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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 FRIDAY 14 DECEMBER, 2018

AT 2.30PM

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

<JAMES CLELAND MONTAGUE, on former oath

[2.43pm]

MR BUCHANAN: I apologise, Commissioner. Mr Montague, you did not declare at council an interest in the projects before council where Mr Demian was the proponent by reason of your relationship with him?---No.

10 Can I ask you about Mr Maroun, Jimmy Maroun. He had a couple of projects before council, one of them being 538 Canterbury Road on the eastern side of the Harrison's site.---The old car wash, yes.

Yes, correct. Did you find that Mr Hawatt and Mr Azzi advocated on behalf of Mr Maroun for his projects?---No.

You didn't?---No. Not to me anyway.

Or in your presence?---Or in my presence.

20 Did Mr Hawatt or Mr Azzi ever raise with you whether their relationship with Mr Maroun was a conflict of interest?---No.

Or did either of them declare an interest by reason of a relationship with Mr Maroun?---Not that I recall, no.

And they certainly didn't declare a pecuniary interest in any of Mr Maroun's projects?---Not that I recall, but the minutes, the minutes would reveal that if they had.

30 I'm sorry?---The council minutes would have revealed that if they had, but I don't believe they did. No, not that I can recall.

Can I turn to Marwan and Ziad Chanine. They had a few projects, do you recall, at Canterbury in the period 2014-2016?---The only one I recall is the one in South Parade. That I knew, that I was involved in in any way at all that was before the council, to my recollection, was South Parade, Campsie.

That's 45 South Parade, Campsie?---Campsie, that's right.

40 There was also the Doorsmart project.---Yes. But that, that came much later.

But it was in that period '14-16. It was in 2015, to be precise.---Yes. Yes, I believe so. Yes.

Did you, in late 2013/early 2014, ask Mr Occhiuzzi to provide you with regular updates as to progress with the assessment of the DA for 45 South Parade, Campsie?---I, I, I probably would have asked him to keep me

apprised because of the council's interest, the, the fact that it was our car park.

And was there any other reason why you asked him to keep you, or probably would have asked him to keep you regularly updated?---Not that I can recall. I don't believe there would have been.

10 Was there anything that Bechara Khouri every raised with you in relation to the 45 South Parade, Campsie DA?---He may have mentioned it in passing at one of our coffee meetings but I don't remember. There was nothing, I don't believe Bechara was involved in that one at all, or not to any extent from memory.

Did you understand there was any sort of relationship that Mr Khouri had with Marwan and/or Ziad Chanine?---I, I knew he knew them. I, I don't -- more so Marwan than, than Ziad, but I don't know the nature or the extent of that relationship.

20 You didn't know the nature of the relationship?---Well, that they were, they were acquaintances, they knew each other, yes, I knew that but that's all.

Was Bechara Khouri an advocate with you for any Chanine project that was being considered by council?---There may have been some discussion just in passing in relation to the Doorsmart one but not the 45 South Parade, no.

If we could have a look, please, at Exhibit 54, page 3. Were you present in court when Mr Occhiuzzi gave evidence?---No.

30 One of the things he provided the Commission with was a notebook that he kept fairly contemporaneously with events, about which he made notes, and Exhibit 54 is a transcript of notes in Mr Occhiuzzi's notebook. If I can ask you to have a look at this, the third page, and against the date 18/12/13. Can you see in the second paragraph there, it's underneath the dot points. Mr Occhiuzzi recorded, "GM had kept a close interest in the DA for 45 South Parade, Campsie. There were two pre-DA meetings with Ziad and Marwan Chanine. I questioned why these meetings involved the GM at all. After the DA was lodged, GM requested regular updates. GM said that the DA must be referred to the IHAP meeting of 3 March." Then there's some further material about that, and then can you see towards the bottom of that page, "I recall that on 11 Feb", and the year, you can take it, is 2014, "just before a councillor workshop, the GM approached me and said that Zena", Z-e-n-a, "was being a bit fussy with the DA. He showed me a message on his phone from 'Bechara' which asked the GM to get me involved as Zena was being a bit 'over the top' with her demands on design issues. I", 40 Occhiuzzi that is, "said that we still had issues for they would need to be addressed." Do you recall receiving a text message from Mr Khouri about that project?---No. No, I don't.

Or about the assessment officer?---No, I don't remember anything specifically about Zena. I can't even picture her now. I don't know who she was but she's one of planning staff, one of the planners.

So if you can assume that, you don't recall showing Mr Occhiuzzi a text that you had received from Bechara Khouri that asked you to get Occhiuzzi involved by reason of complaints they were making about, he was making about Zena?---No.

10 The assessment officer?---No, and, no, I don't. No.

Is it likely that that happened?---It could have. Yes, it could have. As I said earlier, previously there were issues in relation to the processing times associated with all sorts of DAs and a reluctance it seemed in the, in the planning division to move these things along.

As you understood it, why would Bechara Khouri have asked you to do something in relation to that project?---Maybe he was requested to by one of the Chanine brothers. I don't know.

20

Well, is that what you understood at the time, that he was advocating for the Chanines in relation to the South Parade project?---Well, that would be a fair assumption I think.

And did you tell Mr Khouri, "I'm sorry, I can't talk to you about that, that's, that's council business"?---No, because as I've said before, I didn't, I didn't operate that way. If people wanted information or I could provide any assistance, I would, and because in the end it's the applicant that has the application before the council and if, and I assume that Khouri was operating in some way as an agent for, for the Chanine brothers, and I saw no problem with that. I mean, obviously depending on what sort of information he's requesting, but if it's just routine stuff like, is there a DA in? Yes, there is. Because they're advertised anyway.

30

You didn't think your relationship with Mr Khouri meant that there was a conflict of interest - - -?---No, no.

- - - or a potential for one?---No.

40 Now, I think we talked in the past about you attending a pre-DA meeting for a Chanine project. Is it the case that you had at least two pre-DA meetings with Ziad and Marwan Chanine in relation to the 45 South Parade project? ---It's possible, yes.

One to which Mr Occhiuzzi was invited?---Yes. If that, if I was at them, I would have had him there or somebody in his division.

And one to which he was not invited?---I don't, I don't know but that's possible too.

Why would you have had a meeting with the proponents in the absence of the director of planning?---Well, that's unusual but maybe he wasn't available. Maybe the date was set and they may have just come in anyway. He wasn't available so I probably just met them and discussed things with them very, on a very low level rather than turn them away.

10 Is it possible that Mr Occhiuzzi asked you whether he should attend and you said no?---That's possible but - - -

Why would you have said that?---Well, I don't know that I did. You're saying is it, did it happen? Well, I don't, I can't recall.

20 Why would you have indicated that you wanted to meet with the proponents in the absence of your director of planning about a planning issue?---Well, I don't think I would have done that. That, that wasn't my normal practice. I, I always tried to have a member of the relevant staff there from the relevant division to provide assistance.

You didn't cause records to be created of what occurred at these meetings with the Chanines?---No. No. We've been through that before. That wasn't my practice either.

30 Now, in respect of the one that you had in relation to that South Parade project, did you have the meeting with Mr Hawatt and Mr Azzi and the Chanines and tell Mr Occhiuzzi that he was not invited?---No, I don't recall that either. Again - - -

Is it possible that you did?---Well, look, it'd be unusual because I always wanted to have a senior staffer or somebody who could assist me if there are technical questions.

So why would you have done that given that it would have been unusual?---Well, I don't know, I don't know that I did.

40 Did Mr Hawatt or Mr Azzi attend either of the pre-DA meetings that Mr Occhiuzzi's told us about?---I've got no idea. I can't recall that.

You said you had no recollection of Hawatt or Azzi being an advocate for the Chanines.---Yeah, that's true.

Do I recount your evidence correctly?---Yeah. Yes, I don't believe they were advocates for him. They may have asked, as they did about a lot of DAs, how are things going, but I don't recall them stridently supporting the Chanine brothers, no.

Or taking an active role?---No. Certainly not Mr Azzi.

And, sorry, when you say that, you mean what?---Well, it's possible that Michael was circling the airport to try and find out what was going on, but he may not have spoken to me. He could have had meetings with Spiro. He often came into the office and sat down with Spiro or George or both of them. That wasn't uncommon either, and other councillors did that.

10 But in the case of Mr Azzi?---No, no. Pierre didn't come in much because he had a full-time job. He drove a cab.

Excuse me a moment. Can I ask that you be shown Exhibit 85, page 18. This is a calendar entry for 6 November, for a meeting on 6 November, 2015, and it's always possible of course that the entry was made days beforehand, but the meeting is scheduled for that date. The location was to be the GM's office. The organiser was yourself. The meeting topic is "Marwan Chanine (Bechara)" and Bechara's name and phone number appear in the notes.---Yes.

20 Can you recall that meeting?---No, but it may never have happened. That would have been my exec officer preparing that diary entry for me. I assume that she had direct contact with either Chanine or Bechara or both, I don't know about the meeting, and that, that's how that entry popped up. I don't know whether the meeting ever took place and I don't recall it.

30 Did Bechara Khouri organise any meeting between you and Marwan Chanine to your knowledge? That is to say, for example, did he come into a meeting with you and Marwan Chanine?---Bechara, or Mr Khouri, didn't come in very often. It was quite rare for him to come in. He, he, he's often on the phone about different things, but I don't recall a meeting that he sponsored or arranged with Marwan Chanine, no.

That's certainly, though, what it looks as if was being scheduled in this case.---It does. Yes, I agree.

40 Now, at that time there were issues before council in relation to the 212-222 Canterbury Road and 4 Close Street development. Do you have a recollection of having a meeting about that development?---I had one meeting about that development – we have been over this before – and that concerned a setback at the rear of the site. Prior to that or since that I had no meetings in relation to the Doorsmart project that I recall.

So that was indeed one issue which was on foot at the time, the rear setback issue, and you have a recollection of a meeting about that subject?---I remember, I have a recollection of a meeting in relation to the Doorsmart site, and my interest and the interest of a number of other people who were there, and I can't remember who they were now, but there were several people there from, internally. It was about the setback.

And was it with Marwan Chanine?---Either Marwan or Ziad, yes.

And was Bechara Khouri present?---I don't believe so. He didn't, he didn't come in to those meetings. Oh, he could have been but I doubt it.

10 The note on the calendar entry I showed you a moment ago, for a meeting on 6 November, could be read as Mr Khouri having organised it and having - - -?---No. I, I think that was just to make the connection between Chanine and Bechara, that's all. I don't think - - -

Why would his mobile phone number have been recorded in the notes for that meeting?---Well, I don't know because I know his mobile number. I didn't need to be prompted on that.

But it might be made by Ms Sutcliffe, for example, or your PA?---Yes, yes, possibly.

20 If Mr Khouri had organised it?---Look, possibly.

Can you tell us your best recollection about the meeting that concerned the rear setback?---I can remember some of it. I wish I could remember who was in the room, but it was all about the setback. I think they wanted a nil setback to the bowling club site and there was discussion about a six-metre footpath that'd run through when the site's redeveloped if you can – I, I know I'm not explain this very well, but there's a railway line there and a railway station and there was concern expressed about commuters, how would they get through to the railway station et cetera, and we were arguing, I think, from memory, that we would require a minimum of nine metres. So 30 that would be the six metres for the walkway, if you like, and three metres to the building line of the, of the proposed new building facing Canterbury Road and they - - -

From the rear of the structure of the proposed development on 212-222? ---Yes, yes. Now, that may encroach on the bowling club site, but that was a subject that was open for further discussion but it didn't go anywhere. It never went anywhere.

40 That was my next question. What was the outcome of that meeting?---Well, it was inconclusive. I don't recall what happened but there were no firm decisions made, and as far as I know, after that and up until the time I retired from the council, that project hadn't progressed, and certainly not involving the bowling club.

Now, Mr Stavis prepared the officer's report in respect of the two DAs. It was split in to two DAs, the 212-222 Canterbury Road and 4 Close Street. I don't know if you recall.---Yes. I, well, I know the sites.

And he submitted those around 16 November, 2015 and he recommended deferred consent with a condition to amend that plans to show a rear setback of three metres from the boundary with the bowling club site.---Yes. That sounds, that sounds right.

10 The view could be taken that those recommendations were adverse to the proponents because deferred commencement meant no commencement until the plans were so amended and, secondly, that the increase in the setback from nil to three metres would lead to a reduction in the developer's lot yield.---Yes.

Did you understand that the requirement of the applicable planning instrument was for setbacks, where the buildings were occupied by people, of 18 metres between buildings, which meant that if they were to be constructed on adjoining properties, a nine-metre setback from the common boundary in each case?---No, I didn't know that. I, I, I didn't understand the, the nuances of the controls over that site either.

20 But you would have been told that there was a matter of concern?---I knew there was a concern about the setbacks. The details of it, I, I didn't know and I don't know now.

And so you didn't know that there was any planning rule that was in play?---No. I, I expected the director of city planning to, to inform the council about that, when and if a report came up.

30 And of course a nil setback on 212-222 meant that if that rule – if I'd ask you to assume that it existed – were to be applied, then there would have to be an 18-metre setback on the bowling club site?---Yes. That's, that sounds reasonable, yes.

And you understood that the council owned the bowling club site?---Yes, they did own the bowling club site.

You also understood that there was a planning proposal to rezone the site for higher density residential development?---And, and community facilities, yes.

40 Yes. And that that had been, had gone on public exhibition?---Yes.

And did you understand that there was a draft – sorry, that there was a master plan or a draft master plan for the bowling club site to allow an eight-storey building on the site adjacent to 212-222?---Look, I don't recall how that progressed, whether it did at all, but that was, I'm pretty certain that was the council's intention because there was a great deal of public interest in this site and the council had to proceed very carefully, so a draft master, or a master plan for the site would have been a sensible thing to do I think.

So there was a great deal of public interest in it, but another reason to proceed carefully would have been council's own economic interest in the site?---Oh, of course. Of course. The council I think is at liberty to develop its assets as it sees fit as long as they, they obey contemporary legal requirements and planning controls, yeah.

10 But council had, when I say it had an interest, it had an interest in the ability to fully realise the development potential of the site, didn't it?---Well, I think that's how the councillors viewed it. They wanted to make sure they got maximum return from what was a very, very valuable site.

And a nil rear setback on 212-222 Canterbury Road would have inhibited that realisation of the development potential of the site because of the 18-metre setback rule?---I don't, I don't know how, because when I said nine metres I was talking about nine metres, if you like, on our side of the border.

20 Yes.---Now, what happened on the other side was a matter for further discussion and I don't know whether the applicant was prepared to consider that or wanted to have that amended or not. But it wouldn't have had a huge impact on the developability on the bowling club site, no, as long as the nine metres on our side was observed.

But the consequence of applying the rule as to the setback required, if there was a nil setback on 212-222 Canterbury Road, was there'd have to be an 18-metre setback?---Well, it'd have to be at least nine. Nine on our side and nine - - -

30 Plus another nine metres?---Yeah. Nine on our side, nine on their side, yes. That's 18.

THE COMMISSIONER: But their site is zero.---Yes. So, they wanted zero. There was three proposed. They wanted zero. So I'm saying if you draw a line, an imaginary line there, there's nine metres over there, that's our site, and there's nine metres on that side, their side. That makes the 18.

40 MR BUCHANAN: That absolutely would have and that would have been completely equitable.---Yeah. And that's what I thought was being proposed.

By whom?---Well, that, that was the impression I got by the people, and I can't recall who was at that meeting, but had it gone to council, and I don't know whether it ever did since I retired, obviously that would have been a very important consideration, the setback, and I would have assumed that the director of city planning – or his, or his equivalent if the amalgamation occurred – would encourage that to be adopted as part of the proposal.

So at this meeting that you can recall at which the rear setback was discussed, did you understand that the proponent was seeking a nil rear setback?---Yes, on his, nil from the, from the boundary of the bowling club site.

From the common boundary?---Yes. I do, I do recall that.

And you were opposed to that, you say?---Yes, yes.

10 And did you understand that that would be the position taken also by your staff?---No, I didn't understand that and I might add that me being opposed to it doesn't mean anything. I mean, in the end, as I've said repeatedly in these proceedings, there would have been a detailed report setting out all of the planning issues including importantly the setbacks.

Can I take you to late November, 2015 and I just want you to, if I can provide you with this information and ask you to assume it was the case. On 24 November, 2015, the IHAP met to consider the DAs. They recommended that they be refused because of the extent to which the  
20 proposals exceeded the permissible FSR and because the clause 4.6 submissions weren't satisfactory.---When you say the proposals, you're still talking about 220 Canterbury Road, are you?

I'm talking about 212-222 Canterbury Road and 4 Close Street.---Okay, fine.

Which were two DAs.---Yeah, that's right.

30 So it's that set of DAs.---Yeah.

They recommended they be refused.---Okay.

Because of excessive exceedance of the planning control for each set of sites in relation to FSR and because they weren't satisfied with clause 4.6 submissions. On the next day, Wednesday, 25 November, the concurrence authority of Sydney Trains, and that would come to you as no surprise - - -?  
---No, of course. Yeah.

40 - - - given their proximity to the rail line, indicated that there hadn't been provision of the information required for them to provide concurrence and advise of concurrence conditions.---Yes.

So as at that date – this is 25 November, 2015 – there were, I want to suggest to you, three live issues for the proponents. One is the IHAP had recommended refusal because of FSR exceedance. Secondly, the director of planning had recommended deferred commencement, not conditional approval, upon the plans being amended to change the zero setback to a three-metre setback, which was the recommendation that he was making in

his officer's report. And, thirdly, the concurrence from a concurrence authority, in this case Sydney Trains, was lacking.---Yes.

So there were three serious issues. Did you have any contacts made with you or you with anyone else about those issues?---No, I, I, look, I wasn't involved in it. I said I had one meeting that I recall, and that was about the setbacks. After that I let, I let other people who were responsible for looking after these matters do their jobs. I certainly didn't inject myself into that one.

10

After the IHAP meeting of 24 November, in which they recommended refusal, did you call Mr Stavis up to your office to talk to him about that? ---Don't recall that either, no.

Did you say to Mr Stavis shortly after that IHAP recommendation anything to the effect of "What's going on? How are we going to fix this?"---No, I don't recall that. But if it was, it could have been said if it was about the setback because we'd agreed it had to be more than three. It couldn't - - -

20

No, it was, the suggestion is - - -?---It certainly could be zero.

- - - that it's about the IHAP report.---Oh.

Which is recommending refusal.---Yeah.

If that report recommendation is accepted, then the DAs are refused.---Well, that report would go through to the council in the normal course of events.

Yes.---Along with the report by the officers.

30

And were you at all concerned about the recommendation for refusal?---No, not in the slightest.

Did anyone contact you about the recommendation for refusal?---Not that I, not that I recall, and the only thing that concerned me is that the council did the best it could in relation to the bowling club site.

40

So you didn't have an interest, as far as you were concerned, in seeing this improved development at this site next to the train line, close to the station, go ahead?---Do you mean the site on Canterbury Road?

Yes.---No. I couldn't, didn't concern me. I couldn't care less whether it ever went ahead or not. But if it did, it had to respect the council's interests as far as the bowling club site was concerned, and the community concern being expressed about the redevelopment of the bowling club site itself. It was a very hot issue at the time in the eyes of the community.

Did you receive contact from either Chanine or Mr Khouri about the IHAP recommendation.---Not that I recall. This one was not on my radar.

Did you have a conversation with Mr Stavis about the rear setback issue aside from the meeting that you've told us you have a recollection of?  
---That's, that's possible, but it would have been just restating the same issue.

10 Did Mr Stavis tell you that either Mr Azzi or Mr Hawatt had contacted him about these development applications?---I don't recall their involvement in this one at all and, no, the answer is no, that I know of, that I recall.

Did Mr Stavis tell you about any discussions he'd had with the Chanines about proposed solutions to the three issues that I've just told you about?  
---No, he didn't, but from what I've learnt throughout these proceedings, that's not surprising.

20 Did Mr Stavis talk to you about proposed solutions?---Not that I recall, no. I mean, you may as well be talking to a brick wall. I can't help him with town planning solutions or outcomes.

But you see, if you'd been made aware that the proponent's proposals was on three different fronts in serious difficulties, then you would have been interested, wouldn't you, in proposals by Mr Stavis to solve those problems?  
---No, not necessarily, not unless they were in the interests, the best interests of the council and the community, particularly in relation to the bowling club site. That's all my interest ever was.

30 Did Mr Stavis ever indicate to you that what the Chanines were going to do was provide additional justification for a nil rear setback?---No.

Or an urban design report?---I would expect discussions like that to take place between he and the Chanines as the applicant.

40 Unless you had in fact said to Mr Stavis words to the effect of "How are we going to fix this?"---Well, I don't believe I did, but if there's evidence to that effect, you'd have to understand the context of a comment like that. I can assure you my interest was the council's interest in relation to the bowling club site. I didn't care whether they got their application up or not.

Did Mr Chanine, I do apologise, did Mr Stavis indicate to you that the Chanines proposed to obtain a letter from their solicitors to provide to council justifying a nil setback?---No, I don't recall that. Again, that's material between Stavis and the Chanines, the applicant. He may have suggested that, I don't know.

Now, excuse me a moment. If we could have a look, please, at volume 27, page 271. This is an email conversation on 26 November, 2015, so it's

shortly after the IHAP had reported that the DAs be refused and it was when these issues of the rear setback and the concurrence of Sydney Trains being outstanding were live issues. If we could have a look at a bit over half, a bit before halfway down the page. Can you see there's an email to you from Mr Stavis - - -?---Yes.

- - - at 12.42pm.---Yes.

10 And that the heading is "Fwd: Re: Update on Canterbury Road and Bowermans", B-o-w-e-r-m-a-n-s. Mr Stavis broke his email up into two sections. The first had the subheading Canterbury Road (Chanines). Can you see that?---Yes.

20 And the first paragraph reads, "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." Just pausing there. It would seem that Mr Stavis thought he should inform you that this was what the proponents were doing. Did that come to you as a surprise or - - -?---Not really.

Was it satisfactory as far as you were concerned?---As, as I said, I was present at that meeting, the one meeting that took place concerning the setbacks. So I guess in deference to him, he thought it was, he, he it was a good idea to keep me apprised. That's all.

30 You don't think that this email might have been sent to you pursuant to a conversation you'd had one-on-one with Mr Stavis about the problems that the proponents faced?---No. We all knew what the problems were and, as I said, the main one, main concern of mine was the setback to the council site.

Can I take you to paragraph 2. "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, '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, of course.

40 What Mr Stavis was telling you was that if the DAs are to be progressed with a possibility of a favourable outcome to the proponents, this would have to be done, or something similar.---Well, well I think what you said about if there's a possibility of a favourable outcome, they're your words. I don't know that that's what he was trying to tell me. That's not in there. You can, you can put any spin you like on it.

Well, I want to suggest to you that you had dealings with him in which you made it very clear that you wanted the obstacles that appears to face these DAs fixed.---Not true.

And that you wanted the DAs progressed with maximising the prospects of a favourable outcome for the proponents.---Not true.

Why, in that case, would Mr Stavis have said, “The only way we can progress the DAs”?---I, I’ve got no idea.

10

Unless he thought you shared that sentiment, if you hadn’t in fact instructed him.---I've got no I idea. I guess, something you’d have to ask him, that question. I don't know what he had in his mind when he wrote this email to me.

Well, you can see also that the motion is that council support the proposed development, not oppose it.---Yes. And that’s up to council.

20

But that’s not what is recommended. The recommendation is for a motion that council supports it.---Yeah, well - - -

That’s the sort of thing that it appears Mr Stavis thought you would be happy with.---No. You can’t, you can’t draw that conclusion. That - - -

30

Did you tell him, no, that’s a bad idea, you can’t possibly pre-empt the decision of council?---No. He, I would have expected him, as the director of city planning, to negotiate or to liaise with the applicant to get an outcome that is, is acceptable and then put that to the, to the council with all of the information to support it and ask the council to make a determination, which is the way it worked at Canterbury and I daresay works at most councils.

I just need to take you now to your response to this email. We haven’t completed going through Mr Stavis’s email yet but I just need to take you to your response at 2.30pm, which is, “Spiro, sounds good. Please proceed as proposed. Jim.”---Yeah. So I'm, so I'm endorsing what he's proposing to do.

40

That council have a motion put before then that the proposed development be supported.---No.

Well, that’s the motion that Mr Stavis was proposing and which you asked him to proceed as proposed.---Yeah, put it up, put it up to council. Let them make the determination.

The third paragraph reads, or it’s probably the fourth paragraph, “I ran this idea past Marwan and he is agreeable,” and pause there. Mr Stavis seemed to have it in his mind that you would want to know whether Marwan

Chanine agreed with the solution that was being proposed here about the lack of concurrence by Sydney Trains.---Look, I don't know what prompted him to put those words in the email. It might have been just a brain dump.

10 Or do you think that it suggests at least that Mr Stavis thought you would want to know whether that course was satisfactory as far as the proponents were concerned?---Look, the implication is that I expected him to do his job, and if he wanted to pursue it the way he had – in other words, discuss it with Mr Chanine – that's fine with me. But in the end, as I say time and time again, I can't approve or disapprove the application. It's up to it to go to council and he'd be expected to defend his recommendation whatever it is, and I did not get involved day-to-day in the planning decisions to the extent that you, you might think I did. I didn't. I didn't have time.

Well, you had enough time to agree to the proposal of Mr Stavis in this email.---A half-dozen key strokes. Would have taken 30 seconds.

20 Yes. And you would have applied your mind to what you were doing and made a decision that what Mr Stavis was proposing sounded good and should proceed.---Well, it does. He, he says, "Are you okay if I proceed this way if we don't," sorry, "if we don't receive concurrence from the RMS?" And the answer to that was, yes, proceed, but if you do get the concurrence from the RMS, that, that might change the equation. So he was just putting to me what he was proposing to do. I didn't have any objection to it. I didn't see it was doing any harm if the council had the benefit of that advice. That's good. Excellent. It's all out in the open. It's all transparent. I've got no issue with it, none at all. Didn't then and I don't now.

30 And can I take you then to the paragraph under the heading Bowermans. ---Yes.

Do you have a recollection of that project, if I can assist you, on the corner of Canterbury Road and Canton Street?---Very vaguely. I, I, I'm very familiar with the site because Bowermans was an icon, an iconic business there for many, many years.

40 And the DA was for the addition of additional storeys, obviously, comprising some 220 units on an already approved multi-level mixed-use development.---Yes. Yes, I know that.

That rings a bell?---Yes, vaguely, yeah.

That Mr Ziad Chanine was the architect.---Well, I don't know that I knew that or, I mean, that's a bit of a, I, no, I didn't know that he was the architect.

Did you know who the proponent was?---No, I, I, I thought it was Bowermans themselves or whoever bought the property from Bowermans.

I'm not suggesting you're wrong.---No, I, I don't know who the applicant was.

Okay.---I can't recall. I may have heard it, but I don't, I don't recall it.

And that this was another DA in which Mr Hawatt and Mr Azzi showed interest.---Yes, yes.

10 Do you know why they showed interest in that particular DA?---Mr Buchanan, this goes back to the very beginning of these hearings. These two gentlemen injected themselves into the planning process with some enthusiasm.

Is the answer yes or no? I don't know or I do know?---I don't, I don't know.

20 Thank you. Now, it was council's recommendation, or proposed recommendation, that 10 units be deleted from the plans for the additional storeys, and is it fair to say that it was important to you that Hawatt and Azzi not be unhappy about the recommendation or proposed recommendation?---Absolutely not. Couldn't care less whether they're happy or not.

Why do you think Mr Stavis would have bothered to have said to you, "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"?---Well, it seems to me there must have been a suggestion by somebody at some time that 10 units be deleted, so he's just keeping me up to speed, that's all, in case the mayor asked or somebody else asked.

30 But why did – I withdraw that. You were always interested in what Pierre and Michael thought about the planning business before council, weren't you?---Only as long as whatever they tried to do was consistent with the controls and was legal, because as I said they, they, they were calling the shots.

40 You were interested in ensuring, weren't you, that if the officers made a recommendation it wasn't going to cause discord with Councillor Azzi and Hawatt?---No, didn't worry me. If they put something up that Pierre and Michael weren't happy with, they'd express their views in the meeting.

Mr Montague, it's difficult to accept that that would not have worried you given the history that you had with those two councillors.---Well, I'm sorry, but that's how it is. I, I wasn't intimidated by either of them, and if they made a decision, that was their decision, they had to defend it.

Now, what you did by responding to the email by saying, "Sounds good. Please proceed as proposed," was to achieve as best you could a determination of the two DAs as soon as possible - - -?---Not necessarily.

- - - on terms which were as favourable as possible to the applicant?---No, not at all. No. No. There were still other things that probably had to be addressed. I don't know what the state of play was.

And do you see here that this is, 26 November was the Thursday. This is about 212 Canterbury Road.---Yeah.

10 And that Mr Stavis sent an email late on the Friday saying that you urgently wanted to talk to him about the DA for 542 Canterbury Road and then you had a meeting with him on that Monday and one of the problems there was the outstanding RMS consent?---Yes.

20 The proposal that Mr Stavis made in his email to you of 26 November in relation to the 212-222 Canterbury Road and 4 Close Street DAs as to how to deal with the absence of required concurrence authority's response, or indeed the material having been provided to the concurrence authority in the first place, was the solution or the type of solution that was ultimately adopted by you that you approved in relation to 542 Canterbury Road, that is to say, a motion to try to get council to approve in principle and for the matter to be ticked off, as it were, by way of issuing a consent once the concurrence authority's response had been received.---Okay.

Do you see the sequence there?---No, not really. You've lost me I'm afraid. You know, I mean, if the cat had kittens, I'd be responsible. That's the way it's going.

THE COMMISSIONER: Mr Montague, please.---No, I'm sorry, I can't  
- - -

30 No, Mr Montague, just listen to the questions and answer them.---Well, the answer is - - -

It assists you if you don't make flippant little comments.---It's not flippant. I'm sorry, but it isn't. I was the general manager, not the director of city planning.

40 MR BUCHANAN: Now, if concurrence with a consent determination of a DA was outstanding for any other applicant at Canterbury Council, the applicant would have had to have waited until concurrence was received from the consent authority.---Well, that's the normal case anyway, yes.

But the exceptions were made in these cases - - -?---Well, not by me they weren't

- - - around 26 November to 30 November, 2015 in respect of these two particular proponents' projects.---I can't explain that.

An explanation would be that for whatever reason you were inclined to want to prefer their interests.---Mr Buchanan, it doesn't matter what I wanted. It wasn't up to me. It would be dealt with by the director of city planning and his staff or the legal team if there were legal issues involved to achieve concurrence from the consent authorities, whoever they might have been, and put it up to council.

In this particular respect the Chanines got special treatment, didn't they?  
---No, I'm not agreeing to that at all.

10

Well, you can see that they did from the way you responded to Mr Stavis's proposal for a solution.---No, I don't accept that.

And Mr Demian got special treatment when the same problem of the lack of concurrence authority's response was discovered in the case of his DA for 542 Canterbury Road, didn't he?---No, I don't think so.

Well, who else got that sort of treatment apart from the Chanines and Charlie Demian?---I can't recall right now. I mean, there'd be other  
20 examples of people who had special issues who came in to see the council, came in to see individual councillors, came in to see the mayor perhaps. I mean, it happened all the time. It wasn't, there's nothing special about this.

It happened, or it didn't happen all the time that it wasn't possible lawfully for the council to determine a DA that was meant to go forward to that councillor or CDC. That didn't happen all the time, did it?---No, but I would expect if that was the case that that would have been reported to the council and they would be given advice, legal advice, either internal or external, that they couldn't proceed. That's, that's how I - - -  
30

But that's not going to make the proponents very happy, is it?---I don't care whether the proponents are happy or not.

That wasn't the case in the case of the Chanines or Mr Demian, was it?  
---No, I refute that, that's not true.

You did provide favourable treatment to them, didn't you?---No, I didn't. No, I didn't.

40 Just your actions show it.---What do you mean?

Your actions in approving what Mr Stavis proposed in the case of the Chanines and what you had asked him to provide in the case of Mr Demian show that you provided special favourable treatment to those developments.---I deny that. You still, you're forgetting the main point, that whatever I said, whatever involvement I had, it still goes to council for final determination. I don't have, I didn't have the authority to approve anything. So I'm just trying to make the council aware of all the facts and I expect the

director and his staff to do their job. I can't do it for them although it seems I should have.

Now, can I ask that we have a look, please, at volume 27, page 274. It's an opinion from Sparke Helmore Lawyers - - -?---Yes.

- - - dated 27 November, 2015 addressed to Mr Ziad Chanine.---Yes.

10 And at page 301, because it goes through to that, it's signed by a partner and a lawyer at Sparke Helmore.---Yes.

You saw this document in relation to the DAs for 212-222 Canterbury Road and for Close Street?---Probably not.

Excuse me a moment. Can we have a look, please, at page, sorry, volume 28. Excuse me a moment. Volume 28, page 167. This is a memo from you to the mayor and all councillors dated 3 December, 2015 - - -?---Yes.

20 - - - in respect of 212-218 Canterbury Road and 220-222 Canterbury Road and for Close Street, Canterbury. Do you see that?---Yes.

It's got your signature at the bottom of page 168.---Yes.

And you see that in the middle, at the fourth paragraph, you say, "We've received legal opinion, copy attached, from the applicant's solicitor, Sparke Helmore Lawyers, dated 27 November, 2015." And then you go on to give a summary about what it says. Do you see that?---Yes.

30 And then the attachment to this was a copy of the Sparke Helmore letter. That's volume 28 commencing at page 169.---Yes.

So you obviously did see the Sparke Helmore letter. Indeed you read it? ---Yes, that memo would have been prepared by Mr Stavis, not by myself - - -

I'm not suggesting it wasn't drafted, but you weren't in the habit of signing memos without reading them and approving them, were you?---No, not as a rule.

40 So you approved this?---Yes, I must have, I signed it.

And you would have had a look at what it was saying about the legal opinion?---Oh look, I don't know. I trusted Mr Stavis like I did the other directors to do their jobs and to give the council the best advice they could.

And you wash your hands of this memo, do you?---No, I don't wash my hands of anything.

What do mean then by saying that? You seem to be shifting responsibility for its contents to somebody else.---Okay. I'm responsible, I, I signed it, end of story.

Thank you. The letter from Sparke Helmore was obviously drawn to your attention.---Well, you can say that but I don't know.

I'm sorry?---Yeah, possibly.

- 10 It must have been drawn to your attention to have written that memo, to have signed that memo, mustn't it?---Yes.

Now, you summarised, I'm sorry, you signed the memo which referred, on page 167, to the legal opinion from Sparke Helmore as stating that increasing the setback from nil to three metres is unreasonable. Do you see that?---Ah hmm.

- 20 That's the fourth paragraph. And then you quoted comments made by the director of city planning in respect of it, the memo, I do apologise, the legal opinion. Do you see that that starts at the bottom of page 167 and goes over to a large part of page 168?---Yes.

And then you made a recommendation, after dealing exclusively with that legal opinion, that council resolved to approve both applications and then you provided the terms of the resolution. Do you see that?---But if you read above the recommendation, the word recommendation, it says, "If the committee agrees with this position, the following recommendation would apply." "If".

- 30 And you didn't provide any alternative?---No, because I wouldn't be in a position to produce an alternative. I don't, I wouldn't have understood the issue well enough to make, to vary from what the director was saying.

But the plain implication of this memo is that you were recommending approval.---No. I'm giving the council a benefit of a recommendation that they could use if they agree, which was not uncommon.

- 40 But you didn't give them the benefit of a recommendation which they could adopt if they didn't agree?---No. They would say, "We don't like that. Come up with something alternative," and they'd say that in the meeting or they'd ring, they'd ring Mr Stavis before the meeting and, and ask for an alternative recommendation. That was commonplace.

Were you not concerned about the terms of the Sparke Helmore lawyer's opinion, given what you've told us was your position, that it would be unreasonable to have a nil rear setback?---That, that's a solicitor's opinion. What I am trying to say, Mr Buchanan, is that I put it up to the council through the director of city planning and let them consider it.

But why put it up yourself at all?---Because that's what the general manager does. I sent, I sent memos to councillor, the mayor, mayor and councillors all the time on a range of different topics. Doesn't mean to say I'm committed to it. It's up to them to make a call, that's what the council's role is.

10 But the plain thrust of your memo is to achieve an approval of the DAs as soon as possible. You'd accept that?---No, I don't know that I accept that either because it could be deferred. The council could have said when it got there, look, we don't like that, let's defer it for three weeks.

The thrust of the memo was to dispense with the deferred commencement recommendation made by Mr Stavis in the - - -?---No. You're reading much more into this than it was intended to be.

15 I'm sorry, isn't that the natural consequence of a recommendation that council resolved to approve both applications as follows, and there's no reference to deferred commencement?---No. Look, that was a memo from  
20 me to all of the councillors, that's it, and it gave them some background so that if they weren't satisfied, they could have contacted me or contacted the director to get further information. And in the end, if it went to the committee meeting or council and they weren't comfortable with it, they could have deferred it and they could have asked for additional – all sorts of things could have happened.

25 The background, of course, was provided entirely by the legal representatives of the proponent in respect of a matter in which council had an economic interest, as you've agreed.---And they may, they may have  
30 taken that advice from Helmore, Sparke Helmore, with a grain of salt for all I know.

But you were obviously trying to provide some guidance and some assistance to councillors.---Yes, yes.

35 Why wouldn't you have provided them with some guidance or assistance as to why the economic interest of council should in these circumstances permit the proponents to have a nil rear setback on their site?---I'm telling  
40 you this is the way we did things. Now, at the council meeting or committee meeting they may have asked my advice at the meeting and I would have given them advice or they might asked Spiro or they might have asked Chris Lenard.

But you're providing the advice in this memo, aren't you?---No, I'm not. I'm just bringing them up, I'm telling them that there's - - -

It's plain that this provides advice.---Well, that's my role.

Thank you.

THE COMMISSIONER: But in the past you've given evidence - - -?  
---Dear me.

10 - - - that you were opposed to the nil setback and you've spoken about the importance of the council bowling site and the interest and it wasn't going to, you wanted to make sure it did not impact on the development of that site, and my reading of this is that you're now recommending to the council that a nil setback be accepted.---I'm asking them to consider all of the facts and make a decision. It's their call.

MR BUCHANAN: What about your reasons for believing that a nil rear setback was only going to occur over your dead body, which is the evidence you've previously given?---I don't know whether I said that. I don't think I'd go that far. But still, okay.

20 THE COMMISSIONER: But in substance you said that.---Well, I don't think I used those exact words.

30 No. I accept that you didn't say that but that was the impression I got. It was a site that the community felt very strongly about. It was going to impact on the development by the council of this very valuable and possibly profitable site within the community, and as I said, my note is "I was opposed to it. The impression I got was it wasn't going to happen if I could help it," and my reading of this document is that it appears to be a complete capitulation by you that now council, it's recommended you will accept a nil setback.---This is, these are Mr Stavis's words, not mine. He would have sent that. Now, maybe I should have read it a bit, I should have been a bit more careful with it, but he put it up like that. I saw no harm in it because it's going to the council. It's informal. It's not an official council business paper. It's going up to the council. It's just for information. Now, the way Canterbury worked was that if they weren't happy with that or they had any queries about it or they were concerned about the three-metre setback, they would have contacted Mr Stavis or somebody in the legal team or myself and said, "Jim, what, what other options have we got?" But I couldn't, I couldn't pre-empt that.

40 MR BUCHANAN: That's no explanation as to why you back-flipped - - -?  
---I didn't back-flip.

- - - in your policy.---I didn't back-flip.

In the approach that you told us that you took to the issue.---I didn't back-flip. I reject that. My position was still the same.

And there is in fact nothing in here at all, is there, which adverts to the argument that council had an economic interest that would be adversely

affected by the outcome that is proposed, nothing in here at all.---I'm sorry, there's nothing more I can add.

You don't have an answer to that, do you?---No.

Why didn't you include something in it on that subject unless what you were trying to do was benefit the proponents?---No, that's, that's nonsense. That's just not right.

10 What other explanation can you give?---Well, there's probably plenty of them but I haven't got time to think about it right now. I mean, I'm under pressure and I'll think about it and maybe get back to you.

Nothing occurs to you as you sit there?---No.

No. Can I just take you to the words that appear before the word "recommendation". "The legal opinion concludes the 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." You had previously  
20 disagreed with that proposition.---They're Spiro's words not mine.

But that was what the legal opinion concluded.---I don't know what the legal  
---

It's practically a direct quote.---I don't know what the legal opinion concluded.

Well, you must have because you were responding to it. That was the purpose of this memo, and you annexed it.---I said I've got nothing further  
30 to add. I, I can't help any more.

MR ANDRONOS: Commissioner, I'm not saying my friend is wrong in the proposition he's putting, but he's putting to the witness that two documents are the same without having taken him to one of the documents in order to make good the proposition, and the witness of course is saying I don't know. Now, if this is important and it needs to be demonstrated to your satisfaction, Commissioner, he should at least be taken to the passage and asked to agree whether they're the same, otherwise I don't know what value this has.  
40

MR BUCHANAN: Why did you allow to appear in your memo the words "the legal opinion concludes". and then set out what you thought it concluded, unless you thought that what was what the legal opinion concluded?---Look, I've said already that perhaps I may have been a little bit more studious in reading the contents of that email, that memo. I didn't prepare it, Spiro did, and I don't know whether he had communications with other people or not. I signed it, in good faith and sent it off to the councillors. But that's not the end of the story because it's not adopted by

the council, it's just a recommendation they could use if they wanted to or they could ask for additional information which they'd get so - - -

THE COMMISSIONER: What do you mean by you signed it in good faith?---Because Spiro prepared it, I thought it would be okay. He's the expert. I don't question everything they bring to me. Why would I?

10 MR BUCHANAN: But you can see the, you must have cast your eyes over it and thought, oops, this is the opposite of what I've been saying all along should happen here?---Maybe I should have, but I didn't.

Well, the question has to be, Mr Montague, why a reasonable person would do that unless there's something else at play.---No, see, that's it, that's the sinister undertone and it doesn't exist.

Well, this is what we're trying to investigate.---Well, there's no undertone.

20 Well, why would you do this unless there was something else at play?  
---Well, there isn't, that's all I can say. There wasn't.

So you can't provide any explanation?---No.

So you saw that, you've agreed that there was an economic interest the council had in the ability to fully realise the development potential of the bowling club site?---Yes.

30 Here the proponents solicitors are saying to the contrary, that increasing the setback from nil to three metres is unreasonable and that approval of a nil setback allows for the reasonable orderly and economic development of our site as well as the two DA sites. It must have occurred to you that this was something in respect of which you needed to be astute to protect council's interests, let alone the public interest?---But there's other ways to do that, not in the, I mean, that's not the end of the world, that memo.

But the legal opinion, I'm just asking did you consider, "Oh well, this is a legal opinion from our opponents in this economic tussle. I'll get a legal opinion from our lawyers"?---No - - -

40 Why not?---But I wouldn't have done that. That would have been up to the legal team - - -

But as soon as you saw this did you say to Stavis, "Have you got a second opinion from our lawyers"?---No, I don't believe I did.

Why wouldn't you have asked him that?---I don't know.

But you can see the adverse impact this legal opinion, if implemented, had on council's interests. Why wouldn't you have bothered to do something

about it unless there was something else at play?---There was nothing else at play. I reject that entirely.

Did you before this hearing know whether Bechara Khouri had an interest in the company which was the developer that had put up the DAs for the Doorsmart site?---I became aware of that but I don't know when. I didn't know what the extent of his interest was. I had no knowledge of that.

10 THE COMMISSIONER: But you became aware while you were general manager?---Of course, yes.

MR BUCHANAN: Is it possible that Mr Khouri drew it to your attention at some stage?---No.

How would it have come to your attention unless Mr Khouri told you? Someone else told you?---Could have. Could have been Spiro, I don't know.

20 How would Spiro have known?---I don't know. You'll have to ask him that, I'm afraid.

Did Khouri ever declare to you his interest in these DAs?---No, he mentioned he had an interest in the property or the site.

And when did he do that?---I don't know.

What did he say in that regard?---That "I've got an interest in the site."

30 Can you tell us a bit about the circumstances of that conversation?---No, no. I can't recall. I can't recall. It just went straight over my head. It was just in passing. I didn't take any notice at all. Why would I?

Why wouldn't you take notice when your friend tells you that they have an interest in a matter that is before council?---No, look, I, I, as I said, I can't offer any further explanation, Mr Buchanan.

40 Your answer tends to suggest that it wasn't a matter of concern for you. ---Well, he, oh, no, I, I, I, I, I can't offer any further explanation. No matter what I say, it's just going to, you know, lead to another question just as difficult to answer. I, I can't answer that question.

And did you disclose to anyone, such as the mayor, that your friend had an interest in these DAs?---I don't recall. I don't think so. I certainly didn't disclose it to the mayor.

Why would you not have disclosed it to the mayor?---Well, again, oh dear me, look, I've got no further explanation. I can't, I can't remember. It may,

I may have, no, I wouldn't have mentioned it to – it's not the sort of thing the mayor would be interested in.

There's no reference in this memo of 3 December, 2015 to the IHAP report recommending refusal of the DAs.---Well, that's an omission perhaps that, that obviously Spiro wasn't entirely complete in his, in his development of that memo.

10 There's an alternative, of course, and that is that it was considered by both you and Mr Stavis, that that wasn't in the circumstances a real obstacle to the DAs being approved. That is to say that it could be assumed that the IHAP report would be ignored.---No, not at all.

In this case.---Not at all, not at all. The IHAP, the IHAP's recommendations and reports were taken very seriously by the council.

Can you explain to us then why there's no reference in here to the fact that the IHAP report recommended refusal?---No, I can't.

20 You don't think that it would have been appropriate to draw attention to the fact that the IHAP recommended refusal?---For, for the purpose of completeness, yes, it probably was.

Well, more than for the purpose of completeness, it was because of the role that the IHAP played and, and the reason it was established in the first place.---I can't tell you why it wasn't mentioned in the memo.

30 Well, I've suggested to you, the reason being that it was assumed that it wasn't a problem.---No, well, I don't believe that.

Because you knew that Hawatt and Azzi had the numbers and that what was going to go forward would be whatever you had cobbled together with Mr Stavis.---Mr Buchanan, if that was true, it wouldn't matter what was in that memo. They'd do exactly what they wanted to do.

40 Why did you feel it necessary to put forward a memo at all?---Just to bring the council up to speed as I did on major developments, particularly in this case, because of the council's interest and the community interests in the bowling club.

This is plainly an illustration, isn't it, of you interfering or of you involving yourself in the decisions that are made by the council and the CDC in planning matters?---No. There is, there, there is a, a rule, there was a rule that any memo that went to all councillors, all councillors simultaneously, had to be signed by me. That was on the list of things I had to sign. If it had been going to just Azzi and, and, Azzi and Hawatt or other councillors individually, then the director would have signed it. So, all he was doing was complying with, with, with the requirement that anything that goes to

all of the councillors simultaneously, by whatever method, is signed by me. That was the protocol we had.

And – excuse me. I withdraw that. Was the memo drafted on your instructions?---No.

10 Did you instruct that a memo be prepared or discuss with Stavis saying, “Well, I want to proceed by way of a memo”?---Could have. But proceed by way of a memo doesn’t mean a thing. That’s just giving them information. It doesn’t mean the matter is resolved.

Did you see a draft of this memo?---No, no.

How do you know you didn’t?---Well, well, I don’t believe I did.

Yes, I note the time, Commissioner.

20 THE COMMISSIONER: Before we finish, can I just get an indication for programming of witnesses next week.

MR BUCHANAN: I should give an indication first and foremost that I would be, I would expect to be concluded with the witness very close to morning tea adjournment.

THE COMMISSIONER: Now this is on the usual basis that I’m not binding anybody to this but, Mr Moses, you have questions to ask?

30 MR MOSES: Yes, Commissioner, at this stage no more than between 30 minutes to 45 minutes but hopefully less than that.

THE COMMISSIONER: All right. Thank you. Mr Neil?

MR NEIL: About the same Commissioner.

THE COMMISSIONER: Mr O’Gorman-Hughes.

MR O’GORMAN-HUGHES: Probably not, Commissioner.

40 THE COMMISSIONER: Okay. Mr Drewett?

MR DREWETT: I think about half an hour, Commissioner.

THE COMMISSIONER: Mr Pararajasingham.

MR PARARAJASINGHAM: Perhaps less than half an hour, Commissioner.

THE COMMISSIONER: And Mr Pullinger.

MR PULLINGER: Probably half an hour or thereabouts, Commissioner.

THE COMMISSIONER: All right. Okay. Thank you. I'm sorry, and of course, Mr Andronos, you'll probably have some questions.

MR ANDRONOS: Yes. Now, Commissioner, my friend Mr Buchanan and I have had some discussions about how we can perhaps save some time, and one of the possibilities that came up is whether I could talk to Mr Montague over the weekend before my friend has concluded his examination. Now, we had that discussion some while ago, before the afternoon session, so I don't know if his position has changed at all.

MR BUCHANAN: No.

MR ANDRONOS: As I understand it, Mr Buchanan doesn't object to me speaking to Mr Montague over the weekend. I'm not sure if the other parties do and I'm not sure if Mr Montague does because I haven't sought instructions, having not spoken to him for two months. I think even if, if I'm afforded that particular indulgence I will need to speak to him after the conclusion of the other parties' examination anyway. So what I would envisage happening in either case, given that I was trying to do a mental calculation of how long it would take, so it would take certainly into the afternoon of Monday. At the conclusion of my friend's examination I would seek an adjournment so I could speak to Mr Montague, even if I do have the opportunity of speaking to him at the weekend. I may not need as long in that case, but there are some 600 pages or so of transcript of this witness's evidence, so there's a bit to talk about.

THE COMMISSIONER: Mr Andronos, can I just clarify that. If the speaking to Mr Montague you'd anticipate over the weekend, depending on his instructions, and then it's probably Mr Pullinger finishes, then you may seek a relatively short period of time just - - -

MR ANDRONOS: Well, it will be close to an entire day of additional examination which I won't have instructions on.

THE COMMISSIONER: All right.

MR ANDRONOS: So I will certainly be asking for the rest of that day and possibly part of Tuesday as well. It just depends on whether, I won't know until Monday what the nature of, what the extent of the application will be, I know what the nature of it will be, I'll be seeking time, but I don't know how long I will need.

THE COMMISSIONER: All right. Now, can I just ask everybody, Mr Andronos has raised, depending on Mr Montague's instructions, that he may speak to him over the weekend about his evidence so far. Does anybody

want to make a submission about that? All right. The only thing I should flag there is a witness who I think we've got to deal with on Monday, who will be a relatively short witness but we might, could you - - -

MR BUCHANAN: Mr Chanine.

THE COMMISSIONER: Yes, Mr Chanine just has to come back and answer a couple of questions on a discrete topic.

10 MR BUCHANAN: Yes.

THE COMMISSIONER: So depending on how we are going on Monday we will have to interpose Mr Chanine at some time.

MR ANDRONOS: That will probably be a productive use of the afternoon if - - -

MR BUCHANAN: It won't be a whole afternoon.

20 THE COMMISSIONER: It won't be a whole afternoon.

MR ANDRONOS: If everybody's examination takes until early afternoon, at least until lunch time, I think that would be quite plain, possibly most of the day, then we can deal with Mr Chanine and then deal with Mr Montague at some time or on Tuesday.

THE COMMISSIONER: We'll play it by ear but I just wanted to foreshadow that.

30 MR ANDRONOS: I'm indebted to everybody, thank you.

THE COMMISSIONER: All right. We'll adjourn until Monday morning at 10 o'clock.

**THE WITNESS STOOD DOWN [4.05pm]**

40 **AT 4.05PM THE MATTER WAS ADJOURNED ACCORDINGLY [4.05pm]**