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INDEPENDENT COMMISSION AGAINST CORRUPTION

PATRICIA McDONALD SC
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OPERATION DASHA

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY 16 AUGUST 2018

AT 2.05PM

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

MR BUCHANAN: Before lunch, Mr Stavis, I took you to passages from the Sparke Helmore Lawyers letter of 27 November 2015, which commences at page 274. Do you see that?---Yes, sir.

10 I took you ultimately to paragraph 9, but I think I said "page 295". Can you see that there's another copy of the second page of that letter at page 295, but, as well, the second page is copied at page 275, which is of course the page after 274, where the first page appears. Do you see that?---Yes, sir.

And it's identical - that is to say, page 275 is identical to page 295?---Yes.

20 Thank you. The Sparke Helmore Lawyers advice provided a legal opinion as to two matters in which council would have had an interest, I suggest to you and invite your response. The first was that it was an opinion as to the proper exercise of council's DA determination power and, secondly, as to protection of council's economic interests. Would you accept that description?---I accept the second one. The first one, if you can draw my attention to your first point in the letter?

30 It's all about whether it would be reasonable for council to approve the DAs without requiring a 3 metre setback at the rear of the proposed developments, isn't it?---Yes. I accept that, yes.

That is about an aspect, anyway, of the exercise by council of its determination power?---Yeah, yes.

40 You didn't seek advice from Pikes & Verekers Lawyers about the accuracy of any of the statements made in the Sparke Helmore opinion, did you?---Not that I'm aware of.

And as far as you're aware, Mr Montague didn't, either?---Not that I'm aware of, no.

Was there any reason why you didn't seek advice on the contents of the Sparke Helmore letter?---The only reason that I can think of, as I sit here today, is probably from a timing perspective, because it was - I notice from the

date of this letter, it was pretty close to the actual committee meeting, I believe.

The opportunity wasn't given by contacting Pikes & Verekers Lawyers and asking them how long it would take to respond to the letter; you could have emailed them a copy, couldn't you?---I could have. I could have, yes.

10 Given that the letter contained legal opinion as to the proper exercise of council's DA determination power, together with protection of council's economic interests, it seems extraordinary, if I can suggest this to you, that you didn't pass the Sparke Helmore Lawyers letter to council's lawyers to seek their opinion?---Again, the only reason I can think of is because of the fact that it was so close to the actual committee date. If you remember, I took you to - my previous evidence was about there was a lag time between when these reports were prepared and circulated. So that's the only reason I can think of,
20 sorry.

You received the letter from Sparke Helmore Lawyers, from Marwan Chanine, at 9.37 in the morning of Friday, 27 November 2015. That's page 272 of volume 27.---Yes.

You were dealing with a CDC meeting, I think, that was scheduled for 3 December?---I believe so, yes.

30 That was the next Thursday, so you had six days in between?---Yes.

That wasn't the real reason, was it?---I believe so. I can't think of any other reason.

I want to suggest one to you: because you didn't want to obtain anything that might result in a question being raised as to whether the advice was correct?---No, that's not true.

40 And you didn't want to obtain anything that would imperil the plan to ensure that the two DAs received the approval of council one way or the other at its meeting on 3 December 2015?---No, that's not true.

What's wrong with those reasons?---Because I don't remember thinking that at the time.

So you do remember thinking, do you, that there's not enough time, six days is not enough time to get our solicitor's advice about this, even though it involves council's exercise of power and council's economic interests, not enough time?--Well, what I'm saying to you is that I don't remember thinking what you just put forward to me.

10 You see, your explanation makes no sense, I'd suggest to you, whereas the explanation that I've suggested to you is entirely consistent with everything you've told us up until now about what you were trying to achieve, anyway - namely, an approval at the meeting of council on 3 December 2015?---I disagree.

20 You, I suggest, had a duty to obtain that advice and failed in the discharge of your duty?---In all honesty, as I sit here, given the time line that we did, I thought that was enough. I had no reason to doubt the advice from Sparke Helmore - - -

It came from the other side.

MR PARARAJASINGHAM: Perhaps he can finish his answer.

THE WITNESS: Sorry.

30 THE COMMISSIONER: No, no, go on, Mr Stavis.---Yes, okay. Look, with the benefit of hindsight, probably I should have got that checked, yes. But, as I said before, I had no reason to doubt the advice that was provided by Sparke Helmore. They're, as far as I'm aware, a large, reputable firm. But it didn't occur to me, you know, yeah.

40 MR BUCHANAN: Would you be happy for your own legal interests to be adjudged in that fashion by allowing them to be determined by reference to a legal opinion obtained by your opponent's lawyers?---When you put it that way, probably no.

Did you discuss the Sparke Helmore Lawyers letter with anyone once you had received it?---I believe I did talk to Mr Montague about it.

What was said?---That we had received this advice, along with other documents, and that - you know, that there was a reasonable, I guess, position, given what I had thought

of before in terms of whether a nil setback or a 10 metre setback was appropriate, that we could move forward and, yeah, that's essentially the tone, I guess, of that discussion.

Was anything said in the conversation by you or by Mr Montague about running the applicant's legal advice past council's lawyers?---I don't believe so, no.

10 Why didn't you suggest it to Mr Montague?---For the reasons I stated earlier. I didn't think to do it, sir.

You were prepared to jettison the public interest and council's interest in favour of the applicant's interest by not obtaining - or giving your lawyers the opportunity of passing their eyes over the Sparke Helmore letter; that's the case, isn't it?---No. At the end of the day, a lawyer is not really going to be able to suggest the appropriateness of a setback. That's a planning issue.

20

So you, in that case, made sure that the Sparke Helmore letter was never seen by council, did you?---I don't recall that, no.

No. You know what you did, don't you?---I'm sorry, I don't know what the question - - -

You made sure that it was put before council, didn't you?---I may have, yeah. I'm not sure.

30

Why did you bother putting it before council if that was your opinion, that at the end of the day a lawyer's opinion didn't matter?---In relation to the setback issue?

Yes.---Look, they provided the information.

It was more than information, wasn't it; it was an opinion - - -?---Sure.

40

- - - that it would be reasonable to delete the 3 metre setback requirement and substitute a nil setback requirement?---Yeah, yeah.

It would have been, I suggest, clear to you that the Sparke Helmore letter was being deployed by the Chanines to change the calculus of council's decision making on their DA?---I think it certainly would have added some weight, yes.

To the applicant's case?---Yes.

And that that was the purpose it was being provided to council; that would have been clear to you, too?---Look - yes.

10 And then you and Mr Montague simply adopted it in what you did thereafter with it, didn't you?---Yeah. I believe so, yes.

Is this the case, that you used the Sparke Helmore letter as cover for a decision to favour the applicant's interests over the public interest in relation to the setback issue?---No, sir.

20 Can I take you to page 271 in volume 27. This is a couple of emails which pre-date receipt of the Sparke Helmore letter, and the first one commences about a third of the way down the page - I'm sorry, there are three of them. The first one is about a third of the way down the page. It's from you to Mr Montague on 26 November 2015 at 12.42pm. Do you see that?---Yes, sir.

It reads, "Hi Jim", and then you have two subheadings. The first is "Canterbury Rd - Chanine's". You said:

30 *I have met several times with Ziad and Marwan and they are putting together a submission which supports deletion of the condition re the rear setback. I will review once I receive.*

Can I just pause there. It seems that on 26 November 2015 you believed that you were going to receive a submission that supported deletion of the condition?---That's fair.

40 Where did you get that idea from?---Probably in discussions or meetings that I had just prior with the Chanines.

Of course, the Sparke Helmore letter is such a submission, isn't it?---Yes, it is.

So is it the case that they had indicated to you that they were putting together a submission that supported deletion of the condition in relation to the rear setback?---It's possible.

So that would have been discussed, would it, in the same meeting as you had proposed the urban design review report and the additional justification for the deletion of the 3 metre rear setback?---I don't recall whether it was discussed at that meeting, but it was brought to my attention by them, and I'm not sure whether it was by way of phone conversation or what, about the Sparke Helmore.

10 This was part of a strategy, wasn't it, to get rid of the 3 metre rear setback condition in the recommended deferred commencement condition?---Not from my perspective, no.

You had had it, obviously, run past you?---They certainly mentioned it to me, yes.

20 And you had run past them two other ways of addressing the problem of the 3 metre rear setback recommended condition, hadn't you?---Are we talking about - what are the two other ways, sorry?

You have told us that you proposed that they obtain additional justification for the deletion of that condition and also an urban design review report?---Yes, sir.

30 Can you see that there appears to have been a good deal of strategising between you and the applicant to remove this condition, which you had been told people were unhappy with?---I wouldn't put it in those terms. I was explaining to them in our meetings or discussions that they needed to provide further justification by way of, as you've suggested and the evidence I've given, some sort of urban design report or analysis. So, you know, as far as I was concerned, it was up to them to provide that information.

I'll continue reading the email. The second paragraph reads:

40 *As a side issue, we are yet to receive concurrence from the RMS or Sydney Trains, technically the application cannot be determined until this is received and it cannot be conditioned. Hence, if we don't receive before the CDC meeting, the only way we can progress the DAs is to recommend the following (or similar) ...*

And then in quotes and italicised:

"That Council supports the proposed development and delegates the determination of the DA to the GM once concurrence is obtained from the RMS and Sydney Trains".

You went on in the next paragraph to say:

10 *I ran this idea past Marwan and he is agreeable. Are you okay if we proceed this we if we don't receive concurrence from RMS and Sydney Trains in time? Otherwise the DA cannot progress on the 3 December.*

Just pausing there, you drafted, did you, the material in italics, commencing "That Council supports the proposed development"?---I believe I did, yes.

20 Where did you get that wording from? Sorry, I should withdraw that question. Did you get that wording from somewhere or did you simply design it yourself?---No, I would have got it from somewhere. I just don't recall where I would have got it from, to be honest with you, at that point in time.

I'm looking at page 269, the email from Mr Tsirimiagos at 10.19pm on 25 November 2015, and although he proposes the idea, the wording that is in your email to Mr Montague of
30 26 November is different. Do you know, did you contact any of your counterparts at other councils after you learned from Mr Tsirimiagos that he thought other councils had done the same thing?---I don't believe I did, no.

So did you simply formulate that wording yourself?---I'm not sure if the idea came from that, because I'm a bit hazy on the timing, or whether it was discussions that I had with Peter Jackson as well in relation to that other DA.

40 That was in relation to the 548-568 Canterbury Road development?---Yes.

And your evidence was to the effect that such a conversation occurred on about 30 November 2015.---Was it?

And this is 26 November 2015.---Sorry, I wasn't aware that I was specific with the date of when I got that.

You indicated that it was around a date that was 30 November 2015.--Well, that's around the 26th as well, isn't it?

10 Okay, so I'll take a step back. Are you saying that you spoke to Mr Jackson about this issue in relation to a property other than 548 Canterbury Road?---No, I'm not saying that at all, no. What I'm saying is that perhaps I already had the conversation with him on or around the end of November.

Do you have a memory of being in a panic because you had more than one DA report going up to council where there was in fact a failure to obtain concurrence from required concurrence authorities?---I don't recall that, I'm sorry, no.

20 What's your recollection - that there was one or more than one such DA or a brace of DAs?---Well, we've seen that there's two. I don't recall, to be honest with you.

You provided Mr Montague with the information that you had run "this idea past Marwan and he is agreeable" - do you see the fourth paragraph in your email of 26 November 2015 to Mr Montague?---Yes.

30 You thought that was relevant information that Mr Montague needed to know?---I believe so, because in the past he had asked me very similar questions about, "What does the applicant think?"

In the next paragraph, you said:

There is still a chance we will still receive their comments before the meeting - I am chasing hard.

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

The next paragraph is under a subheading "Bowerman's", and it reads:

I had discussions with Pierre and Michael and they are now not concerned with the recommendation to delete the 10 units, so I have not progressed this any further.

Happy to discuss.

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

Was Bowerman's one of the matters on the agenda for the meeting of the CDC of 3 December?---I remember it was a fairly large agenda, but I can't remember, to be honest, if it was on the same one.

10

What was the nature of the Bowerman's DA?---They had an approval for a multi-level mixed use development and they were seeking to provide additional units, and I think it was a DA in relation to that.

20

Were the additional units to be by way of an additional storey on the approved development?---I think it was at least one. So what they - from memory, what they were doing was there was, I think, an approval for a six-storey building along Canterbury Road, if you like, turning around the corner to, I believe it's Canton Street, from memory, and at the back they had a series of two-storey townhouses. So that was part of the original approval. Their proposal was to remove the bulk - the townhouses from the back, create a public open space area at the back that was accessible by the public, and add potential - well, I'm not sure if it was exactly what they lost, if you like, from the back and add it towards the front.

30

Whose proposal was that?---God, you've got me stumped now. I don't remember exactly.

Was it a proposal from council's side?---No, no, it was an applicant.

Was the applicant Ziad and/or Marwan Chanine?---I believe the architect was Ziad Chanine but I think a different owner.

40

Well, it was a different owner in the case of 212-222 Canterbury Road and 4 Close Street, wasn't it?---Was it? I thought they were one and the same, I'm sorry, yeah.

I can well understand you thinking that. Just focusing on the Bowerman's material in this email, the recommendation to delete the 10 units must have come from council, mustn't it?---Yes.

The gist of this was, Ziad Chanine being the architect at the least in terms of Chanine involvement, the proposal from the council side that the fresh DA entail a deletion of 10 units from the approved DA was something that you made sure Michael Hawatt and Pierre Azzi were happy with before proceeding to recommend it?---Can I just correct you?

10 Yes, certainly.---Only a small point.

Yes.---The deletion of the 10 units was not in relation to the approved development. It was actually in relation to what they were proposing.

Thank you. But it was to make what they were proposing more approvable; is that fair to say?---That's fair.

20 And you wanted to ensure that Pierre Azzi and Michael Hawatt were comfortable with that, because you didn't want their opposition to it?---I think that's fair comment.

You understood they had a relationship with Ziad Chanine?---And I also believe they - they certainly knew of the owner as well.

So that is why it was important that their concurrence in what was proposed be obtained?---I think that's fair comment.

30 Now, can I just ask, though, why did you put that in this email to Mr Montague?---Because that was one of the properties that Mr Montague had inquired about in the past, and also I believe it was one of the properties that he wanted expedited. Now that I sit here, I think it was on the same agenda as the other ones that we spoke about earlier.

For the 3 December meeting?---Yes.

40 It sounds, though, as if you're answering a question that you understood to be in Mr Montague's mind as to whether Pierre Azzi and Michael Hawatt would be concerned with a recommendation by council that 10 units be excised from the proposed development in the DA being considered?---I had kept, for both those properties that are listed in that email, in constant contact with the general manager about

the progress of those applications, and during the life of those applications there were occasions where Mr Montague had inquired about Bowerman's and certainly had discussions in meetings that I was present at. I believe that the two councillors were there as well, about Bowerman's. So, yes, I thought it was important that he was aware that I had made contact with the councillors, because he normally ordinarily would have asked me, anyway.

10 I suppose I can guess at the answer to this question, but I should ask it, anyway. Had you had a conversation with Mr Montague in which he had, in essence, asked you to find out whether Pierre and Michael would be concerned with the recommendation to delete 10 units from the proposed development in the DA?---That I'm not sure about, I'm sorry.

20 Can I show you, please, exhibit 221. I think we are going to show it to you on the screen - or, rather, the part of it that I want to show you is going to appear on the screen. This is the first page of exhibit 221, which is a copy of a letter from Ms Nakhle, dated 18 May 2015, to Mr Jackson at Pikes & Verekers Lawyers that we saw earlier today. Do you recall it was a "Request for Legal Advice - Extent of Variation using Clause 4.6 in respect of 308-310 and 312-320 Canterbury Road and 6-8 Canton Street, Canterbury"? Do you see that?---Yes, sir.

30 Is that the Bowerman's site?---Absolutely.

Then on page 271 of volume 27, about a third of the way down the page, Mr Montague replied to your email at 2.30pm saying:

Spiro, Sounds good. Please proceed as proposed

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

40 So you believe that you had had a discussion, a verbal discussion, with Mr Montague about using the device of delegating to the GM, but, in any event, you provided a written advice and it was then approved, as it were, by Mr Montague; is that right?---Yes, sir.

Now, just going forward again, you had received on 27 November 2016 the documents that Marwan Chanine sent

you, which included the Sparke Helmore letter, which commences at page 274, and the Realize Architecture letter, which is at page 282. Can you see that?---Yes, sir.

Can I take you to page 283. There's an email from you to Andrea Sutcliffe, who worked for Mr Montague, I think?---That's right. I think she was part time for him, yes.

10 You sent an email at 9.07pm on Friday, 27 November 2015, in which you attached the documents that Marwan Chanine had sent you earlier in the day and said to Ms Sutcliffe:

The GM wants to meet with me urgently on Monday to discuss the above.

Had there been a conversation in which that had been conveyed to you?---In all likelihood, yes, and that would probably be why I sent that email at night.

20

Do you think it was a phone conversation?---Yes.

Was it a phone conversation and not a meeting at, say, Pierre Azzi's or - - -?---No. Like I said in previous evidence, I think, I never went to Azzi's house in the presence of the general manager. So in all likelihood, it would have been a phone call that I'd received from him.

30

Did the general manager indicate to you in that conversation why he wanted to meet with you urgently on the Monday?---Not that I can recall.

Did you know why he wanted to meet you urgently on the Monday?---Well, for me to write - you know, the heading has those two - well, three properties headed - or four properties, actually. So it was probably to discuss those properties that I've put in there, in the headers. As to the detail of that discussion, I just don't recall, sorry.

40

Can I take you to page 293. This is an email headed "Draft memo from GM to All Councillors re: CDC Mtg for 212 & 220 Canterbury Rd". It's from Andrew Hargreaves to you, cc'd to Mr Gouvatsos, and it's at 2.53 in the afternoon on Monday, 30 November 2015. The attachments are Legal letter Canterbury Road.pdf and AH CDC recco for C.bury Road.doc. Do you see that?---Yes.

It says:

Attached is a memo from the GM to All Councillors about changing the recommendations for 212-218 & 220-222 Canterbury Rd on Thursdays CDC Meeting.

10 *This memo includes a cover from the GM, as well as a response to the opinion from Sparke Helmore and a revised recommendation for each DA.*

Also attached to this email is the opinion from Sparke Helmore (which the GM's memo responds to) which needs to go out with the GM's memo as a separate attachment.

20 Were you expecting to receive this sort of email when you received it?---In all likelihood, I'd say yes.

Why were you expecting to receive it?---Because, as we saw in the email before from myself to Mr Montague in regards to, I guess, changing the recommendation to allow the matter to be determined by the GM once concurrence had been received, it's probably as a result of that that I would have likely spoken to Andrew about it and asked him to prepare a memo.

30 You had, however, told the GM staff on Friday night that you needed an urgent meeting with the GM on the Monday; you remember that?---Yes, sir. Okay.

Mr Hargreaves' email is at 2.53pm on the Monday. Is there a possibility that you had had a meeting with Mr Montague earlier on that day?---I think there is a possibility, yes.

40 Can you tell us what happened at that meeting?---I remember meeting him very - and, look, in terms of the date, I can't be a hundred per cent sure, but very late in the process I remember meeting him in his office and explaining to him, I guess, the circumstances that we had discussed previously as well, and I remember him authorising me to proceed and authorising and instructing me to prepare a memo to go out.

Did you convey those instructions to Andrew Hargreaves?---I must have, because he would not have done that of his own accord.

When you instructed Andrew Hargreaves, was there anyone else present?---I can't recall, sorry.

Was Mr Gouvatsos there?---I did speak to Mr Gouvatsos about that approach, but as far as him being present when I spoke to Andrew Hargreaves, I can't be sure.

10 If you could go, please, to page 302, this and page 303 through to page 335 might be the document which was attached to Mr Hargreaves' email that was a Word document which indicated it was about a recommendation. Do you recall that attachment?---I don't, but - - -

Right, we'll go back to it.---Sure.

Page 293.---Yes.

20 Do you see the attachment to Mr Hargreaves' email of 30 November 2015 at 2.53pm to you?---Yes, sir.

And to Mr Gouvatsos. And the second attachment is "AH" - that would be Andrew Hargreaves; correct?---Yes.

"CDC", that would be city development committee, wouldn't it?---I believe so, yes.

"Recco" is recommendation, is it not?---Yes.

30 And it's for Canterbury Road - it's obvious, isn't it?---Yes, yes.

Then if you go back to page 302, you can see it's a memo that I suggest to you is a draft that had been prepared by Mr Hargreaves. It's dated 30 November 2015, and its subject heading is "Changing a City Development Committee recommendation for two DA's". Do you see that?---I do, yes.

40 The second-last paragraph reads:

Attached is an amended recommendation for your consideration.

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

If you could have a look, please, at page 304?---Yes.

It's headed "Attachment A - Agenda item 14: 212-218 Canterbury Road, Canterbury" and appears to be approval conditions that are no longer deferred commencement approval but, instead, approved in principle and:

10 *... having received suitable concurrence
the General Manager be authorised to issue
consent ... subject to the following
conditions ...*

?---Yes.

The first one is:

20 *This consent not be issued until
concurrence has been received and any new
conditions added as a result of the
concurrence.*

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

Going back to page 302, could you just read that to yourself, please?---Sure. Okay.

I appreciate this was not physically drafted by you, but it was drafted on your instructions; is that right?---That's fair, yes.

30 Looking at the first paragraph, looking at the last line, the sentence reads:

*Unfortunately, we've [obtained] legal
advice that prevents this.*

Is that what you'd indicated to Mr Hargreaves - that is to say, that legal advice prevented the DAs being approved as a deferred commencement consent?---That I honestly can't recall.

40 Well, it wasn't correct, was it?---I'm not sure, to be honest with you.

What do you understand the reference to "legal advice" in that sentence to be a reference to?---I don't know. Perhaps he sought legal advice or verbal advice, but the only two legal advices that I can think of was either

Andrew somehow got advice or he's referring to the letter from Sparke Helmore. But I haven't read the letter. I'm not sure if that's what they are suggesting in their letter.

In the third paragraph, the draft memo says:

10 *Since these two matters were considered by our Independent Hearing and Assessment Panel we've received a legal opinion (separately attached to this memo) that increasing the setback from nil to three metres is unreasonable and this position is supported by the Director City Planning.*

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

20 So it's likely that the reference to "legal advice" is a reference to the Sparke Helmore Lawyers letter, isn't it?---It's likely, yes, if you read that, yes.

There is nothing in here indicating that the Sparke Helmore Lawyers letter had been provided by the proponent and was advice to the proponent?---No.

Then appears the paragraph:

30 *I recommend the Committee determine each item as an "approval in principle" whereby once concurrence is received that each application be approved by delegating authority to the General Manager.*

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

Could you go over, then, to page 303.---Yes.

40 This is a single-page document headed "Response to legal opinion from Sparke Helmore about Agenda Items 14 and 15". Do you see that?---Yes, sir.

Do you know who prepared this?---I have no idea, but I would imagine it would have been Andrew.

It wasn't prepared by you?---No. I don't believe so, no.

And where did Andrew get the ideas from that are expressed

in it?---I'm not sure. Probably from the information that was in front of him.

Was that the Sparke Helmore letter?---It would have been that, amongst other things, yeah. So probably the amended package that was provided.

All it refers to is the Sparke Helmore opinion?---Correct.

10 If I've overlooked a reference to anything else, then I'm happy to have my attention drawn to it, but can I just take you to the fact that there's a reference in the fifth paragraph to:

... DA 399/2013 for a similar mixed use development, at 6-8 Close St which adjoins the development sites to the south ... This ... enjoys nil setback with 15 Close St.

20 ?---Yes.

And:

Notwithstanding the owners' right to proceed, amend or disregard this consent, a precedent has not been set. A nil setback to an area of public recreation has a lesser impact than a nil setback to a, potentially likely, residential zone as is now the case.

30

Where did all those ideas come from?---I'm not sure.

Did they come from you?---No, I don't recall.

Did you tell him what it had to say?---I don't believe so. I certainly made him aware that I supported the nil setback.

40 Did you give him reasons?---I don't recall if I did, but as I said before, he had the benefit of the Sparke Helmore letter.

But this document endorses the Sparke Helmore letter, so the question is where did Mr Hargreaves get the ideas from that there were parts of the Sparke Helmore letter that needed to be endorsed?---Well, it probably came from me.

So when the next paragraph says:

The opinion correctly says at the time of lodging these two DA's that the rezoning wasn't imminent, as it now is.

That was likely to have come from you?---No, I don't recall saying that, no.

10

If I can take you to the second-last paragraph:

The opinion concludes that our existing controls (ie: excluding the 3m setback) allows for the reasonable, orderly and economic development of our site, as well as the two DA sites.

That much is an extract from the Sparke Helmore letter?---I believe so.

20

Take it from me.---I'll take it from you, yes.

Then the last paragraph is one sentence, and it reads:

This is reasonable ...

I'll just take that part of that sentence. Where did that idea come from?---Probably from me.

30

And why did you say that to Mr Hargreaves?---Because I believed it. As I've been saying all along, I didn't have any issue with the nil setback.

It goes on to say:

... and the 3m setback from our common boundary should be removed.

40

Where did Mr Hargreaves get that idea from?---Well, probably from me.

Why did you tell him that?---Because I believed it, probably. I just don't recall exactly, but - - -

Weren't you under any pressure from anyone to have the 3 metre setback condition removed?---Yes, I was,

absolutely. I don't deny that.

Would you have caused this document to be drafted had you not received that pressure?---No.

You would have just allowed the officer's report to go through to the CDC meeting?---That's fair comment.

10 In the draft memo at this stage, 30 November 2015, there is a recommendation, in the third-last paragraph, of a determination by way of approval in principle whereby once concurrence is received, that each application be approved by delegating authority to the general manager, but can I take you back to the second paragraph:

The principal reason for the deferred commencement was to obtain concurrence from Sydney Trains and Roads and Maritime Service, which has yet to be received.

20

The next sentence is certainly correct, that you are awaiting that concurrence and, until it is received, a determination cannot be made. But wasn't the principal reason for the deferred commencement to require an amendment to the plans that the applicant had lodged to replace a nil setback at the rear of the proposed development with a 3 metre setback?---I can't be a hundred per cent certain, but that was certainly a very, I guess, strong reason, yes.

30

Because at the time the deferred commencement condition was drafted and, indeed, you provided the report for provision to the IHAP, and therefore also to the CDC, you hadn't been aware that you needed concurrence from concurrence authorities and that concurrence hadn't been obtained?---That's fair comment, yes.

40

So it might be that Mr Hargreaves got things a little bit mixed up in that second paragraph there in this draft?---Probably.

If I could take you, then, to volume 28. Do you have that there?---Yes.

Page 3. Can you see that that is an email from Mr Hargreaves to you and cc'd to Mr Gouvatsos, this time dated 2 December 2015, and that it is again a memo from GM

to all councillors re recommendation at CDC for 212-218 and 220-222 Canterbury Road, Canterbury?---Yes.

He, Mr Hargreaves, says:

Attached is a memo from the GM to all Councillors about changing the recommendation for two DAs on tomorrow nights CDC agenda ... Also attached is the legal opinion discussed ...

10

Then if you can go to the next page, I appreciate that it bears still the date 30 November, but this is another draft of the memo from Mr Montague. Do you see that?---Yes, sir.

And I'd ask you to accept that it was attached to the email of 2 December from Mr Hargreaves to you?---Okay.

20

After the one-page draft memo is the document "Response to legal opinion from Sparke Helmore about Agenda Items 14 and 15". Do you see that?---Yes, sir.

This time it bears your name at the bottom?---Yes.

Then the next document is the Sparke Helmore letter again?---Yes.

30

So had you looked at the first draft that Mr Hargreaves had sent you of the GM's memorandum?---I'm not sure if it was me or it was Mr Gouvatsos.

Had you given instructions to Mr Gouvatsos, as well, as to what had to occur?---Yeah, I did speak to him about it, as I said earlier, yes.

40

And you told him that, "This deferred commencement recommendation has to go. We have to have a recommendation for a conditioned approval. And the third commencement condition for a 3 metre setback at the rear of the proposed development has to go. And, in addition, there's going to be a fresh recommendation for a delegated determination by the GM"?---We did discuss it, and everything that you've said sounds about right, except I'm not sure about the deferred commencement conditions changing to standard conditions. I can't remember if - I just don't recall that aspect of it, to be honest with you. What sticks in my mind with this application was the concurrence issues and

also the rear setback.

But you can see, can't you - remember I took you to page 304 in volume 27?---Yes, I remember that.

That it's an approval in principle that is not a deferred commencement?---Yes, that's correct, yes.

10 So at that stage, on 30 November, that was what you were procuring, were you not?---As far as changing from deferred commencement to standard?

Yes, yes.---Probably, but I have no recollection of it, to be honest with you. As I said - - -

20 Where would Mr Hargreaves get the idea from that that should be- - -?---In all likelihood it would have come either from me, or was it contained in the Sparke Helmore advice? I'm not sure.

So if the Sparke Helmore advice had said, "Get rid of the deferred commencement component and substitute a conditioned approval", you would have followed that instruction as well?---Provided it could legally be done. Look, I don't know, to be honest with you, what I would have done in that circumstance.

30 So you are likely, are you not, to have reviewed Mr Hargreaves' first draft of the GM's memorandum and attachments from volume 27, commencing at page 302?---As I said before, I'm not sure if I reviewed it or George reviewed it. I can't be a hundred per cent certain as I sit here today.

40 Well, where did Andrew Hargreaves get the idea from, for the second draft, that there should be an attachment to the GM's memo headed "Response to legal opinion from Sparke Helmore", signed you?---But wasn't that already in that draft, the first draft?

I just point out to you that page 303 of volume 27 doesn't have your name on it.---No.

I think I'm right in saying that the memo doesn't identify that you are the person this is meant to have come from; it simply says, "If you have any questions, please contact the DCP, Spiro Stavis"; that's page 302 in volume 27?---Yes.

So it's likely, isn't it, that you told Mr Hargreaves to put your name at the bottom of the document headed "Response to legal opinion"?---No. It was common practice to do so. So obviously what he's done in his first draft is just drafted the words, and obviously either myself or George Gouvatsos reviewed it, and then, as was proper protocol, you always put either Mr Montague's, as the general manager - ordinarily you would put the general manager's signature with such documents that get circulated to councillors. So I'm not sure why my name is on that, to be perfectly honest with you.

It is not conceivable, is it, that you allowed this memo and attachments to go forward to Mr Montague without you being satisfied with the content?---I think that's fair comment, yes.

You would have reviewed each draft, I suggest, and made changes?---Again, I don't recall.

You would have reviewed each draft and made changes, wouldn't you?---Ordinarily I would, yes.

And you were the person who had been dealing with the proponent, weren't you, directly?---I accept that, yes.

You were the person who had been dealing with Mr Montague as to the need to find a solution and what that solution might be?---I accept that.

It wasn't Mr Gouvatsos who was doing any of that?---No, no.

Nor Mr Hargreaves?---Not at all, no.

Isn't it clear that you are the person who approved the content of these documents?---It's likely, but I don't have any recollection of it, to be honest with you.

All we need to know is that really you did, didn't you? Whether you have a recollection of it or not, you did approve these documents?---Well, I can't answer that. How - I don't know - - -

Yes, you can. You know exactly what the procedure was. Nothing would go forward to the GM for the GM to circulate under his name from you unless you were happy with the

content?---I can't say that a hundred per cent of the time, no.

And nothing would go forward to the GM or council from you over your name unless you were happy with the content?---Ordinarily, yes, you're right.

10 You told Mr Hargreaves, did you, in one way or the other, that you wanted this third paragraph inserted, on page 5 of volume 28:

Each DA was assessed by an external consultant who supported the LEP departures but did require that the building envelopes, particularly the setback from the rear boundary, be increased from nil to three metres ...

20 Et cetera?---I have no recollection of that, whether I told him to put that in there.

The conclusion of this document, "Response to legal opinion", remained unchanged from Mr Hargreaves' first draft, that is:

30 *The opinion concludes that approval of a nil setback for these two DAs allows for the reasonable, orderly and economic development of our site, as well as the two DA sites.*

This is reasonable and the 3m setback from our common boundary should be removed.

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

40 So you were obviously content with that being put forward over your name?---I must have. I must have been at the time.

You're going through this process of drafting material to be provided to council as, to use the language of the document, a response to the legal opinion from Sparke Helmore about these agenda items, but you didn't obtain a legal opinion responding, from council's lawyers, to the legal opinion from Sparke Helmore?---I've already conceded that.

It is just not conceivable that you took this step instead of the more logical step of obtaining your own lawyer's advice unless you were determined to ensure that nothing got in the way of an approval on 3 December of these two DAs and without a 3 metre setback requirement condition in it?---That's not true.

10 Do you want to say anything else on the subject?---I think I've said enough on that rear setback. I've said all along I had no issue with a nil setback from day one.

20 Yes. What I am putting to you is the strangeness of the fact that you're preparing and having your staff prepare documents entitled "Response to legal opinion from Sparke Helmore about agenda items to be considered by council" and you don't take any steps to have legal advice obtained from council's lawyers or to advise the GM that that's what should occur?---The only reason that I can think of was the
20 timeframe. That's all. We simply didn't have the time to do that. This document is not something that you - you can knock something like this out in an hour, if you really wanted to. So it's not like it's a War and Peace sort of document.

30 This is, I suggest to you, further evidence of the fact that you were preferring the interests of the development proponent in this case to the public interest?---No, sir, I don't believe that.

And, if it be a different thing, you were preferring the interests of the proponent over the economic interests of council?---I don't believe that, no.

At page 17 commences a copy of the business papers for the city development committee meeting on 3 December 2015?---Yes, sir.

40 In respect of, in this case, 212-218 Canterbury Road, and they had in it the same material that the document had had when it had been submitted to the IHAP, other than it had added to it the report as to how the IHAP had dealt with it, for example, at page 18, the last dot point in the middle of the page. Do you see that?---Page 18?

Yes. Do you see the last dot point in the middle of the page?---Yes. Sorry, I do, yes.

The document still had in it, at page 35, the statement under the heading "Clause 4.6 Variation":

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

10

?---Yes, sir.

You didn't take any step to have that statement withdrawn or attention drawn to the fact that it was incorrect?---No, I didn't, no.

20

Then, just so that we complete the exercise, volume 28, page 66, the recommendation remained as drafted in the original officer's report of a deferred commencement, with, as condition A1, an amendment to the development to create a 3 metre setback at the rear. Do you see that?---Yes, sir.

Then just for completeness, page 87 in volume 28 is the counterpart report for 220-222 Canterbury Road and 4 Close Street?---Yes.

30

At page 167 over to page 168 is the memo as presented to the councillors?---Yes, sir.

This time it's dated 3 December 2015. When I say the "memo", the GM's memo.---Yes.

40

As you can see, there have been some changes, because if you go through to page 169, you can see that the next document is not your response to legal opinion but, instead, the first page of the 27 November Sparke Helmore Lawyers letter. Do you see that?---Sorry, where are you seeing that, I'm sorry?

Page 169.---Yes. Oh, sorry, 169. Yes.

Instead, what we have is that some people have amalgamated the draft memo with your response to legal opinion document and made it a two-page memo from the GM, together with the recommendation to the councillors being spelled out. Do you see that?---I do, yes.

Who did that?---I have no idea, I'm sorry.

Did you?---I don't believe so. Not me personally, no.

Well, did you cause it to be done in your department?---I don't recall, sir, I'm sorry.

10 Did you see the memo as it went up to Mr Montague for approval?---Ordinarily I would have, yes.

Was it in this state when it went up to him for approval, or was it still in the state it was in at the time of the second draft, which we looked at a moment ago?---As far as I'm aware - look, I really can't say with any certainty. I don't want to be saying something for the sake of saying something. I just don't recall.

20 Do you recall doing a body of work in amalgamating two documents into one?---No, no.

Do you see the recommendation on page 168? Where did that come from?---I can't recall. I don't know.

Because it's different from what you proposed to Mr Montague, isn't it?---Correct, yes, based on the versions we saw earlier, yes.

30 Indeed, there's no recommendation that the applications be approved in principle, is there?---Actually, there's not. You're right.

There's no delegation of the power of determination, is there?---No. You're right.

40 You understood, didn't you, that an approval wouldn't be a valid determination under the Environmental Planning and Assessment Act unless it was in fact a determination by way of approval?---Sorry, can you repeat that again?

Yes. The Environmental Planning and Assessment Act authorised consent authorities to determine development applications. The word "determine" is the language of the statute, isn't it?---Yes.

You understood that the statute allowed for determination by refusal or by approval?---Correct.

Leaving aside approval subject to conditions.---Sure.

It's not likely, is it, that you would have framed a recommendation by simply authorising the general manager to issue a consent?---No.

10 So my suggestion to you is that you didn't draft that recommendation?---Well, as I was saying to you, I don't recall drafting it and it's highly unlikely for me, as it was common practice, to actually physically change or add to memos. It just wasn't my practice to do that on the screen, on a computer.

Oh, yes, I see what you mean. You would usually print out a copy and annotate it in handwriting?---Correct.

20 But if a memo had to go to council or the CDC concerning an agenda item for which you had carriage, then wouldn't the first draft at least be provided to the GM by you or your department?---Correct. The GM would not have drafted the original ones, no.

Looking at the memo, the third paragraph reiterates the incorrect statement:

30 *The principal reason for the Deferred Commencement Consent as recommended by the external consultant was to enable an opportunity to obtain concurrence from Sydney Trains and the Roads and Maritime Service, which is currently outstanding.*

?---Sorry, are we on page 167 now?

Yes. The third paragraph, first sentence.---Yes, yes.

40 We've agreed that that's not correct and couldn't be correct?---Yes.

But it seems to have gone up to the GM in the form as originally drafted, to that effect. In other words, that wording hasn't changed?---Yes.

Why did you allow it to go to the GM with that sentence in it, when it was incorrect, to your knowledge?---Can I - I'm just thinking, taking a step back, I'm not sure whether

that's incorrect.

We'll go through it again.---Sure.

When did you discover that there was concurrence outstanding from relevant concurrence authorities?---Very late in the piece.

10 At the time that you wrote to Mr Tsirimiagos?---That sounds about right, yes.

And that's after the time that you had a final draft of the officer's reports that went to the IHAP?---I'd take your word for that, yes. I accept that.

20 If necessary, we can go to it, but the deferred commencement consent condition was about amending the proposed development to replace the requirement for a nil setback at the rear of the proposed development with a 3 metre setback, wasn't it?---In part, I believe, but I also thought that I read that there was the RMS and Sydney Trains referrals.

Well, Mr Stavis, I'm not going to go back over it.---Sure.

Take it from me it wasn't?---Okay. I accept that.

30 Even if it was, why wasn't there something put in here to make sure that it was a correct statement as to why the deferred commencement consent had been recommended?---Well, even if it was, it actually says what the reasons were, and it includes the nil to 3 metres.

Then the memo in the fifth paragraph says:

This submission was referred to the Director City Planning for review and the following comments are made.

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

Those following comments are attributed to you?---Look, I don't know who added that, to be honest with you.

Are you saying it's incorrect that you made the comments that appear after the sentence which says:

*This submission was referred to the
Director City Planning for review and the
following comments are made.*

10 ?---These comments - a lot of these comments are actually -
and I stand to be corrected - were contained in the
assessment report that was received by the external
consultant. For example, I recall reading somewhere that
the 3 metre setback was considered a compromise from the
required 9 metres under the apartment design guide, and
I believe that statement was contained in the external
consultant's report.

20 What I want to suggest to you is that the first two
paragraphs - that is to say, the last two on that page -
are extracted from the response to legal opinion document,
which was, in the second draft, put up over your
name?---Okay. Well, I don't have it in front of me, so I'm
more than happy to stand to be corrected.

Can I then take you to the third paragraph on page 168.
There's a statement there about 15 Close Street having been
identified for significant increase in height, which
effectively means that the master plan which accompanies
the draft LEP will significantly change. Then it says:

30 *Given the above, our rezoned site has the
potential to absorb the building separation
distances should the two DAs be approved
with a nil setback.*

Again, on the assumption that that does not appear in the
document in the second draft for the memo which was headed
"Response to legal opinion", do you know where that opinion
came from:

40 *... our rezoned site has the potential to
absorb the building separation
distances ...*

?---I can't recall, I'm sorry.

Did you discuss with Mr Montague the economic impact of
changing the setback requirement from 3 metres to
nil?---I don't recall whether I did, no.

Was there any question that was canvassed by you or

Mr Montague in your presence of how council's interests would be or might be affected if the deferred commencement condition was changed to a nil rear setback?---Not that I can recall.

10 Then the next two paragraphs, commencing "The legal opinion concludes" and "Having regard to the above points", are slightly reworded but essentially what was in the response to legal opinion portion of the second draft of the memo for the general manager. Do you see that?---Yes, I do.

I want to suggest that that material came from you? I just make it clear that the words "on balance it is considered reasonable to allow the DAs to be approved with a nil setback from the rear boundary" was an opinion you allowed to be attributed to you by the general manager in this document?---Sorry, where are you reading that?

20 It is:

Having regard to the above points, on balance ...

?---Yes, yes, okay.

30 Just above halfway down the page.---I have it, yes. I really don't recall, but it's probably likely that it did come from me or from Andrew as opposed to the general manager, yes.

When you say "Andrew", it would have been Andrew drafting a document under your instructions?---Yes.

MR BUCHANAN: Commissioner, could we have a very short break?

THE COMMISSIONER: Yes. We'll just adjourn for about five minutes.

40

SHORT ADJOURNMENT

[3.35pm]

MR BUCHANAN: Mr Stavis, if I can take you back, please, to page 271.---Which volume, sir?

Actually, I withdraw that. Can I just take you forward to

page 179 of volume 28. I just ask you to note, if you would, please, the two resolutions which appear on that page. This, you can take it, is an extract of the minutes of the meeting of the city development committee held on 3 December 2015, and in respect of the two DAs you can see the resolution that:

10 *The General Manager be authorised to issue the consent ... subject to the conditions as recommended in Part B of the Director City Planning's report and any additional conditions that arise as a result of Sydney Trains and RMS concurrence.*

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

And that in each case, against the letter B:

20 *The Committee decided not to accept the IHAP recommendation based on legal advice provided by the applicant concerning the 3 metre setback and resolved to accept the Officer's recommendation.*

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

Can I take you back, then, to your email to Mr Montague at page 271 of volume 27. Do you see the advice you gave Mr Montague:

30 *Hence, if we don't receive before the CDC meeting, the only way we can progress the DAs is to recommend the following (or similar) ...*

Italicised and in inverted commas:

40 *"That Council supports the proposed development and delegates the determination of the DA to the GM once concurrence is obtained from the RMS and Sydney Trains".*

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

That was a device you were proposing to defeat the requirements of the Environmental Planning and Assessment Act and the State Environmental Planning Policy

(Infrastructure) 2007 for there to be concurrence by those two agencies before any approval was granted?---That's correct.

You were trying to defeat the law, weren't you?---No, sir.

10 A device to defeat the law is an attempt to defeat the law.---It's not defeating the law. It's a way in which the application can be progressed, provided certain things are achieved. As you rightly point out, I don't recommend approval of the application. I recommend - I recommended that they delegate the determination of the DA to the GM once the concurrence is obtained.

20 Can I take you, please, to the evidence that you have given about Mr Jackson's involvement in the McEwen advice in relation to clause 4.6 and your evidence that you have a distinct memory of talking to Peter Jackson about a proposal for a motion to delegate authority to the GM to approve the DA, this being in respect of 548 Canterbury Road?---Yes, yes.

And that that was in the absence of, that case, RMS approval?---Yes, sir.

30 If I can just record it for the record, that's your evidence at pages 3814 to 3816, 3819 to 3820, and 3825 to 3828 of the transcript. What I want to put to you and ask you to listen to is material that the Commission has received, which I would ask you to assume has come from Peter Jackson in response to those transcript pages of your evidence.---Sure.

40 You can assume that Mr Jackson says he has no recollection of ever having a conversation with Spiro Stavis concerning a resolution whereby council would delegate its functions to the general manager to determine the DA on the Harrison's Timber site. You can assume that he has told the Commission he has no records of having a conversation with you in respect of the matters upon which you gave evidence concerning the delegation to the GM. You can assume that Mr Jackson has told the Commission:

It is my practice to record conversation in respect of the giving of significant advice. Any advice which is requested of a solicitor concerning whether or not

council can delegate its powers of determination of a DA to a general manager is, in my opinion, significant advice and any oral advice given would certainly (in accordance with my practice) have been referenced by a detailed file note.

10 *There is no file note in respect of ever having a conversation with Spiro Stavis concerning matters relating to the giving of a delegation to the GM to determine a DA.*

You can assume that he has told the Commission that the Harrison's Timber file at Pikes & Verekers Lawyers was opened on 1 July 2015, which is the day after he met with you and George Gouvatsos at council chambers on an urgent basis to discuss the applicant's clause 4.6 submission. His file closed on 25 November 2016. Prior to the file
20 being closed, it remained dormant for quite some time, with the majority of advice being given over a one-month period from about 29 June to 29 July 2015.

You can assume that Mr Jackson has indicated to the Commission:

30 *There is no indication on my file of any email exchange with Spiro Stavis relating to a request for advice or the giving of advice concerning council's delegation to its general manager to determine a DA.*

You can assume that Mr Jackson has told the Commission that if he were asked to give advice as to whether a collegiate body, that is to say, a body like council:

40 *... could delegate a function to its general manager to determine a DA, then I would certainly want to know of the context in which the delegation was to be granted so I could then properly advise the client of the specific section of the Local Government Act and work through that section with a view to providing proper advice as to whether such a function could be delegated.*

You can assume that Mr Jackson tells the Commission:

Having now had the benefit of reading the transcript, I am aware that council had not obtained the RMS concurrence, which is a mandatory precondition prior to the grant of a DA in the circumstances such as the Harrison's Timber site.

10 *If I was aware of that context, then such an advice to be forthcoming by me would certainly have been in writing and not verbally over the phone.*

You can assume that Mr Jackson has informed the Commission that it seems to him, from the transcript of your evidence relating to the delegation matter, that you indicate that the conversation that you had with Mr Jackson was around the time of the email, that is to say, 30 November 2015.
20 That is the email, if I can add it for the record, in volume 22, page 125.

You can assume that Mr Jackson has informed the Commission that he has checked his records, which indicate that he was on annual leave from 9 November through to 2 December 2015, being in Western Australian and not in his office.

You can assume that Mr Jackson has informed the Commission that he has also checked his time sheets, which confirm
30 that no work was performed by him between the period 9 November and 2 December 2015.

Is there anything you want to say in response to that?---Absolutely. I recall having a conversation with him, sir. I stand by that. Maybe I've got the dates wrong, but I distinctly remember having that conversation. I would not have come up with that without running it past our solicitor.

40 THE COMMISSIONER: When you said, "I wouldn't have come up with that"- - -?---Well, the wording. That's - to delegate to the general manager, basically.

You're referring to the wording in your email of 26 November, that one? Sorry, is that what you're pointing to?---No, sorry, no. This is actually in reference to the other one.

To Harrison's?---Yes.

MR BUCHANAN: You're referring, aren't you, to your evidence:

10 *I have a distinct memory of talking to Peter Jackson about a proposal for a motion to delegate authority to the GM to approve the DA in the absence of RMS approval.*

That's what you are referring to, isn't it?---That's right, sir.

Did you make that evidence up?---No, sir.

20 Did you attend the meeting of the city development committee on 3 December 2015 when it considered the DAs for 212-222 Canterbury Road and 4 Close Street?---I can't recall, but it's likely that I did, yes.

Did you provide any advice during that meeting about those two agenda items, that is to say, the two DAs?---Not that I can recall, no.

30 By that, I mean not just did you provide advice to council; did you provide advice to the general manager during the meeting in respect of those two DAs?---No, I think we had already discussed it prior to that. I don't recall having any discussions with the GM at the meeting about it.

Did you have any discussion with the GM about the wording of the motion for the resolution to approve the DAs, given that it wasn't for an approval but, instead, an authorisation to issue a consent?---I can't recall, sir, no.

40 You must have had the general manager's memo and attachments with you at the meeting, given that they were in your portfolio?---I certainly would have had the report - the business paper, I should say, but I don't recall if I had the memo as part of that, to be honest with you.

Why would you not have had the general manager's memo, when you'd been involved in bringing it into existence?---I can't answer that. I'm just saying I don't have

a recollection of having the memo. I remember having the business paper.

It's likely you had the memo, isn't it?---I'm not sure. I can't recall if I had it. Is it likely? I didn't always have everything with me. The main things that I used to take with me was just the actual business paper itself.

10 You're trying to put some distance between you and the GM's memo, aren't you?---No, sir. No, not at all. I'm just - that's the best of my recollection.

Because the question is, why would you have allowed the committee to pass a resolution which didn't delegate the power of determination to the general manager?---I see no reason why I would have.

20 Because, I thought you agreed earlier, you saw that as necessary for an exercise of the power to approve a development application, as you understood the Act?---To delegate to the GM.

No, not to delegate to the GM; that there be an approval, a determination.--Well, eventually, yes.

30 What do you mean "eventually"?---Well, to the best of my recollection, the wording that I gave the GM is the wording that - I thought that this was what was going to be adopted, to be perfectly honest with you.

THE COMMISSIONER: Sorry, that was the wording that you gave back on 26 November?---Yes, that email to the general manager, yeah.

MR BUCHANAN: That's why you are trying to put some distance between yourself and the general manager's memo, because you know it recommended something different?---Sir, I'm not. In all honesty, I don't recall.

40 Did you at the time think that the issuing of a consent amounted to approval of a DA?---No, not that I can recall.

So the question is, why did you allow such a motion to be put to the committee if you knew that it wasn't effective to bring into existence a determination by way of approval?---I don't know the answer to that, I'm sorry.

