was to be equitable, then why didn't it appear in earlier versions of the draft report?---I can't answer that, I'm sorry. I'm not sure.

20 Well, that suggests that it wasn't discussed until the time of the draft in which it did first appear?---No, that's not correct.

I just need to be clear about this. You discussed with Mr Black, did you, when he was preparing his first draft of the report, the fact that there was a requirement for building separation in SEPP 65 for residential buildings of 8 storeys and above which needed to be addressed in, say, the compliance table for SEPP 65, did you?---We discussed the rear setback, yes.

30 And it came from SEPP 65?---I can't recall if it came from SEPP 65, to be honest with you, in those discussions.

It isn't a case that you and he overlooked the building separation requirements in SEPP 65 until the time of the second draft of Mr Black's draft reports?---No.

40 It doesn't make sense that it wouldn't appear in Mr Black's reports, Mr Stavis, if it had been the subject of discussion between the two of you beforehand?---Sir, there are plenty of reports that actually have information omitted erroneously, certainly in my experience. For me, that's the only explanation I can offer.

MR BUCHANAN: Commissioner, I note the time.

THE COMMISSIONER: We will break for the morning tea

adjournment and resume at 5 to 12.

SHORT ADJOURNMENT

[11.35am]

MR BUCHANAN: Mr Stavis, if I could take you, please, back to page 269 in volume 27.---Yes, sir.

10 At the top of that page, there's an email from you to Mr Marwan Chanine which you sent at 12.31pm on 26 November 2015, which reads:

FYI. Maybe you can pass onto your legal team to review and advise.

20 *As we said, worse case is that we add to the recommendation that Council delegates determination of the DAs to the GM once concurrence etc is obtained.*

Do the words "As we said" indicate that you were confirming a conversation that you had had, before sending that email, with Mr Chanine?---That's likely, yes.

What was said in that conversation?---That I can't recall, to be honest with you, but, I mean, if the email - you can probably get the gist of it from the email.

30 So had Mr Chanine suggested, in a conversation with you before you sent the email, that he would pass Mr Tsirimiagos's suggestion in the last paragraph of his email on to his lawyers to review and advise?---That I'm not sure about.

Why did you suggest to him that he could pass the email on to his legal team to review and advise?---I really don't remember, to be honest with you, but it's likely that it was just for him to run it past his legal team.

40 With a view to what outcome?---Well, to see whether, I guess, the suggestion that was provided by Mr Tsirimiagos was possible, even though I felt that it was generally possible, given discussions that I had previously with our lawyers on other applications. But that's probably the likely reason why I did.

I just want to remind you that your evidence of a conversation with Mr Jackson, which I assume is what you are now referring to when you said that you'd had conversations with "our lawyers", is in relation to 548 Canterbury Road, which was after this conversation with Mr Tsirimiagos in his email of 25 November 2015?---If that's the case, I stand to be corrected, yes.

10 So you didn't have any legal advice at that time about the lawfulness or the propriety of the suggestion that the development can be endorsed as presented but the determination of the DA delegated to the GM once concurrence had been obtained; is that right?---I don't recall if I did, but if what you're saying is true, then - I just don't recall, to be honest with you.

Well, you do have a recollection of this conversation with Mr Jackson in relation to 548 Canterbury Road?---I do, yes.

20 You don't have a recollection of having a conversation with Mr Jackson or any other lawyer about the suggestion around 25 November 2015 or shortly thereafter?---No.

Is it possible that you had no conversation with a lawyer around 25 November 2015 about that suggestion?---Again, I don't recall, but it's possible, yes.

30 It seems strange that you wouldn't recruit council's lawyers into an assessment of the legal position in relation to the suggestion rather than passing it on to the applicant for the applicant to pass to their legal team to review the suggestion. Do you accept that that is a strange thing?---I do. If I can just explain, if you don't mind, I just probably took it on face value that what Mr Tsirimiagos was saying was actually factual. But I accept that.

40 What do you mean by taking it on face value that what Mr Tsirimiagos said was factual?---In the last paragraph, where he says in other similar situations, in other LGAs, some councils have decided to endorse the development as presented but delegate the determination of the DA to the GM.

I'm sorry, what do you mean in your answer by you assumed it was factual?---Well, coming from Jim that - - -

What was factual?---Just what I read, that last paragraph.

You mean to say that some other councils had delegated the determination of the DA to the GM?---Yes. Yes, sir.

Why, in that case, did you type in your email to Mr Chanine, "Maybe you can pass onto your legal team to review and advise"?---I don't recall why I did it, no.

10 Isn't it an indication of providing the Chanines with preferential treatment in relation to the processing or progressing of their DAs?---No, I don't see it that way, no.

How many other questions of the lawfulness or otherwise of a tactic to adopt to achieve the outcome of approval via a particular mechanism have you sent out for legal review to the applicant's side rather than your side?---None come to mind, to be honest with you.

20 You didn't say anything in that email at all about the rest of the content of Mr Tsirimiagos's email - that is to say, the issues that Sydney Trains had with the DA?---I didn't, because I assumed by forwarding that email that he would have read that content, anyway.

30 But you weren't interested to know what Mr Chanine could tell you as to when the applicant would be in a position to meet the requirements outlined in Mr Tsirimiagos's email?---I vaguely remember him actually saying to me - and I'm not sure if it was just him or Ziad - that he was in contact, quite regular contact, with Mr Tsirimiagos regarding their applications throughout the process.

40 Just thinking now about the fact that Mr Tsirimiagos proposed a device that could be employed to overcome the absence of concurrence that was required by the legislation, ordinarily you would have not submitted or withdrawn from council's consideration a DA where the requirements of legislation for a concurrence authority to provide an approval had not been satisfied; is that fair to say?---It is.

But in this case, you decided that you would not wait for concurrence but, instead, would use a device to overcome the lack of the concurrence required by the legislation?---I think that's fair, yes.

The reason that you did was because the applicant was Arguile Pty Ltd, the company that Marwan Chanine and Ziad Chanine were working for, the applicant?---I recall that the main reason was because I was asked that this needed to go to a council meeting on that particular date by the GM, and obviously the pressure and inquiries from the two other councillors, yeah.

10 When did the GM find out that you knew on 25 November 2015 that you hadn't satisfied the requirement of the legislation for concurrence to be obtained from Sydney Trains?---I'm not sure. It was around that timeframe, but I'm not sure if it was before or after this email.

You've told us about a meeting you had that day with the GM.---Yes.

20 And I asked you whether anything else was talked about and you said you couldn't remember anything else that was talked about. So can we take it that at that meeting you didn't tell the GM that concurrence was required from Sydney Trains and hadn't been received?---I don't recall that, no, sorry.

So was it a separate meeting or separate contact with Mr Montague at which you informed him of that?---There were at least two meetings that I can recall with the general manager around that timeframe.

30 But when in relation to the email you sent at 3.35pm on 25 November 2015 that's printed at the bottom of page 269, going over to page 270 was it that you informed the general manager that there was this problem?---As I said before, it would have been around this timeframe. I can't give you an exact date, I'm sorry.

40 How did you inform him?---I spoke to him. Normally with these sorts of things, I'd go up and see him and talk to him in his office.

Did you go up to him with a problem or did you go up to him with a problem and a solution?---I believe it was a - you don't go to Jim's office without - or Mr Montague's office without solutions, so I presented to him the problem, and in all likelihood I would have presented him with a solution, yes.

The solution proposed in Mr Tsirimiagos's email?---Yes.

That wasn't provided to you until 10.19 at night on 25 November 2015. Do you see that?---I do, yes.

10 So if your evidence is correct, that means that you didn't tell Mr Montague until the next day, 26 November 2015, when you were telling Marwan Chanine about the proposed solution?---Like I said, I don't recall exactly when, but following your logic, at the very earliest it would have been on 26 November, yes.

20 Did Marwan Chanine indicate anything to you as to what he thought of the device of council or the CDC endorsing a development in principle but delegating determination - endorsing a development application in principle but delegating determination of it to the GM once concurrence was received?---I'm not sure if it was around that period of time, but I do recall having a discussion with him about it and presenting - discussing that last paragraph from Mr Tsirimiagos. I don't remember him having any displeasure over it in any way, to be honest with you.

Is it likely that he indicated that it sounded like a good idea, or that he was content with it?---I'd say so, yes. I think that's fair.

30 Did you indicate to Mr Montague that Marwan Chanine was okay with the proposal?---I believe so, yes.

Mr Montague, as you understood it, would have been interested in the applicant's views on the subject?---Yes.

40 Was it your experience that Mr Montague was interested in the views where the applicant was, in particular, Marwan and/or Ziad Chanine in relation to their DAs?---Well, the only experience I had with their DAs at Canterbury - maybe two, I think, from memory. I think it was more likely because he was getting inquiries from the two councillors that we spoke about, so I'm not sure if it was solely attributable to the fact that it was Marwan Chanine or whether it was, I guess, the relationship that the Chanines had with certain councillors.

MR BUCHANAN: Commissioner, if I could make an application to vary a non-publication order, please - the order made on

21 November 2017 in respect of evidence given by the witness recorded in the transcript at page 1322, commencing at line 14, and concluding on page 1323 at line 20 - I'm sorry, Commissioner, the concluding passage being page 1325 line 2.

THE COMMISSIONER: Can I just confirm that again: 1322 line 14 to 1325 line 2?

10 MR BUCHANAN: Yes, Commissioner.

THE COMMISSIONER: I vary the non-publication order made on 21 November 2017 to exclude the evidence by Mr Stavis recorded in the transcript commencing at page 1322 line 14 and concluding at page 1325 line 2.

20 **I VARY THE NON-PUBLICATION ORDER MADE ON 21 NOVEMBER 2017 TO EXCLUDE THE EVIDENCE BY MR STAVIS RECORDED IN THE TRANSCRIPT COMMENCING AT PAGE 1322 LINE 14 AND CONCLUDING AT PAGE 1325 LINE 2.**

MR BUCHANAN: Mr Stavis, if you could listen to me read the transcript of an extract of evidence that you gave on 21 November 2017 to the Commission, and then I'll ask you some questions afterwards:

30 *This is an email chain over two pages. The first email is 25 November, 2015 at 3.35pm, but there seems to be - oh, there we go. And then it's followed by an email at 10.19pm and then you forward that email to Marwan Chanine on following day, 26 November, 2015.---Okay.*

The email relates to 212-218 Canterbury Road.---Yeah.

40 *And the topic of the email correspondence appears to be Sydney Trains Concurrence. I'll give you some time to read that email.---Okay. Yeah.*

Right. Do you remember this issue in relation to the Chanines' development at 212?---Vaguely, yeah, yeah.

And it appears that you've gone to Sydney Trains and asked for an urgent favour in relation to this matter. So the first email in the chain is an email from yourself to - - -?---Yeah.

- - - somebody at Transport NSW.---Yeah.

10 And you've gone to that person and said, "I need an urgent favour regarding this matter."---Yeah.

What was urgent about this matter?---Oh, no different to other matters that had councillor involvement, probably to get it to a council meeting.

20 It looks from this email as though you were aiming for 3 December, 2015 council meeting.---Yep.

Similarly to the Harrison's DA we looked at earlier today.---Yeah.

And you had again an issue with concurrence being outstanding.---Yeah.

30 And as we discussed earlier, other applicants in that position would have had to wait for the concurrence to come through before their matter could be progressed.---Yeah.

So the Chanines were also in the same category of people whose - - -?---Yes.

- - - matters were progressed urgently - - -?---That's fair comment.

40 - - - regardless of concurrence - - -?---Yeah.

- - - being outstanding. And that was on the basis that the Councillors Hawatt and Azzi had expressed an interest in it. Is that correct?---That's correct.

And when, when we say interest, are you able to be more specific in relation to this particular development about the nature of Mr Hawatt and Azzi's expressions to you?---The nature of their expressions?

10 What they said to you about how they were interested, what their interest was, what they wanted you to do?---No, no. They wanted, obviously I knew that they wanted me to determine or to hurry up and get an assessment report to council, yeah.

The email you received from Transport NSW is on the first page.---Yep.

20 And they've said to you that they are unable to consider deferred commencement in the first sentence.---Yeah.

They have raised a number of issues in the email.---Yeah.

30 They've said, "The issues that need to be addressed result in too many unknowns." In the third paragraph, "The issue of concern to us, which may trigger the need for design changes, is the proximity of the development to the power lines and the ability for the developer to build their development without a reasonable setback and the impact of their works on the bridge." Do you recall this issue?---Vaguely, yeah. Yeah.

40 I mean, it sounds like this wasn't just something that could easily be conditioned. If these issues came to fruition it would be difficult to manage - - -?---That's fair comment.

- - - that after it had gone through council?---Yeah, that's a fair comment.

All right. And yet you've come back to Mr Chanine and said, in the second

sentence, "Worst case is that we add to the recommendation that council delegates determination of the DAs to the GM once concurrence, et cetera, is obtained."
---Yeah.

Right. So it sounds - - -?---That's along the same spirit as the last one, yeah.

10 So it sounds like you're suggesting that the worst outcome for Mr Chanine from this issue being raised would be that a recommendation would be made to council that they could delegate their approval of this DA to the general manager and that the general manager would manage any issues arising through conditions.---That's a fair comment.

20 And we've just looked at the email where some issues are raised which sound like it would be difficult to manage through conditions. Why would you have recommended that on this occasion?---Well, obviously to get the application in timeframe, yeah, that I was instructed.

30 Right. So the only issue that was really mattering to you at the time was the timeframe of these applications?---Pretty much, yeah.

Right. And whatever might arise in the future as a result of these issues you'd just have to manage at the time?---Yeah.

You weren't - - -?---That's a fair comment.

40 You weren't proceeding, really, in an orderly fashion to manage issues proactively in relation to this application?---Sorry, repeat that.

You weren't managing these issues proactively in relation to this application?---I wasn't - - -

10 *I'm suggesting to you that - let me withdraw that question, Mr Stavis. I'll start again. Wouldn't it have been better to wait for concurrence on this occasion and manage any issues raised by Transport for NSW, particularly considering the nature of the issues that they foreshadowed, rather than proceeding to refer the application for approval?---I would say that's a fair comment.*

And would you have done that for other applicants, that they would have had to wait for these issues to be dealt with before you went to council?---I'd say so.

20 *Right. What did you think was going to happen if these issues became a reality, if there had to be design changes as a result of the issues raised by RMS? Transport for NSW, sorry.---Well, they'd have to, they'd have to make changes obviously.*

Right.---Yeah.

How would that be managed by the GM?---Well, GM would probably delegate it to me, I guess, yeah.

30 *Would it go back to council?---Yeah.*

So it would have to go back to a council meeting if there had been design changes?---I'd say so, yeah, yeah.

You heard me read that excerpt from the transcript of the evidence you have gave on 21 November 2017, did you?---I did, yes.

40 *Was it true and correct?---It was, with two - if I can add two things to that, if that's possible? The interest that was shown was not only by the two councillors; it was the general manager as well. So I probably forgot to mention that. The other thing is, while you were reading that about Sydney Trains, there was - from the best of my recollection, information that was submitted at the time didn't show the boundary, the common boundary, between the*

subject site and Sydney Trains. So that was an oversight of some sort, and I believe we only became aware of the location of that boundary - and I stand to be corrected - after the approval was issued. So they're the two things that I'd like to add.

10 To sum up, this is correct, isn't it: firstly, the issue of concurrence being outstanding, other applicants would have to wait for concurrence to come through before the matter would progress to determination?---Ordinarily that was the case, yes.

In this case, the Chanines, however, had their matter progressed urgently regardless of concurrence?---Yes.

And that happened because Councillors Hawatt and Azzi and the general manager, Mr Montague, had expressed an interest in, to use your words, the timeframe?---Yes, sir.

20 The matter being progressed urgently to approval?---Yes, sir.

Can I ask you to go, please, to page 272 in volume 27. It's in very small print, so we might try to enlarge it on the screen. It's an email from Marwan Chanine to Mr Montague, cc'd to you, dated 27 November 2015 at 9.37am. Do you see that?---I do, yes.

30 It has a number of attachments. Can you see that there are names of files against the word "Attachments"?---Yes, sir.

It's addressed "To The General Manager" and says:

*The two Subject DA's 212-218
Canterbury Road, Canterbury DA-168/2015 and
220-222 Canterbury Road, Canterbury
DA-169/2015, will be before a council
meeting next week for determination.*

40 *I am formally objecting to the deferred
commencement condition (condition A1) on
the recommendation.*

*Please find attached formal letters in
favour of the deletion of this onerous
condition from my Lawyers Sparke Helmore
and the neighbouring properties architect*

at 6-8 Close Street Canterbury.

*Should you have any further questions,
please do not hesitate to contact me.*

Thank you.

*Kind regards
Marwan.*

10

Do you recall that email arriving?---No, I don't, but I do recall receiving the Sparke Helmore advice, yes.

If you go over to page 274, can you see that that's the first page of a letter from Sparke Helmore Lawyers, dated 27 November 2015, to Mr Ziad Chanine, CD Architects?---Yes, sir.

20

By email, however, to the email address of Marwan Chanine?---I'm not sure if that's his email address, but I take your word for it.

You recall receiving that?---The document itself, yes.

Can I just draw your attention, as well, to another document, at page 282, which is dated 25 November 2015, which is from a Terry Savill at Realize Architecture?---Do you see that?---Yes, sir.

30

Its subject is "IHAP Meeting Issues, DA-169/2015 4 Close St, Canterbury - Mixed Use Development". Do you see that?---Yes, sir.

40

If I can just take you back to the attachments identified to Mr Marwan Chanine's email of 27 November 2015 at 9.37am to Mr Montague and you at page 272, there is identified a letter to CD Architects, 27/11/15, that matches the Sparke Helmore Lawyers document commencing at page 274 of volume 27; is that right?---I'm on page 274 now.

Sorry, page 272 is Mr Marwan Chanine's email. All I'm doing is trying to identify to your satisfaction that these were documents that were attached to Mr Marwan Chanine's email to you and Mr Montague?---I accept that.

So the Letter to CD Architects 27.11.15.pdf would appear to be the document commencing at page 274 in volume 27?---Yes.

And the attachment 151125 IHAP Meeting Issues DA-169/2014 4 Close St, Canterbury Mixed-Use.pdf would appear to be the letter from Realize Architecture which is at page 282 of volume 27. Do you see that?---I accept that, yes.

When did you first read this email from Marwan Chanine?---It was probably shortly after receiving it. I just don't remember exactly when.

10

Did you have any notice of the fact that a letter from lawyers to the Chanines would be coming?---I'm not sure if it was discussed in that meeting that I spoke about earlier, before the break. So I'm not a hundred per cent sure, but I remember talking about an urban design analysis and what have you. It may have been discussed as well. I'm not sure, to be honest with you.

20

So in that discussion that you had with Ziad Chanine, and I think you have said likely also Marwan Chanine, there had been strategising by the three of you as to how to deal with the deferred commencement condition for a 3 metre setback at the rear of the proposed developments in light of the fact that they were unhappy with that condition?---I don't know if "strategising" is the right word that I'd use. I pointed out, as I have said before, in terms of that 3 metre setback, I was indifferent to it, but I left it with them to come up with the arguments or further justification for it, and yes - - -

30

You didn't leave it with them. You proposed that they provide justification for it?---If they could get support for it.

For the nil setback?---Yes, sir. I accept that.

40

So do you think it's possible as well that the provision of a letter from the applicant's lawyers on the subject might have been discussed at that meeting?---I really don't know, I'm sorry.

Well, I think you're accepting, aren't you, that there is some possibility that you had noticed that such a letter was coming?---I'm not sure what this letter - I can't - obviously it's been some years since I've read it, but does this deal with any particular issue?

It deals with the question of the rear setback.---Okay.
Possibly, sir. I don't discount it.

10 It's simply ridiculous, I want to suggest to you, for you to say in the witness box that you and the applicant didn't get together and strategise as to how to deal with the deferred commencement condition that the applicants weren't happy with? That's what you did, wasn't it?---No, it wasn't. I was saying to them, "There's an issue that has been raised. You need to provide us with a justification for it." Now - - -

Hang on. Who raised it?---I did. I raised it.

Why did you raise it, given that it was your recommendation?---Because I was indifferent to that setback, sir. I didn't care whether it was a nil setback, given the precedent, or whether it was 3 metres.

20 If you didn't care, why raise it with them?---Obviously because I wanted to make sure that, you know, there was adequate justification for it.

Why, if you were indifferent to it? No-one had raised it with you - or had they?---The actual 3 metres?

Yes.---Yes, as I've given you evidence before, of course they did.

30 Who did?---Obviously at some point in time, the general manager, certainly the two councillors, and obviously the Chanines at some point in time.

40 At some point in time, you had a meeting of minds, as it were, whether it was on the phone or face to face, with Ziad and Marwan Chanine about how to overcome this condition in the recommended conditions for approval, the deferred commencement consent?---Yes, I certainly met with them to discuss that.

At that stage it's likely, is it, that unhappiness with that condition would have been expressed to you already by either Mr Hawatt or Mr Azzi or both?---Highly likely.

So is it the case - and I haven't dealt with Mr Montague. Maybe I should. Is it likely that by the time you spoke to the Chanines and discussed ways of getting rid of the

deferred commencement condition for a rear setback of 3 metres, you had had the discussion with Mr Montague that you've told us about in his office?---Yes.

So in the order in which these conversations occurred - tell me if I have this right - as you best recall it, it was the councillors, then Mr Montague, then the applicants? You tell me if that's wrong or some variation of it needs to be provided.---I think that's about right, yes.

10

Do you think, then, that you first heard someone express displeasure about the 3 metre setback requirement was Mr Azzi - I will rephrase the question. Who was the first person to express displeasure with it?---I think I said earlier today that in my mind, as I sit here today, I believe it was Mr Azzi.

20

At the time Mr Hawatt spoke to you, do you have a memory of thinking, "Yes, I know, I know it's a problem", that is to say, "I've already heard this from Pierre Azzi"? I don't want to put it in your head if that's not what actually occurred. I'm just asking.---No, no, I accept that. I'm just trying to think. I honestly can't remember.

30

Then just to again test your evidence on this subject, at the time you went in and spoke to Mr Montague in his office about the 3 metre setback requirement, did you understand already that there was displeasure about it on the part of others?---I believe so, yes.

40

When you spoke to Mr Montague, though - I just need to be clear - had you already started coming up with solutions?---Again, I think in that initial meeting with Mr Montague, probably not. But as I said before, earlier today, there were at least, from what I can remember, two meetings in his office. So by the time we had that second meeting, we would have probably had a solution. Like I said before, you don't go to Mr Montague's office without finding - having a solution.

So although I have suggested to you that the sequence of events in your evidence would seem to be contact from the councillors, contact with Mr Montague and then contact with the applicant, is it possible that before you discussed these solutions with the applicant, you had already been thinking to yourself about possible solutions, such as those which you then ran past Marwan and Ziad Chanine? Do

you understand what I'm asking you? In other words, you'd already been thinking about it because of the fact that other people had expressed displeasure with the condition?---Okay. I don't discount that, no. Yes.

10 Additional justification for a nil rear setback - that's the sort of thing you could come up with in five seconds flat, isn't it? It wouldn't take a great deal of thinking things through to think of, "Well, that would help"?---I accept that. I do.

Did you have any discussion with Marwan and Ziad Chanine, at the time that you were discussing these possible solutions with them, of a formal objection being lodged by them with council to the recommendation of that condition?---A formal objection?

Yes.---To the council?

20 Yes. Sorry, what I'm doing is I'm looking at the email from Marwan Chanine to Mr Montague and you dated 27 November 2015, and do you see the second line reads:

I am formally objecting to the deferred commencement condition (condition A1) on the recommendation.

30 Sorry, page 272.---Yes, got it. No, I don't believe I did, I'm sorry, no.

Did anyone indicate to you that a formal objection was being considered as part of the approach to be taken to this issue?---Not that I'm aware of, no.

40 There wasn't in fact, was there, a legal category of formal objection to a condition recommended in an officer's report to a consent authority for a proposed development in a DA, was there?---No, that seems quite strange to me now, looking at that.

So you didn't recommend it?---No, sir, I don't believe so, no, no. I mean, there's no - as you rightly pointed out, that has no status. There's no process for that.

Had you encountered that sort of objection before?---No, no. Objections, for me, in relation to applications, are generally from the public, I guess.

During the notice period?---Correct, yeah.

Can I take you to the Sparke Helmore letter of 27 November 2015 commencing at page 274 in volume 27. Can you see that it takes the form of advice being delivered by lawyers to their client?---Yes, sir.

Paragraph 1:

10

You have designed two proposed mixed use developments ...

Et cetera. Then:

The Council's report ... proposes that they be approved subject to a deferred commencement condition ...

20

Et cetera:

You seek our advice about whether the zero setback at the Bowling Club boundary is justified ...

Et cetera. Do you see all of that?---Yes, sir.

That reads as if it's the client's instructions?---Yes, I accept that.

30

Now, what appears thereafter would appear to be the advice that is provided, although quite plainly there is reference to material that would have been provided to Sparke Helmore by their client, when you flip through it?---I accept that.

For example, the figures, the plans?---Yes, and also the - it looks like the maps and so forth.

Yes.---Yes.

40

Can I take you now to paragraph 4. Can you see that it reads:

Because the draft amendment to the LEP has been on public exhibition Council must consider it.

?---Yes.

10 This, Mr Stavis, is what I said yesterday I would take you to as being perhaps an indication that it might be right - that is to say, if the applicant through their lawyers indicates that because a draft amendment to the LEP had been on public exhibition, then if the applicant's lawyers say that council must consider it, then probably the council should consider it. Do you understand?---I do. Without having the benefit of the report, did we not consider it in the report or mention it as a relevant consideration? I'm sorry to ask the question. I just don't have a copy of the report in front of me.

20 You were proposing in your evidence yesterday that it was not necessarily the case that because a draft amendment to the LEP had been through a planning proposal process and it reached the stage of public exhibition, that it was required to be taken into account when considering the building separation requirements of SEPP 65. What I'm suggesting to you is perhaps that's not right. If the applicant's lawyer suggested it's not right, then it's probably not right?---In relation to SEPP 65, no, I stand by what I said yesterday, I'm sorry.

Can I take you, then, to page 281. Do you see that the conclusion at paragraph 30 was that:

30 *... an examination of the development applications (and in particular the detailed plans of the proposed developments) against the current controls and the proposed rezoning of the Bowling Club would allow Council acting reasonably to conclude that the proposed developments are appropriate and maintain an environment allowing the Bowling Club to be redeveloped to its full potential.*

40 ?---Yes, sir.

If I can take you, then, back to page 274, can you see at paragraph 7 at the bottom of the page, Sparke Helmore say that an important circumstance that needs to be considered is that:

... there is precedent for development

having no setback (or zero lot line) from the Bowling Club boundary. Development consent was given to an adjoining property, being 6-8 Close Street, Canterbury and which also shares a common boundary with the Bowling Club, with a zero rear setback.

Do you see that?---Yes, sir.

10 On page 295, paragraph 9, after discussing their opinion that:

20 *The Bowling Club is a very large site with the potential for a variety of development options, including high rise residential. One would expect that such development would require generous setbacks from boundaries to provide adequate deep soil planting and landscaping to both soften the impact of such higher density development and to provide an acceptable landscaped solution ensuring acceptable amenity for the residents of what no doubt will be a large number of apartments on the Site.*

Sparke Helmore said this:

30 *Accordingly we conclude that the Council would be acting entirely reasonably in approving the applications as submitted and without deferred commencement Condition A1. Removal of the condition would also alleviate any suggestion that that Condition was imposed unfairly to provide a benefit to the Council.*

40 So you accept that the burden of this opinion was that the rear setback condition of the deferred commencement approval that was recommended in the officer's report be removed?---In this advice?

Yes.---Yes.

And the practical effect of the Sparke Helmore approach was that council should absorb 100 per cent of the economic impact of there being no setback on the western side of the common boundary if the proposed developments with nil rear

setbacks were approved?---I accept that.

As against 66 per cent of the economic impact being absorbed by council of the setback of 3 metres required by the deferred commencement condition, as drafted in your officer's report?---Taking into account the 3 metre setback?

10 Yes, the difference between 100 per cent and 66 per cent.---That's - I haven't done the maths, but I accept what you're saying, yes.

MR BUCHANAN: I note the time, Commissioner.

THE COMMISSIONER: I will adjourn for lunch and resume at 2 o'clock.

20 **LUNCHEON ADJOURNMENT**

[1.00pm]

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