

AUBURN PUBLIC INQUIRY

Private Hearing - Mr Joseph Malouf

On Wednesday, 11 May 2016

Before the Commissioner: Mr Richard Beasley SC

Counsel Assisting: Mr Paul Bolster

Officer Assisting: Mr Darren Sear

1 THE COMMISSIONER: This is a private hearing for the  
2 inquiry into the Auburn City Council. Present in the room  
3 are myself, Richard Beasley, Commissioner of the inquiry;  
4 Mr Paul Bolster, the counsel assisting; Mr Darren Sear, the  
5 investigator and we have summoned for a private hearing  
6 Mr Malouf. Could you tell us your full name, Mr Malouf?  
7

8 MR MALOUF: It's Joseph Vitara Malouf.  
9

10 THE COMMISSIONER: Thank you. And you've brought a  
11 support person here to sit with us during the evidence  
12 taken today. Could you tell us the name of the support  
13 person who's and occupation?  
14

15 MR MALOUF: David Watt. A project manager.  
16

17 THE COMMISSIONER: All right. I'm going to make an order  
18 under section 12 of the Royal Commission Act which applies  
19 to this public inquiry, which is under section 438U of the  
20 Local Government Act that the evidence taken from Mr Malouf  
21 today will be given by way of private hearing and I am also  
22 making a direction that the transcript and evidence  
23 recorded today be restricted from publication to anyone  
24 other than those involved with the public inquiry or from  
25 Mr Malouf, unless I make a different order.  
26

27 All right, Mr Malouf, you've been summoned today to  
28 answer some questions Mr Bolster is going to ask of you. I  
29 understand you want to take an oath on the Bible.  
30

31 <JOSEPH VITARA MALOUF, sworn:  
32

33 THE COMMISSIONER: Is there anything by way of  
34 introduction before I go on?  
35

36 MR BOLSTER: No, no.  
37

38 THE COMMISSIONER: All right, Mr Bolster will ask some  
39 questions. If you don't understand a question, can you  
40 please let us know?  
41

42 THE WITNESS: Okay.  
43

44 <EXAMINATION BY MR BOLSTER:  
45

46 MR BOLSTER: Q. Mr Malouf, you haven't worked for Auburn  
47 Council for some time now. When did you leave?

1 A. 2006.  
2  
3 Q. What have you done, just briefly, since then?  
4 A. I've gone into my own practice as a private certifier  
5 and I mainly contract to other certifiers to do  
6 inspections.  
7  
8 Q. Since 2006 have you done any certifications in the  
9 Auburn Council area?  
10 A. Yeah, I've probably done two or three jobs, small jobs  
11 - granny flats, extensions to houses.  
12  
13 Q. Nothing of a commercial nature?  
14 A. No.  
15  
16 Q. Have you done any certifications where the applicant  
17 for consent or the person who was doing the building was a  
18 member of council?  
19 A. No.  
20  
21 Q. Now I want to talk to you about when you were at  
22 Auburn Council. When you left, what position did you have?  
23 A. I was a building surveyor, not a senior, because I  
24 always wanted to be a senior but didn't get that job.  
25  
26 Q. Who was the senior building surveyor?  
27 A. At the time it was Manuel Gregory.  
28  
29 Q. And how many other building surveyors were there at  
30 the time you left?  
31 A. He was the only one at the time, one, yeah.  
32  
33 Q. So it was you and he?  
34 A. Yes.  
35  
36 Q. And he was the boss and you reported to him?  
37 A. Yeah, well, he was my senior, yes.  
38  
39 Q. I want to ask you about a couple of jobs where the  
40 documents show that you had some involvement --  
41 A. Right.  
42  
43 Q. -- and they're both related to a particular  
44 councillor, Councillor Oueik. Have you maintained any  
45 relationship with Councillor Oueik since you left council?  
46 A. No.  
47

1 Q. Have you ever spoken to him since you left council?  
2 A. No.  
3  
4 Q. On the phone or in person?  
5 A. No.  
6  
7 Q. Has he ever tried to contact you?  
8 A. No.  
9  
10 Q. The first property I want to talk to you about is  
11 14-22 Water Street, Lidcombe; do you remember that?  
12 A. No.  
13  
14 Q. No? Okay, all right. It was a four-storey flat  
15 development in Water Street, near the railway line on one  
16 of those stormwater drainage canals; does that ring a bell?  
17 A. Called "The Corner"? Possibly, and that would --  
18  
19 Q. Let me show you a map. Mr Commissioner, I'm going to  
20 show the witness the plans that we used in yesterday's  
21 private hearing in relation to this matter, it's the same  
22 bundle marked 1 through 9. If you just want to have a look  
23 at those plans. Perhaps the thing that might help you the  
24 most --  
25 A. Have I got the right one?  
26  
27 Q. You have. What might help you the most is if you  
28 were to turn over to - perhaps to page 5. You see there  
29 that the unique feature of - it's this stormwater channel  
30 running around the north-west corner of the building. Does  
31 that ring a bell?  
32 A. No, it doesn't.  
33  
34 Q. No? All right. Well, I think we can proceed  
35 nonetheless because I just wanted to ask you about some  
36 process issues in relation to that development. So if you  
37 could just hand that back to me. There's a bundle in front  
38 of you. If we open that up to page 125, you see there's a  
39 document there headed, "Building Code of Australia Check  
40 Sheet".  
41 A. Mmm-hmm.  
42  
43 Q. It's an 11-page document. If you go forward to the  
44 end, the 11th page, which is on page 136 of the bundle,  
45 you'll see there your signature.  
46 A. Yes.  
47

1 Q. Does that form of check sheet - is that familiar to  
2 you, do you recall using that when you were at council?  
3 A. Yes.  
4  
5 Q. And in what circumstances did you use a check sheet in  
6 that form?  
7 A. Well, it was like a guide, these checklists, which I  
8 would have got from someone in the council, either a senior  
9 or someone in the department to kind of assist me with  
10 having a look at things.  
11  
12 Q. So when you were assessing a building for whatever  
13 purpose - in this case can I suggest it was in connection  
14 with the issue of a construction certificate - you would  
15 use that to check off all of the requirements as far as  
16 council was concerned to make sure that the plans that had  
17 been lodged were compliant; is that right?  
18 A. Well, it was - yeah, it was a guide.  
19  
20 Q. A guide?  
21 A. It was more of a guide because a lot of them were  
22 outdated.  
23  
24 Q. Yeah. Was there a procedure in place at council at  
25 the time to use that particular form?  
26 A. No.  
27  
28 Q. It was just a form you've used yourself?  
29 A. I'm trying to gather as much as I can but the --  
30  
31 Q. Right, right. No, and I don't mean any criticism but  
32 we --  
33 A. No, no, no, it's being a witness.  
34  
35 Q. We've seen --  
36  
37 THE COMMISSIONER: Q. Do you remember who created the  
38 document? Was it council-created?  
39 A. It may have been - I wouldn't remember that. It could  
40 have been before I'd even got the --  
41  
42 Q. Or does it come from the building code, it doesn't  
43 come from BCA?  
44 A. No, it doesn't come from BCA.  
45  
46 Q. No?  
47 A. Someone's obviously had some spare time and sat down

1 and devised it to the best of the --  
2  
3 Q. Someone - some employee of the council, yes,  
4 I see, right.  
5  
6 MR BOLSTER: Q. See at the foot of each page there's a  
7 QAF10 class 2 to 9 checklist?  
8 A. Right.  
9  
10 Q. Do you think that - does that suggest that it may have  
11 been from within council or from outside?  
12 A. It's hard to tell. To - from what I remember, a lot  
13 of certifiers or building inspectors would bring checklists  
14 from other councils with them or new managers would come in  
15 and they'd say, "Let's try a whole new system" and it could  
16 have been something like that at the time which we just  
17 found to use.  
18  
19 Q. You don't have any recollection of this particular  
20 development at all?  
21 A No, no.  
22  
23 Q. Okay, no, no, I understand that.  
24 A. Sorry, man.  
25  
26 Q. I understand that. Now, at that time your duties  
27 obviously extended to issuing construction certificates.  
28 Can you just go back to page --  
29  
30 THE COMMISSIONER: Are you leaving this document or you're  
31 going to come back to it?  
32  
33 MR BOLSTER: No, we're leaving that document but we  
34 will --  
35  
36 THE COMMISSIONER: Q. I just wanted to know, you've  
37 signed it, is the other handwriting on it yours? For  
38 example, page 128, where it says, like, "engineer to  
39 certify" - I think it says, "engineer to certify"?  
40 A. Yeah, yeah, that's mine.  
41  
42 Q. That's you?  
43 A. Yeah.  
44  
45 MR BOLSTER: Yeah.  
46  
47 THE WITNESS: It's --

1  
2 THE COMMISSIONER: Q. So you filled out the whole form?  
3 A. Yeah, I filled out the form.  
4  
5 Q. Yeah, all right, yes. Sorry to interrupt.  
6  
7 MR BOLSTER: Q. Now, if you just go back to 125 and  
8 you'll see facing page 125 is page 124. You see the  
9 construction certificate with your signature on it?  
10 A. Mmm-hmm.  
11  
12 Q. I think if you go back to 123 you'll see the reverse  
13 side of it. You'll see that that's dated 26 April 2006,  
14 you see that on page 124.  
15 A. Oh, sorry, man. Yes.  
16  
17 Q. And you'll see that the check sheet that your  
18 handwriting appears on is the one on 31 March 2006;  
19 correct?  
20 A. Yes.  
21  
22 Q. Does that help you in concluding that you must have  
23 used your check sheet for the purposes of determining the  
24 matters for the purpose of the construction certificate?  
25 A. Yes, well, I would have filled this out before this,  
26 yes.  
27  
28 Q. Yeah, yeah, so that was part of your working papers  
29 that enabled you to issue this document?  
30 A. Well, yeah, I mean, I would have spoken also to other  
31 people but this is like a general thing that we just go  
32 through to kind of give us an understanding of what's  
33 happening but that would definitely be done before this was  
34 issued.  
35  
36 Q. When you issued a construction certificate at that  
37 time, was there any form of peer review by Mr Gregory?  
38 A. I don't remember if it was Mr Gregory or a team leader  
39 or manager but someone would have looked at it or they've  
40 spoken --  
41  
42 Q. Who was the team leader above you and Mr Gregory?  
43 A. I'm trying to remember. I don't remember, I really  
44 don't.  
45  
46 Q. It was in the planning section of the council?  
47 A. Yeah, there was a team leader at one stage, then a

1 manager or Tom - I think Tom Donough was a manager.  
2  
3 Q. Glenn Francis, does that name ring a bell?  
4 A. Glenn Francis, yes, I think he replaced Tom Donough as  
5 a manager.  
6  
7 Q. Do you recall reporting to Mr Francis in relation to  
8 the issue of construction certificates at about this time?  
9 A. I don't recall but - it's possible but I don't recall.  
10  
11 Q. Do you remember who he reported to?  
12 A. The director, I suppose.  
13  
14 Q. Does the name Mark Brisby - does that ring a bell?  
15 A. Yes, yes, Mark Brisby, yeah, yeah, because it was then  
16 Jan McCredie because there was a transition. So Jan  
17 McCredie but it could have been Mark Brisby after;  
18 that's correct.  
19  
20 Q. Did you have anything to do with Mark Brisby when you  
21 were working at Auburn Council?  
22 A. No.  
23  
24 Q. Did you have anything to do with Mr Francis?  
25 A. As my manager, you mean?  
26  
27 Q. Yeah, yeah.  
28 A. Well, just through - do you mean --  
29  
30 Q. Did he talk to you often?  
31 A. Oh, yeah, we were on the same level, yes.  
32  
33 Q. Did he ever talk to you whilst Mr Oueik was present?  
34 A. I don't recall.  
35  
36 Q. Did you ever talk to Mr Oueik at all?  
37 A. Oh, at - on a site or something like that I may have  
38 spoken to.  
39  
40 Q. What did he talk about on the site?  
41 A. Oh, I wouldn't remember.  
42  
43 Q. Was he an easy person to deal with, a difficult person  
44 to deal with or don't you remember?  
45 A. He wasn't anything in particular, there's nothing easy  
46 or difficult. He was a friendly kind of guy, that was all  
47 I remember.



1  
2 Q. Now, at that time were you also responsible for  
3 issuing occupation certificates for developments in Auburn?  
4 A. I think at one stage I was but - and I don't know if I  
5 had delegation down the track, from what I remember.  
6  
7 Q. What was the process you followed before issuing an  
8 occupation certificate in 2001/2002?  
9 A. Well, you do a site inspection.  
10  
11 Q. Why would you do that?  
12 A. To have a look at the building compared to the plans  
13 or if there's any DA conditions that refer to, you know, a  
14 privacy screen had to be built or something like that, so  
15 you would check to see that what was there, the DA  
16 conditions that were referred to had been complied with.  
17  
18 Q. So first step is to look at the DA?  
19 A. Oh, normally do it on site.  
20  
21 Q. On site?  
22 A. Yeah.  
23  
24 Q. So you take the DA with you --  
25 A. Take the plans for a --  
26  
27 Q. -- on site?  
28 A. And had a look through the DA conditions in case  
29 there's something you can see physically, then you'd come  
30 back to the office and go through the DA and then send an  
31 email or a letter.  
32  
33 Q. You've seen the Water Street. If you were doing an  
34 occupation certificate for Water Street, which had quite a  
35 large number of units, you'd go and look in each unit,  
36 wouldn't you?  
37 A. I guess. I mean, I sometimes would go - two of us  
38 would go out there to do final inspections if there were,  
39 you know, units to go through but, yeah, you'd go through  
40 the units to see that there's their smoke alarms or, you  
41 know, those kinds of things.  
42  
43 Q. And after Auburn Central, fire became a bit of an  
44 issue, didn't it, for Auburn Council?  
45 A. Yes.  
46  
47 Q. So you would check, for example, if the consent said,

1 "This is a development of 20 two-bedroom units and  
2 10 three-bedroom units, you'd check that, wouldn't you?  
3 A. Yeah, you possibly could. You might not check every  
4 single room, you know, because you may be looking at the  
5 fire services or measuring a balcony, you might not check  
6 but if there's - you know, if there was two or three units  
7 you would, if there's 50 you might not look at every single  
8 room to see --  
9  
10 Q. Yeah.  
11 A. You know.  
12  
13 Q. If you could just close that folder. I want to ask  
14 you about another property.  
15 A. Sure.  
16  
17 Q. I'll get that put away. I want to give you a bundle  
18 of plans. You see those plans?  
19 A. Mmm-hmm.  
20  
21 Q. This is a development at 40-46 Station Street, Auburn.  
22 Are you familiar with that site, just sitting here today?  
23 A. No.  
24  
25 Q. Have you read anything about it in the press?  
26 A. No.  
27  
28 Q. Has anyone spoken to you about it in the last 12 to  
29 18 months?  
30 A. No.  
31  
32 Q. Now, whilst you're looking at the plans I want to show  
33 you a bundle of documents, it's not a very large bundle.  
34 I'm going to ask you some questions about that.  
35 A. Sure.  
36  
37 Q. And you'll see there the first of those documents is  
38 the determination of the development application for  
39 40-46 Station Road, Auburn.  
40 A. Mmm-hmm.  
41  
42 Q. Now, I want you to go to special condition 34 and  
43 you'll see there - it's on page 11. See there, there was a  
44 condition that, "The dining room walls within units 10, 11,  
45 23, 24, 37 and 38 shall be deleted" --  
46 A. Mmm-hmm.  
47

1 Q. -- "details to be provided with the construction  
2 certificate." Now, you'll see here, perhaps going over to  
3 the first page, that the determination was in February 12,  
4 2001, do you see that there?  
5 A. Yes.  
6  
7 Q. Now, if you can just look at the plans for a moment,  
8 and I'm going to page 1, and you'll see that these are  
9 drawings that are dated 20/11/2000. You see that down the  
10 bottom left-hand corner?  
11 A. Right, yes.  
12  
13 Q. And you'll see next to that date there is a notation,  
14 "Dining rooms nib walls deleted"?  
15 A. Right.  
16  
17 Q. If you just make a note of that for your own purposes.  
18 Now, if you look at units 37 and 38 --  
19  
20 THE COMMISSIONER: Q. Do you know what a nib wall is?  
21 Sorry. Do you know what that term means?  
22 A. Small wall.  
23  
24 MR BOLSTER: Q. A small wall?  
25 A. Yeah.  
26  
27 Q. How high is a small wall? This doesn't go to the  
28 roof, does it, it's a wall from the ground up about 3 or  
29 4 feet?  
30 A. I would have thought --  
31  
32 Q. All the way?  
33 A. -- any wall is a nib because you can (indistinct) put  
34 a beam on a nib.  
35  
36 Q. Right, okay, all right, we might come back to that.  
37 A. All right.  
38  
39 Q. If you have a look at 37 and 38 - units 37 and 38,  
40 they're on page 1 of the plan - you'll see a wall  
41 separating the formal dining area from the living area?  
42 A. Yes.  
43  
44 Q. You see that?  
45 A. Oh, yeah.  
46  
47 Q. Yeah?

1 A. That where he crossed out the --  
2  
3 Q. And you see --  
4  
5 THE COMMISSIONER: That's crossed out.  
6  
7 MR BOLSTER: Q. That's not your writing there?  
8 A. I can't recall.  
9  
10 Q. All right, let's --  
11  
12 THE COMMISSIONER: It's a strange - less than a --  
13  
14 THE WITNESS: It could --  
15  
16 MR BOLSTER: Q. We'll worry about that later.  
17 A. Sometimes we did scratch things out and --  
18  
19 Q. Go over to page 2 and you'll see units 23 and 24?  
20 A. Okay.  
21  
22 Q. It's the same thing?  
23 A. Yep.  
24  
25 Q. You go over to page 3 and you'll see units 10 and  
26 11 --  
27 A. Mmm.  
28  
29 Q. -- it's the same thing, right, and --  
30  
31 THE COMMISSIONER: And you said these are the same date,  
32 they're all on the same date?  
33  
34 MR BOLSTER: They're all the same date, yes.  
35  
36 THE COMMISSIONER: Yes, all right, so --  
37  
38 MR BOLSTER: Q. These are the walls that are referred  
39 to, I want to suggest, in the condition 34 that I showed  
40 you, okay?  
41 A. Yes, yeah.  
42  
43 Q. Now, if you then go over the page, I think if you look  
44 at page 4, there's another map of units 10 and 11 at about  
45 the same time, where the feature's in place for units 10  
46 and 11; that's map number 4.  
47 A. It's --

1  
2 Q. All right. Now, if you go back to the bundle of  
3 documents and you want to turn over the page to page 14,  
4 have a look at the third dot point in paragraph 1. This is  
5 a letter from Rajendra Rajbhandary?  
6 A. Oh, see, he was my senior.  
7  
8 Q. He was your senior?  
9 A. He was my senior.  
10  
11 Q. At that time?  
12 A. Then Manuel became my senior.  
13  
14 Q. Okay.  
15 A. Yeah.  
16  
17 Q. Thank you for that.  
18 A. Okay.  
19  
20 Q. So in April 2001 --  
21 A. Yeah.  
22  
23 Q. -- Rajendra was --  
24 A. I didn't know the dates, that's why, 2001.  
25  
26 Q. No, no, that's --  
27 A. I started then, yeah, I was a - my first job.  
28  
29 Q. No criticism of you. I couldn't tell you where I was  
30 on 2 April 2001, I'm sure about that.  
31 A. Right.  
32  
33 Q. But now that you've seen that, that Rajendra was your  
34 senior?  
35 A. Yeah, at that time, yes.  
36  
37 Q. Manuel Gregory hadn't arrived yet?  
38 A. No, Manuel Gregory --  
39  
40 Q. Was there?  
41 A. He - actually, there was two teams at that stage.  
42  
43 Q. Two teams?  
44 A. Yeah. Rajendra and myself and Anita and Manuel.  
45  
46 Q. Anita who?  
47 A. She had a unusual long name, Ugarkovic, Ugarkovic.

1  
2 Q. Okay, all right. Now, if you go over the page, you'll  
3 see a handwritten memo, is that Rajendra's handwriting?  
4 A. Mmm-hmm.  
5  
6 Q. And you'll see "3. Delete dining room walls six  
7 units"?  
8 A. (No audible response).  
9  
10 Q. Yeah, okay. Now, then if you go over the page to a  
11 construction certificate that Rajendra issued on May 11,  
12 2001 - you see that?  
13 A. Yes.  
14  
15 Q. And it refers to some plans. Now, it was the practice  
16 at that time, wasn't it, for the plans to be stamped once  
17 the construction certificate had been issued?  
18 A. Yes.  
19  
20 Q. If you could just turn over the plans bundle to  
21 page 5, I think you've got that there?  
22 A. Mmm-hmm.  
23  
24 Q. And you'll see on the right-hand side, you'll see a  
25 stamp.  
26 A. Mmm-hmm.  
27  
28 Q. And that's the stamp I was just mentioning and that's  
29 the construction certificate stamp for this matter dated  
30 11 May.  
31 A. Yeah.  
32  
33 THE COMMISSIONER: 2001.  
34  
35 MR BOLSTER: Q. 2001 and you'll see there the OC number  
36 on the stamp has been added in in handwriting, it's 7901?  
37 A. Yes. It's a CC number.  
38  
39 Q. And if you go over the page on the construction  
40 certificate, underneath Rajendra's handwriting you'll see  
41 7901?  
42 A. Yep.  
43  
44 Q. Let me ask you this: at occupation certificate time  
45 would you look at these plans, the construction certificate  
46 plans, when you're certifying for OC as well as the  
47 development plans, you look at both?

1 A. You'd usually look at the plans.  
2  
3 Q. Now, if you look at page 5, which you have in front of  
4 you, of the plans --  
5 A. Yes.  
6  
7 Q. -- have a look, will you, at units 9, 12, 5 and 2.  
8 A. Yes.  
9  
10 Q. You see that the formal dining room is now enclosed in  
11 each of those?  
12 A. On that, yes.  
13  
14 Q. There's no door drawn in --  
15 A. Mmm-hmm.  
16  
17 Q. -- they're now enclosed. If you go back to the --  
18  
19 THE COMMISSIONER: Page 3.  
20  
21 MR BOLSTER: Q. -- development plans at page 3, you'll  
22 see there was no enclosure on the approved development  
23 plan?  
24 A. Oh, right.  
25  
26 THE COMMISSIONER: So the walls have gone off units --  
27  
28 THE WITNESS: Mmm.  
29  
30 THE COMMISSIONER: -- 10 and 11 but there's been --  
31  
32 MR BOLSTER: Yeah.  
33  
34 THE WITNESS: Mmm.  
35  
36 THE COMMISSIONER: -- these additions to - right.  
37  
38 MR BOLSTER: Q. Now, if you just bear with me this will  
39 all come together fairly soon and we'll get to the end.  
40 You'll note for units 10 and 11, which were concerns of the  
41 development consent, those walls have gone --  
42 A. Mmm-hmm.  
43  
44 Q. -- for the CC?  
45 A. Yep.  
46  
47 Q. And it's the same on the other floors, you see there

1 units 23 and 24 on page 6 it had the same problem before,  
2 it's been removed but for units 22, 25, 15 and 18 we've got  
3 a change and we've got a wall now enclosing what's said to  
4 be a dining room.  
5 A. (No audible response).  
6  
7 Q. All right. Now, I wanted to ask you then about some  
8 engineering plans that begin at page 8. You see here these  
9 are plans by Far West Consulting Engineers?  
10 A. Mmm-hmm.  
11  
12 Q. You see that they essentially deal with the same issue  
13 and they were stamped for construction certificate as well?  
14 A. Another one, yes.  
15  
16 Q. At the same time, the same construction certificate.  
17 If you have a look at units 10 and 11, the problem is back  
18 on the engineering plans and if you look at units 9, 12, 5  
19 and 8 - no, no, on the same --  
20 A. Oh, sorry, I've got pages --  
21  
22 Q. The dining room enclosure is not evident, all right?  
23 A. Yes.  
24  
25 Q. Let me ask you this: when there is an inconsistency  
26 between the engineering plans and the architect's plans,  
27 such as that, would that be something that you would pick  
28 up on OC?  
29 A. Probably not.  
30  
31 Q. Which would you go off, the engineering plans or the  
32 architect's plans?  
33 A. The architect's plans would probably be the ones you  
34 go off.  
35  
36 Q. If you could go then over to page 11, there was a  
37 development consent amendment on 21 June.  
38  
39 THE COMMISSIONER: 2001.  
40  
41 MR BOLSTER: Q. 2001 and you'll see there the stamp for  
42 it on the top right-hand corner?  
43 A. Yes.  
44  
45 Q. This is on page 11. Looking at unit 10 and 11, you'll  
46 see the wall's back for the dining room. For 9, 12, 5 and  
47 2 the dining room is back to the way it ought to be. I



1 want you to assume for the purposes of today and for your  
2 evidence that the addition of the walls to units 10 and 11,  
3 to units 23 and 24 on page 12, and 37 and 38 at page 13,  
4 weren't the subject of the development consent amendment.  
5 Something else was - which we don't need to worry about  
6 that for present purposes.

7 A. Yep.

8

9 Q. Then finally, if you go to page 14 and following, we  
10 come to the end of the - the last set of plans, which are  
11 dated October and you'll see there that 10 and 11 are as  
12 per the consent - original consent?

13 A. Mmm-hmm.

14

15 Q. The formal dining rooms on the corner units that we  
16 were looking at before were as per the original consent,  
17 that is, there's no enclosure and that that is common to  
18 all three maps and all three levels. All right, now, where  
19 you come in is this: if you turn over to the bundle of  
20 documents, you'll see that you issued the occupation  
21 certificate on 18 July 2002.

22 A. Sorry.

23

24 Q. Turn over the page, you'll see you've signed it.

25 A. Page 18?

26

27 Q. On page 18 and page 19; okay?

28 A. Okay.

29

30 Q. Now, the problem, Mr Malouf, is this: what was built  
31 was in accordance with the original problematic plans for  
32 each of units - let me get the numbers right - units 10,  
33 11, 23, 24, 37 and 38, they were all built with the wall  
34 across the dining room, effectively converting the dining  
35 room into a third bedroom --

36 A. Right.

37

38 Q. -- and in the case of all of the corner units, the  
39 dining room was enclosed and a door was installed. They  
40 were all done at the same time. Did you notice that when  
41 you did your inspection for the purposes of the occupation  
42 certificate?

43 A. I don't recall. I just - I won't remember.

44

45 Q. If you had noticed that --

46 A. Yeah.

47

1 Q. -- that essentially - just to be fair to you, if you  
2 go over to pages 20 and 21, this is a summary prepared by a  
3 council investigator --  
4 A. Right.  
5  
6 Q. -- in 2008, some years after when this issue had come  
7 to light. You'll see there that, in the case of twenty - I  
8 believe it's 24 of the 41 units --  
9 A. Mmm, yep.  
10  
11 Q. -- a dining room has been converted to a bedroom?  
12  
13 THE COMMISSIONER: At the time of construction?  
14  
15 MR BOLSTER: At the time of construction.  
16  
17 THE COMMISSIONER: Right.  
18  
19 MR BOLSTER: Q. And so I want to suggest to you that if  
20 you had inspected each room of the site at that time, or  
21 even half of them --  
22 A. Yeah.  
23  
24 Q. -- or even a third of them or even a quarter of them,  
25 you'd have picked that up?  
26 A. If I picked it up I would have said something.  
27  
28 Q. I want to suggest to you that you couldn't but have  
29 picked that up at the time, you must have picked that up at  
30 the time? What do you say about --  
31 A. I don't recall, I really don't. I mean, it was in my  
32 first year.  
33  
34 Q. Right.  
35 A. I'm just green as.  
36  
37 Q. 2002?  
38 A. My first year.  
39  
40 Q. When did you start at the council?  
41 A. 2001.  
42  
43 Q. Who asked you to do this?  
44 A. I don't remember, that's the - I don't remember, I  
45 really don't, especially coming at the end of a job at an  
46 OC stage.  
47

1 Q. You appreciate the significance --  
2 A. Of course I do.  
3  
4 Q. -- of it now?  
5 A. Oh, now it would be a whole different story.  
6  
7 Q. 17 years later.  
8 A. Mmm, (indistinct).  
9  
10 Q. You understand this: that the properties were --  
11  
12 THE COMMISSIONER: 14 years on.  
13  
14 MR BOLSTER: Q. 14 years on.  
15 A. Yeah.  
16  
17 Q. The properties were marketed as three-bedroom units?  
18 A. Right.  
19  
20 Q. They were sold as three-bedroom units and the people  
21 who paid three-bedroom unit prices for them were left with  
22 non-complying development. Do you understand?  
23 A. Yes.  
24  
25 Q. And am I right in thinking that this just simply  
26 escaped your attention when you did the OC?  
27 A. Definitely.  
28  
29 Q. Did you go to do the inspection alone or with someone  
30 else?  
31 A. Well, the - I wouldn't remember. It would probably  
32 be --  
33  
34 THE COMMISSIONER: Q. Maybe start with: do you  
35 remember, sitting here now and having been taken through  
36 all of this by Mr Bolster, do you remember doing an  
37 inspection for the purpose of the occupation certificate  
38 now?  
39 A. No. I don't remember doing the actual inspection.  
40  
41 MR BOLSTER: Q. Yeah.  
42 A. No.  
43  
44 Q. Is it possible you didn't do it?  
45 A. No - well, if I'd written somewhere that I've been  
46 there, I would have done it.  
47

1 Q. Yeah.  
2 A. Yeah, no, no.  
3  
4 Q. But you wouldn't have --  
5 A. Oh, no.  
6  
7 Q. -- as a --  
8 A. No.  
9  
10 Q. I want to suggest to you this: as a young, fresh  
11 certifier, you'd have been keen to make sure that this was  
12 certifying development?  
13  
14 THE COMMISSIONER: Compliant.  
15  
16 MR BOLSTER: Q. Complying development, wouldn't you?  
17 A. Yes, but if I didn't know - I mean, I would have went  
18 out there, but you wouldn't issue an occupation certificate  
19 if I didn't go, okay, so --  
20  
21 Q. Yeah, yeah.  
22  
23 THE COMMISSIONER: Q. So that's point one?  
24  
25 MR BOLSTER: Point one, yeah.  
26  
27 THE COMMISSIONER: Q. You would have gone out there?  
28 A. Yeah, would have but - I would have gone out there. I  
29 would have, you know --  
30  
31 Q. You wouldn't take the DA with you?  
32 A. Possibly, yes, I would have because I normally would  
33 take the DA and (indistinct) file.  
34  
35 Q. You wouldn't not take the DA, would you, to something  
36 as large as this - as 12 or 41 units, you would have taken  
37 the DA?  
38 A. Yeah, would have had the DA.  
39  
40 Q. They would have told you it's 12 three-bedrooms and  
41 29 two-bedrooms?  
42 A. Yes - well, yes.  
43  
44 Q. Yeah, okay.  
45 A. I wouldn't have read that though.  
46  
47 MR BOLSTER: Q. The DA - you wouldn't have? What about

1 the --  
2 A. Read the front page.  
3  
4 Q. Yeah?  
5 A. I would have just opened up the plans.  
6  
7 Q. What about special condition 34, "The dining room  
8 walls within units 10, 11, 23, 24, 37 and 38 shall be  
9 deleted"?  
10 A. I don't recall. I mean, I don't --  
11  
12 MR WATT: Who's going to (indistinct) it?  
13  
14 THE WITNESS: If the plan - we're more plans - we're more  
15 go out there and look at a plan then if I have a plan I  
16 would have just walked through, checked smoke alarms.  
17  
18 MR BOLSTER: Q. Which plan would you have used?  
19 A. I don't know, that's the thing.  
20  
21 Q. The most recent, the development plan?  
22 A. They would have - the girl that --  
23  
24 Q. There were many plans on the file, weren't there?  
25 A. The girl would have given me the file.  
26  
27 Q. Which girl?  
28 A. The C - the PA, whoever it may have been, she was  
29 doing the file for the day and she does for all our  
30 inspections.  
31  
32 Q. It would have been that the council file for that  
33 site, would it have been --  
34 A. Yes.  
35  
36 Q. Would have been everything that was on the council  
37 file?  
38 A. Everything, it'd be everything.  
39  
40 Q. So you would have had in front of you all of these  
41 plans?  
42 A. All the plans of - and for that day, or the  
43 inspections for that day, there'd be a whole stack of  
44 things.  
45  
46 Q. You have all of them, you obviously don't open them  
47 all out, I don't - you wouldn't have opened them all out

1 and done the sort of check that we've done here?  
2 A. No way.  
3  
4 Q. Which one would you have looked at?  
5 A. I don't know, I don't remember.  
6  
7 Q. Well, what's your practice now when you do it?  
8 A. Now?  
9  
10 Q. Yeah.  
11 A. Now I'm in charge of everything, the stamping that  
12 goes on, I've - it's my job. I don't take on someone  
13 else's job, that's the only thing, it says that I'd throw  
14 out or put at the old plans now, the file now, and have my  
15 current plans but that's now.  
16  
17 Q. I come to you today and I say I would need an OC for  
18 my development like this, what's --  
19 A. I don't do developments like that, yeah, I just do  
20 houses.  
21  
22 Q. You just do houses?  
23 A. Oh, yeah.  
24  
25 Q. Okay, well, let's do it for a house.  
26 A. I just do houses.  
27  
28 Q. For a house. Which plan do you use?  
29 A. Now I would take the latest plan that I --  
30  
31 Q. The latest plan?  
32 A. The latest plan that I stamped.  
33  
34 Q. Are you able to tell us what your practice would have  
35 been back then?  
36 A. I don't recall, I don't remember.  
37  
38 Q. Okay, all right. I think --  
39  
40 THE COMMISSIONER: Q. Just so that I understand, I just  
41 want to understand, when you say you would have - you've  
42 said you would have gone out and inspected this because you  
43 wouldn't have issued the occupation certificate otherwise.  
44 Are you saying you don't think it was part of your  
45 procedure back then that you would have necessarily checked  
46 that the development was the 12 three-bedrooms and  
47 29 two-bedrooms?

1 A. That's right, back then --  
2  
3 Q. You wouldn't?  
4 A. Back then I wouldn't have. I wouldn't have, no. I'm  
5 just trying to remember that.  
6  
7 Q. I mean, I'm not a certifier, and please respond to  
8 this the way you want to but I'd say, as a non-certifier, I  
9 would have thought that was the first and most fundamental  
10 thing to check, that it had been built - no?  
11 A. No, we'd probably look at what fire - like, the smoke  
12 alarms and door - smoke doors and those kind of thing.  
13 That's more of a planning issue. Sometimes I would have  
14 got in-house engineers sometimes to go out there, have a  
15 look at the store board. Sometimes I'd get a planner to be  
16 able to look at the landscaping and possibly even the units  
17 but I don't remember but we - you know, it was a team,  
18 like, there was a team there. I came on this job, from the  
19 looks of it, at the end, I - you know.  
20  
21 Q. But you're telling us that there's no way that you -  
22 had you have noticed that there were more than 12  
23 three-bedrooms, that's something you would have gone,  
24 "Well, I can't issue an Occupation certificate"?  
25 A. Yeah, oh --  
26  
27 MR BOLSTER: Q. Let me ask you a couple of things. You  
28 say you were new, when did you finish - did you go to  
29 university?  
30 A. I finished in 1992.  
31  
32 Q. 2, yeah.  
33 A. And 10 years I did my own businesses because I  
34 couldn't get a job in council.  
35  
36 Q. What were you doing?  
37 A. I worked at Qantas, I opened up my own business as a  
38 food place and then 10 years down the track I got an  
39 opportunity to do some work experience for free at  
40 Randwick, I took the job on, underwent --  
41  
42 Q. Let me just start - when was that, I just want to get  
43 the timing?  
44 A. So that was 1992 to 2000, I - straight after my  
45 studies I didn't get into this field. It was ordinate 70  
46 back then and then it became BCA.  
47

1 Q. Yeah.  
2 A. I then had an opportunity to do some work experience  
3 at the Randwick Council, which I took on, one day a week.  
4 I got a part-time job there, happy. I wanted a full-time  
5 job, I applied then to Auburn Council, there was a job  
6 available.  
7  
8 Q. When was that?  
9 A. 2001.  
10  
11 Q. 2001?  
12 A. 2001.  
13  
14 Q. What time of the year in 2001?  
15 A. It was January.  
16  
17 Q. In January, so you --  
18 A. Because I remember I had the Christmas break and then  
19 I started.  
20  
21 Q. Okay, you'd been there more than a year?  
22 A. (No audible response).  
23  
24 Q. More than a year, okay. Were you the junior certifier  
25 in --  
26 A. I was the junior amongst the four.  
27  
28 Q. At 18 July - amongst the four? The least experienced?  
29 A. The least experienced.  
30  
31 Q. Had you ever had to certify a building of this  
32 complexity before?  
33 A. No.  
34  
35 Q. Prior to doing this, what was your typical task?  
36 A. Well, there you get anything. You get factory - at  
37 that council you get anything --  
38  
39 Q. Yeah?  
40 A. -- put on your desk but --  
41  
42 Q. Well, had you ever done anything as complicated as  
43 this before?  
44 A. No, and if I had something like that at CC stage,  
45 because that's where you get all nervous because you've got  
46 to go through the building code, I would have got one of  
47 the seniors to go through and have a look at it with me.



1  
2 Q. Yeah, but this one at OC, do you think you'd have got  
3 someone to help you then?  
4 A. I just don't remember. I probably - I would have  
5 thought that I would of.  
6  
7 Q. Right, well --  
8 A. I would have thought that I would of because I might  
9 have not been confident enough.  
10  
11 Q. One year into the job, a junior certifier in July  
12 2002. You're asked to do an OC on a large residential  
13 development in Auburn. Did you know at the time that  
14 Mr Oueik was on the council?  
15 A. Yeah, well, yes.  
16  
17 Q. You knew that?  
18 A. Oh, you know all the councillors.  
19  
20 Q. You think it's possible that you may have asked for  
21 some assistance in relation to this?  
22 A. I just don't - I don't remember. I mean, if I say  
23 yes, I wouldn't be telling the truth, I just don't  
24 remember.  
25  
26 Q. If you were to have asked for assistance, would you  
27 have asked it of your team leader?  
28 A. Yes, team leader or --  
29  
30 Q. Who was that?  
31 A. And that's - no, I would have asked, like, my senior,  
32 Rajendra, if that was in --  
33  
34 Q. Rajendra?  
35 A. -- his day, yeah, it would have been. I would have  
36 asked my senior to come along.  
37  
38 Q. Did you ever meet Mr Oueik on site, like, that you can  
39 recall?  
40 A. I don't remember.  
41  
42 Q. You don't remember?  
43 A. No.  
44  
45 Q. Ordinarily when you're doing an OC is the developer or  
46 the owner or the builder there to walk you through it,  
47 explain it - the process to you?

1 A. Usually, there's a --  
2  
3 Q. Yeah?  
4 A. Yeah, usually they've got to open the doors up and --  
5  
6 Q. More common than not that they would do it?  
7 A. And give you a headache while you're there, yeah.  
8  
9 Q. And, what, tell you their two cents worth, yeah? Make  
10 sure that you notice what they want you to notice. It's  
11 your job to notice the things that they don't want you to  
12 notice; correct?  
13 A. That's right, that's correct.  
14  
15 Q. You don't have any memory of that here?  
16 A. No.  
17  
18 Q. I think earlier on in your evidence you'd mentioned  
19 that you might have gone with someone. Can you rule that  
20 out or you just don't know?  
21 A. I just don't know, I just can't remember that day,  
22 that job, I just can't remember it. There's so many - so  
23 much work going on all, like, you know, there wasn't just  
24 one, we would have got a stack of inspections.  
25  
26 Q. Looking back on it now --  
27 A. Yes.  
28  
29 Q. -- does it strike you as unusual, given the work you  
30 did at council, that you were asked to do this, given the  
31 experience you had at the time?  
32 A. Yes.  
33  
34 Q. Ordinarily, based on your experience of working with  
35 the council from 2001 through to 2006 --  
36 A. 6.  
37  
38 Q. -- who would do the OC for a development of this  
39 scale?  
40 A. Well, you'd think a senior, at least. A senior with  
41 five, 10 years experience.  
42  
43 MR BOLSTER: Anything else?  
44  
45 THE COMMISSIONER: Not from - well, a couple of things  
46 I'll say but no more questions.  
47

1 MR BOLSTER: Yes, no more questions from me, thank you.  
2  
3 THE COMMISSIONER: All right.  
4  
5 MR BOLSTER: Thank you very much, Mr Malouf.  
6  
7 THE COMMISSIONER: Now, Mr Malouf, as I said, there's a  
8 restriction on the evidence given today and the transcript  
9 in terms of publicising it to anyone else, unless I make a  
10 different direction. We may require you - it's not certain  
11 yet - for the public hearing which commences on 20 May and  
12 runs for three weeks and so in case we do, we'll give you a  
13 summons to appear for the public hearing and we'll let you  
14 know whether you are required.  
15  
16 Just one thing I want you to think about though is  
17 that obviously when Mr Bolster started to ask you questions  
18 about both of these matters, I think you, given - and it's  
19 not surprising, given how many years had passed - you  
20 didn't have any strong memory or much memory at all. If,  
21 when you go away today, something occurs to you, as  
22 sometimes it does, having thought about it, "Oh, now I do  
23 remember this about that or remember that" --  
24  
25 THE WITNESS: Yes.  
26  
27 THE COMMISSIONER: -- would you please - have you got  
28 Mr Sear's contact details?  
29  
30 THE WITNESS: Yeah.  
31  
32 THE COMMISSIONER: So if something about today causes a  
33 spark in your memory, please contact Mr Sear and pass that  
34 on, all right?  
35  
36 THE WITNESS: All right.  
37  
38 THE COMMISSIONER: Okay.  
39  
40 MR BOLSTER: Would you like a copy of the documents for  
41 that purpose?  
42  
43 THE WITNESS: Yes, and I can --  
44  
45 MR BOLSTER: But you have to keep them confidential.  
46  
47 THE WITNESS: Oh, no, definitely, it's not something I

1 want to talk about.  
2  
3 THE COMMISSIONER: All right, well --  
4  
5 MR BOLSTER: All right, well, you can have --  
6  
7 THE WITNESS: Yes.  
8  
9 MR BOLSTER: You can have that copy of the plans and that  
10 copy of the (indistinct).  
11  
12 THE COMMISSIONER: So you can write on it "confidential  
13 exhibit". Maybe if you --  
14  
15 THE WITNESS: I mean, if you don't mind me taking them  
16 tonight.  
17  
18 THE COMMISSIONER: No, no, you can take them but we might  
19 write on it, "Confidential exhibit for private hearing  
20 Auburn City Council inquiry".  
21  
22 (Indistinct exchange)  
23  
24 THE COMMISSIONER: Can you just put today's date on that  
25 for me.  
26  
27 MR BOLSTER: What is today's date?  
28  
29 THE COMMISSIONER: 11 May. Just one final thing,  
30 Mr Malouf, this is an administrative investigative inquiry,  
31 not a court.  
32  
33 THE WITNESS: Yes.  
34  
35 THE COMMISSIONER: So given we're not in a court, is there  
36 anything you want to raise now, any concerns or anything  
37 else that you think you can help us with?  
38  
39 THE WITNESS: I just feel that at the time I didn't have  
40 the experience, the know-how. Maybe I was trying to be  
41 bigger than my boots to see that I can get through things  
42 but I really don't feel that I probably should have been  
43 given this and other jobs at all without the backup and off  
44 - well, on the record, whatever you want to call it - my  
45 seniors and that did not mentor or train me the way it  
46 should have been trained. I feel like the system needs  
47 some massive improvements and peer reviewing of things

1 because this stuff shouldn't really happen and I --  
2  
3 THE COMMISSIONER: Were you given any guidelines as to how  
4 to go about issuing a - the steps to take before you issue  
5 an occupation certificate for a large residential flat  
6 development?  
7  
8 THE WITNESS: No. You might get a couple of those  
9 checklists, which are outdated, and whether you use them,  
10 whether you don't or whether --  
11  
12 THE COMMISSIONER: The checklist was for the construction  
13 certificate.  
14  
15 THE WITNESS: Yeah, but sometimes with our checklists we  
16 can - well, I don't think they're - I've got a checklist  
17 now for myself but I don't think there was ever the  
18 checklist back then for an occupation certificate, so you  
19 can --  
20  
21 THE COMMISSIONER: Right.  
22  
23 THE WITNESS: Like that, that we had to use. There may  
24 have been something in the system but nothing was there in  
25 front of you to use.  
26  
27 THE COMMISSIONER: Well, do you recall had you been given  
28 any training, I'll use that word, it may not be the most  
29 precise word, but any training by anyone at the Auburn  
30 Council as to how to go about an inspection for the  
31 purposes of issuing an occupation certificate for a  
32 residential flat building like this?  
33  
34 THE WITNESS: No. I used to say to my senior, "Next time  
35 you go out on a job can you let me know so I can come out  
36 with you to have a look at what you do" and that's  
37 basically --  
38  
39 THE COMMISSIONER: Right.  
40  
41 THE WITNESS: At that time in my job and I tried to get  
42 myself trained.  
43  
44 THE COMMISSIONER: Okay.  
45  
46 MR BOLSTER: All right?  
47

1 THE COMMISSIONER: All right, as I said, if anything -  
2 Mr Sear will give you the documents that I've discussed.

3  
4 MR BOLSTER: Just one more thing.

5  
6 THE COMMISSIONER: Sorry, yeah, go on.

7  
8 MR BOLSTER: You said "on this and other jobs". Were  
9 there other big jobs that you were asked to do that you  
10 felt uncomfortable doing?

11  
12 THE WITNESS: Oh, there would have been other jobs that  
13 would have come --

14  
15 MR BOLSTER: Do you remember?

16  
17 THE WITNESS: I wouldn't remember but it was such a  
18 diverse council, with so many different types of buildings  
19 that - and there was only four of us, you could get  
20 anything on your desk. There was no, you know, "You just  
21 take the small job because you're the junior", you'd get  
22 anything.

23  
24 MR BOLSTER: Okay. All right, thank you. That's all,  
25 thank you.

26  
27 THE COMMISSIONER: All right. Do we might end the  
28 recording now.

29  
30 THE PRIVATE HEARING WAS ADJOURNED ACCORDINGLY

31  
32  
33  
34  
35  
36  
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