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COMPULSORY
EXAMINATION

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INDEPENDENT COMMISSION AGAINST CORRUPTION

STEPHEN RUSHTON SC
COMMISSIONER

COMPULSORY EXAMINATION

OPERATION DASHA

Reference: Operation E15/0078

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY 7 JUNE, 2018

AT 4.30PM

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

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

THE COMMISSIONER: This is the compulsory examination of Mr Benjamin Black. Mr Black, you're unrepresented?

MR BLACK: That's correct.

THE COMMISSIONER: All right. I propose to make a number of directions and I'll explain them to you as we go along. Essentially this is a private hearing and so it won't be published except by Commission officers for Commission purposes, but I'll, I'll get to that in a moment. Will you
10 take an oath or an affirmation?

MR BLACK: Oath.

THE COMMISSIONER: We might have that done now, thanks.

<BENJAMIN FINLAY BLACK, sworn

[4.36pm]

10 THE COMMISSIONER: Now, this compulsory examination is being conducted for the purposes of an investigation of an allegation or complaint of the following nature. Whether between 2013 and 2016 public officials including councillors of the former Canterbury City Council, Michael Hawatt and Pierre Azzi, the former General Manager, Jim Montague, and the former Director of Planning, Spiros Stavis, dishonestly and/or partially exercised their official functions in relation to planning proposals and/or applications under the Environmental Planning and Assessment Act 1979 concerning properties in the Canterbury City Council local area.

I propose to make a direction pursuant to section 31A of the Independent Commission Against Corruption Act 1988. I direct that the following persons may be present at this compulsory examination, Commission officers including transcription staff and the witness.

20 I also propose to make a direction under section 112 of the Independent Commission Against Corruption Act restricting the publication of information with respect to this compulsory examination. The direction will prevent those present today, other than Commission officers, from publishing or communicating information relevant to this compulsory examination. It will permit Commission officers to publish or communicate information for statutory purposes or pursuant to any further order made by the Commission. The direction may be varied or lifted by the Commission without notification if the Commission is satisfied that it is necessary or desirable to do so in the public interest. It's a criminal offence for any person to contravene a section 112 direction.

30 Being satisfied that it is necessary and desirable in the public interest to do so, I direct pursuant to section 112 of the Independent Commission Against Corruption Act 1988 that the evidence given by this witness, the contents of any exhibits tendered, the contents of any documents shown to the witness, any information that might enable the witness to be identified and the fact that the witness has given evidence today shall not be published or otherwise communicated to anyone except by Commission officers for statutory purposes or pursuant to further order of the Commission.

40 **BEING SATISFIED THAT IT IS NECESSARY AND DESIRABLE IN THE PUBLIC INTEREST TO DO SO, I DIRECT PURSUANT TO SECTION 112 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT 1988 THAT THE EVIDENCE GIVEN BY THIS WITNESS, THE CONTENTS OF ANY EXHIBITS TENDERED, THE CONTENTS OF ANY DOCUMENTS SHOWN TO THE WITNESS, ANY INFORMATION THAT MIGHT ENABLE THE WITNESS TO BE IDENTIFIED AND THE FACT THAT THE WITNESS HAS**

GIVEN EVIDENCE TODAY SHALL NOT BE PUBLISHED OR OTHERWISE COMMUNICATED TO ANYONE EXCEPT BY COMMISSION OFFICERS FOR STATUTORY PURPOSES OR PURSUANT TO FURTHER ORDER OF THE COMMISSION.

THE COMMISSIONER: Now, Mr Black, the effect of that order is, this is a private hearing and so the evidence you give today, you can't leave here and talk to others about it.---Understood.

10

Indeed you can't even tell them you've been here.---Sure.

Do you understand that?---Understood.

Let me tell you something about your rights and obligations here as a witness before the Commission. As a witness you must answer all questions truthfully. You must also produce any item that I require you to produce during the course of your evidence. You may object to answering a question or producing an item. The effect of any objection is that although you must still answer the question or produce the item, your answer or the item produced cannot be used against you in any civil proceedings, or subject to one exception in your case, in any criminal or disciplinary proceedings. The exception is that the protection does not prevent your evidence from being used against you in a prosecution for an offence under the ICAC Act, most importantly an offence of giving false or misleading evidence. To give false or misleading evidence to the Commission is a very serious matter for which the penalty can be imprisonment for up to five years, so it's important to tell the truth.

20

30 The - to save you objecting every time to a question so you can get that protection, I can make a declaration that all the answers you give or any item you produce will be regarded as having been given on objection. Would you like me to make that declaration for you? It protects your interests.---I guess I'd be advised best to do that.

I think so, yeah, particularly as you've got no representative here.---Sure, yeah.

40

But just do bear in mind that it gives you protection so long as you give truthful evidence.---Thank you.

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

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

THE COMMISSIONER: Yes, Ms Ellis.

MS ELLIS: Thank you, Commissioner. Commissioner, before I
commence, I have documents across four different volumes that I'd like to
show the witness today, and for convenience may I tender those
electronically on a USB for the Commission's records?
20

THE COMMISSIONER: There are four volumes, are there?

MS ELLIS: There are four volumes labelled volumes 25, 26, 27 and 28.

THE COMMISSIONER: Do you want them separately marked?

MS ELLIS: No, thank you, Commissioner, I'm satisfied to have the four
volumes marked together.

30 THE COMMISSIONER: All right. Well, those four volumes will be
marked Exhibit 7 – sorry, Exhibit 67.

**#EXHIBIT C67 – VOLUME 25 – 28 IN RELATION TO 212 – 222
CANTERBURY ROAD CANTERBURY**

MS ELLIS: Thank you, Commissioner.

40 Mr Black, could you state your name?---Benjamin Finlay Black.

How do you spell Finlay?---F-i-n-l-a-y.

And what's your current occupation?---I'm a consultant town planner.

Who do you do that for?---Planning Ingenuity.

Is that your company?---No, it's not.

Who runs that company?---Jeff Mead, Jeffrey Mead, Jeffrey Michael Mead I should say.

And that's Mead, M-e-a-d?---That's right.

What's your role at that company?---I'm a consultant planner with the title of director although I don't have a financial interest in the company.

10 And could you just give us a brief outline of your previous experience leading up to that role.---Sure. I was university-qualified, I graduated in 1999. I first started at Parramatta Council in 2000, went to Sutherland Council shortly after. I spent about six years in local government. I then went and worked for a developer in the city for three years and for the past eight years or thereabouts, eight years and one month I've worked for Planning Ingenuity.

And while you were employed at councils or in local government were you employed in a planning role?---That's correct, yeah.

20

And were you assessing DAs in particular development applications?
---Yeah. That was my role, yeah.

And what was the name of the developer that you worked for in the city?
---Meriton.

Thank you. What work if any had you done for the Canterbury City Council prior to July 2015?---Prior to these two development assessments?

30 Yes.---No work at all.

So the first time you had any engagement with Canterbury City Council was in relation to 212-218 Canterbury Road and the neighbouring development?
---That's right, for work related to working for the council that is. I had done private work within the LGA.

I see.---Yeah.

40 But you hadn't been engaged by the council previously?---Not at all, no.

And can you tell us how you came to be engaged by the council in relation to those developments?---It is some three years ago now. I, I struggle to remember the exact details, but it was a time when I think like a lot of councils, there was a shortage of staff, assessment staff at that council, and I was asked by the director, Spiro Stavis, to consider doing an assessment of two development applications that they had, which were sizeable in nature in terms of their, their value, their construction value, and they didn't have the staffing resources to deal with that, those applications and we were

requested to step in and provide assistance, given that our firm was outside of the LGA.

Is that what Mr Stavis told you, that there were no staffing resources available?---I don't, I don't know if he used those terms exactly, I, I honestly can't remember. I know, whether that was a feeling I had at the time because I was doing private work and perhaps getting frustrated by not getting an outcome through the council offices, or indeed it was something more direct to me, I know that Sean Flahive, I think is how you pronounce his surname, who was originally briefing me on the, on the two applications, he was leaving council to go back to Ireland I think he was from, it was overseas, and he at the time said that there was no staff at council and made the complaint to me that there wasn't anyone to deal with the applications at hand, and I guess I may be putting two and two together there, I'm not sure exactly, or whether it was a direct comment to say that we don't have the resources.

I see. And you also mentioned that it was because you were outside the LGA. What did you mean by that?---Typically councils, if, if you are doing private work, not private work, but government-related work for them on a, when you're a private company, they don't like you to also be undertaking, or sorry, having an office in the LGA. For example, we as an office do work for Ryde, Inner West, Randwick, Wollongong Councils and that's because we're not within their LGA and they are struggling with their resources to assess their development applications, so we step in and provide that service. And that was I think one of the reasons they came to us. I don't, I wasn't told that, but there was a select group of consultancies that they were looking at, but I guess on the assumption that we were outside the LGA and I would like to think that our dealings with the council were professional and we had a good rapport with the council, so they felt comfortable in giving an application or two applications of this size to us to deal with. We had the, the capacity to assess those type of developments.

And this is the first time that anyone from the council had come to you.
---That's right.

How do you know, how did you come to their attention?---Well, because of doing private work in the LGA for developers, architects, we sat in front of them on the opposite side of the table many times.

I see.---Yeah.

Could you name for us a couple of your larger clients in the LGA?
---Larger clients?

Clients with larger development applications say.---Yeah. That's, you know, casting my mind back now. It's, there's developments for architects such as Technik Haus - - -

Ah hmm.--- - - - in Alexandria, they were engaging us from time to time. Other, I can't exactly think of other architects at the point, at this point, because I'm needing to go back sort of further than three years and we, we do some 400 applications a year, it's quite hard to remember exactly what time it was - it was done.

That's all right. But you had some other work in the LGA in the time.
---Yeah, that's right. Again the, the timing of the Canterbury LEPs, you
10 know, I think it's a 2012 LEP which up zoned a lot of properties to allow for additional height and density. So, - - -

Ah hmm.--- - - - it's between, you know, 2012/2013 and, and these applications in 2015, so I guess it's three years there, or there is three years there, two to three years. We would have been doing work at that time for an architectural firm known as Urban Link - - -

Ah hmm.--- - - - Architects. They're probably the largest architectural firm. We're, we're often not employed directly by developers, it's often the
20 architect - - -

I see.--- - - - project managing on behalf of the developer who employs us or coordinates us ---

Hmm, hmm, --- - - - yeah, I should say.

And do you know whether there was any process around your engagement, was there a process of other quotes being sought from other planning - - -?
---I do not know that, no.
30

Right. And was there any expectation that your assessment would be independent of the council?---I think there was an assumption. I, we were given the, the role of looking at the development application, assessing it against the controls and coming to some type of recommendation, which we did. So I think there would have been expectation that we were independent.

And does that mean independent of any input from council or was - - -?
---No.
40

- - - there an expectation there would be some input?---Yeah, no, there always is some input. But the, the lines often get a bit blurred with councils who have their own processes in terms of just stepping through the process of, of assessing a DA, but also in terms of how they may assess an application on its merits, it varies from LGA to LGA, depending what the controls and their history of how they apply those controls. So it's, it's, it's never the case that we're entirely autonomous and we just write a report,

provide conditions or, or reasons for refusal and it's accepted, there's always back and forth, there's editing of reports and, and, and so on.

What about in terms of the outcome of the report, does council have any input into whether they would like the DA to be approved or refused?
---No, no. They give us, they give us the work to, to look at independently. Obviously with this one our initial recommendation was for refusal.

10 Yes. I might take you to some documents about that.- - - --- Hmm.

Can I show the witness volume 25 of that exhibit? It's Exhibit 67. I beg your pardon, Commissioner. Commissioner, we'll have the documents up on the screen for you there. Volume 25, page 265 please.---265?

Yep. Perhaps we can make it a little bit larger.-- - - - Sorry?
I'm just talking. This is an email - - - --- Yes.

20 - - - dated 23 July, 2015, sent from Kim Johnston to yourself. Who is Kim Johnston?---We occasionally used Kim to assist with consultancy work when didn't have resources in house to deal with various matters.

So, she wasn't employed by you?---So we outsourced, well, we outsourced
- - -

Yep.--- - - - as a consultant to - - -

I see. And Kim Johnston signed off as KJ Planning. Is that her company?
---That's correct.

30 Right. And on this occasion you engaged Ms Johnston to do the work because you didn't have the in-house resources to complete it?---That's right, yep.

And it appears from this email that she sent to you that she was of the view that the applications for at least 220-222 should be refused. Do you recall that?---Yes.

And do you recall her reasons for that?---Yes.

40 And you can see she summarised her reasons in the second part of this email which says, "In summary, the recommendation for refusal is based on essentially two issues. An excessive variation of the floor space ratio." I beg your pardon, three issues, "The clause 4.6 variation did not adequately demonstrate why it should be varied." And there were issues with the DCP controls, the development control plan. Do you recall those being - - -
---Yes.

- - - the main issues?---Yes.

And what was your view about these issues?---Well, I obviously had a look at the plans, the justification, and we put together, I can't recall now whether it was a draft report on that basis or an email of concern back to the council saying, "This is the way we'll go."

Did you agree with her at this stage - - - ---Yes.

10 - - - that the DA should be refused?---At that stage, that's right. It was, I, I was agreeing that the applicant hadn't justified the variation to the FSR.

Thank you. Sorry, that's for our recording purposes - - - ---Sure.

- - - so we need to - - - ---No worries.

20 - - - ensure that our transcription officer can hear you.---Sure, no worries. Yep. So, the one of the key reasons for, or, or key outcomes of varying in LEPs, you need to demonstrate that the, the variation is site specific and, and on merit and it can't be citing generic reasons which any application could cite. It needs to be very much specific to the site and have good, good backing. There are various court rulings on that.

Hmm, hmm. ---And so at the time what we had and what we were assessing, it didn't achieve those things.

I see. And you recalled that these two applications were two neighbouring DAs - - - ---That's right.

30 - - - and both of them were valued just slightly under the 20,000 - - -? ---20 million.

- - - \$20 million limit to go to the Joint Regional Planning Panel?---That's correct.

40 Is that something that you see happening from time to time in planning, that development applications could be split to choose a particular jurisdiction for determination?---No. I, I'll have to say this is, I haven't often seen it that way. It's, it sometimes happens that you have different owner groups who aren't willing to come together on neighbouring sites but they both want to develop.

Did you know what the situation was here?---No.

Why they'd been split?---No, no.

Do you know whether council has any options available to them to force an applicant to combine their DAs for a particular project if it appears they

should be dealt with together?---Yeah. No, I'm not aware of anything, any part of the legislation that can, can force that.

Thank you. I just want to take you through some of the emails that led up to the email we're looking at on the 23rd of July. So, if you just turn over the next page---- Hmm, hmm.

You'll see the preceding emails from the 22nd of July--- - - - Hmm, hmm.

10 And, in particular, your email from the 22nd of July in the middle of that page where you say, "Thanks Kim, I've discussed this with council and forwarded a copy of your email." Now, just so you can see the background to that, Ms Johnston's email is below.--- Hmm

Dated 21st of July, 2015-- - - - Sure

20 And you can have a quick look through that but essentially it's summed up in her first paragraph where she says, "I've undertaken my full assessment of number 212-218 Canterbury Road, Canterbury and I cannot support the DA due to the significant variation to FSR."---Sure.

Okay.---Yep. I understand that.

So you said to Ms Johnston, "I've discussed this with council and forwarded a copy of your email. The council officer indicated that there was a conflict of interest, hence the reason for referring the DA for external assessment, and was not surprised by our position."---Right.

30 Do you recall that conversation?---I, from memory it was with Sean Flahive, the planner who soon after left.

What did Mr Flahive say to you?---I don't recall the exact words but it was, I, I think along those lines where, it was either Sean Flahive or Andrew Hargreaves. Yeah, I think it was Sean but I, I can't be certain. I believe that what had happened is they had looked at the documents, sent it to us with already thinking this is excessive, and hence the, the fact that they weren't surprised by our assessment.

40 And do you remember what Mr Flahive – if it was Mr Flahive – said to you about the conflict of interest?---No. I don't recall what was said about that at all.

Do you recall what the nature of the conflict of interest was?---No. No, I don't. No.

Okay. I'll take you to the next email, which is of the 22nd of July, just at the top of that page - - - ---Sure.

- - - 266, and you've sent this to Ms Johnston on the afternoon of the same day, 3.02 pm, and said, "Council wants to meet – want to meet with me to discuss our position." Do you recall that?---Yes.

And do you remember, did you meet with council?---Yes, I did.

And who was at that meeting?---Spiro Stavis and George, the manager. I can't recall his surname.

10 Could it be Gouvatsos?---I, it is a Greek surname but I don't know whether that's it.

Was he the manager - - - ---Yes.

- - - Manager in the development assessment section?---That's right, yep.

And was anybody else there?---And, and Andrew Hargreaves may have been there. I can't recall now. He may have been sitting at the end of the table, but there's been so many meetings I've had, it's hard to recall exactly.

20

This would have been the first meeting you had about these properties, is that right?---Yes. I believe so, that's right

And what, what happened at that meeting?---I think I was asked to explain or, or canvass our position and why we felt, or what issues we had, which I did, and, and then it was I think put to me that we give the applicant a go at remedying the concerns raised and providing additional justification and supporting information.

30 And who put that to you?---I believe it was Spiro. My, my reco - I don't verbatim remember the, the meeting but I do recall Spiro being more front and centre and George to the side. Yeah, I don't know if George said much other than perhaps agreeing.

Was that normal for that to happen in this kind of process?---Spiro's whole way of doing things wasn't normal.

40 What do you mean by that?---Well, by and large council officers are very conservative and they start off on the negative, let's say, and it's then my job, given reasonable justification and, to, to try and turn their, turn their view into something which I think is correct. Spiro was unlike that. He was much more proactive in the process, and to be honest I thought it was, perhaps, yeah well, looking back, naïve of me at the time, but I, I thought it was a refreshing change, someone who was honestly trying to motivate things and move things along. In the planning world, there's this, well, when generally there's all discussion about housing shortage and the blockage in local government, and all of a sudden you had this person

sitting in front of you seemingly trying hard to get things done and I, I appreciated that for what it was.

Did you form the view from that meeting that Mr Stavis was supportive of the applications?---No. He, he was, he was more just saying that, "Let's give these guys another chance at, at getting it right. Let's not refuse it."

10 I just in particular want to take you to some parts of the first draft of Ms Johnston's report just so that we can detail what some of her concerns were.---Sure.

I'd like to show you the first page of that draft, which is attached to her emails. It's at page 272 of the bundle in front of you. Do you recognise that document?---I do. Yep.

And the page of the draft I want to take you to is at page 287.---287.

20 Where she discusses the clause 4.6 objection in relation to the floor space ratio.---Sure.

And at the bottom of that page Ms Johnston's noted, "Varying a standard by more than double the adopted committed is not the flexibility envisaged by clause 4.6. A better outcome for the site would be a more compliant development with upper level setback and greater relief in the building façade, particularly on Canterbury Road frontage."---Sure.

Did you agree with that?---On, on the surface it seemed a reasonable position to take, yeah.

30 What do you mean by, "On the surface"?---Well, planners are often caught in the trap of thinking about things on numbers and I don't think that's really what the public sees after the building's been constructed. They see what's existing. So, a, a pure numbers driven assessment would take you to that conclusion, but then if you stepped aside and thought about what made sense in terms of the building on, on the opposite side of Canterbury Road, that was approved at nine storeys and also the conflict between the height control that council was allowing for and the buildings are approved to the height and the floor space ratio, when you combine those two, you don't get the height that the, the strategic planning objectives would, would require or
40 seek.

When you say, "The building's approved to that height," what, what did you mean by that?---So there's a building on the opposite side of Canterbury Road to the north-west, I believe it would be, which was approved to nine storeys essentially.

Right. And, and are you saying that because council had already approved that building there was perhaps some other considerations for that site to

take into account?---That's right. Yeah, so, so one of the, one of the concerns was that the controls, again, if you totally disregard everything, and look at this you know as a, as a point in space, the controls would require a setback to Canterbury Road and a base of the building, I think, to four storeys and then a setback above that as the, as the building rises.

10 In this process, did you have a look at how the building on the other side of the road ended up with the controls that it had?---That's right. I, I do and I, and I have that report. I'm aware that we have that report electronically for the - - -

Presumably that would have had to make some site specific arguments about why the controls should be varied on that site as well?---Yeah, I didn't look into the details of, I, I just saw the council report, I didn't look into the detail of why it was approved, I just knew it was approved.

20 I see.---And contextually, in an urban design sense, and this is why we went and asked council to provide greater urban design supporting information, was we had, we had a building in theory which was constructed to nine storeys with a zero setback to the street, and then you apply strict letter to the law these controls to this site and you have a building which is not mirroring that, if you like, it's setting back and it creates an odd urban design outcome, and that's where we asked the, the applicant to have a look at that further and, and get an, an urban design expert to look at that, because that's not my forte, and that was provided to us.

30 I see. Can I take you to a second volume of documents, volume 26?---Sure. Of Exhibit 67. And, Commissioner, those documents will be coming up on the screen as well. And, Mr Black, I'd like to take you to page 39 of these documents.---Okay, yes.

And this is a timesheet that I believe Planning Ingenuity provided to us as part of its return.---Hmm, hmm. And this is the timesheet for the work that Planning Ingenuity did on 212-218 and the neighbouring development application-Hmm, hmm. That's my writing, yep.

I see. And I just want to ask for your help interpreting some of the references in this.---Sure. Yes.

40 You'll see, in the right hand column, the far right hand column, there's some references to some initials. Are those names of people who completed the work?---Yes.

And JMM is Mr Mead?---Is the owner, that's right.

BFB is yourself?---that's right.

And REH, is that Rachel Harrison?---That's correct.

And at some point we can see in this planning, in this timesheet, that Mr Johnston, who I think is KJ, is that right? In the, I'm sorry, in the work description column, you can see a reference to KJ.---Sure, yep, I can see that.

Is that Karen Johnston?---Kim Johnston.

Kim Johnston, I'm so sorry.---Yep.

10

So, Ms Johnston at some point seems to drop away from this timesheet. ---Sure.

Did she stop doing work on this project?---Yes, she did.

20

And why was that?---I can't recall the exact reason why now. I think that she had done a draft assessment and it was at a time when we were seeking staff and she had done her draft assessment and I, and I can't recall what she would have charged for that, but anyway, I'm assuming it wouldn't have been a full fee because it wasn't a reported, a completed report. And then Rachel started work in our office, so Rachel took over the project.

So, Rachel wasn't employed there before when - - -?---No, that's right. No, she came, this is a, a, a new, one of the new, newer projects for her from memory.

And I just want to draw your attention to the entry at the 24th of July, 2015. It says, "Meeting at council."---That's right.

30

Is that a reference to the meeting you were talking about before?---That's correct. Yes.

When Mr Stavis and Mr, and George attended?---That's correct, yep.

And after that meeting it seems like Karen didn't do any, sorry, Kim didn't do any further work on that, is that right?---That's correct. Yep.---Yeah. But you'll, you'll see also there was a significant lag---Yes.---Between when we, there was some months, two months, three months.

40

Can you tell us what happened with that lag?---Well, this is at the time where there was, Spiro gave us the direction at the meeting to allow the applicant to have another go at providing better information and I had formed a, adraft letter to the council which they then forwarded on and it took that amount of time for the applicant to come back with the documents they did.

So, you were waiting on the applicant - - - ---That's right.

- - - for all of that time?---Yeah.

And just to formalise that, I'll take you to the next page, which is page 40
- - - ---Yep.

- - - where there's an email from you to Rachel Harrison on the 12th of
October. But what is attached is on the next page - - - ---Yep.

10 - - - is a letter which appears to be in draft. So, 29th of July, 2015.---That's
correct.

Which appears to be a draft letter to the applicant requesting additional
information.---That's correct.

Is that the draft you referred to?---That's, yes.

So did you draft this document?---Yes. I did.

20 And did you send it to the council officers?---That, I sent it to Sean to
complete. In particular, there's a highlighted section at number 6, "Urban
design," and I wasn't sure they were, at this stage, having their own urban
design input---Hmm, hmm---or not.

Yep. And at this, at this point in time it appears from the draft that there
was still significant issues with the floor space ratio in the development.---
That's right.

30 In particular, you've identified that in point 1, "That both the proposed
developments significantly exceed the permitted FSR maximum and this has
not been sufficiently justified in the clause, in the submitted clause 4.6
variations."---That's correct.

Did you see the final letter that went out from council?---No, I didn't.

I'll take you to page 119 and this is a, a letter addressed to Planning
Ingenuity to your attention from Mr Hargreaves. You can see over the next
page - - -
---Yes.

40 - - - and it's dated 23rd of September, 2015.---Okay.

Did you, do you recall this letter?---Yeah, I think I do. Yep, yep.

And - - - ---Broadly. I get lots of council letters, so - - -

Yes. And you can see that it attaches a number of, it refers to attaching a
number of documents. I believe that some but not all of those documents
may actually be attached in this volume in front of us, but particularly I just

wanted to draw your attention to the fact that the letter states underneath the list of attachments that, “Both DAs are expected to be considered by Independent Hearing Assessment Panel meeting on the 2nd of November, 2015.

---Yes.

When this, with this in mind, we require your completed report by Friday, the 16th of October, 2015.” Was that an unusual request to receive from the council?---So what was the, how far out was this?

10

So, this letter’s dated the 23rd of September.---Not particularly, no. I wouldn’t say it's unusual.

Okay. So there’d usually be time frames involved and you’d usually be told about those time frames?---Yeah, that’s right. And, and the longer it, a development application’s with council, the more pressure is, I understood, generically across the board, across all councils, for them to be determined.

20

Even if the delay had been caused by the applicant’s getting documents back to the council?---Well, there’s a statutory allowance for the council to stop the processing period, provided that the request for the additional information is made within the 25 or 27 days of, of lodgement and I believe that the request was made after that timeframe. So, in essence, the clock is, is still ticking- -Hmm, hmm.- - - despite the applicant using most of that time.

And it seems that additional clause 4.6 justification documents were sent to you with this letter. Do you remember receiving additional 4.6 - - -?---I do, yes.

30

And did you have a view about the adequacy or sufficiency of those at this point in time?---When I received this letter or shortly after?

When you read the documents.---When I read the documents. Well it, it certainly I think put it in a much better light to understand that there was that inconsistency I was talking about earlier between the height and the FSR figures in council’s LEP.

40

Ah hmm.---That argument hadn’t to my recollection been put forward previously.

That there were inconsistency between the controls?---That’s right, yeah.

And in that respect, if there’s inconsistency between the controls, which controls trump the other controls, which ones should you pay more attention to?---In my view FSR is, in a site like this isn’t necessary.

And why do you say that?---Because we have a height limit and setback requirements and they essentially set the building form, and whatever, however you fill that out is somewhat academic and it's, and people get too focused on the numbers and what we really should be focusing on is the build form outcome.

What it looks like - - - ---What it looks like - - -

10 - - - at the end of the day?--- Yeah, that's right, because no one's going to go and care about floor space after it's built.

But floor space ratio does have something to say about how bulky the building is, doesn't it?---No, I don't think so.

Right.---I, I think there are many controls that control bulk and FSR is a, amathematical calculation, setbacks, balconies, materials, finishes, all these things aren't related to FSR but they impact greater the, the bulk of a building, how it's viewed.

20 So setbacks are very significant in - - -?---Setbacks or modulation in, in building façade movement.

And here it was recommended that there be no setback from Canterbury Road.---Because of the building opposite, yeah.

Because the building opposite also had no setback from Canterbury Road. ---Approved at that, yeah.

30 Didn't that make it just very bulky on both sides?---On, on both sides of the street do you mean?

Yes.---I wouldn't say so. I, I think that, well, at least the urban design advice provided to me to look at was formed on the basis that this is a significant entry point to Canterbury town centre and it deserves buildings that are a,---Ah, hmm.---focal point or nominate that Canterbury town centre.

40 Was there an expectation from you that that urban design advice would be provided independent of the applicant?---I, I do recall perhaps, I think it was only a phone conversation with Sean or Andrew, and perhaps we discussed, discussed it also at the, at that meeting in the time, that's nominated in the time sheets, the idea of whether council would have its own external consultant review and it was put to me that they wouldn't and they don't.

Ah hmm.---And I must admit I was surprised at that, all the development happening in Canterbury, at least you would think A, the preference would be to have an on, on site person employed at the council who's an architect to review these things, but as a fall-back position you would usually have

someone external to the council to give feedback. That's my experience with, we're doing some work for Blacktown at the moment and they don't have an on-site architect, but they, they send it out externally and that makes sense.

Right. And that person would be independent of the applicant?---That's right, yeah.

10 Do you recall what happened on this occasion?---It was just we were asked to provide, or sorry, we were asking the applicant to use a reputable urban designer, which I think they got Rohan Dickson, he's well-regarded, he does a lot of court work, he provides expert witness services for the court. I don't think he's by any means an unknown architect, a hired gun, I think he's a person that's got good qualification experience.

He was someone you trusted when you saw his name on the document?
---Yep, that's correct.

20 Can I take you to page 150 of the volume in front of you, volume 26 of 67.
---150, sorry?

150, yes. It should be an email from yourself to Mr Stavis dated the 14th of October, 2015.---Ah hmm.

30 And this follows, so the letter we just looked at was dated the 23rd of September, 2015, it had some additional 4.6 variations attached to it. You sent an email to Mr Stavis on the 14th of October which says, "Further to our discussions, as a minimum can you please ask the applicant to provide greater justification within the FSR clause 4.6 variation, i.e. 425 LEC case and planning grounds justification."---Yep, that's correct.

Do you recall those discussions with Mr Stavis?---I, I don't, and I, I think it may have been a conversation, a phone conversation with Andrew Hargreaves instead, I couldn't be exactly sure.

Sure.---This was something which was off our radar for some time now.

40 Ah hmm.---And I think perhaps it went that we were provided bits and pieces of information but not everything that we were asking for back in that, that earlier letter.

And it seems that still at this point in time you weren't satisfied with the justification - - - ---Yeah.

- - - that had been provided to you?---That's correct, yep. I can see there from the earlier, the trail email from Ziad---Hmm.--- Chanine that he's, he was just pointing us back to the SEE,---Hmm.--- the statement of environmental effects, which obviously wasn't good enough in our view.

Right. You needed a separate document which addressed more, more - - -?
---Oh, just a better document, yeah.

A better document.---Yeah.

I see. Look, I'd like to take you to page 200.---Ah hmm. Ah hmm.

10 I just want to take you to an email, and I appreciate you weren't on this
email chain and I just want to ask your opinion about something - - -
---Sure.

- - - that's stated in that email.

20 It's an email from Mr Stavis to Marwan Chanine, who's the developer
applicant in this, in, in relation to this property, he's the developer. And Mr
Stavis has said, "Thanks for the updated clause 4.6. In regards to the front
setback, as discussed previously, the non-compliance was not adequately
justified. I note our agreement that you would provide independent urban
design advice in that regard. I'm not trying to be difficult, Marwan, and I
would not ask if I didn't need. I need the ammunition." What do you, do
you know what the word ammunition meant in the context of this
application, did it have any meaning to you?---I would take that to be I'm
willing to support your proposal but I need you to help me with information
that is adequate.

30 Was this something that you were asking for, were you asking for
ammunition?---Well, no. I, I guess in an indirect sense we were asking for
an urban design expert to review and provide us with feedback, but I was
open to, from memory, the urban design expert coming back and saying it
was flawed or it needed a redesign or it needed tweaking or changes,
whatever it might be.

So at this point in time you hadn't settled your view about whether it should
be supported or not?---I, I, not at this point, no. I think this is still, this is
October .

40 This is October 2015.---Yeah, I can't recall the exact dates but it wasn't, it,
it was a bit of a mad rush from memory towards the end, I think I was
working on a Sunday to get the report done, the information was a provided
that late.

I just want to take you to an email on page 205.---Ah hmm.

This is an email from yourself to Mr Stavis on the 20th of October, which is
the following day.---Yeah.

And you've said, just to contextualise this email, it's a chain of emails following on from an email from Mr Stavis to yourself where he - - -?
---Ah hmm.

- - - forwards for your information his email with Mr Chanine - - -?
---Sure.

- - - where he says, "Thanks for the updated clause 4.6," and he includes the email about the ammunition.---Ah hmm.

10

So he sent that email to you and said, "FYI." And you've replied and said, "Our report is 95% there, we just need this info to complete."---Mmm.

Do you recall at this point what your view was about the applications?
---I believe at this stage Rachel Harrison was writing the report. She was a senior planner with similar years' experience to me.

20

Mmm.---Now, I recall that she, I would, I would have had a conversation with her. I'd - as a, as a director or a more senior person in the, in the company I don't go and review every report or write every report, indeed I ask people and take it on their word when I ask them how's the report going and they say it's 95% or whatever it is and I, I take it for that.

Mmm hmm.---And I believe what would have happened is, I would have asked Rachel---Ah hmm--- how she's going with it and I would have got a response, it's nearly there, hence me working on a Sunday to get it done when I realised it wasn't nearly there.---Ah hmm ---Um, I think that's how it played out.

30

I see. But if you were 95%, if your team was 95% there, surely a view would have been formed generally about which way it was going to go?
---Sure. And I, and I would have had discussions with Rachel about, you know, what are your, what are you feeling about, how, how is this new information stacking up, and then we started to get our head around more focusing on the envelope that was appropriate given the urban design advice, setting the FSR aside for a second.

Ah hmm.---What's, what's an appropriate envelope for this site that the strategic planning documents are trying to achieve.

40

It's often the case that councils, when they're preparing an LEP, don't really do a lot of homework on the combination of FSR and height controls and particularly where sites are so irregular-shaped. It's really easy to get a nice rectangular-shaped site and say, well, that's the height and the FSR, that's the box, you fill it out and you get X. But in this instance the shape, the shape of the site's so unique that I think it's almost impossible to say if you build a building to nine storeys that you will have a floor space equalling this, because there's too many factors that go in to, to vary that. A

building like this would have long corridors, it has, they all contribute to floor space, you know, there's various items that influence it.

Mmm hmm.---You know.

But on this occasion you thought the floor space ratio was less important and you focused on the other aspects of the envelope.---That's right, yep.

Can I take you to page 257.---Yes. Ah, hmm.

10

This is a letter dated the 23rd of October, 2015 which runs over three pages.--Yes.

Its signed by Rohan Dickson---Ah hmm.--- and it describes itself as Urban Design Advice.---Yes.

Is this the letter to which you were referring as the - - -?---This is what I'm referring to. That's correct.

20

This is the urban design advice you received?---That's correct.

And it was pos - generally positive in nature?---That's right.

Yep. And you were happy to accept that advice?---Yes.

Now, there was, were some differences between the FSRs for each site.---Yes.

30

From my understanding, and you can tell me if I'm wrong, the FSR for 220-222 Canterbury Road is 4.3:1. I'll just take you to page 213 of this bundle.---213?

Yep. And this is a document - - -?---I'm sorry. Dyslexic. 231.

This is a document, part of a document prepared on behalf of the applicant which is this clause 4.6 variation document is the introduction to that document.---Is this the more recent one?

40

Yes. This one is dated the 18th of October, 2015.---Yes. Okay.

And fifth paragraph down.---I can see that, 4.3.

See that the - - - ---Yeah.

- - - FSR is 4.3:1.---Yes.

And this is for 220-222 Canterbury Road and 4 Close Street.---Ah hmm.

Whereas the FSR for 212-218 Canterbury Road, the next clause 4.6 variation document starts on page 230,---Hmm, hmm.--- also dated the 18th of October, 2015.---Yes.

And then on page 232---Ah hmm--- it records that the total FSR sought on that site is 6 point - 6:2. ---That's right.

10 Did you have any views about that scale of variation in the FSR?---I, I, from memory we, we were fairly clear in the report saying that we thought it was a significant variation.---Hmm.---We weren't trying to skate around that issue but again it came back to what it means in the context of the, of the building that council is trying to achieve for that site.

And I mean, where do you get the, the views about what council is trying to achieve except from controls like the FSR?---Well, the height and the setbacks.

20 And, and again, why are they given more priority in identifying for you what council is trying to achieve on the site - - -?---Sure.

- - - than the floor space ratio?---Yeah. And I, and I think that the, the emphasis here was the building approved on the other side of Canterbury Road.

30 I see.---But it was, I don't have the information in front of me but from memory it was demonstrated on the, on the - on the site with the 6:1 FSR that if a compliant, no, I, I, I'm thinking of, there was a scenario put to us I'm sure if I'm thinking of this job where it was demonstrated that you wouldn't get anywhere near the height limit if you applied the floor space, and something around half or, or so size of building than the, than the controls are after.

Do you recall who put that to you?---I can't, I can't recall now. It may, it may have been in this 4.6 variation indeed. I can't recall.

And it seems that the building on the other side of the road had significant influence over---Hmm.---the assessment process. Would you say that's accurate?

40 ---Yeah, that's fair.

So essentially provided an important precedent for the site - - - ---Yeah.

- - - that you were considering?--- That's right.

And just generally in that situation and your experience as a planner,--- Hmm.--- wouldn't it be better for council to holistically amend the controls that didn't match up rather than there being a piecemeal variation - - - --- Yeah.

- - - of this nature?---There is, there is purpose to be had in terms of complying with numbers but in saying that, as I said earlier, I'm not, I'm not too, I'm not focused so heavily on FSR if the rest lines up to a reasonable extent. There is no requirement in the, in the legislation that says once, once you get to a particular variation you should be talking about a rezoning or a change to the, to the LEP. It's been mooted around that it should be, you know, anything greater than 10 per cent but I don't know where that comes from. It might be coming from council officers. I don't know but.

10

And the variation here was 105 per cent so - - -?---105 to 54.

- - - it was significant?---Yeah, that's right, yeah. And that was our major concern. This is a very easy, seemingly at the start it was, it was a very easy one to recommend refusal,---Hmm.--- until the ammunition as Spiro puts it is given to us. Hmm.

So you needed all of those other - - - ---That's right.

20

- - - reports and documents - - - ---That's right, yeah.

- - - before you would even consider recommending it for approval?---That's right. Yeah. And when you're, when you're put in a position of acting in the council shoes,--- Hmm.--- you need, you need the information, don't make it up yourself, and it needs to be put to you, yeah.

Do you recall at any point in this process the issue of a setback from the neighbouring development at 15 Close Street being raised with you?---Is that the bowling club?

30

That's the bowling club.---Yeah, I do.

And how did that happen?---There was, I think it was a through-site link or something in the bowling club and there may have been, there was I think an LEP change happening for the bowling club which, and that LEP or planning proposal rezoning had an indicative building footprint on the bowling club site with a setback of some nine metres I think to allow for the through-site link and back then was residential flat design code under SEPP 65 which governs apartment design. It talks about achieving adequate, adequate privacy where there's 12 metres between buildings, ---Hmm, 40
hmm.--- and so on the basis that there was nine metres on the bowling club site we, we proposed three metres on our site to achieve the total separation of 12 metres.

Do you remember when in that process that issue was thrashed out?---It was information that was provided to us from memory very late in the process. We weren't aware of the planning proposal. We weren't aware of the planning proposal I don't think when we first did our, our first run of

assessment via Kim Johnston that we put to council. I think it came much later in the piece.

If I can show you on page 277 and following. There's a draft report for 212-218 Canterbury Road that you've sent through on the 4th of November, 2015 and you may be able to find this better than me in this report but I can't see any reference there to a three metre setback to the bowling, bowling club, bowling club site.---A three metre setback?

10 Yes.---It refers to a common boundary with the bowling club site.

Page 297 where it refers to building separation.---297.

There's a table of controls, a compliance table and 3.1.9 refers to building separation.---Was this the final report?

No. This is a draft report that you've sent through on the 4th of November and I'm, the point that I'm making is that I can't see any reference in this report to the three metre setback and I'm just trying to pinpoint when that
20 issue arose. ---Yeah, I, I, I can't recall. Perhaps it was put to me after this that there was a planning proposal on that neighbouring site.

Okay. But would you expect to see reference to that in 3.1.9 building separation?---I would and I, and I thought the final report did.

I believe it does, Mr Black.---Right.

I'm just taking you through the drafts - - - ---Sure.

30 - - - to try and work out - - - ---Right, okay.

- - - when it comes into play.---Okay.

So this is a draft.---I understand.

Am I looking in the right place at building separation if I want to - - -?
---That's exactly where you should be looking to answer your question.

40 And it's not there is it?---That's right.

Okay. I'll take you to the next volume of documents in Exhibit 67.
---Alright.

And perhaps you could remove - - -? Thank you.---Thank you.

And in this volume I want to take you to page 2.---Yes.

You've received, this is an email from Andrew Hargreaves,---Yeah.--- to yourself attaching the first half of the report for 212-218 Canterbury Road, - --Ah hmm.--- containing feedback that can be used for both reports and the attachment is in the following pages 3 to, 3 to 20.---Sure.

Do you recall receiving this email?---I do.

And you can see that there are a number of mark-ups made to the report - - - ---Yes.

10

- - - that you've drafted?--- By various people from memory.

Yes. Was this usual in your experience?---No. It's very unusual.

Alright. And what was unusual about it?---Well, usually, you'd just have one point of contact that would say to you, "These are our mark-ups or suggestions," instead of, I think from memory there was George, Andrew and Spiro all had their, had their turn at looking at it.

20

Hmm, hmm. And they each had different things to say about the report?---I, I can't recall exactly but I, I, mean there was input there provided by each of them,---Hmm, hmm.--- on various points.

And on page 3, which is the first page of the draft - - - ---Yes.

- - - you can see somebody's inserted that this report has been prepared by Planning Ingenuity an independent external planning consultant on behalf of council. Was there a reason why you hadn't included that statement in your draft?---No and he should have.

30

Right.---Yeah, and indeed--- - - - And that's the normal course - - -?---And I missed, I did the same thing last week for one in Campbelltown where I stopped, I did, did that exact thing as well, so I had to do it there.---Okay.--- It was a slip up.

Page 4.---Yes.

40

There's some handwriting after the second dot point which seems to refer to, "The external consultant had recommended that deferred commencement consent be issued."---Hmm.--- Was that your recommendation?---No. That was, that was put to us as a, a way of dealing with various items.

And what, what were the issues that meant that it should be dealt with by deferred commencement?---It depends on which one we're looking at but there were some access issues, there was a setback issue, there was something to do with Sydney Trains from memory.

Did they both have issues that meant they needed to be dealt with by deferred commencement?---I can't recall exactly.

Okay. Just for your information, we're looking at the 212-218 report at this stage.---Yep. Which is, I know them as stage, that's the stage 2. Right.

Can I take you to page 19.---19, okay.

10 There's some handwriting on the left-hand side where, from my reading, it says, "It should be noted that a proposal which complies with the setback height and landscape controls envisaged for the site, an FSR of," blank, "would be generated on site, which is way over the max FSR under the LEP. Consequently, it appears that there is no correlation between the FSR," I can't read that word, "and the other controls."---Under the LEP.

Oh, "Under the other controls in the LEP and DCP." Did you agree with that statement?---Oh, Yes. Yep. I was happy to include that.

20 And you've sent back an amended draft on page 23. You can see your email coming back on the 12th of November, 2015.---Sure.

I can see the attachment starts, just for your information, at page 26.---Ah, hmm.--- And dot point 1 you've incorporated, "This report has been prepared by an independent external planning consultant on behalf of council."---Yes.

30 Is there any reason why you didn't use the company's name, Planning Ingenuity, in that statement?---I, I had no reason why we wouldn't other than perhaps it not being necessary to tell people who we are. It's just the fact that it was independently assessed but I, I don't think we contemplated whether we should or shouldn't.

And in this draft, page 50,---Hmm, hmm.--- if I could take you to that.--- Yes.

And this is where for the first time, in 3.1.9, I can see reference to - - - ---Yes.

40 - - - "The three-metre rear setback to close street."---Yes.

Having looked at these documents, do you re - recall that issue being raised with you?---I'm not Yeah, and I said earlier that I, I do recall it being raised but I don't know exactly when. It was towards the end.

Right. And do you know who raised it with you?---It was Andrew Hargreaves.

Right. And what did he say to you about the issue?---I, again, I don't recall whether it was an email or phone conversation but it was along the lines of, "Are you aware of the neighbouring proposal?" which is very late and, and in planning terms, it's quite easy, perhaps not in Canterbury, but in most LGAs it's quite easy to search for DAs and you can find out what's happening in the surrounding sites. But when it comes to planning proposals, they're not typically put out there for people to re - review their processing, so there's no mechanism or way that we can go and, and check what's happening on surrounding sites with regards to future LEP or DCP change.

Do you know whether there was an issue about whether that rezoning's imminent?---I don't recall. I, I don't recall the exact status of it at this, at this point. I, I know that it was, it has, I recall seeing diagrams as I said earlier, the three, the three-site link and had some setback issues, so it at least was to a point of being a full proposal,---Hmm, hmm.--- when at one stage it was, it, there was the council looking at it, the Department of Planning looking at it, coming back to council, I think it had been exhibited, I, I can't really recall whether it was 50 per cent of the way through the process or something else.

Is there a certain part of the process where it suddenly becomes relevant to the assessment and has to be taken into account?---As soon as it's placed on public exhibition, yep.

So once it's on public exhibition - - - ---Sure.

- - - then it needs to be taken into account in future plans.---Into account, yep.

I see.---And how far it's, it then progresses down its journey before resulting in a planning change depends on how much weight or imminence you give it.

And is imminent a technical term in planning?---It's not a defined term. It's just, and, and it's very loosely used. Yeah.

Okay. Can I take you to 168 of this bundle.---Sorry?

168.---Okay.

This is an email from Mr Stavis to yourself, dated the 15th of November, 2015, and it's on the Sunday, I think you said to us you were doing some work on this on the Sunday to get it completed.---Yes.

And you see that Mr Stavis has written to you, "Andrew will call you. I cannot stress how important the 9.00am deadline is." Was there some

pressure around getting this done in time?---For me, well, there was, yeah.
At this point, absolutely (not transcribable)

And where was that pressure coming from?---From council, from Spiro. I, I don't think it was really, I mean, in a, Andrew I think was, Andrew Hargreaves is asking me for, to meet deadlines and giving me dates but Spiro was pushing harder than Andrew.

10 Ah hmm. And do you know what the cause of that pressure was?---Not at all. No. Well, he says I think somewhere that perhaps it was, he, he, has, the, the general manager was also watching, was one of the emails.

That the general manager was involved somehow?---Yeah, that's right. Yeah. And to the extent of that, I'm not sure, and whether that's just the general manager overlooking processing and making sure things are moving forward, that had been in the system for five months or more.---Hmm, hmm.--- So, it may have been the case but I didn't really reflect on it too much other than, I need, I needed to get it done.

20 On Page 171, on the 16th of November, 2015.---Ah hmm.--- It's an email from yourself to Mr Stavis.---Ah hmm.--- It says first email - - - ---Yep.

- - - and it attaches a draft for 212-218 Canterbury Road. And is this you, you sending through your final draft?---That's right.

30 Can I take you to page 192, which is part of that document. And I just want to draw your attention to, we, we noted before that there was an amendment suggested to the effect that even if you applied the other controls, a larger FSR would be generated.---Yep.

And I just want to draw your attention to the FSR that had been worked out. It appears that there's an amendment to the document in marked-up changes in the seventh paragraph down, "It should be noted that a proposal which complies with the setbacks, excluding rear setback to draft LEP height and landscaping controls envisaged for the site, an FSR of approximately 5.8:1 would be generated."---Yes.

Did you calculate that FSR?---Yes.

40 Which the result of that if that is that the FSR of 6.1 that was sought would still be a variation to that FSR?---Sure, yep.

So, it was still exceeded,---Yeah.--- significantly even, that FSR?---I wouldn't say significantly,---Right.--- from 5.8 to 6.0.

You don't think that's significant?---Well, in a percentage sense it's, what, 2 per cent? I think it's 4, 2 per cent.

I can't do the maths on my feet, I'm afraid. But in your view, that's not a significant variation?---That's not a, that's not a significant variation, no.

Okay. Do you know whether this matter went to the IHAP?---I believe it did.

Do you know what the result of that was?---No, I don't because I wasn't invited.

10 Right. Okay. Do you know, would it be normal for you to be invited to the IHAP meeting?---Yes.

And do you know why you weren't on this occasion?---No.

You didn't make any enquiries after that about what happened to it?---I, I believe I, I asked whether he would need me there- I - and he said, no, that, I can't, can't recall the exact sequence of events but it is usual process so I asked the question.

20 Yep.---Yep.

But you didn't ask afterwards, after the IHAP meeting had taken place what the outcome was?---No. I, I can't recall whether it was told to me that it was approved. I, I, I, yeah, no. I, I don't recall exactly.

Do you know what the outcome of the DA altogether was?---That's what I'm talking about, no and, and, no.

Right.---Yeah.

30

So you don't know the outcome of the IHAP meeting, whether the IHAP recommended it for approval or refusal?---Yeah.

And you don't know what happened with the DAs at the end of the day? ---That's right.

Okay.---Yep.

40 Can I just show you a document on page 274 of that volume in front of you.---Yeah. Okay.

This is a letter which goes until page 281. It's dated the 27th of November, 2015. ---Right.

It's signed by solicitors from Sparke Helmore Lawyers. I'll just let you flick, flick through that document. I'm just going to ask you if you've seen it before.---I don't recall seeing this.

No? You've never seen it?---I don't recall it, yeah. As I said before, I see a lot of letters but I don't recall seeing this one.

All right. In – All right I'll take you to the next volume.---Sure.

Thank you. And this is volume 28 of Exhibit 67.---Sure. Do you want the other one too? Thanks.

10 All right. And did you ever see what the final report looked like when it went to the council?---I, I don't recall. I don't recall that I looked at it.

I'll take you to page 17 of the volume in front of you.---Sorry, page?

Page 17.---Right. Yes.

This is an extract from the City Development Committee business paper which shows the final report which went to council for 212-218 Canterbury Road - - - --- Planning Ingenuity.

20 - - - and the neighbouring property is quite similar. Does that document look familiar to you at all?---It's familiar but it's the first time I've seen our company name included.

Right. Yes. And you say there wasn't a reason it hadn't been included on the other documents?---No. Not one way or the other we hadn't been asked to or not, you know (not transcribable)

30 Sure. So you haven't seen this version of the report before?---I don't believe I have.

I can't recall exactly. I've looked at the report lots of times.

Sure. Can I take you to page 35.---Yes.

And under clause 4.6 variation there's a statement, "Council has received legal opinions 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." Have you seen that before?---No.

40 That's not something you wrote?---No.

That wasn't part of the reports that you provided to council?---No.

Do you have any view about that statement?---That's wrong.

That's an incorrect statement?---Yeah, that's incorrect. How can - - -

It is a relevant consideration the extent the variation?---Absolutely. Yeah.

That's not something you would have signed off on?---No.

Is it misleading to - - -?---And what you do with it is another thing but it's relevant to, to put there, yeah.

10 Is it misleading to put a statement like that before council? And, and let me clarify, Mr Black. I'm not suggesting that you put that statement before the council.---No, no. No, that's okay. I think it's certainly downplaying to councillors or whoever the audience is that they don't have to be too concerned.

Or the fact that they shouldn't consider it?---Yeah. Yeah, that's right.

I'll just take you to the recommended conditions at the end of this report just so that you can see what they were. Page 66.---Yes.

20 And the recommendation remained for deferred commencement. If you can see that about a third of the way down the page.---Yes.

Which included the condition at condition 81 for the development to be amended to create a three metre setback to its rear eastern boundary in relation to 15 Close Street.---Yes.

So that was the condition that you had included in your draft report?
---That's correct.

30 And just working through these documents. Also provided to council on that day was the outcome of the Independent Hearing and Assessment Panel assessment. So I can take you to page 160.---Yes.

And essentially in relation to 212-218 Canterbury Road the IHAP recommended that the DA be refused and the reasons given were that the proposed development exceeds the maximum permissible FSR, floor space ratio provisions of clause 4.42 of the Canterbury Local Environmental Plan 2012 by over 100 per cent.---Yes.

40 And essentially that the grounds of the objection didn't justify contravening the development standard.---Mmm.

So you weren't aware that that was the Independent Hearing - - - ---No.

- - - and Investment Panel's position?---No.

Do you have a view about their recommendation?---Well, I mean, it's, it's, it doesn't really go far enough I don't think in explaining what the terms are unless that's further on but, yeah, I mean, it's, it's their professional opinion I guess. That's what it is.

Your professional opinion differed to their professional opinion?---Well, that's right and I have presented to Canterbury IHAP previously.---Hmm.--- and I think from memory there was four people on the panel, one's a community representative, one's an architect or a landscaper and then there's a lawyer and a planner. There was five this time round and so I guess they had a differing, a differing view and I would be listening to the view of the lawyer or the planner more than perhaps the other two or three there on the panel.

10

And just for the record, they all voted in favour of that recommendation? ---That's right.

Page 164 just for completeness is the recommendation in relation to 220-222 Canterbury Road.---Yes.

And 4 Close Street and the recommendation again was that it be, the DA for that property be refused for similar reasons.---Yes.

20 Can I take you to page 167.---Mmm hmm. Okay.

Now we looked at a – a – well very briefly the Sparke Helmore letter which you says, you say you don't recall receiving. That's attached to this memorandum - - -

---Sure.

- - - that I'm showing you now.---Okay.

30 Which is dated the 3rd of December, 2015 and was circulated to the mayor and the councillors. It just runs over the two pages. Could you have a quick look at that and tell me whether you've seen it before?---No, I haven't seen this.

Right. In particular I'd like to take you to the fourth paragraph where the general manager who signed off on this memorandum advises that "In addition, since these two DAs were considered by an Independent Hearing and Assessment Panel we have received legal opinion, copy attached, from the applicant's solicitor Sparke Helmore Lawyers dated 27 of November, 2015 which states that increasing the setback from nil to three metres is unreasonable."---Sure.

40

Is that the first time something like that has been raised with you?---Yes.

Did you have a view about the reasonableness or otherwise of the three metre setback?---Well, as I said earlier, I think we were achieving an appropriate relationship of 12 metres between future buildings.

And would a reduction to nil metres have an impact on the neighbouring development?---It would certainly have an impact, yeah.

Would it adversely affect the economic potential of that, of the bowling club site?---I don't know.

10 Could it have an impact on the future yield on that site?---Well, it did, yeah, potentially it could but also if I was on behalf of the bowling club I would be saying that the restriction placed by the building with a nil setback shouldn't be imposition on the bowling club site and its re-development.

They would have to accommodate the setbacks on their land rather than - - - ?---They wouldn't have to. They would have to form an argument to, to try and seek just - a variation.

20 Okay. It would make it more difficult for them to develop their land closer to the other building?---Yeah, and, and as I said earlier, I do recall seeing a footprint design in a through-site link so it's the relationship between that through-site link and the buildings either side of it. It may be the case that the buildings were, sorry, the apartments were more oriented north/south or front/back instead of to the side. So that relationship becomes less critical if there isn't direct overlooking.

30 Hmm, hmm. Can I take you to the, not the next paragraph down but the following, "The external consultant supported the LEP departures but did require the setback from the rear boundary to be increased from nil to three metres as well as to respect the development potential on our adjoining property." Is that, is that an accurate representation of your position?---I'll just read that again.

Yes, of course.---Yeah, that's, that's reasonable.

And the statement that the three metre setback is considered a compromise from the required nine metres under the Apartment Design Guide, was that your position?---Where does it say that?

Just in the, it's in the second paragraph.---Oh, that's not, no, there's no requirement for nine metres.

40 Right.---And in the report I state that the 12 metres is the number we should be aiming for.

Right. So you should be aiming for 12 metres between the two buildings? ---That's right, three and nine.

Yeah. It - was there a setback requirement that there be a nine-metre setback from the boundary?---No, no. Well, the, the concept for the

bowling club site had nine metres and then we were, were suggesting or proposing that three metres should be achieved on, on the development site.

Because then that would be 12 metres altogether?---That's it, yeah.

So that statement's not quite accurate, the three metre setback was a compromise?---Yeah, no, that's, that's not correct.

Okay.---Yep.

10

And this memorandum, just to take you over to the next page, recommends essentially that the setback condition be removed, that there be no setback from the bowling club site.---Sorry, this is a memo to the councillors from the - - -

20

This is a memorandum from the general manager to the councillors in relation to the DAs that were to be considered by council on the 3rd of December, suggesting an amendment to the conditions recommended, from including a three-metres setback from the bowling club site to having no setback from the bowling club site.---Okay.

Do you have a view about that recommendation?---Well, it's, it's surprising, that's my view I guess, that this has all happened.

Right.---Yeah.

30

What's surprising about it?---Well, I mean I thought that we were, we came from a, a good professional standpoint to say that 12 metres should be achieved and even that, even at 12 metres, that's, that was somewhat of a compromise on the basis that, you know, the neighbouring site was giving us more than we were giving them essentially.

Mmm.---So I'm, I'm just surprised by this. It's - to me this is, it's, it's pushing the applicant's case more than I'd usually see. But I wouldn't be privy to this type of communication usually either.

40

Should you be consulted about something like this if you were the person who prepared and submitted the assessment to council?---Well as, as much as we did do the assessment obviously that was overridden by IHAP, --- Hmm.--- and IHAP had made their recommendation as, as they did, and so I guess, I guess because we weren't the people, well, the body that was put in the position of approving or refusing it becomes less relevant to come back to us.

Well, the IHAP didn't have determinative powers - - -?---That's right.

- - - at the time.---No.

It was still the council who would determine it. So the IHAP's, the status of the IHAP recommendation was purely that it was a recommendation.

---Yeah.

And for your information, your report still went to council with those recommended conditions - - -?---Sure.

- - - in it that we looked at earlier.---Mmm.

10 So your report was still there before the council for consideration.---Mmm.

In those circumstances should you have been consulted about the proposed change in condition and the impact it would have on the other recommendations in your report?---I, I, I think to be thorough in the process, yes, we probably should have been spoken to about that.

Right. Commissioner, those are my questions and it's my application that Mr Black can be excused from his summons.

20 THE COMMISSIONER: Okay. Mr Black, thanks very much for coming in this afternoon and for your assistance, and I release you from your summons and you're now excused.

THE WITNESS: Thank you.

THE WITNESS EXCUSED

[5.53pm]

30 THE COMMISSIONER: Anything else?

MS ELLIS: No, thank you, Commissioner.

THE COMMISSIONER: I'll adjourn.

AT 5.53PM THE MATTER WAS ADJOURNED ACCORDINGLY

[5.53pm]



INDEPENDENT COMMISSION
AGAINST CORRUPTION
NEW SOUTH WALES

OPERATION DASHA

REVOCATION OF SECTION 112 DIRECTION

I, Patricia McDonald SC, Commissioner of the Independent Commission Against Corruption, being satisfied that it is in the public interest to do so, hereby revoke the direction made on 7 June 2018 pursuant to section 112 of the *Independent Commission Against Corruption Act 1988* concerning the evidence given to the Commission on that day by Benjamin Black.

Dated: 1 August 2018

A handwritten signature in cursive script that reads 'P. McDonald'.

.....
Patricia McDonald SC
Commissioner