



**CORONERS COURT
OF NEW SOUTH WALES**

Inquest: Inquest into the death of John Flamish

Hearing dates: 7 – 11 September 2020
21 – 22 September 2020

Date of findings: 11 December 2020

Place of findings: Coroner's Court, Lidcombe

Findings of: Magistrate Harriet Grahame, Deputy State Coroner

Catchwords: CORONIAL LAW – manner and circumstances of death - death by fire – whether fire deliberately lit - fire doors propped open – fire safety measures in public housing blocks

File numbers 2017/169135

Representation: Mr Chris McGorey, Counsel Assisting, instructed by Mr Paul Crean and Ms Elizabeth Blomfield, Crown Solicitor's Office

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Non-publication orders:

1. Pursuant to the Court's implied power and on the basis of public interest immunity, the Court orders that the information at Confidential Annexure A:
 - a. is to be excluded from the Coronial brief of evidence;
 - b. is not to be disclosed or disseminated to any person; and
 - c. is not otherwise to be published in any medium.
2. Pursuant to the Court's implied power and on the basis of public interest immunity, the Court orders that the information at Confidential Annexure B:
 - a. is to be excluded from the Coronial brief of evidence;
 - b. is not to be disclosed or disseminated to any person; and
 - c. is not otherwise to be published in any medium.
3. Pursuant to the Court's implied power, the Court orders that:
 - a. there is to be no disclosure of, or the contents of, the Confidential Affidavit of Assistant Commissioner Cook sworn 21 August 2020 ("the Confidential Affidavit") beyond the Deputy State Coroner and those assisting the Deputy State Coroner, for the purposes of determining the Commissioner's application on these orders.
 - b. there shall be no disclosure of these confidential orders except in accordance with these orders.
 - c. there shall be no disclosure of these confidential orders except in accordance with these orders
 - d. there shall be no disclosure of the confidential annexures to these orders except in accordance with these orders.

Table of Contents

Introduction	6
The role of the Coroner	6
The evidence	6
John's Background	7
Unit complex	8
Rear tower (block B) residents	9
John's movements on 4 June 2017	9
Cars parked in the carpark on 4-5 June 2017	9
The Fire	10
Sprinklers	10
Deliberately lit	10
Timing	11
Response of John and Ms Ludkin to the fire	11
Emergency responders	12
Cause of death	12
Smoke ventilating into the Rear Block	13
Block B residents	14
Joseph Moujalli	14
Involvement in drug supply	16
Disputes with Mr Nakhla and Mr Toufan	17
Moujalli's movements before the fire	26
Early account of his movements	26
CCTV Timestamps	28
CCTV footage between 12:15 and 1:10 am	29
CCTV footage between 1:15 and 3:20 am	30
CCTV footage between 3:20 and 3:35 am	30
Accuracy of CCTV timestamps	30
CCTV footage between 3:35 and 4:15 am	33
CCTV footage between 4:15 and 5:12 am	35
Conclusion as to movements	36
Mobile phone	36
Samuel Zreika	38
Other people	40
Residents	40
Non-residents	41
Other issues arising from the evidence	44
Police Investigation	48
Fire doors	48
Agency responses to the problem of propped open fire doors	48
The need for recommendations	54
Findings	54
Identity	54
Date of death	54
Place of death	54
Cause of death	54
Manner of death	54
Recommendations pursuant to section 82 <i>Coroners Act 2009</i>	55

Conclusion 55

Introduction

1. This inquest concerns the tragic death of John Flamish. John died on 5 June 2017 in the car park of 22-24 Early Street, Parramatta (the Unit Complex) from the combined effects of smoke inhalation, burns and ischaemic heart disease. The smoke inhalation and burns resulted from a fire that was deliberately lit within the Unit Complex's carpark.
2. Members of John's family attended each day of the inquest. I offer them my sincere condolences for John's tragic death. The circumstances of his death were extremely distressing and it is clear that their grief is profound and ongoing.

The role of the Coroner

3. The role of the coroner is to make findings as to the identity of the nominated person and in relation to the place and date of death. The coroner is also to address issues concerning the manner and cause of the person's death.¹ A coroner may also make recommendations in relation to matters that have the capacity to improve public health and safety in the future.²
4. In this case, there is no dispute in relation to John's identity, or to the date, place or medical cause of his death. For this reason the inquest focused on the manner and circumstances of John's death.
5. Despite an extensive investigation by NSW Police led by Detective Senior Constable Peter Davis, no person has ever been charged in relation to the fire. The inquest sought to test the available evidence in relation to known persons of interest.
6. Another significant issue for the inquest involved the examination of policies and practices relating to the operation of fire doors in public housing unit blocks.

The evidence

7. The court took evidence over seven hearing days. The court also received extensive documentary material, compiled in a twelve volume brief of evidence. This material included witness statements and transcripts of interviews, medical records, photographs

¹ Section 81 *Coroners Act 2009* (NSW).

² Section 82 *Coroners Act 2009* (NSW).

and CCTV recordings. While I do not intend to refer to all of the material in detail in these findings, it has been comprehensively reviewed and assessed.

8. A list of issues was prepared before the proceedings commenced and circulated to the parties. Issues included:
 - a. Was the fire in the carpark deliberately lit?
 - b. If yes to (a), why was the fire lit and by whom?
 - c. Regarding the fire door leading from the carpark into the stairwell leading to units 13-21:
 - i. Did smoke enter the stairwell because the fire door was propped open at the time the fire started?
 - ii. Was there a practice of propping open the fire door before the fire?
 - iii. If yes to (b), have changes been made to fire safety measures/practices at the Unit Complex since the fire to prevent its reoccurrence?
9. Counsel assisting prepared detailed closing submissions which set out a clear summary of the extensive material before the court. I rely heavily on the outline he provided which I accept as an accurate record of the evidence before the court.³

John's Background

10. John is survived by two children, Jennifer and Peter. His wife of 50 years, Daphne, passed away in 2014. John and Daphne operated a trucking business involved in the transportation of sand and soil. John retired in 1987 but remained active in his later years including attending to his business and investment commitments and social engagements. He continued living in the family home in Wentworthville, Sydney, but also spent time in Port Macquarie.
11. On 4 June 2017 he attended the Unit Complex to visit his friend, Rosalind Ludkin, who lived in unit 21. John had known Ms Ludkin since about 2000-2002. He had stayed overnight at her unit.⁴ John was scheduled to undergo a hip replacement operation on 21 June 2017. Although he didn't require a walking stick or frame he was reportedly a slow walker.⁵

³ I thank counsel assisting Chris McGorey for providing a full summary of the evidence which has been used as the basis of these findings.

⁴ Although Ms Ludkin stated the stay overnight was unplanned, DSC Davis notes that John had brought an overnight bag with him: Davis WS 10.09.18 [20], vol 1 tab 7.

⁵ Davis WS 10.09.18 [19], vol 1 tab 7.

Unit complex

12. The Unit Complex is about 10 minutes walk from Parramatta Train Station. It is on a block flanked by the Great Western Highway to its north, the Great Western Highway and Church Street to its east and Marsden Street to its west.⁶
13. The complex is a double brick three-storey building consisting of two towers or blocks.⁷ Each block consists of 3 levels with units on each level. Block B consists of 9 units (three units per level) and is at the north end furthest from Early Street.
14. The blocks are set atop a ground floor car park which cars access from Early Street.⁸ Within the carpark are car spaces and lockable garages for unit residents.⁹ The carpark can be accessed at several points. *First*, via the open car entrance itself. *Second*, via an internal stairwell in each unit block.¹⁰ The internal stairwell provides access at each unit entrance (being the only entry/exit doorway for each unit). *Third*, via a doorway leading from the stairwell to the eastern side of the Complex. From there a person can walk along a path along the side of the building to Early Street.¹¹ *Finally*, via openings positioned halfway along the garage which leads to the western side of the building.¹²
15. The Land and Housing Corporation (**LAHC**) owned the Unit Complex in 2017 and to this day.¹³ As at 2017 the LAHC employees were employees of the Department of Families and Community Services (**FACS**) (now the *Department of Communities and Justice, DCJ*). In 2017 FACS employed persons in the role of *Client Service Officer* for the management and support of tenancies in government housing premises.¹⁴ The Client Services Officer was the complex manager for the Unit Complex in 2017.¹⁵
16. At the time of the fire the LAHC was responsible for building maintenance and repairs. This remains the case today. FACS housing was the agency responsible for the management of tenancies in public housing owned by the LAHC. Since 2019, DJC Housing is the relevant division of the Department of Communities and Justice and LAHC now comes under the Department of Planning, Industry and Environment.

⁶ See Image 1 (Map), tab 210 vol 12 p.1.

⁷ See Image 2 (Photo of front): tab 210 vol 12 p.2; Image 3 (Layout): tab 210 vol 12 p.3.

⁸ PO Heagney WS 15.06.17 [7], vol 1 tab 11.

⁹ PO Singh WS 09.06.17 [7], vol 1 tab 9; PO Heagney WS 15.06.17 [7], vol 1 tab 11.

¹⁰ Davis WS 10.09.18 [9], vol 1 tab 7.

¹¹ Steven Rowe WS 087.06.17 [9], vol 4 tab 53.

¹² Image 5 (John's car): tab 210 vol 12 p.5 (shows John's car parked out front Ms Ludkin's garage space).

¹³ The LAHC is a Public Trading Enterprise established under the *Housing Act 2001* (NSW): P Vevers WS 8.8.2019 [6]-[7] tab 200 vol 10; Kruminis WS 30.7.2019 [6] tab 201 vol 10.

¹⁴ Kathryn Smith was the CSO as at 5 June 2017: P Vevers (DCJ Deputy Secretary) WS 8.8.2019 [8]-[11], tab 200 vol 10; K Smith WS 31.8.2020 tab 207 vol 11.

¹⁵ On 1 July 2019 the LAHC became part of the Department of Planning, Industry and Environment (**DIPE**) and the LAHC's employees became DIPE employees. However, the DCJ retains some responsibility specifically for the provision of supports, services and managing tenancies within the LAHC's public housing portfolio: P Vevers (DCJ Deputy Secretary) WS 8.8.2019 [6]-[7], tab 200 vol 10.

17. The interaction between tenants and the building in which they live requires ongoing cooperation and interaction between the LAHC and DCJ.

18. Both DCJ and the LAHC were separately represented at the inquest. Both DCJ and LAHC can be commended for the constructive manner in which they approached the conduct of these proceedings.

Rear tower (block B) residents

19. As at 4 to 5 June 2017 the following resided in the rear (Block B) tower:

Top Level	Janette Ryan (unit 19)	Steve Rowe (unit 20)	Rosalind Ludkin (unit 21)
Middle Level	Moonsook Joo (unit 16)	Sidholm Nakhla (unit 17)	Nizar (Neil) Toufan with Ches (Jeff) Ram (unit 18)
Lower Level	(unit 13)	(unit 14)	Joseph Moujalli (unit 15)
Ground Level Carpark			

John's movements on 4 June 2017

20. On 4 June 2017 John took Ms Ludkin out for lunch to celebrate her birthday. He dropped her back to the Unit Complex at about 2 pm. At about 3 to 4 pm he returned to the Unit Complex in his car (red Toyota) and parked in the ground car park. Ms Ludkin and John had some alcoholic drinks together in her unit. John stayed the night there and went to sleep at about 8 pm.

Cars parked in the carpark on 4-5 June 2017

21. At about midnight 4 June 2017 parked at the northern end of the carpark was:

- a. A Mercedes Benz sedan 1987 model (rego JY0010) owned by Sidholm Nakhla parked nearest to the stairwell fire door.¹⁶

¹⁶ Davis WS 10.09.18 [265]: Nakhla had owned this since October 2014. He took out insurance for the vehicle in March 2016 and it had been renewed in March 2017 without any alteration.

- b. A Silver Honda Civic (rego ATO09E) parked next to the Mercedes in Ms Youngnam Joo's parking space.

The Fire

Sprinklers

22. There were no fire sprinklers within the Unit Complex carpark. If the Unit Complex was built today sprinklers would be required throughout this building. That requirement was introduced *post* construction of the Unit Complex. There is no requirement for buildings to be retrospectively fitted with measures introduced *post* construction.¹⁷

Deliberately lit

23. Mr Nakhla's car was examined in situ at the scene¹⁸ The fuel cap was in place and closed.¹⁹ The fuel tank was intact which indicates that it was not a cause or contributor to the fire.²⁰ The driver's door was slightly ajar and there was no window glass remaining.²¹ Petrol residue was detected in certain areas and on items but not in significant quantities on or around the vehicles.²² It may be that most of the accelerant was washed away by water from the fire hoses.

24. Test burns were later carried out using cars identical to that of Mr Nakhla. The pouring of petrol down the front windscreen and wiper well and its lighting, with all vehicle doors and windows closed, was considered to produced burns most consistent with that observed *post* fire.²³ Smoke monitoring near the open-air fire showed significant levels of carbon monoxide, nitrogen dioxide, sulphur dioxide, formaldehyde and acrolein. The recorded levels were a low estimate compared with the levels during the fire within the car park. A person within the vicinity would be expected to become quickly disorientated and incapacitated within such an environment.²⁴

25. In the opinion of Fire Investigating Officer Colin Eldridge (NSWFRS), the fire patterns on the Mercedes showed the greatest damage to the front of the vehicle (specifically at the

¹⁷ E Ravino WS 20.8.2020 [17] (note there are certain exceptions to this rule such as in the case of Aged Care Facilities retro-fitted post the Quakers Hill Nursing Home fire.

¹⁸ SC Kennon is attached to the Forensic Evidence and Technical Services Command and formerly attached to the Pemulwuy Crime Scene Unit (Crime Scene Officer).

¹⁹ Kennon WS 20.6.2018 [23.5], tab 184 vol 8; Gardner report photo 1.9 annex 1.

²⁰ Kennon WS 20.6.2018 [28] and [82.3], tab 184 vol 8.

²¹ Kennon WS 20.6.2018 [23.7], tab 184 vol 8.

²² Kennon WS 20.6.2018 [79], tab 184 vol 8.

²³ Note: In the opinion of Robert McKay, based on his inspection of the Mercedes, at the time of the fire all windows were in a raised position and all doors in a closed position with the exception of the front offside door (which was either fully or partially open): see McKay report vol 9. The FIRU's conclusions differ with Mr McKay's opinion but appear consistent with Mr Gardner's opinion.

²⁴ FIRU report 'Fire test report – Vehicle fire tests in open air' dated 28.8.2018 (prepared by Kim Thai) p23-24, tab 196 vol 10.

front passenger end of the car).²⁵ An electrical engineer, Mr John Gardner, inspected the Mercedes and was also present for test burns conducted in March 2018. In his opinion:

- (1) there is no evidence to support an electrical fault as a potential cause of the fire²⁶.
- (2) an inspection of the car indicates the fire likely originated in the left hand side of the front passenger compartment and spread through into the engine compartment or vice versa (no evidence of an electrical ignition within the engine compartment that would have accounted for the fire).
- (3) based on the damage to the battery and the test burns carried out in March 2018, the fire may have been fuelled by a flammable liquid being poured into the plenum chamber from outside the car.

26. Senior Constable (**SC**) Garry Kennon examined the scene post fire. SC Kennon marked on a schematic diagram the 'general' area where, in his opinion, the fire originated (see Figure 3).²⁷

27. I accept their expert opinions and am satisfied the fire was intentionally lit on or around Mr Nakhla's parked Mercedes using an accelerant before spreading to the Honda Civic. The fire caused extensive damage and significant heat and smoke (see Figure 1).²⁸

Timing

28. The building's fire alarms activated at 3:52 am²⁹. Janet Ryan, Ches Ram and Mr Toufan heard a '*loud bang*' or '*boom*' noise and soon after smelt smoke. DSC Davis estimates the fire was lit at about 10 minutes before the fire alarm's activation, being about 3:42 am on 5 June 2017.³⁰ DSC Davis' estimate is consistent with subsequent smoke alarm modelling showing the alarm likely activated within 8 minutes of the fire starting.³¹ The available evidence discloses that the fire was lit on or about 3:42 am or soon after.

Response of John and Ms Ludkin to the fire

29. Ms Ludkin was awoken by John and heard the fire alarm sounding downstairs (which must have been after the alarm activated at 3:52 am). John said '*We've got to get out of here*'.

²⁵ FIO C Eldridge WS [14] tab 204 vol 11.

²⁶ Gardner report [30], tab 195 vol 10.

²⁷ Schematic located at image 8, supp bundle and tab 210 vol 12 p.8.

²⁸ See Images 6-8 (two vehicles), tab 210 vol 12 p.7 (image 8 – can see in the background the front end of John's red Toyota).

²⁹ Davis WS 10.09.17 [89] vol 1 tab 7. Smoke alarm modelling indicates the alarms likely activated within about 8 minutes of the fire starting (possibly as early as 5 minutes after the fire started): Jamie Vistnes FRSNSW Report 3.9.2020 tab p.32 vol 11.

³⁰ Davis WS 10.09.17 [89] vol 1 tab 7.

³¹ Jamie Vistnes FRSNSW Report 3.9.2020 tab p.3 and 32 vol 11.

Ms Ludkin went out on to the balcony to look for the fire. She looked back and realised John had gone.

30. Ms Ludkin went to the unit entrance but became breathless because of the smoke that entered her unit and filled up the lounge room. She closed her front door and returned to her rear balcony to get fresh air and yelled to John, '*where are ya?*'. She heard him call out '*I'm, I'm here*'. It did not sound like John was at the bottom of the stairwell. She tried using the torch on her phone but could not see through the smoke.³²

31. Ms Ludkin once again opened her unit door and called to John but did not hear a response. She could not remain in the doorway because of the heat and smoke. The hallway was 'totally black'. She closed the door and returned to her balcony.

Emergency responders

32. The first Fire and Rescue truck arrived between 3:54 to 3:56 am. The first police responders arrived at 3:59 am. The fire was still going on firefighters' arrival. The fire was extinguished by about 4:20 am. Firefighters found John in an alcove close to the damaged vehicles. Within the alcove was a mattress, old TV, large pain can and other debris (See Figure 2).³³ John was lying on his side facing the side wall in a recovery position. Firefighters carried John outside the Complex (John was limp at time) (see Figure 3)³⁴. Cardiopulmonary resuscitation (**CPR**) was attempted but John could not be revived. He was taken to Westmead Hospital and formally declared life extinct at 7:30 am.³⁵

Cause of death

33. The evidence establishes that John made his way down the stairwell and entered the carpark where the Mercedes was on fire. There was likely little to no visibility.³⁶ It is not possible to find what John's reason for entering the carpark. Possible explanations include:

- a. him entering the carpark to locate and extinguish the fire but ultimately becoming disorientated and overwhelmed by the conditions.

³² Another witness (Rachana Patel) at the unit complex at 27 Great Western Highway (located north of or at the rear of the Unit Complex) heard a female voice shout out, "*John*" 2 or 3 times and also say, "*John, are you okay? John, come back. Call the police*". She also heard voices saying, "*We are lost, we are lost we are lost*". DSC Davis considers Ms Patel heard Ms Ludkin communicating with John Flamish (which corroborates Ms Ludkin's account): Davis WS 10.9.2018 [115] tab 7 vol 1.

³³ FO Geoffrey McAllister told this storage space where John was found: WS 18.06.17 tab 30 vol 2; Photos#17-19, PO Carter, vol 2 tab 28 depict that space.

³⁴ FO Glenn Wilson WS 16.06.17 tab 29 vol 2; FO Adam Honey WS 18.06.17 [10] tab 31 vol 2; Collins WS tab 33 vol 2.

³⁵ DSC Davis WS 10.9.18 [139] tab 7 vol 1.

³⁶ The route taken by John is depicted in Images 9-18 (tab 210 vol 12) beginning on level 3 and heading down the stairwell with the two cars in situ shown in image 15 (red arrow indicates the alcove where John was found) and images 17-18 showing the alcove and rubbish inside.

- b. him entering the carpark intending to move his car; or
- c. him entering the carpark by mistake when he had intended to exit the tower block via the door leading to the ground level but became disorientated and missed that exit.

34. It is also not possible to guess at whether John would have opened the fire door had it been closed or at what stage he became disoriented and then completely overcome by the smoke.

35. On autopsy Dr Pokorny, the pathologist, observed partial thickness burns to John's face, upper arms, upper chest, back and buttocks covering approximately 30% of his body surface area. Bruises and abrasions were seen on both anterior shins possibly sustained when he attempted to navigate the smoke filled carpark. A patterned burn over his left hip and posterior thigh appeared consistent with that of a metal cage from a nearby pedestal fan within the alcove. Soot was detected in John's distal airways to bronchial branches. A toxicological examination revealed a carboxyhaemoglobin of 6% post-mortem and 7% antemortem which is lower than that usually seen in lethal smoke inhalation. It is likely that John was more vulnerable than most to the effects of smoke inhalation because of his ischaemic heart disease and his past double bypass grafts.³⁷ Dr Pokorny recorded John's cause of death as "the combined effects of smoke inhalation, burns and ischaemic heart disease". I accept her opinion.

Smoke ventilating into the Rear Block

36. I am satisfied that the Block B fire door leading into the carpark was propped open by a brick when the fire was lit³⁸ and secondly that there was a practice of propping open this fire door (likely by residents) using a brick from *before* the fire (see Figure 4).³⁹

37. The *self-closing* fire door is intended to prevent the spread of fire and smoke from the car park into the common stairwell and units above.⁴⁰ It maintains tenable conditions within the stairwell so residents can evacuate through the stairwell to the side path. Its efficacy is materially compromised when it remains open (hence the requirement for a self-closing mechanism).⁴¹

38. The impact of the garage fire door being propped open was significant. Smoke from the fire entered the stairwell, ventilated up to the third floor, via that doorway, and entered

³⁷ Pokorny report, tab 6A vol 1.

³⁸ See observation of FIO Colin Eldridge WS 22.5.2018 [7.4].

³⁹ See images 18 and 19.

⁴⁰ E Ravino Supp WS 20.8.2020 [7], R Kanaijalal Pancholi WS 1.8.2019 [7].

⁴¹ E Ravino Supp WS 20.8.2020 [9]-[10].

units on that level. That smoke meant Ms Ludkin and Mr Toufan were each trapped in their respective units. Ms Ludkin called triple zero and reported that she could 'not get downstairs'.⁴² Firefighters used an extension ladder to evacuate residents via their balconies.⁴³ In Ms Ludkin's case, firefighters brought her neighbours, Mr Rowe and Ms Ryan, into her unit and all three were evacuated from her balcony via a ladder.

39. SC Kennon observed Block B stairwell had extensive smoke staining throughout all three levels.⁴⁴ Venting of smoke via the stairwell's external doors and upper window is visible in the photos taken at the scene.

40. It is not established that the propping open of the fire doors caused Mr Flamish's death. It is quite impossible to know whether he would have chosen to enter the area if the door had been closed correctly. What is clear is that the fire door being open allowed an extreme amount of smoke to enter the building.

Block B residents

41. The court heard evidence of various disputes or tensions between Block B residents, in particular the court heard evidence of tension between Mr Moujalli and his neighbours Mr Sidholm Nakhla and Mr Nizar (Neil) Toufan.

42. Mr Nakhla resided alone in unit 17 (Block B second level). He owned the Mercedes set alight. Mr Nakhla has no known criminal history or criminal associations. Mr Nakhla gave evidence in these proceedings and he appeared to be trying to assist the court.

43. Mr Toufan resided on the second level in unit 18 with Ches (Jeff) Ram.⁴⁵ He reported typically keeping to himself and rarely venturing far from his unit except to shop once a week or fortnightly. Mr Toufan also gave evidence, giving a consistent version of events to that which he had given the police.

Joseph Moujalli

44. The court was particularly concerned to review the evidence of Joseph (Joe) Moujalli. Mr Moujalli was residing alone in unit 15 at the time of the fire. He initially lived with Mr Toufan in unit 18 and then squatted in a car garage space in the carpark in about 2011 to 2013. At the time of the fire Mr Moujalli was living on his own in unit 15 which was a unit

⁴² Triple zero transcript of Rosalind Ludkin call at 3:56 am (0439 257 949), follows ROI 05.06.17 transcript tab 36 vol 2; Davis WS 10.09.18 [116] tab 7 vol 1.

⁴³ FO Neilly WS 18.06.17 [10]-[12] tab 32 vol 2.

⁴⁴ Kennon WS 20.6.2018 [54] tab 184 vol 8.

⁴⁵ Mr Toufan had a reputation as a heavy drinker who was (is) abusive to other residents.

leased to someone else. He was a regular user of methylamphetamine ('ice') and regularly supplied it to others.⁴⁶

45. There is no doubting Mr Moujalli was absent from the Unit Complex when the fire was lit. However, he was identified as a person of interest given:

- (1) his conflict with Mr Toufan and Mr Nakhla preceding the fire.
- (2) his movements in the early hours of 5 June 2017 (considered by police as suspicious).
- (3) his contemporaneous account to police about his movements specifically that he was away from the Unit Complex continuously between about 12:30 and 4:30 am (when there is evidence showing he returned to his unit for about 2 hours between 1:15 and 3:20 am).
- (4) his drug associations, which may have included persons prepared to carry out criminal acts for payment.

46. Mr Moujalli participated in numerous interviews with police and willingly gave evidence in the inquest hearing. He has at all times denied any involvement in the fire.

47. Mr Moujalli presented as a poor witness. His evidence was frequently implausible and circular. Numerous issues arose with the credibility of his account, namely:

- (1) he was regularly evasive in his answers;
- (2) he refused to reasonably concede matters even in the face of overwhelming evidence to the contrary (e.g. accuracy of CCTV timestamps or about his movements around the time of the fire) and
- (3) he was at pains to portray himself as a caring and forgiving person who had been unjustly harassed by Mr Toufan and Mr Nakhla. That is so notwithstanding the evidence of his drug supply activities, the impact that had on the Unit Complex and his admitted (initial) agreement to Mr Toufan being assaulted in retaliation for speaking to police about Mr Moujalli.

48. I can place little weight on the various accounts that he has given over the years. I do not accept his evidence unless it concerns an uncontroversial matter or is corroborated by other credible evidence.

⁴⁶ Moujalli began coming to the attention of police in 1995. He has been convicted of drug offences for which he has served sentences of imprisonment (including sentences post the fire): Davis WS 10.09.18 [29], vol 1 tab 7.

Involvement in drug supply

49. Mr Moujalli began living at the Unit Complex in about 2011. He never held a lease for a unit there. He initially resided in Mr Toufan's unit. He and Mr Toufan became friends through Mr Moujalli's employment as a singer in a restaurant.⁴⁷
50. Mr Moujalli then lived (squatted) within a secure garage space within the Unit Complex's carpark. He supplied 'ice' from his garage in this time and hoarded copper, bikes and other scrap items within the garage.⁴⁸
51. In September 2015 Mr Moujalli entered custody for property offences. He was released to parole on 2 May 2016. After his release he stayed for a short time with Mr Toufan in unit 18 and later moved into unit 15. The later unit was leased by Marcus Rash. Mr Rash used 'ice' he secured from Mr Moujalli.
52. In March 2017 Mr Rash was arrested and entered custody although Mr Moujalli continued living in the unit despite not being on its lease. Mr Rash had not returned to the unit by the time of the fire. According to Mr Rash, around the time he entered custody, Mr Moujalli was smoking a significant quantity of 'ice' each day (about 4-grams).⁴⁹
53. People regularly visited Mr Moujalli at all hours of the day and night to get drugs. Mr Moujalli frequently used the Unit Complex as a type of drive through service where people would drive into the carpark, get drugs from him, and drive out.
54. Mr Toufan said residents were reluctant to go into the carpark or outside for fear at encountering people there to buy drugs from Mr Moujalli.⁵⁰ He said people were coming no less than ten times a week.⁵¹
55. Mr Moujalli did not show any concern about the impact his conduct had on other residents. On his version no one else at the complex had issues with him save for Mr Nakhla, Mr Toufan and possibly one other resident.⁵² I do not accept Mr Moujalli's account, it appears clear that his conduct was causing widespread concern in the complex.

⁴⁷ Mr Moujalli sang at restaurant Cocco Cubano where Mr Toufan worked: T51, 8.9.2020.

⁴⁸ Davis WS 10.09.18 [29], vol 1 tab 7

⁴⁹ Rash WS 09.06.17 [13], tab 72 vol 5.

⁵⁰ Toufan T61-62, 8.9.2020.

⁵¹ Toufan T63, 8.9.2020.

⁵² T59, 22.9.2020.

Disputes with Mr Nakhla and Mr Toufan

56. There was a documented history of tension and suspicion between Mr Moujalli, Mr Nakhla and Mr Toufan. The court heard about the following events.

57. **2011 Altercation:** police attended on 13 June 2011 in response to a physical altercation between Mr Moujalli and Mr Nakhla. Each gave a differing account over what occurred. Mr Nakhla said he confronted Mr Moujalli about his suspicion that persons connected to Mr Moujalli had slashed his Toyota sedan's tyres (Mr Moujalli denies involvement in this).⁵³ Charges were laid but later dismissed.

58. **Mr Nakhla's car stolen:** approximately 2012/2013 Mr Nakhla's red Toyota sedan was stolen and no one was ever charged with that theft. Mr Moujalli denies any involvement in that theft and no one was ever charged for it. Mr Nakhla, in October 2014, purchased his Mercedes Benz for about \$1,500.⁵⁴

59. **Mr Nakhla's complaint to Housing:** on 10 February 2017, Mr Nakhla approached the Client Service Officer and complained about Mr Moujalli. She noted that the unit 15 resident was 'dealing drugs'. She attended unit 15 and spoke to 'Joseph' about how he came to be at this unit. It is evident from statements Mr Moujalli later made to police he believed Mr Nakhla and or Mr Toufan were making complaints about him living there and or his drug activities to the Department of Housing.⁵⁵

60. **Petition:** Mr Toufan said a petition being circulated amongst unit residents asked the Housing Commission to evict Mr Moujalli. This likely happened in 2016 and or 2017. Although a record of this petition was not found in the Department of Housing records, at the very least Mr Moujalli believed Mr Toufan and Mr Nakhla were asking people to sign a petition for his eviction (he spoke of this in his June 2017 interviews with police).⁵⁶

61. **Police attendance in May 2017:**⁵⁷ on 14 May 2017 a verbal exchange took place between Mr Toufan and Mr Moujalli. Mr Toufan believed Mr Moujalli was making abusive statements about or to him. Mr Moujalli said Mr Toufan overheard him talking to his cousin, Peter Douwaihi, and wrongly thought he was speaking about Mr Toufan.

⁵³ Nakhla T24, 7.9.2020.

⁵⁴ Nakhla T27, 7.9.2020.

⁵⁵ Smith WS 31.8.2020 [12.4] and [13].

⁵⁶ T14, 22.9.2020.

⁵⁷ The accounts about this incident can be found at Moujalli WS 12.9.2017 tab 41; Toufan ROI 05.06.17 A222-25, A229-30, A238-39, tab 56 vol 4; Nakhla WS 07.06.17 [8]-[12], tab 46 vol 4; Nakhla T31, 7.9.2020.

Mr Toufan then approached him outside his unit and was abusive. Mr Moujalli asked his cousin to come around and explain to Mr Toufan what had occurred which he did.

62. Mr Toufan called the police and two officers attended and spoke to him at his unit soon after. Of most significance is what Mr Moujalli believes was said to police. Mr Moujalli says he heard Mr Toufan tell the police he was 'dealing drugs, had kilos and all sorts of things'. This made him 'very angry'. After speaking to Mr Toufan police spoke to Mr Moujalli and asked him had he been talking 'shit' about a police officer at Parramatta named 'Tim'.⁵⁸

63. The same day Anthony Chahroua visited Mr Moujalli with Marcel Korkis and/or Luke Iannone. He visited to get methamphetamine. Both Mr Chahroua and Mr Moujalli agree there was a conversation between about Mr Chahroua assaulting Mr Toufan. Who initially came up with that idea and what happened afterwards is disputed.

64. According to Mr Chahroua, Mr Moujalli asked him to grab 'Nizar and hit him' because he was 'putting shit' on Mr Moujalli. He understood Mr Moujalli wanted him to 'break his arm or hurt him'.⁵⁹ Mr Moujalli suggested he do this when Mr Toufan was getting his Centrelink money which he did every second Wednesday. Mr Chahroua never intended carrying out the assault but tried to placate Mr Moujalli. He offered to speak to Mr Toufan to resolve the issue but Mr Moujalli made clear he wanted the assault to happen.⁶⁰

65. Mr Chahroua said he saw Mr Moujalli upset, even crying, on more than one occasion when discussing his disputes with other residents.⁶¹ Mr Moujalli complained this resident had in the past worked for him holding his scotch as he sang but was now 'sort of putting it on him and Joe was angry about it...'⁶² Mr Moujalli also referred to that person, 'Nizar', as a 'dog' meaning he was a 'snitch' who spoke to police about their criminal activities.⁶³ Mr Moujalli appeared paranoid believing there was 'some big conspiracy' by people at the Unit Complex against him.⁶⁴

66. On the following Wednesday or Thursday Mr Moujalli called Mr Chahroua and said he'd been "under cameras" expecting the assault being committed. Mr Chahroua understood the 'under cameras' statement to mean Mr Moujalli had intentionally placed

⁵⁸ Moujalli WS 12.9.2017 tab 41.

⁵⁹ Chahroua T158, 9.9.2020.

⁶⁰ Chahroua T159, 9.9.2020.

⁶¹ Chahroua T159, 9.9.2020.

⁶² Chahroua T161-62, 9.9.2020.

⁶³ Chahroua T162, 9.9.2020.

⁶⁴ Chahroua T165, 9.9.2020.

himself in a place where he was recorded on CCTV to give him an alibi. Mr Chahroura told him nobody had said it would happen that day.⁶⁵ Thereafter it was not discussed again.

67. According to Mr Moujalli, Mr Chahroura had become very angry at learning that Mr Toufan had spoken to police. He asked Mr Moujalli 'do you want me to go hit him?' Mr Moujalli agreed to the proposal and suggested he do this Mr when Mr Toufan went to get money from the bank which he did each fortnight on pension day.⁶⁶ Later that same day, after calming down, Mr Moujalli called Mr Chahroura and told him not to go through with it.⁶⁷ He denies ever saying to Mr Chahroura he had been 'under cameras' in expectation of the assault being committed.
68. I do not accept Mr Moujalli's version of events. The motive for Mr Chahroura to instigate and drive this plan, because he was upset Mr Toufan had spoken to police, when there was no suggestion Mr Toufan had mentioned Mr Chahroura to police, is weak. I accept Mr Chahroura's evidence in this regard.
69. Counsel assisting submitted that such a finding is significant. First, this event occurred shortly before the fire. Second, it evidences the magnitude of Mr Moujalli's anger about Mr Toufan and the complaints being made against him (e.g. to involve himself in such a plan). Third, if Mr Chahroura's account is accepted, Mr Moujalli spoke of putting himself "under cameras" to give himself an alibi. Finally, although this event directly concerned Mr Toufan it appears that by this point he viewed Mr Toufan and Mr Nakhla as partners in attempting to get him evicted. I accept counsel assisting's submissions on this matter.
70. ***Mr Nakhla's altercation with Mr Moujalli in May 2017:*** Mr Nakhla was verbally irate at Mr Moujalli in the early hours of the morning in about mid to late May 2017. This followed a male unknown to Mr Nakhla knocking on his door asking for Mr Moujalli. This male was seeking illicit drugs.
71. According Mr Nakhla he said to Mr Moujalli, 'Eff you, Eff Joe. Don't knock on this door anymore. I'm gunna call the police. And I kept yelling and screaming. Neil came out. And then a few minutes later, Joe came and asked me. I said, Listen, if anyone of your mates knock on my door again, I'm gunna call the police. Oh, he says, I dunno. They

⁶⁵ Chahroura WS 22.12.17 [24]-[32], tab 94 vol 5.

⁶⁶ Mr Toufan confirmed it was his practice to walk to his bank every second Wednesday on 'payday' to withdraw money for shopping: Toufan T73, 8.9.2020.

⁶⁷ Moujalli WS 12.09.17 [26], tab 41 vol 3.

mistaking this and that. I said, It's not my business. I'm gunna call the police.'⁶⁸ Mr Nakhla said he did call the police about the persons who he believed were attending to source drugs from Mr Moujalli. Mr Nakhla said he did so 'a lot of people using drugs and making noise, so I called the police and I told the Housing and he got angry about that, why I called the police'.⁶⁹

72. According to Mr Moujalli, he heard arguing in the stairwell about 3 or 4 am. He went outside the unit and saw a male he knew as 'Ali' outside Mr Nakhla's door. Mr Nakhla was very angry at being disturbed. Based on statements made by Mr Moujalli immediately after the fire he, at least, believed Mr Nakhla had made complaints to police about him.

73. **Mr Toufan's warning to Mr Nakhla about Mr Moujalli:** according to Mr Nakhla, a few days after the police attended on Mr Toufan, Mr Toufan said to him 'Joes is going to get you because you always call the police and housing and he doesn't like it'. Mr Nakhla understood from what Mr Toufan said that Mr Moujalli might get a drug customer to take care of Mr Nakhla for \$100.⁷⁰

74. According to Mr Toufan, Mr Moujalli mentioned to him his frustration at the trouble Mr Toufan and Mr Nakhla were causing him. Mr Toufan became concerned at what Mr Moujalli might do which is why he warned Mr Nakhla to look out for himself.⁷¹

75. According to Mr Moujalli, he spoke to Mr Toufan about a torch he had loaned Mr Nakhla and wanted returned. He said Mr Nakhla '...came to me, said he went to the police, maybe he talk bullshit about me, 'cause maybe he talk bullshit about me, I want this light. Look at me. Simple. I want this light now. 'Cause he likes it, I don't want him to have it....'⁷²

76. Even accepting Mr Moujalli's account about what was said, it is further evidence of his ill feeling towards Mr Nakhla in the month before the fire.

77. **Mr Moujalli's Westpac card found in Mr Nakhla's boot in May 2017:** about two weeks before the fire Mr Nakhla found Mr Moujalli's Westpac Bank card in the boot of his Mercedes. It was sitting on top a white rag. Mr Nakhla regularly moved tools from his boot and believes he would have noticed it had it been there at an earlier time.

⁶⁸ Nakhla ROI 05.06.17 A732-36, tab 45 vol 4.

⁶⁹ Nakhla T28, 7.9.2020.

⁷⁰ Davis WS 10.09.19 [40], tab 7 vol 1

⁷¹ T66-67, 8.9.2020.

⁷² ROI 7.6.2017 A737 pg.908.

78. According to Mr Nakhla, he took the card to Mr Moujalli's unit and told him about where he had found it. Mr Moujalli had two males with him at time. Mr Moujalli denied any knowledge of how this occurred. Mr Nakhla then said, 'Well, I found it. Do you want it or do you want me to call the police?' to which Mr Moujalli replied, 'Okay, I'll take it, but I swear I've got nothing to do with'. Mr Nakhla ended the discussion stating, "Okay, but please stay away from my stuff, my garage and my car".⁷³

79. According to Marseil Korkis, while visiting with Mr Chahroura, Mr Moujalli said, 'the neighbours are harassing me'. When asked what he meant, Mr Moujalli said 'The neighbours are harassing me. They just brought my key card. I don't know how they had my key card' and 'They're harassing me. I'm having trouble with them. I've got to move out. I have to move'.⁷⁴ Mr Moujalli was 'stressed' when he said this.⁷⁵

80. According to Mr Moujalli, Mr Nakhla came to his unit with the card. Mr Nakhla was angry about it. To this day he does not know how his card ended up in the boot but suspects someone tried to set him up (what reasons they would have for doing so is not known).⁷⁶

81. **Incident on 2 June 2017:** on Friday 2 June 2017, two days before the fire, Mr Nakhla had a brief exchange of words with Mr Khaled Haddad in the Unit Complex carpark. When Mr Nakhla was driving out of the carpark to take his sister home and Mr Haddad was in the carpark, in his car, sourcing drugs from Mr Moujalli. Mr Nakhla thought Mr Haddad was inappropriately staring and swearing at him and vice versa. Mr Moujalli was standing at Mr Haddad's driver's side door. Mr Nakhla momentarily stopped his car asked Mr Moujalli 'what's going on'. Mr Moujalli replied to the effect, 'nothing Sid, I'm sorry'.⁷⁷

82. According to Mr Moujalli, after Mr Nakhla drove off, Mr Haddad said to Mr Moujalli he was 'gunna hurt [Mr Nakhla]...' and '...Should I...take his car...'.⁷⁸ Mr Haddad had two weeks earlier, when he heard Mr Nakhla had spoken to police (presumably because Mr Moujalli told him that), said 'Should I burn his car, no burn, he said, I take his car...'.⁷⁹

83. Mr Haddad, in his evidence, did not deny the exchange with Mr Nakhla but denied having any involvement in the fire or knowing who did cause the fire.

⁷³ Nakhla T34, 7.9.2020.

⁷⁴ Korkis T93, 8.9.2020.

⁷⁵ Korkis T94, 8.9.2020.

⁷⁶ T63, 22.9.2020.

⁷⁷ Nakhla ROI 05.06.17 A212-14, A620-22 and A640, tab 45 vol 4.

⁷⁸ Moujalli ROI 05.06.17 A317-19, A424-433, A433-50, A710-44, tab 38 vol 3.

⁷⁹ ROI 5.6.2017 A424 pg.673 and A719-727 pg.703.

84. **Overall:** Mr Moujalli made several statements in his interviews with police that are telling about his feelings towards Mr Nakhla at the time of the fire, including:

- (a) Mr Nakhla was '...very angry man...he talk to me, say good morning, he doesn't even put his eyes in my eyes, respect for you...'⁸⁰
- (b) '...I stop people to hurt him lot of times, 'cause he's been bit tough with them each time he see, anyone, ah, he's been bit rude, *by lookin' at them like he's the boss of the building*. That's his wrong. But respect, to me, is more important than what he do.'⁸¹
- (c) '...That's one of the big reason he hate me. Because he trying to put things on me, stolen things, and the sergeant saw him. Even Neil, number 18, the one who stuck with him now, for show-off does show off, and I am the enemy, I am the one feed them, I am the enemy. Yeah, he saw everything in his eyes. He said to me, Look how shit person he is, Sid. I never saw someone like him in my life, he is saying. Now they're together....*And they try to let people sign on paper*, Sid and Neil...they signed against me to, they kick me out 'cause I'm a criminal...'⁸²
- (d) '...I just run away from my place, and, yes, 'cause these people are very annoying, 17, 18, they put things on me, bullshit, and I tried to run away much I can, and I love to ride the bike...'⁸³
- (e) regarding Mr Nakhla as compared with Mr Toufan – 'the different is, Sid knows how to write his name...Neil never been in school. You don't blame him so much.'⁸⁴
- (f) 'I don't know why the housing don't maybe they think I'm bad guy. 'Cause Sid, he always talk to them, and he tell them, they believe him. 'Cause he study law, and, he just read the law to used against simple people, to put his anger on them. 'Cause he have anger and hate, he's, he hate his self. He all, I always do good by him, and he always do that, the opposite, and I don't know why. 100 per cent, people knows in the building, everyone knows.'⁸⁵
- (g) 'Ah, there is nothing between me and Sid, ah, bad. From my side, it's a clear. If I want to do something, I will do it, after what they done, bullshitting to police. - - - ...I'm not [angry at Sid], but what's make me angry is, he, his anger, like, I can't

⁸⁰ ROI 5.6.2017 A1250 pg.753.

⁸¹ ROI 5.6.2017 A505.

⁸² ROI 5.6.2017 A84 pg.843.

⁸³ ROI 5.6.2017 tab 38 A62-pg.637.

⁸⁴ ROI 7.6.2017 A88 pg.844.

⁸⁵ ROI 7.6.2017 A60 pg.634.

handle always put things on me... and - - - Of course [I am angry at Sid], when I come say to him hide your car, what's this, why he come to me and stab me seven times, and I hold his hand , Sergeant saw me holding his hand, they arrest me, 'cause I'm on bail, and save him in court, saying he all tried to open his car, and God forgive what happened before the basement, before Sergeant saw us . . . stabbed me seven times, Indian people are witness. When you forgive person like that, and he's keep, and he say, I swear to my mother, I, if I die, I want to kick you out of, for nothing, no reason . Depends his mood. Ah - - -⁸⁶

85. Some of his statements in evidence are also telling:

- (a) '[why he rode around in the early hours]...If you know what's going on in that building ma'am everyone will get away if someone doesn't want trouble. [Sid and Neil] they're making trouble, making stories, making things and I didn't want that at all, that's the pressure I'm talking about - - - Ever[y] night there is pressure, yes - - - Yes because any person who comes to the building they think he is coming to see me about drugs, even if the person is not coming to see me they make up stories about them...'⁸⁷
- (b) '[whether he was worried about being evicted from the Unit Complex] I don't want to because I've been there for seven years - to stay seven years there that means *there is no problem only from them.*'⁸⁸

86. Notwithstanding the above Mr Moujalli repeatedly played down the level of ill feeling he had for Mr Nakhla *before* fire. That includes:

- (a) his description of his relationship with Mr Nakhla in 2017, before the fire, as being '*an ordinary relationship*'.⁸⁹
- (b) Despite believe Mr Nakhla looked down at him acted as if he was in charge of the Unit Complex⁹⁰ and was causing trouble for him regarding persons visiting to buy drugs, Mr Moujalli said he wasn't angry at Mr Nakhla and 'he wasn't creating problems for me, the people who were coming to see me were the ones creating problems'⁹¹

87. Mr Moujalli gave evidence (at T18, 22.9.2020) that:

⁸⁶ ROI 5.6.2017 tab 38 A1265-1268 pg.756-57.

⁸⁷ T7-8, 22.9.2020.

⁸⁸ T59, 22.9.2020.

⁸⁹ T8, 22.9.2020.

⁹⁰ T11, 22.9.2020.

⁹¹ T12-13, 22.9.2020.

Q. Mr Moujalli, as you believed it people didn't take Neil seriously in that unit complex, he was someone who was known for drinking, yelling out?

A. INTERPRETER: Yes.

Q. But Sid is a different story, isn't he?

A. INTERPRETER: Yes, yes you can hold a conversation with him.

Q. People took Sid seriously in the unit block, didn't they?

A. INTERPRETER: Yeah, yeah, he is a respectable man.

Q. Sid is educated?

A. INTERPRETER: Yeah, of course he is.

Q. So what I am suggesting when you say Sid knows how to write his name is different when Sid is going around with a petition asking people to sign it to get you kicked out that's a far different story to what Neil was doing, wasn't it, people are going to listen to Sid?

A. INTERPRETER: Yes.

Q. And that made you angry, didn't it?

A. INTERPRETER: *I don't get angry, I get angry a little bit and then I forgive people.*

88. Further at T38-39 (22.9.2020):

Q. So when I ask you about Sid getting people, you believe him, is asking people to sign a petition to get you kicked out, yes?

A. WITNESS: Yes.

Q. He's come up and told you he's gone to the police and spoken about ice dealing, yes?

A. WITNESS: Yes.

Q. You were angry weren't you?

A. WITNESS: Yeah I'm angry.

Q. With Sid?

A. WITNESS: *If I'm angry I forgive, I told you--*

Q. You were angry with Sid, yes or no?

A. WITNESS: *Of course, of course I was angry with Sid.*

89. Mr Moujalli then gave evidence that:⁹²

⁹² T51-52, 22.9.2020.

Q. Then goes on "Right, so the fact that he blames you for certain things?" and you go on to say "For everything." yes?

A. WITNESS: Yes.

Q. "Does that anger you, does that make you feel angry towards him?" "Of course." yes?

A. WITNESS: Yes.

Q. So at the time of the car being burned you were angry at Sid, weren't you?

A. WITNESS: Yes.

Q. He was blaming you for everything in the unit block, yes?

A. WITNESS: Yes.

Q. He acted like the owner of the building?

A. WITNESS: Yes.

Q. He was trying to get people to sign a petition to get you kicked out you thought?

A. WITNESS: Mm.

Q. He was talking to housing you thought, yes?

A. WITNESS: Yes.

Q. And he told you he was speaking to the police?

A. WITNESS: Yes.

Q. About ice dealing in the unit complex?

A. WITNESS: Yes.

Q. You thought he was telling stories about you, didn't he?

A. WITNESS: Yes.

Q. And you were angry with him?

A. WITNESS: *Not very angry.*

Q. None of that angers you at all, really?

A. WITNESS: Anger is about Neil, *not about Sid at all.* Sid hears things, when I see him different, when he say hello and I say hello to him before get, that's it, I don't--

90. I do not accept Mr Moujalli's evidence in relation to his feelings towards Mr Nakhla. I had the opportunity to observe him giving evidence over two days. He appeared to significantly downplay his antagonism towards Mr Nakhla. I am satisfied that Mr Moujalli, in the weeks preceding the fire, was angry about the complaints being made

by Mr Nakhla and Mr Toufan. It may be that his stress, anger and judgment was further aggravated by his 'ice' use at that time.

Moujalli's movements before the fire

91. Mr Moujalli says he saw Khaled (Haddad) and Zreika talking⁹³ on the street out the front of the Unit Complex (Early Street) on the night before the fire (Sunday 4 June 2017). He says Khaled was sitting in his silver Mazda and Mr Zreika was standing next to the car talking to him. Counsel assisting submitted that other evidence makes it likely that Mr Zreika did speak with Mr Haddad on Early Street between 8 and 9 pm on 4 June 2017.⁹⁴ That is so despite Mr Zreika's denials to the contrary.⁹⁵
92. At 11:19 pm, Mr Moujalli sent a text message to a Kendall Cochrane. Ms Cochrane is not suspected to have involvement in the fire. She had purchased or sourced 'ice' off Mr Moujalli *before* and *after* the fire. The message read: *'if u can not come to me am cmin to you to get dat. 100 c you soon its my money its up to me not up to you'*⁹⁶. Ms Cochrane replied at 11:21 pm *'U know I get paid after midnight so dnt start talking anything yet OK thank you'*⁹⁷.
93. At 11:37 pm, Mr Moujalli called the mobile phone used by Mr Zreika without success.⁹⁸
94. At 11:38 pm, Mr Moujalli called 0403 890 913 (saved in his contacts as 'Danyyy'). Mr Moujalli states he later visited his friend 'Danny' sometime between about 1 and 2 am on 5 June 2017 (discussed below).
95. At 12:01 am, Mr Moujalli again called Mr Samuel Zreika's mobile phone without success.⁹⁹

Early account of his movements

96. Mr Moujalli voluntarily participated in a record of interview on 5 June 2017 (**ROI 5.6.2017**) and a videoed walkthrough on 16 June 2017 (**Walkthrough 16.6.2017**). In

⁹³ Moujalli ROI 05.06.18 A451-52, 452-54, and 495-96.

⁹⁴ T205-06, 10.9.2020.

⁹⁵ This includes (a) call logs showing Zreika called Haddad's phone at 8:50 pm: Davis WS 10.09.18 [446] tab 7; (b) at 8:33 pm a car with rego CH-65-AV (Haddad's rego) read by a Highway Patrol vehicle's automatic number plate recognition on Church Street, Parramatta (between Great Western Highway and Early Street) putting it near Early Street, and (c) Later a vehicle seen leaving Early Street on CCTV camera in Marsden Street at about this time similar in appearance to Mr Haddad's car (in DSC Davis' opinion): Davis [4447] tab 7 vol 1).

⁹⁶ Davis WS 10.09.18 [53] & [528], vol 1 tab 7.

⁹⁷ Davis WS 10.09.18 [55] & [529], vol 1 tab 7.

⁹⁸ Davis WS 10.09.18 [607], vol 1 tab 7.

⁹⁹ Davis WS 10.09.18 [59] & [609], vol 1 tab 7.

these accounts he maintained he was continuously away from the Unit Complex between about 12:30 am and 4:30 am¹⁰⁰, namely:

- (1) he left between about 12:30 and 1 am for a ride on his push bike¹⁰¹. He left via the side of the building (not through the internal stairwell to the carpark).
- (2) after riding a little way along Early Street, he returned to his unit to get his jacket. He left his bike under the stairs on the side of the building (not in the carpark).¹⁰² He got his jacket (Fluro yellow) and then returned to the carpark and rode out.
- (3) soon after exiting onto Early Street (on the second occasion) he saw a van turn into Early Street. He realised his friend "Nikko" was driving (he knew Nikko through another acquaintance, Paul Adair). Nikko was later identified as "Nick Shaw". Mr Shaw pulled over in the street and they briefly spoke before proceeding on their separate ways.¹⁰³
- (4) he then rode to a friend's house ('Danny') in Rosehill (which he showed police on 16 June 2018 was at 2 Riverview West, Rosehill) via Noller Parade.
- (5) he went there to collect batteries for a drill he had loaned Danny.¹⁰⁴ As at 5 June 2017 he estimated he got to Danny's place about "1' or '1:30' because he had gone '*straight to him*' from his place¹⁰⁵
- (6) Danny said he didn't have drill (it was in van at cousins).¹⁰⁶ While there Danny gave him some '*ice*'. Their interaction was relatively brief.
- (7) he fixed his bike seat briefly shortly after speaking to Danny.¹⁰⁷
- (8) he then rode to a friend's "Heritage" house in the CBD area to source '*ice*'.¹⁰⁸ After knocking he had second thoughts owing to the time and left.¹⁰⁹
- (9) then he rode to Charles Street, riding down it (towards Parkes Street) past the Police Headquarters.¹¹⁰

¹⁰⁰ ROI 5.6.2017 A52.

¹⁰¹ Moujalli Dec 2017 ROI Q/A24, vol 3 tab 44.

¹⁰² Moujalli Dec 2017 ROI Q/A35-36 tab 44 vol 3.

¹⁰³ ROI 5.6.2017 tab 38 A539 and 543.

¹⁰⁴ ROI 5.6.2017 tab 38 A88-98.

¹⁰⁵ ROI 5.6.2017 tab 38 A144 and 186.

¹⁰⁶ ROI 5.6.2017 tab 38 A142.

¹⁰⁷ In the walkthrough he estimated he fixed his bike for about 10 minutes before setting off again.

¹⁰⁸ ROI 5.6.2017 tab 38 A233.

¹⁰⁹ ROI 5.6.2017 tab 38 A164.

¹¹⁰ ROI 5.6.2017 tab 38 A243-46.

- (10) he then rode to the Multi-Storey Secure Carpark located between Wentworth and Church Streets just north of Parkes Street.¹¹¹ In the ROI 5.6.2017 he said he got there about 2 am.¹¹²In the video walkthrough 16.6.2017 he said he thought he was there between 3 to 3:30 am.¹¹³ He locked his bike inside the carpark (under camera) and went for a short walk as was his practice to do every night.¹¹⁴ He returned to his bike about 10 minutes later.¹¹⁵
- (11) he continued riding around the Parramatta area.
- (12) at some point he rode south past Harris Park Train Station time he ended up at the Isuzu or Volkswagen car yard on Church Street.¹¹⁶ His friend 'Wally' worked there as a security guard. Wally had let him take copper from the bins. It turned out Wally wasn't working that night, but his Wally's nephew was.¹¹⁷
- (13) when he returned to the Unit Complex at about 4:30 am,¹¹⁸ firefighters and police were already at the scene in response to the fire.

97. Although he said he looked for copper while out on his bike he never located any on the morning of the fire. Had he found some he would not have carried it back to the unit on his bike. His practice was to hide it to collect later on with a car.¹¹⁹

98. Mr Moujalli told the police they could find footage of him at various places away from the Unit Complex at the time of the fire.

CCTV Timestamps

99. Mr Moujalli was captured on numerous CCTV cameras in and around the Parramatta area between 12:30 and 4:30 am. Several CCTV stills were tendered and shown to Mr Moujalli when he gave evidence.¹²⁰ He is readily visible wearing a fluoro-yellow hoodie with navy blue flashings and a fluoro-green jacket.¹²¹ Mr Moujalli does not dispute it is him seen in the footage or stills. He did dispute the accuracy of time

¹¹¹ ROI 5.6.2017 tab 38 A253-62, A366-72.

¹¹² ROI 5.6.2017 tab 38 A253-62, A366-72.

¹¹³ Walkthrough transcript tab 39 vol 3 pg.937; video footage see 6th video (S1090006.MP4) and 7th video (S1090007.MP4).

¹¹⁴ ROI 5.6.2017 tab 38 A370.

¹¹⁵ ROI 5.6.2017 tab 38 A377-78.

¹¹⁶ ROI 5.6.2017 tab 38 A267-8, A2974.

¹¹⁷ ROI 5.6.2017 tab 38 A51-52, 278-79.

¹¹⁸ ROI 5.6.2017 tab 38 A383-85.

¹¹⁹ T10, 21.9.2020.

¹²⁰ CCTV stills isolated by police (tab 216). An in depth analysis of CCTV footage is contained in DSC Davis' statement dated 10 September 2018 (at [59]-[104], [117]-[135]).

¹²¹ As described by him in ROI 5.6.2017 A200-206 and A205-15.

stamps of some footage and stills between about 1 am and 3:30 am (scope of this dispute is set out below).

CCTV footage between 12:15 and 1:10 am

100. Mr Moujalli left the Unit Complex on his bike at about 12:15 am. After leaving the Unit Complex he headed in an easterly direction to Early Street, onto Church St and then towards to the Church Street/Parkes Street intersection.
101. At 12:16 am he was captured on CCTV passing the PJ Gallagher's Hotel at that intersection.¹²²
102. At 12:19 am he was captured riding along Parkes Street past Anytime Fitness heading in an easterly direction. Mr Moujalli did not dispute it was him depicted in these images or the accuracy of their timestamps.¹²³ He estimated it would have taken him between 6 to 8 minutes to ride from Early Street to Danny's residence which fits with the timestamps shown on these stills.¹²⁴
103. At 12:30 am, Ms Cochrane sent Mr Moujalli a text message '*C u soon*'.¹²⁵
104. Mr Moujalli's meeting with Danny must have occurred between 12:19 am, when seen heading past Anytime Fitness, and 1:02 am when he rode past the Albion Hotel.
105. At 1 am, Mr Zreika called Mr Moujalli's phone (0402 825 877) (**Moujalli's 877 phone**) but did not get through.
106. At 1:02 and 1:03 am, CCTV cameras at the Albion Hotel (corner of Harris and George Street) and Little Caesar's Pizza Shop (George Street), captured Mr Moujalli riding past on his bike¹²⁶ (see Figure 5).
107. At 1:10 am, CCTV cameras captured Mr Moujalli riding south down Anderson Street. He then entered the rear of a car yard straddling Anderson and Church Streets. This route took him to Church Street just opposite the entry to Early Street (see CCTV still Figure 6 and map of route Figure 7).
108. Mr Moujalli accepts it is him seen in this footage and this was a route he typically took when returning to his unit from the Parramatta CBD area.¹²⁷ He wavered between accepting that the timestamps showed he had returned to his unit at about 1:10 am

¹²² CCTV still tab 216 vol 12 pg.3.

¹²³ T12-14, 21.9.2020.

¹²⁴ T34, 21.9.2020.

¹²⁵ Davis WS 10.09.18 [68] & [531], vol 1 tab 7.

¹²⁶ Davis WS 10.09.18 [70], vol 1 tab 7; CCTV stills tab 216 vol 12 p.6-7.

¹²⁷ T21-22, T28, 21.9.2020.

and denying he did so at this time while maintaining the CCTV timestamps were inaccurate (this dispute is addressed below).

109. In my view, the objective evidence establishes that Mr Moujalli returned to his unit at about 1:15 am after cutting through the caryard, crossing Church Street, and entering into Early Street.

CCTV footage between 1:15 and 3:20 am

110. At 1:27 am, Moujalli sent Ms Cochrane an SMS '*I dt want to c anyone, put it under the door plz*'. The content of this message is consistent with Mr Moujalli being at home when he sent it. He stated he didn't want to see anyone rather than saying he was not home to collect the money personally. Mr Moujalli agreed as much in his evidence. It is not clear why Mr Moujalli would not have answered the door to collect it from her at 1:27 am when in earlier text messages he had been chasing the money.

CCTV footage between 3:20 and 3:35 am

111. Mr Moujalli left his unit on his bike, wearing the same outfit, at about 3:20 am. This is established by a statement of Nick Shaw and CCTV footage obtained from a residence at the T-section for Early and Marsden Streets. The footage shows Mr Shaw's van pulled over on Early Street at 3:22 am (see Figure 8). Mr Shaw told police he had been living in O'Reilly Street, Paramatta and was driving to his work in North Parramatta. He was driving along Early Street and by chance saw Mr Moujalli riding his bike. He pulled over and briefly spoke to Mr Moujalli before each continued on their separate ways. Mr Moujalli said the timestamp of 3:20 am was incorrect as it was '*two hours ahead, I saw him two hours prior*' (this dispute is addressed below).¹²⁸

112. CCTV stills show Mr Moujalli riding into Marsden Street, into Lennox and then Landsowne Street heading towards Church Street.¹²⁹ At 3:34 am, CCTV cameras at the Holiday Inn on Anderson Street again captured Mr Moujalli riding his bike along Anderson Street.¹³⁰

Accuracy of CCTV timestamps

113. Mr Moujalli disputed the accuracy of timestamps of footage between 1 and 3:35 am (before he reached the secure carpark). However, his testimony on this issue was confused and at time contradictory. His evidence included:

¹²⁸ T30-31, 21.9.2020.

¹²⁹ CCTV stills tab 216 vol 12 pg.15-16.

¹³⁰ T36, 21.9.2020.

- (a) the timings are not correct and were one hour behind as he recalled riding past police headquarters (on Charles Street) about 2:15 am.¹³¹
- (b) he maintained he passed the Albion Hotel about 2 am before he passed by the Police Headquarters on Charles Street.¹³²
- (c) *'the cameras will show more truth but I say again, and I'm not very certain of the time but I think there is a difference in the time'*.¹³³
- (d) when put to him his memory of it being 2 am had to be wrong he denied that was the case.¹³⁴
- (e) *'the camera is more right but how do I know that no one has tampered with the time on the camera'* (it is noted there is no evidence whatsoever to suggest anyone, police or otherwise, has deliberately tampered with the timestamps).¹³⁵
- (f) the Albion Hotel, Little Caesar Pizza Shop and Holiday Inn camera time stamps were *'incorrect and my time is correct'*.¹³⁶
- (g) *'I will agree on all of that timeframe that you're talking about, I will agree to all the timeframes that you're talking about, I will place my signature on all these photos, let's move on - - - Okay, I agree to everything you're saying. I wasn't the one sure of the exact time and at that time I was using drugs and I was running away from the building and everything that was going on, I will agree with you on everything, it's not a problem at all...'*¹³⁷
- (h) he then said he accepted the timestamps were *'correct'*.¹³⁸
- (i) he then said, *'...I know where I was, I'm hundred per cent sure the time I left my place, time I got my jacket and there is bit of different time but not one hour and two hours, I'm sure hundred million per cent, I am sure hundred million per cent...what time I left my place... - - - I left 12.30, someone wants to do a crime, a ugly crime like that who would go to the pub with nice clothes is I'm a dealer, sit under the camera in the PJ Gallagher's I don't make*

¹³¹ T16, 21.9.2020.

¹³² T26, 21.9.2020.

¹³³ T26, 21.9.2020.

¹³⁴ T27, 21.9.2020.

¹³⁵ T28, 21.9.2020.

¹³⁶ T28, 21.9.2020.

¹³⁷ T38, 21.9.2020.

¹³⁸ T39-40, 21.9.2020.

*myself suspicious, come on sir, there is something going on here, I'm sorry.*¹³⁹

- (j) regarding his arrival at the Secure Carpark at 3:35 am, after leaving his unit at about 3:20 am, he said '*...No...that's the route I took to go to Rosehill so they using that - - - You're trying to use the road that I took to Rosehill to say that I used it to go into the car park and I say again that I came from Rosehill directly to Parkes Street*' (it appears Mr Moujalli was asserting that the footage of him riding north along Anderson Street actually showed him earlier that morning when he first left to ride to Danny's place in Rosehill).¹⁴⁰
- (k) he then said, '*I am sure that I haven't gone back after I saw Danny in the unit.*¹⁴¹ Even though he agreed he had, at least, conceded the possibility he did return to his unit straight after leaving Danny's place, when he was shown the stills by police on 7 December 2017¹⁴², he said he was now sure, some 3 years on, that he did not return to his unit as claimed. He said, '*today I am a different person than I was. In that period I was going and coming a lot at night time and I was using drugs and I couldn't give a 100% correct answer, I can see those days now more clearly than I had seen them then*¹⁴³ and '*I know 80% know what I was saying and I promise I know 100% now I didn't come back to the unit after I took my jacket*'.¹⁴⁴

114. Having considered all the material before me, I reject Mr Moujalli's evidence about the timings of his movements and find that the CCTV time stamps are accurate within about a minute or minutes of Standard Eastern Time. *First*, DSC Davis gave evidence that police checked the CCTV cameras' times against the known times when they collected the footage (to ensure the timestamps were accurate). *Second*, the consistency of the recorded times across numerous different cameras supports the times being accurate. For the time stamps on footage taken before 3:35 am to be wrong, numerous cameras around the Parramatta CBD area and near to Early Street would all have to be wrong. It is inconceivable this occurred. Examples of this consistency include:

¹³⁹ T43, 21.9.2020.

¹⁴⁰ T48, 21.9.2020.

¹⁴¹ T5, 22.9.2020.

¹⁴² During an interview with police in December 2017, Mr Moujalli was shown CCTV stills and challenged about whether he returned to his unit between 1:15 and 3:20 am. Mr Moujalli said at the time '*I'm a heavy user of...ice' and '...I might come...come back to Early Street. How, what a mess for me, if, now I'm startin' to believe I did, but I don't think I stayed till 3:20*'.¹⁴² He stated he now believed (at the time of the interview) that he returned to his unit use drugs¹⁴² as '*...100 per cent I would have some smoke...every 1, 2 hours*'.

¹⁴³ T6, 22.9.2020.

¹⁴⁴ T7, 22.9.2020.

- a. Mr Moujalli is captured passing the Albion Hotel at 1:01 am and then past the Holiday Inn at 1:10 am. Mr Moujalli agreed it would take him about 8 to 9 minutes to ride between these two spots consistent with the recorded passage of time between those two cameras.¹⁴⁵
- b. there is no footage from any camera of Mr Moujalli being out and about between 1:10 am and 3:20 am consistent with him being back at his unit.
- c. at 3:34 am Mr Moujalli is seen riding north on Anderson Street, past the Holiday Inn, heading toward the Secure Carpark (which is off camera). At 3:35 pm he is seen outside the Secure Car Park on the Carpark's CCTV. The passage of time between the two recordings is consistent with the distance between the two spots.

115. I do not accept Mr Moujalli's assertion the timestamps are incorrect.

CCTV footage between 3:35 and 4:15 am

116. At 3:35 am Mr Moujalli was captured on CCTV cameras arriving at the Secure Carpark entrance (see map of route Figure 9 and CCTV still Figure 10). He entered the carpark, locked his bike and left there on foot. He is seen leaving the carpark at 3:38 am and making his way to a nearby vacant construction site on the corner of Church and Parkes Street (see walkthrough video 16.6.2017 still at Figure 11 showing approach to site).

117. Mr Moujalli said he would have entered the vacant construction site to get metal but there was not anything of value he could find.¹⁴⁶ He looked for about 5 minutes seeing nothing of value.¹⁴⁷

118. CCTV cameras capture Mr Moujalli entering the vacant construction site at 3:38 am (see CCTV still at Figure 12). He is seen exiting via that same point 5 minutes later at 3:43 am. Mr Moujalli does not dispute he entered this site between these times.¹⁴⁸

119. Mr Moujalli was then captured on walking to the Campbell and Church Street T-section arriving there about 3:46 am. He continued along Campbell Street before crossing the road and entering back of the premises at 39 Campbell Street at about 3:49 am (see map of route Figure 13, CCTV still Figure 14).

120. Mr Moujalli told police in the video walkthrough 16.6.2017 he stopped out the front of a nearby building to get a drink from a front tap. He repeated that account when

¹⁴⁵ T23, 21.9.2020.

¹⁴⁶ T45, 21.9.2020.

¹⁴⁷ T46, 21.9.2020.

¹⁴⁸ T41, 21.9.2020.

giving evidence.¹⁴⁹ That is not consistent with that captured on camera. Mr Moujalli said he could not recall why he had entered the rear yard area of this premises or explain his actions.¹⁵⁰

121. Mr Moujalli then retraced his route back to the vacant construction lot. At about 3:54 am, he was captured on camera re-entering the vacant construction site. He exited via that same spot at 4:13 am almost 20 minutes after he entered on the second occasion.

122. Asked why he had returned to the construction site for a second time, Mr Moujalli said, *'I don't know why I went'* but then said, *'I was looking for scrap metal again and I mean that's what I do, I waste time before I go home that's why I'm looking'*. When it was suggested he must have known from his first entry there (at 3:38 am) there was nothing salvageable to be found when he returned the second time (3:54 am), he said *'It was dirt but like I - I will say it again, you don't know where you will find scrap metal, why don't you look at the footage from the night before and you will see that I am doing the exact same thing'*¹⁵¹ and *'I always waste time till 5 o'clock before I go home, it's the same every day'*.¹⁵²

123. As already stated, I am satisfied that the fire was lit sometime between 3:42 (about the time Mr Moujalli exited the vacant construction site the first time) and 3:52 am (when Mr Moujalli was heading on foot on Campbell Street back to the vacant construction site).

124. While he was in the construction site the second time, emergency vehicles travelling under lights and sirens past by the construction site heading to the Unit Complex. This occurred at 3:57 am¹⁵³, 4:01 am¹⁵⁴, 4:03 am¹⁵⁵ and 4:12 am¹⁵⁶. Mr Moujalli said he did not hear emergency vehicles pass by while he was in the vacant construction site the second occasion.¹⁵⁷ In all the circumstances I find his evidence difficult to accept.

125. Mr Moujalli's stated purpose for entering this site twice between 3:38 and 4:13 am is implausible and suspicious. Photographs taken on 7 June 2017 show a vacant site

¹⁴⁹ T50, 21.9.2020.

¹⁵⁰ T55, 21.9.2020.

¹⁵¹ T66, 21.9.2020.

¹⁵² T67, 21.9.2020.

¹⁵³ CCTV still tab 216 vol 12 pg.46.

¹⁵⁴ CCTV still tab 216 vol 12 pg.47.

¹⁵⁵ CCTV still tab 216 vol 12 pg.48.

¹⁵⁶ CCTV still tab 216 vol 12 pg.49.

¹⁵⁷ See video walkthrough 16.6.2017 and Moujalli evidence at T69, 21.9.2020.

with little to no signs of building materials on site (e.g. copper, etc) (see images of site, Figures 15A-E).

126. I note that in the opinion of DSC Davis it would have been possible for a person within the vacant site to observe comings and goings to Early Street. It is at an intersection where Parkes Street, Church Street, and the Great Western Highway meet, with Early Street and Marsden Streets being accessed from there.

127. As the crow flies the Unit Complex is located close to the rear of the Campbell Street premises Mr Moujalli entered. It is possible a person passing by could have thought that the rear of these premises might offer some view of the Unit Complex although it cannot be said it did so.

128. I do not accept Mr Moujalli's evidence about his reasons for being in the construction site at the times he was. This is given (but not limited to):

- (1) it is difficult to conceive he would spend over 20 minutes searching for copper at a site, as vacant as it appeared in the photographs taken on 7 June 2017, particularly after having earlier attended there and finding nothing.
- (2) it is inconceivable he did not hear or notice one or more of the four emergency vehicles that passed by the construction site while he was in it under lights and sirens.
- (3) the timing of the entry to the construction site and his walk to Campbell Street and back, relative to the fire, is suspicious.
- (4) the evidence about Mr Moujalli deliberately placing himself under cameras when a criminal act was expected to be committed (assault on Mr Toufan).
- (5) the issues with Mr Moujalli's credibility and the absence of credible evidence to corroborate his account about the reasons for his movements.

129. As to his entry to the rear of the premises on Campbell Street, Mr Moujalli himself cannot explain it.

CCTV footage between 4:15 and 5:12 am

130. Mr Moujalli re-entered the secure carpark after exiting the construction site. He entered the carpark on foot at about 4:15 am.¹⁵⁸ He remained in the carpark mostly off camera until 4:39 am (about 24 minutes after he returned inside).¹⁵⁹

¹⁵⁸ CCTV still tab 216 vol 12 pg.52-53.

¹⁵⁹ CCTV still tab 216 vol 12 pg.54.

131. As to what he was doing in this 24 minute period Mr Moujalli said could not recall but denied that he was hiding out. Despite not remembering what he was doing he nonetheless maintained he did not use his phone in this period.¹⁶⁰ Mr Moujalli, in his interviews with police, had awareness of some cameras within the carpark.
132. Thereafter, Mr Moujalli was captured on camera at various locations taking a circuitous route on his bike back to the Unit Complex (see Figure 16). The trip took about 35 minutes. A direct route from the carpark would have seen him back at the unit in about 5 minutes.
133. Mr Moujalli did not enter Early Street via Church Street on his return home. Despite passing close by that point, he instead turned left into Lansdowne Street and up and around to Marsden Street into Early Street. Footage shows him near Early Street at about 5:13 am.¹⁶¹ It is difficult to understand why he did not want to enter via Early Street given there were emergency vehicles blocking its entrance for incoming vehicles as part of the emergency response to the fire.

Conclusion as to movements

134. At the conclusion of the evidence I remain suspicious of Mr Moujalli's reasons for entering the construction site twice and the rear yard of the Campbell Street premises *and* what he was doing in there while off camera. While he stated on numerous occasions that it was his usual practice to cycle around all night, his evidence was difficult to accept and in all the circumstances it remains extremely suspicious.

Mobile phone

135. On 5 June 2017 when spoken to by police, Mr Moujalli voluntarily gave police his mobile phone (0402 825 877) (**Moujalli 877 phone**).¹⁶²
136. The possibility of Mr Moujalli having another phone or SIM card was examined in the hearing. If he did he may have had the means of communicating with persons additional to that recorded in the Moujalli 877 phone.
137. Mr Zreika was in semi-regular phone contact with Mr Moujalli before and after the fire including having attempted to call Mr Moujalli in the early hours of 5 June 2017 before the fire. According to Mr Zreika, around the time of the fire Mr Moujalli had '*three numbers*' and he would sometimes receive calls from Mr Moujalli from different

¹⁶⁰ T72, 21.9.2020.

¹⁶¹ Moujalli Dec 2017 ROI Q/A521-26, tab 44 vol 3.

¹⁶² T6, 21.9.2020.

numbers (including sometimes from a private number).¹⁶³ Mr Zreika recalled seeing Mr Moujalli with an old Nokia mobile phone and another 'flip' type phone.¹⁶⁴ On occasion he saw Mr Moujalli with 2 SIM cards and sometimes as many as 3 or 4 SIM cards.¹⁶⁵

138. Mr Moujalli in his evidence said that besides the 877 phone he also had an old mobile phone with no phone number (presumably because it did not have a SIM card in it). He did not use the old mobile phone.¹⁶⁶ But he agreed he had the second phone in 2017 *before* the fire on 5 June 2017.¹⁶⁷

139. While walking along Campbell Street, at 3:53 am, a CCTV camera captures him handling items in both hands (Figure 17). He appears to have moved a lit screen device to his left hand, which he appears to look at briefly, and uses his right hand to put another item in his right pocket. The Moujalli 877 phone shows no incoming or outgoing call or SMS about this time.

140. If the lit screen represented a call or SMS, the phone Mr Moujalli is holding is not the one he identified to police (as there is no log of any call or SMS around this time on that phone). It is also possible the screen was lit because Mr Moujalli was checking the time on his phone (if so this would have him checking the time at about the time the fire was lit).

141. When played this footage, Mr Moujalli said '*I only got my phone in my hand I think not nothing else because I didn't have anything else maybe the other phone but it wasn't showing here.*' When asked if, by his answer, he meant he had two phones that night he said '*Yeah, I did have two phones, police remind me of that, phone without SIM card old SIM card, I'm not using it so it must be in my jacket*' but he maintained his second phone did not have an active phone number.¹⁶⁸

142. Asked why he would carry two phones with him he said, '*because my phone is really old and the battery it can finish pretty quickly so if I'm out for like five hours then I would use the other phone*' by swapping the SIM card from the phone with the flat batter to the charged one.¹⁶⁹

143. Pressed on whether he had more than one SIM card in 2017, as claimed by Mr Zreika, Mr Moujalli said '*I didn't say that I didn't – [I] said "maybe" but I don't use it. I*

¹⁶³ T216-17, 10.9.2020.

¹⁶⁴ T217-18, 10.9.2020.

¹⁶⁵ T218, 10.9.2020.

¹⁶⁶ T8, 21.9.2020.

¹⁶⁷ T9, 21.9.2020.

¹⁶⁸ T57-58, 21.9.2020.

¹⁶⁹ T59, 21.9.2020.

only use one number.¹⁷⁰ When pressed further he admitted he did have more than one SIM card around this time and he possibly had more than one SIM card on him during the early hours on 5 June 2017.¹⁷¹ He agreed he never mentioned to police back in June 2017 he had SIM cards other than that used in the 877 phone.¹⁷²

144. After reviewing all the evidence, I am satisfied that Mr Moujalli, at the very least, had a second mobile phone and/or SIM card during the fire. It would be surprising if Mr Moujalli *didn't have* a second mobile phone and or SIM card given his extensive drug supply activities.

Samuel Zreika

145. Mr Zreika resided with his parents at 2/38-40 Early Street at the time of the fire. That unit is located closer to the Church Street end of Early Street as compared to the Unit Complex.¹⁷³

146. Mr Zreika said he used his mother's pre-paid mobile phone and agreed that all calls made to or from that phone in the weeks before the fire would be attributable to him.

147. Mr Zreika said he was at home in his unit at the time of the fire.¹⁷⁴ While his initial claim to police that he was asleep in the early hours is contradicted by his phone logs (showing calls made or received around 3 am¹⁷⁵) there is no evidence to refute that claim.

148. There is no direct evidence that Mr Zreika caused the fire (e.g. no witness who heard him making admit his involvement, etc). Nor is there evidence of bad blood existing between Mr Zreika and Mr Nakhla or Mr Zreika having a motive to harm Mr Nakhla other than possibly because of his association with Mr Moujalli.

149. At the time of the fire Mr Zreika was frequently using 'ice'. He often sourced that drug from Mr Moujalli. He estimated he saw Mr Moujalli about 2 to 3 times a week on average at about the time of the fire.¹⁷⁶

150. Mr Zreika and Mr Haddad agree they met in the past possibly about Mr Zreika buying a car from Mr Haddad. Mr Moujalli says that on Sunday evening 4 June 2017, he saw Mr Zreika by Mr Haddad's driver's side door out the front of the Unit Complex. He saw them speaking together. Mr Zreika denies this occurred but there is other

¹⁷⁰ T59, 21.9.2020.

¹⁷¹ T60, 21.9.2020.

¹⁷² T61, 21.9.2020.

¹⁷³ Zreika T184, 10.9.2020.

¹⁷⁴ Zreika T183, 10.9.2020.

¹⁷⁵ Davis WS 10.09.18 [612] tab 7 vol 1.

¹⁷⁶ Zreika T185, 10.9.2020.

evidence to support it did (referred to above). Although of interest this does not permit a finding that either Mr Zreika or Mr Haddad were involved in the fire.

151. Mr Zreika made calls to Mr Moujalli, and vice versa, on 4 and 5 June 2017 before the fire, namely:

- a) 11:37 pm: Mr Moujalli's mobile calls Mr Zreika's mobile phone without success.¹⁷⁷
- b) 12:01 am: Mr Moujalli's mobile calls Mr Zreika's mobile phone without success.¹⁷⁸
- c) 1:00 am: Mr Zreika's mobile phone calls Mr Moujalli's phone but does not connect.

152. There was also a call with 'Anandu Pradeep' lasting 5 minutes at 2:50 am.¹⁷⁹

153. Mr Zreika says he sold Mr Moujalli a pair of work shoes and two bags of copper a couple of days before the fire. In return he was given \$100 and a promised a couple of points of 'ice'. He believes he was calling Mr Moujalli in the late hours of 4 June and early hours of 5 June 2017 to get the drugs he was owed.¹⁸⁰ I am satisfied that, assuming this claim is true, the subsequent call with Anandu Pradeep may have been an attempt to secure 'ice' because Mr Zreika could not reach Mr Moujalli although a positive finding cannot be made about this.

154. On 21 February 2018 Mr Zreika spoke to police at his unit in Early Street.

155. On 29 May 2018 he attended Parramatta Police Station and signed a written statement. After completing the statement, DSC Davis had another officer read the statement to Mr Zreika to confirm its accuracy before signing it.

156. Mr Zreika's evidence in the inquest on certain matters was somewhat baffling including:

- a) in his written statement Mr Zreika said he received a call from 'Boris' at about 11:45 pm on 4 June 2017 asking where Mr Moujalli was as 'Boris was supposed to be meeting Mr Moujalli on Church Street to obtain drugs. Mr Zreika called Mr Moujalli (who said he was heading to the BMW dealership

¹⁷⁷ Davis WS 10.09.18 [607], tab 7 vol 1.

¹⁷⁸ Davis WS 10.09.18 [59] & [609], tab 7 vol 1

¹⁷⁹ Davis WS 10.09.18 [612] tab 7 vol 1

¹⁸⁰ Zreika T180-81, 10.9.2020 (note: he gave evidence he was using his mother's mobile phone, being number 0481 294 564, in the period around the fire) (T199-200, 10.9.2020).

then).¹⁸¹ In his evidence he said this statement was not true. Mr Zreika said he told police this because '*I didn't know what saying*' and '*I was anxious and I didn't want my siblings to know that I was taking drugs*'¹⁸² (although he showed no hesitation talking about his drug use in open court).

b) in his statement Mr Zreika said he was on his balcony about 12:15 to 12:30 am on 5 June 2017 and saw Mr Moujalli ride by on his bike (wearing a black T-shirt and pants not a Fluro-jacket). He now says this was not true and attributed saying it to him not knowing what he was saying and feeling rushed by the police.¹⁸³

157. I do not accept Mr Zreika's explanation for why he made these claims in the first place. He realised when he made his written statement that the police were investigating a serious matter and that they were interested in Mr Moujalli's movements. His statement was read through with him carefully before he signed it. Although he cannot read, he did not require an interpreter when he made his statement. He was sufficiently cognizant to have worried about getting a parking ticket while he was in the police station (having driven his truck to the station).

158. In my view, he was being deliberately untruthful in his evidence about why he said the above things to police in the first place. His reasons for doing so cannot be ascertained at this time. For this reason it is difficult to properly assess the evidence in relation to Mr Zreika. However, there remains a possibility that he knows more about the events surrounding the fire than he was willing to disclose.

Other people

Residents

159. Police investigated other persons in the course of their investigation. This includes other residents:

a) *Sidholm Nakhla*: Mr Moujalli suggested to police that Mr Nakhla may have burnt his own vehicle for insurance and/or because he never used it or to possibly set Mr Moujalli up. There is no other evidence of anyone witnessing Mr Nakhla cause the fire or him saying he wanted or intended that to occur. Mr Nakhla denied under oath any involvement. He has no known criminal

¹⁸¹ Davis WS 10.09.18 [619] tab 7 vol 1

¹⁸² Zreika T176, 10.9.2020.

¹⁸³ Zreika T2020, 10.9.2020.

history or associations with criminal elements. The vehicle was purchased for a small amount and not insured for a great sum.

- b) *Nizar Toufan*: there is no evidence of anyone seeing Mr Toufan start the fire or state that he intended to or wanted that to occur. Mr Toufan denied under oath any involvement in causing the fire. His flatmate, Mr Ches Ram, confirmed in a statement to police that Mr Toufan was at home in the unit, at the time the fire was lit.
- c) *Ken Lawson*: resided in the Unit Complex at unit number 4. He passed away shortly before the inquest. Mr Moujalli told police Mr Lawson had a bad relationship with Mr Nakhla and Mr Toufan. Mr Moujalli also suggested Mr Lawson had involvement in the earlier theft of Mr Nakhla's car. Mr Lawson, when interviewed by police, denied involvement in the fire stating he was in his unit when the fire was lit. Police later found his lighter (dragon shaped) on the wall ledge near the entry to the Block B stairwell (leading to the car park). Mr Lawson told police he believed he had inadvertently left it there when he was helping residents in that block to escape the fire. A covert strategy employed by police did not reveal anything suspicious. To the contrary his conversations with his partner and others (including Mr Moujalli) were consistent with him having no involvement.

160. In my view there is no reliable evidence to establish that any of these people played a role in starting the fire.

Non-residents

161. Police investigated other persons many of whom were nominated by Mr Moujalli as suspects. The investigations extended to the following people, each of whom gave evidence before me.

- 1) ***Anthony Chahroura***: Mr Moujalli told police he believed Mr Chahroura was responsible for the fire (stated to police on 9 June, 11 August and 12 September 2017).¹⁸⁴ Mr Moujalli alleged that, in addition to Mr Chahroura's willingness to assault Mr Toufan, he and Mr Korkis said they wanted to take

¹⁸⁴ Davis WS 10.09.18 [440] tab 7 vol 1

Mr Nakhla's car for parts. This conversation happened while Mr Chahroua, Mr Korkis and/or Mr Iannone were in the Unit Complex's car park. Mr Korkis also said he wanted to take Mr Nakhla's car for parts and then said he would break the car or burn it. Mr Moujalli said not to do this and Mr Chahroua asked Mr Moujalli why he wouldn't let Mr Korkis burn the car.¹⁸⁵ Mr Chahroua's account about the discussions about assaulting Mr Toufan is set out above. Mr Chahroua denied involvement in the fire or knowledge of it. The suggestion that Mr Chahroua was motivated because he was angry at Mr Toufan speaking to police about Mr Moujalli, not himself, is difficult to accept. Apart from Mr Moujalli's claim about that, and Mr Chahroua's association with Mr Moujalli, there is no other evidence of Mr Chahroua having motive to harm Mr Nakhla. In the opinion of DSC Davis, Mr Chahroua can be excluded as a suspect.

- 2) ***Khaled Haddad***: Mr Haddad admitted going to the Unit Complex to buy drugs from Mr Moujalli. He would collect the drugs within the Unit Complex carpark. He admitted having a verbal exchange with one of the residents who he did not know (Mr Nakhla) once when his car blocked the resident backing out. He denied any involvement in the fire. Other than this brief exchange with Mr Nakhla there is no evidence as to Mr Haddad having motive or cause to burn Mr Nakhla's vehicle.¹⁸⁶
- 3) ***Marseil (Marsell) Korkis***: according to Mr Moujalli, Mr Korkis was present and part of conversations Mr Moujalli had with Mr Chahroua about retaliation against Mr Toufan and either himself or Mr Chahroua stating they wanted to take Mr Nakhla's car for parts and even burn it. Mr Korkis admitted sourcing 'ice' from Mr Moujalli but denied any involvement in the fire. His exact location at the time the fire was lit is not known. There is a reasonable basis to think he would have been with his then partner who required his help because of her poor health.¹⁸⁷ Apart from his association with Mr Moujalli there is no evidence of Mr Korkis having any motive to want to harm either Mr Toufan or Mr Nakhla.
- 4) ***Luke Iannone***: according to Mr Moujalli, Mr Iannone visited Mr Moujalli's unit with Mr Chahroua. He was present when Mr Chahroua and/or Mr Korkis spoke of wanting to take Mr Nakhla's car for parts. According to DSC Davis, it

¹⁸⁵ Moujalli WS 12.9.2017.

¹⁸⁶ Haddad T149, 9.9.2020.

¹⁸⁷ Korkis T99, 8.9.2020.

is unlikely that Mr Iannone had involvement in the fire as police have information from another investigation that puts him at a different location at the time the fire was lit. Apart from his association with Mr Moujalli there is no evidence of Mr Iannone having any motive to want to harm either Mr Toufan or Mr Nakhla.

- 5) **Shane Trainer:** Mr Moujalli had a drug association with Mr Trainer. Mr Moujalli raised Mr Trainer as a possible suspect saying Mr Trainer liked making bombs and had had a verbal exchange with Mr Toufan in the past. Mr Trainer admitted visiting 'Joe' at the Unit Complex for drugs. He also admitted making fireworks and having a prior interest in fireworks but denied any involvement in the fire.¹⁸⁸ Apart from his association with Mr Moujalli there is no evidence Mr Trainer had any motive to want to harm either Mr Toufan or Mr Nakhla.

162. In many cases the only real basis the above persons became implicated is through Mr Moujalli's account to police. As I have stated, I consider his evidence to be wholly unreliable.

163. On the second day of his evidence, and the last day of the inquest, Mr Moujalli suggested the involvement of another person believed to have been living with Mr Toufan at the time of the fire (*Ches Ram*). Mr Ram was not called as a witness given the timing of this revelation. Mr Moujalli said he had been told by 'Michael' that about 5 minutes before the fire Michael had been driving along Early Street when he passed the Unit Complex. He happened to see up into the Unit Complex's carpark and saw a 'Pakistani' man in the carpark near Mr Nakhla's parked car (it is noted that Mr Ram is identified as being of Fijian or Islander descent not Pakistani). Michael lived in the same unit complex in Early Street as the person with whom Mr Moujalli temporarily stayed after the fire.¹⁸⁹ Mr Moujalli claimed he had mentioned this to DSC Davis in DSC Davis' car on their return from the video walkthrough 16.6.2017. In his evidence DSC Davis conceded the possibility that Mr Moujalli mentioning a 'Pakistani person', in the context of many other names and persons, but is certain Mr Moujalli did not provide any detail the significance of this person based on what Michael had said.¹⁹⁰ Mr Moujalli's claim requires further investigation but I am satisfied that he did not

¹⁸⁸ Trainer T80-83, 8.9.2020.

¹⁸⁹ T21-24, 22.9.2020.

¹⁹⁰ T99-100 22.9.2020.

attempt to relay to DSC Davis, back in June 2017, all the details he provided to this inquest in September 2020.¹⁹¹

164. Mr Ram was not called as a witness as Mr Moujalli's disclosure occurred halfway through the last day of evidence. Mr Ram has not had an opportunity to respond. Although this report requires further investigation, I have serious doubts about its reliability.

Other issues arising from the evidence

165. Other factual issues arose at the inquest including the following.

166. ***Kenneth Lawson seeing Mr Moujalli pass by his unit on 5 June 2017:*** Kenneth Lawson lived with his de facto partner, Dora Kitinas, in unit 4, at the Unit Complex. Mr Lawson passed away shortly before the inquest hearing commenced. Mr Lawson told police that he saw Mr Moujalli, who he knew, to walk by his kitchen window which was on the ground level facing out onto a path alongside the eastern side of the Unit Complex. Mr Moujalli said hello as he passed by (heading in the direction of the street not towards the stairwell to his unit). Mr Lawson believed he saw Mr Moujalli sometime between 1 to 3 am but did not make a note of the time when he saw Mr Moujalli. Mr Moujalli told police that he saw Mr Lawson at about 12:30 am.¹⁹²

167. DSC Davis gave evidence about the differences in the timing. In his opinion Mr Lawson saw Mr Moujalli pass by around 2 am or later and not earlier as suggested by Mr Moujalli. The reason for this is:¹⁹³

- (1) when Mr Moujalli left at around 12:15 am he said he left via the side of the building which would take him past Mr Lawson's window. Mr Moujalli then returned to get his jacket. When he did so he rode his bike in the carpark and accessed his unit via the internal stairwell. That route did not take him past Mr Lawson's window.
- (2) Mr Lawson said he saw Mr Moujalli wearing a jacket which Mr Lawson later saw hung over Mr Moujalli's bike post fire (e.g. same as that seen in the footage).
- (3) assuming Mr Lawson is correct about seeing the jacket, he must have seen Mr Moujalli walk by *after* Mr Moujalli left the second time (once he got his jacket).

¹⁹¹ T29, 22.9.2020.

¹⁹² Moujalli ROI 14.06.17 (p.949-50) tab 40 vol 3.

¹⁹³ Davis T100-01, 22.9.2020.

168. Given the evidence that Mr Moujalli did return to his unit between 1:15 am and 3:20 am, it is possible Mr Lawson may have seen Mr Moujalli when he left on the third occasion (3:20 am) unless Mr Moujalli was moving around the Unit Complex beforehand (which Mr Moujalli has not said he did).
169. Ultimately, this evidence does not materially assist to find who caused the fire.
170. **Ken Lawson's subsequent report to Mr Nakhla and Mr Toufan:** Mr Nakhla and Mr Toufan told police about a conversation they had with Mr Lawson in about July or August 2017.
171. According to Mr Nakhla and Mr Toufan, Mr Lawson said in this conversation '*You know you weren't the target*' and '*Neil was the target. Because at 2:00 am on the night of the fire or the night before, I heard Joe talking with 2 wog or Leb guys about bashing Neil*'. Mr Lawson also said he'd heard 'Joe' saying something to the two males about '*no touching the car*'..¹⁹⁴
172. Mr Lawson was questioned about this conversation. Although he spoke with them he denied witnessing Mr Moujalli speak to males as described or that he said he had to Mr Nakhla and Mr Toufan.
173. In DSC Davis' view, Mr Lawson did not witness what Mr Nakhla believes he later said to him. DSC Davis does not consider Mr Toufan or Mr Nakhla have deliberately lied. He considers it possible they are mistaken about what they heard or misunderstood what Mr Lawson was telling them.¹⁹⁵
174. I accept the opinion of DSC Davis on this matter. This evidence does not assist in determining who caused the fire.
175. **Mr Zreika and Mr Moujalli's calls with Anandu Pradeep:** Call charge records for phones for Moujalli's 844 phone and Mr Zreika's phone (this phone being subscribed to his mother) show both phones made and or received calls with a number 0405 936 472. This number was falsely subscribed in the name 'Anandu Pradeep'. The calls include on 4 to 5 June 2017 at:
- a) 11:22 pm - this number calls Zreika's phone for 15 seconds¹⁹⁶.
 - b) 1:07 am - Mr Zreika called 0405 936 472 ('Anandu Pradeep'). That call lasted 1 minute 7 secs.¹⁹⁷

¹⁹⁴ Nakhla WS 07.11.17 [5]-[7] tab 48 vol 4; Toufan WS 14.08.17 [4]-[6] tab 57 vol 4.

¹⁹⁵ Davis WS 10.09.18 [76] and [330] tab 7 vol 1.

¹⁹⁶ Davis WS 10.09.18 [607], vol 1 tab 7.

c) 2:50 am - Mr Zreika mobile calls 'Anandu Pradeep' (0405 936 472)¹⁹⁸. Call lasts 5 minutes 16 secs¹⁹⁹.

176. In DSC Davis's opinion, the communications between Anandu Pradeep and these phones in the weeks before concerned drug activities.

177. It seems unlikely either would make or receive calls with Anandu Pradeep around the time of the fire if he or she was involved in the fire. It is reasonable to expect they would have used other phones or means to communicate with such a person(s). These calls are unlikely to be material as regards who caused the fire.

178. **Peter Douwaihi (Mr Moujalli's cousin):** Mr Douwaihi's evidence was very supportive of Mr Moujalli both as to his cousin's character (harmless) and his negative descriptions about Mr Toufan. Despite the harassment he says Mr Moujalli was subjected to by Mr Toufan and Mr Nakhla, he maintained his cousin never appeared angry and did not care about their actions (even Mr Moujalli admits being angry at the very least towards Mr Toufan).²⁰⁰ His description does not stack up with Mr Moujalli's own evidence about the plan to assault Mr Toufan. I had the opportunity to observe Mr Douwaihi give evidence. He did not impress and I give his evidence little weight.

179. **Marseil (Marsell) Korkis:** in a statement made to police in February 2018, Mr Korkis said he recalled an occasion where he accompanied Mr Chahroura to see Mr Moujalli at the Unit Complex. While they were in the basement, Mr Moujalli pointed to a 'Persian guy' (e.g. Mr Nakhla) and said, 'See this guy. He just give me this key card'. He said that he didn't like him and had trouble with him before. He said the Persian guy found his key card in either his mailbox or his car. When they were using 'ice' inside Mr Moujalli's unit, Mr Moujalli was 'off his chops' saying 'I am getting fed up' and 'I am going to blow it up' or 'I am going to put it on flames'. When they left Chahroura said to the effect 'this guy is off his head'.²⁰¹

180. This account, on its face, is clearly significant. The difficulty is that Mr Korkis suffered a stroke in mid-2019. In his evidence he *claimed* he had no memory of what was discussed inside the unit as he had recounted in his statement to police.²⁰² In the absence of a proper testing of Mr Korkis' original account, it is of little value.

¹⁹⁷ Davis WS 10.09.18 [611]-[612] vol 1 tab 7.

¹⁹⁸ Davis WS 10.09.18 [612] vol 1 tab 7.

¹⁹⁹ Davis WS 10.09.18 [612] vol 1 tab 7.

²⁰⁰ Douwaihi T122 and T130, 8.9.2020.

²⁰¹ Korkis WS 20.2.2018 tab 95 [6]-[8].

²⁰² Korkis T95, 8.9.2020.

181. **Mr Toufan's recollection of hearing singing about 2 am from Mr Moujalli's unit:**

At about 2 am²⁰³ Mr Toufan was asleep in his bed. His unit was positioned directly above Moujalli's unit. He later told police he recalled waking about 2 am and hearing singing along with other voices coming from Mr Moujalli's unit. Mr Toufan then fell back to sleep. The time he attributes to this is not based on any objective marker (e.g. him waking because he received a text message, itself time stamped). There is other evidence of persons hearing singing at around this time coming from the Unit Complex. I note that there no evidence of anyone else hearing 'other voices' coming from Mr Moujallis' unit. There is also an absence of detail about the other voices (e.g. how it can be excluded the voices didn't come from a TV or recording Mr Moujalli was playing).

182. **Sumathi Gokulan:** at about 2:30 am²⁰⁴ Sumathi Gokulan, who lived in a neighbouring unit block, heard someone singing²⁰⁵. She also heard unknown male voices outside the Unit Complex saying, '*hurry up*'²⁰⁶ (when this was put to Mr Moujalli in December 2017 by police and he denied it had anything to do with him).²⁰⁷ If her timing is correct Ms Gokulan heard someone saying '*hurry up*' more than an hour before the fire was lit. This evidence does not appear material in determining who lit the fire.

183. **Brendon Stubbs:** Brendon Stubbs also lived in a neighbour unit block. In a statement made shortly after the fire (9 June 2017)²⁰⁸, Mr Stubbs said he was awoken about 3:50 am on 5 June 2017 to the sound of two panicked male voices. He heard one male voice say, '*Are you alright? There is a fire in the basement*'. Mr Stubbs went to his balcony and saw two males in the Unit Complex's courtyard. One had long sleeve shirt and long pants (short cut hair and solid build). He couldn't see the other male because of the smoke. He heard one male say, '*What are we going to do*' or '*We have to do something*' and '*Are you out?*'. Mr Stubbs called triple zero at 3:52 am. He heard alarms going off after that call. It is possible the two males Mr Stubbs heard and saw were involved in the fire. But it is also possible these persons were residents or persons who were in the area at the time but not involved in the causing the fire (albeit no one came forward and told police they had been in the carpark at that stage). This evidence does not materially assist in working out who lit the fire and or what role, if any, Mr Moujalli might have had.

²⁰³ Time is self-report (estimate) not objective time stamp.

²⁰⁴ Time is self-report (estimate) not objective time stamp.

²⁰⁵ Moujalli Dec 2017 ROI Q/A291-304 and A351-53, vol 3 tab 44.

²⁰⁶ Davis WS 10.09.18 [75], vol 1 tab 7; Gokulan WS 08.06.17 [6], tab 70; Gokulan T43-44, 7.9.2020.

²⁰⁷ Moujalli Dec 2017 ROI Q/AA304-310, vol 3 tab 44.

²⁰⁸ Stubbs WS 9.6.2017 tab 82.

Police Investigation

184. The NSW Police Force is to be commended for the thorough investigation carried out. DSC Peter Davis, the officer-in-charge, is particularly deserving of praise. Investigators worked diligently and tirelessly in their attempt to identify who was responsible for the fire.

185. In my view, despite extensive investigation it is highly likely that there remain people in the community who have yet to come forward or who have yet to disclose all the information they have. I intend to ask the relevant authorities to consider a reward for information.

Fire doors

186. Unfortunately, it is clear that the practice of propping the fire doors open at the Unit Complex continued after the fire that contributed to John's death. That practice was still ongoing up until a week before the inquest commenced in September 2020.

187. Mr Nakhla gave evidence that the door had always been propped open in the time he had lived there (at or before 2011).²⁰⁹ Mr Toufan described it being open 24 hours a day.²¹⁰ DSC Davis attended the Unit Complex occasionally during 2019 and 2020 and observed it propped open, which he photographed.²¹¹ As recently as 1 September 2020, a week before the commencement of the Inquest hearing, DSC Davis witnessed both stairwell fire doors (towers A and B) to be propped open.²¹²

188. Residents may not be aware of the importance of the self-closing fire door as a fire safety measure. Propping open a door may seem a benign practice to residents. But this case highlights the very real dangers associated with such a practice. The only way residents can exit their units is via the internal stairwell unless they are able to climb over their balconies to the ground level. Ms Ludkin and Mr Toufan were trapped inside their units owing to the heat and smoke that moved up the stairwell. It is also possible John himself was disorientated by the smoke and heat as he went downstairs.

Agency responses to the problem of propped open fire doors

189. It was pleasing that the relevant agencies approached the inquest in a cooperative and constructive manner. Their focus was on the fire door in the rear units leading into the carpark. Counsel for DCJ acknowledged that the inquest was "an important

²⁰⁹ Nakhla T38-39, 7.9.2020.

²¹⁰ Toufan T71, 8.9.2020.

²¹¹ See Davis Supp WS 14.8.2020 [6] tab 7A vol 1.

²¹² See photos tab 209 vol 11.

opportunity to make sure that appropriate measures are taken to ensure the safety of public housing tenants.”²¹³ It was also acknowledged that fire doors being propped open was a “perennial problem” affecting all types of buildings.

190. The court accepts that the issue of propping open fire doors in unit blocks such as the Unit Complex at Early Street is particularly difficult to solve. The door cannot be alarmed, given that it is also a commonly used entry and exit point. Safety relies on everyone living at or visiting the block understanding the real importance of the issue.

DCJ response

191. DCJ acknowledged that there was an ongoing issue with propping open the door which continued, from time to time right up until the date of the inquest.²¹⁴ DCJ also conceded that it was likely that even after various measures have been put in place, there will still be times when fire doors are propped open. This seems particularly true in situations like this where the door is both a fire door and the most convenient door into the garage area. In other words, it is commonly used and from time to time residents and others may find it convenient to prop open the door, particularly if they are bringing shopping or other items upstairs.

192. The court had evidence from DJC Deputy Secretary Paul Vevers outlining the steps taken in response to “the fire at the unit complex and the Grenfell Tower fire in London”. Those changes included changes to the Client Service Visit (CSV) checklist. Client Services Officers (CSO) were tasked to direct specific attention to the condition of fire doors and to look for any obstructions in common areas. For this purpose, Client Service Officers were issued with tablet devices to complete the CSV checklist online.²¹⁵

193. The court also heard oral evidence from the CSO with responsibility for the Early Street Unit Complex at the time of the fire. CSO Kathryn Smith told the court that it was her practice to check smoke alarms in all units and contact maintenance if necessary.²¹⁶ She did not recall being told about any fire door being left open and she did not notice any such door being propped open during her visits in 2017.

194. The court heard that when DJC was informed by LAHC on 18 July 2019 that the fire door at the complex had been left open, prompt action was taken. Letters were

²¹³ Submissions on behalf of Department of Communities and Justice, page 2.

²¹⁴ Written submissions on behalf of DCJ at [10].

²¹⁵ Volume 10, Tab 200 Statement of Paul Vevers [12].

²¹⁶ Written submissions on behalf of DCJ at [14].

apparently hand delivered to tenants advising them that propping open the door was an offence.²¹⁷

195. More recently when the images taken on 1 September 2020 were brought to the attention of the DCJ, it responded by immediately issuing all residents a letter, warning residents of the risks and imploring them to keep the doors closed.²¹⁸

196. After considering the evidence as it emerged at the inquest, DCJ proposed the making of following four recommendations:

- a. that DCJ provide information and/or training to new and current Client Service Officers as to the importance of fire safety measures in public housing tenancies including keeping fire doors closed;
- b. that DCJ amend fire safety information provided to public housing tenants at sign-up, and at subsequent Client Service Visits, to include instructions as to the importance of keeping fire doors closed;
- c. that the Client Service Visit Checklist be amended so as to require Client Service Officers to check the proper functioning of fire doors adjacent to the tenancy subject to the client service visit; and
- d. that DCJ work co-operatively with the LAHC in consultation with the Fire & Rescue NSW in the development of the above material, as required.²¹⁹

197. DCJ then moved quickly to implement the proposed changes. In a statement dated 18 September 2020, Ms Wilma Falcone, Director of Housing Statewide Services, within DCJ set out the planned changes for the education of DCJ officers and tenants in relation to fire control measures.

198. Counsel for DCJ summarised them in submissions, drawing the Court's attention to the following matters:

- (1) *Tenant sign-up checklists*: these checklists will be amended to include specific instructions to tenants regarding fire safety including the importance of keeping fire doors closed: at [11];
- (2) *Tenant newsletters*: provide an opportunity to reinforce good practice in fire safety measures: at [12];

²¹⁷ Written submissions on behalf of DCJ at [15].

²¹⁸ Exhibit 3.

²¹⁹ Ex 12, Draft Recommendations on behalf of the Department of Communities and Justice dated 22 September 2020.

- (3) *Client service visit checklist* (completed by the visiting CSO): the CSO is required to check whether there are objects blocking fire doors, objects propping open fire doors and whether the fire door is damaged. If a simple remedy is available, such as removing a blockage, then the CSO is to go ahead and do that and if not a call must be made to 'Maintenance' for repair: [13] – [17]; and
- (4) Training to new and existing CSOs: this includes monthly Webinars Sessions (with slides also published on the DCJ intranet), 'VLOGS', and incorporation of fire safety awareness into the induction program in co-operation with Fire and Rescue NSW: [19] – [19.6]; and
- (5) *Explore other opportunities to work with Fire and Rescue NSW*: such as co-branding of brochures, poster and general fire safety information: [19.7].²²⁰

199. Counsel for the DCJ submitted that given the first three proposed recommendations had already been implemented, it may be sufficient to only make the fourth recommendation which involves DCJ and the LAHC to work with Fire & Rescue NSW to develop the fire safety material. However, they submitted that even that process has apparently now been commenced.²²¹

LAHC Response

200. Submissions from the LAHC set out the changes made as a consequence of this tragedy. These included placing additional signage on the fire door and on at least one occasion requesting DCJ send a letter to tenants about the problem.²²²

201. Amendments have also been made to the compliance checklist that both LAHC Compliance Officers and the Building Essential Services team use when conducting inspections.²²³ These amendments are to prompt checking about whether:

- i. the fire door is propped open or obstructed;
- ii. such object or obstruction was removed and reported;
- iii. whether the required signage was displayed; and
- iv. whether the door closers were operational.²²⁴

²²⁰ Written submissions on behalf of LAHC at [11].

²²¹ Written submissions on behalf of DCJ at [22] and [23].

²²² Ex 12, Statement of Rebecca Krumins dated 18 September 2020 at [28].

²²³ Ex 12, Statement of Rebecca Krumins dated 18 September 2020 at [40 – 41].

²²⁴ Ex 12, Statement of Rebecca Krumins dated 18 September 2020 at [41].

202. The LAHC are also working with DCJ to develop animated educational videos for tenants. This will be available online for all tenants at residential properties leased by LAHC.²²⁵ One video will specifically address the dangers of blocking or propping open fire doors.²²⁶
203. On 7 September 2020, an email was sent by LAHC Contract Manager, Emra Vukovic to contractor, Broadspectrum, responsible for 22 – 24 Early St Parramatta. Ms Vukovic alerted them to the continued propping open of fire doors and asked that each staff member and subcontractor close a propped open fire door and to urgently advise the Principal's Authorised Person of same.²²⁷
204. On 8 September 2020, an email was sent by LAHC Head of Portfolio Management, Mark Byrne to LAHC'S asset team, which is responsible for the oversight of maintenance and management of contractors. Mr Byrne alerted them to the increased occurrence of fire doors being propped open and asked that each person, when in the field, close a propped open fire door and advise the local tenancy manager of same.²²⁸
205. On 16 September 2020, LAHC Contract Manager, Emra Vukovic provided Broadspectrum (and all other similar contractors)²²⁹ with a formal Notice to Contractors ("NTC").²³⁰ This NTC contractually requires the contractor to immediately:
- a. inform LAHC if contractors, or subcontractors, identify that a fire door has been propped open or obstructed;
 - b. remove and dispose of any prop or obstruction in the vicinity of the fire door, and close the door; and
 - c. inform LAHC if contractors, or subcontractors, identify large items of furniture or household goods, or large volumes of rubbish, dumped in common areas.²³¹
206. LAHC proposed three recommendations at the conclusion of proceedings. These included:
- a. LAHC provide training to employees who conduct site visits (including the compliance team and Building Essential Services team) on fire safety measures, including fire doors, and include training in induction for new

²²⁵ Ex 12, Statement of Rebecca Krumin dated 18 September 2020 at [43].

²²⁶ Ibid.

²²⁷ Ex 7, Email from Emra Vukovic dated 7 September 2020.

²²⁸ Ex 7, Email from Mark Byrne dated 8 September 2020.

²²⁹ Submissions of LAHC.

²³⁰ Ex 12, Statement of Rebecca Krumin dated 18 September 2020 at [24].

²³¹ Ibid.

employees in these roles going forward.

- b. LAHC require its contractors to deliver training to staff and subcontractors on expectations for performance of the contract with respect to fire safety equipment including fire doors.
- c. LAHC continue to work cooperatively with the DCJ to provide or display fire safety information (including in forms other than written information in English) addressing the dangers of propping open or blocking fire doors.

NSW Fire and Rescue (FRNSW) response

207. FRNSW bear no responsibility for the fire door practice continuing *post* fire. Its assistance was sought given its expertise in fire safety measures and community safety.

208. The FRNSW has existing community risk reduction material includes advice warning occupants not to prop open fire doors.²³²

209. As of 21 September 2020, the FRNSW advised it had commenced discussions with DCJ on collaborating to expand the DCJ's current community safety activities. This is expected to include:

- i. providing input into the fire safety awareness/training of DCJ staff who visit buildings and tenants;
- ii. joint authoring brochures, posters and general fire safety information; and
- iii. exploring the configuration of DCJ'S in-field data capture app to:
 - include checklists of fire safety issues for reporting (including fire doors propped open);
 - enable an email to be sent to FRNSW requesting a Safety Visit; and
 - notifying the FRNSW of a building DCJ has assessed as a higher risk to trigger the local fire crew to undertake a Pre-incident Plan and assess the Alarm Response Protocol for the identified site.²³³

210. FRNSW has co-ordinated inquiries with the National Council of Fire and Emergency Services to determine whether other jurisdictions have identified the issue as a risk, and any scheme developed and implemented to mitigate this risk.

²³² Letter under the hand of Mark Whybro dated 21 September 2020, p1.

²³³ Ibid.

The need for recommendations

211. Pursuant to section 82, *Coroners Act 2009* (NSW) a coroner may make such recommendations, considered necessary or desirable in relation to any matter connected with the death with which the inquest is concerned. Without limiting the power, public health and safety is a matter which may be the subject of a recommendation.
212. The pro-active approach taken by DCJ is commendable. DCJ identified possible recommendations and has moved quickly to commence implementation. For that reason, the need for formal recommendations appears to fall away. I accept that DCJ is committed to following through with the changes it has already outlined and that it will seek the active cooperation of NSW Fire & Rescue and LAHC.
213. LAHC has also shown a willingness to identify potential improvements and to work collaboratively with DCJ. I accept that LAHC is committed to following through with making the changes as proposed at the conclusion of the proceedings and that some of this work has already commenced. For that reason, the need for formal recommendations in relation to LAHC also appears to fall away.

Findings

The findings I make under section 81(1) of the *Coroners Act 2009* (NSW) are:

Identity

The person who died was John Flamish

Date of death

John died on 5 June 2017

Place of death

John died at Westmead Hospital, Westmead NSW.

Cause of death

John died of the combined effects of smoke inhalation, burns and ischaemic heart disease.

Manner of death

John died soon after a fire which had been deliberately lit by person or persons unknown.

Recommendations pursuant to section 82 Coroners Act 2009

214. I make the following recommendations:

The Commissioner of Police

215. I recommend that the Commissioner of Police refers this matter to the appropriate body for consideration of a making a reward for information.

Conclusion

216. Finally, I offer my sincere thanks to counsel assisting and his instructing solicitors for their extremely hard work in preparing this inquest. I thank the Officer in Charge of the investigation.

217. Once again, I offer my sincere condolences to John's family and friends. I acknowledge that the pain of losing a loved one in these circumstances is profound and that their grief is ongoing.

218. I close this inquest.

Magistrate Harriet Grahame

Deputy State Coroner

11 December 2020

NSW State Coroner's Court, Lidcombe

