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INDEPENDENT COMMISSION AGAINST CORRUPTION

PATRICIA McDONALD SC
COMMISSIONER

PUBLIC HEARING

OPERATION DASHA

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON FRIDAY 29 JUNE, 2018

AT 9.30AM

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THE COMMISSIONER: Mr Drewett.

MR DREWETT: That's all right, Commissioner. When you're ready to hear me.

THE COMMISSIONER: Yes.

MR DREWETT: I have an application to make. I'm not sure, with respect, how widely supported it is within the room, but it's an application for you, Commissioner, to consider a view of some of these places that we're hearing about in the brief of evidence and in the evidence as it's coming out. We're hearing of various locations on Canterbury Road and various homes. And whilst it is the situation, one would think, that what one would look at as of now may be somewhat different to what things may have looked like some two or three years ago, there may be some benefit for the interested parties to see these locations, to see Canterbury Road itself. Some of these sites may still be of a similar appearance as they were back in 2015-16.

I'll just put it out there, Commissioner. If, if, if you are of the view that there would be some assistance to yourself, my instructing solicitor and I believe there would be some assistance from our point of view to see these locations. In terms of the implications that a view would have in relation to the length of the hearing, it may in fact be that it saves time. One would imagine that if it was a well-organised view it would take a morning or an afternoon out of a hearing date, but the end result may be that that half-day could be made up by having seen things first-hand and not having to go into the extent of the detail of the questions and examination. I'll just put it out there, Commissioner. It doesn't have to be done today or next week or any time, but - - -

THE COMMISSIONER: Mr Drewett, two aspects to it. Have you identified which particular locations you think we would benefit from by having a view?

MR DREWETT: I have a number of properties that I would think would be useful to have a look at. Commissioner, if you were of the view that it's not out of the question, then perhaps over the day or over the coming days we can collectively – I say “we” as in other lawyers here – collectively get our heads together and work out what could be useful and what might not be. I mean, at this stage obviously I'm thinking of the Roselands property, the Willeroo property, 998 Punchbowl Road and 570 Canterbury Road. There's a number of properties that are of interest in relation to Mr Hawatt, no doubt, that may be of less interest to other persons or of the same interest. I'm certainly not going to suggest that the Commission should just go down and see a property that is just of interest to Mr Hawatt. There may be some collective thoughts in relation to that. But if you are against the idea straightaway, then that's where it goes. But if you thought that there may be some benefit to having those discussions, then I'm happy to - - -

THE COMMISSIONER: Look, it's a novel application. Another preliminary issue, do I have power to do it?

MR DREWETT: I think under section 19 of my - - -

THE COMMISSIONER: 19?

10 MR DREWETT: 19, where it talks about the incidental powers under the ICAC Act, I formed a view that, Commissioner, that you do and you can, in effect, can do anything in relation to what you consider to be appropriate for the investigation of this particular matter. I might have misunderstood that particular section, but under the incidental powers of the ICAC Act I believe that you do have the power. Of course it's not an unusual application to make in a criminal trial situation. Anything that one person sees, everybody has to see at the same time. So it needs to be organised, and from a procedural point of view no doubt that would take some time to actually organise something of that nature. But it was just a thought I was having.
20 With the evidence of this witness – who I know is still at the back of the room, but I don't think he needs to go out – there was some issue in relation to issues of strategic merit in relation to certain buildings and what have you. Of course, at the end of the day they're views that are shared by certain parties. At the end of the day it may be of use to you, Commissioner, for you to assess that for yourself and see if, when there are issues of strategic merit, what you yourself find in relation to those sort of issues.

30 THE COMMISSIONER: All right. Mr Buchanan, have you had time to consider this?

MR BUCHANAN: Mr Drewett has given me notice of his intended application, Commissioner. At this point, as I indicated to Mr Drewett before he came up to the bench, I'm not persuaded that the Commission would be assisted by undertaking a view. I leave aside the question of power. I make an assumption for the purposes of the submission that there is power. In my submission, a view is undertaken where it will throw light upon factual issues. Now, I would readily concede that there are factual issues as to matters being investigated, but in my submission there hasn't been sufficient put before the Commission to indicate what the factual
40 issues are which would be assisted by a view and how they would be assisted by a view beyond the reference by Mr Drewett to the question of strategic merit in an urban design review.

So far as concern issues that I have raised with Mr Annand as to strategic merit, they are themselves the subject of evidence that has been given, for example, by Mr Foster, by Ms Dawson. In addition, the Commission has, in my submission, quite clear aerial photographs of the 998 Punchbowl Road site which can assist, together with clear and unchallenged evidence about

the distance between 998 Punchbowl Road and Canterbury Station, and the only arguments being, you know, how much beyond a kilometre there was or is between that address and Canterbury Road. The fact also appears to be conceded by Mr Annand that there weren't any eight-storey buildings nearby, and indeed he made a reference to the fact that he thought there might be something to the north, but to the east he appeared to concede that there really wasn't anything until you got to Canterbury Road.

10 He disagreed or didn't accept the proposition that the site was an isolated site, but Your Honour has the evidence of the planners, and at the end of the day these are terms of art used by experts in their field, and in my submission the material available will – to the extent that it's an issue that needs a decision in order to assist in making findings – has the evidence upon which to draw a conclusion as to the weight to be given to the various opinions that have been expressed, which is sufficient to allow a conclusion to be drawn.

20 So, I am, for myself, not closing the door at this stage, but I do submit that at this stage there is insufficient before you to justify undertaking a view, and that if any party wished to pursue the application, in my submission, Commissioner, you should ask that party to provide a written document of the issues, as well, obviously identifying the site, but of the factual issues where it is submitted that you will be assisted by the undertaking of a view so that we have a clear application in front of us. At the moment it's amorphous.

THE COMMISSIONER: All right. Now, before returning to Mr Drewett, anybody else want to say anything about the application?

30 MR ANDRONOS: Commissioner, having only just heard the exchange between my friends this morning, and not having had any prior notice, there may well be some merit but I think the other parties would need a little opportunity to consider it before perhaps the Commission will revisit the issue at some time, perhaps on the sitting day next week or early in the next tranche of sittings. While I'm on my feet, Commissioner, I wonder whether the Commission, either through yourself or through Counsel Assisting, could give us some indication of likely timing. In particular, whether future dates are going to be added to the existing sittings. We all have diaries that we need to organise, Commissioner.

40 THE COMMISSIONER: Yes. Look, it's an issue that we're discussing at the moment. I anticipate we may need some future dates. Our challenge is, there's at least another public inquiry by the Commission and we've got to coordinate with that, but I am very aware that I've got many counsel, very busy with diaries, and we want to let you know as soon as possible. So, I'll pursue that further and let you know as soon as possible.

MR ANDRONOS: I'd be grateful, thank you, Commissioner.

THE COMMISSIONER: Anybody else? Mr Drewett, I am interested in the proposal but I've got two issues. Number one, power, and I need to look at that, I think, myself. But I am persuaded by Counsel Assisting's submission that we do need identification of the particular sites and also the matters or the factual matters in dispute that a view would assist, and I think the other parties would be assisted by that as well. Could you put together some kind of, sorry, I withdraw that. Can you put together a document which would set out, number one, maybe some more detailed submissions about my power to do it and then that, in your application, it would be 998 or Willeroo or whatever, for these various reasons. We'll then circulate it and it allows the other parties to assess whether they will join you in your application et cetera.

MR DREWETT: Yes, Commissioner. I'll do that. Thank you.

THE COMMISSIONER: Thank you. Mr Buchanan.

MR BUCHANAN: Could Mr Annand be recalled, please?

THE COMMISSIONER: Sir.

MR BUCHANAN: Excuse me a moment, Mr Annand. If the witness could be given volume 14, please, of Exhibit 52. And yesterday I was taking you to a draft report dated December 2015. This is commencing at page 10 on volume 14.---Yes.

10 And can I just take you to page 34, please. And just reminding you – and please tell me if this was not your understanding or isn't your memory – this was an assessment you had been asked to undertake of a submission by Statewide Planning, made in October 2015, for a height of 25 metres, eight storeys, and a maximum FSR of 2.8:1.---That's correct.

20 Thank you. So can I take you to page 34. On that page you expressed the conclusions that, under the heading of Building Height, generally eight storeys, 25 metres, as a tower element or gateway, with capacity for a roof garden above. And as to FSR, a maximum FSR of 2.8:1 could be permitted based on the provision of a well-landscaped communal open space on the roof of the building and the implementation of ADG setbacks. The maximum FSR that could be supported in this context with a generous and useable communal roof garden/open space at ground level is 2.8:1. Then, over the page, you had a series of recommendations. Do you see that? ---Yes.

There are 13 recommendations. There is no recommendation here as to FSR, is that right? Have I read that correctly? Or as to height, unless it's recommendation 3.---Doesn't appear to be, no.

30 And I'll just – to make it quite clear – there really is a recommendation as to height in recommendation 3, isn't there? "Permit modified height limits as set out," and then you identify the figures, "permitting development to a maximum of eight storeys/25 metres."---Correct.

Just excuse me a moment. If the witness could be shown, please, volume 12, page 118. It's on the screen in front of you, if that assists, sir. Recommendation 4 - - -?---What is that?

40 It is the third version, that is to say the final version, of your March/April report.---March/April. Right.

And recommendation 4, you indicated that the FSR should be retained at 1.8:1 as per council planning proposal. You made a recommendation as to FSR there – at the moment I'm not looking at what the FSR was – but you didn't in this draft, I'm sorry, in your December 2015 report, the review of the Statewide Planning proposal, on page 35 of volume 14. Was there any reason for that?---I, I don't know the answer to that. It surprises me that

there isn't a reference and it surprises me even more that on the previous page I'm suggesting that 2.8:1 is, could be permitted.

Well, can I take you up on the latter. Why does it come to you as a surprise?---Because I think yesterday, towards the end of yesterday we were looking at some documents where I did some analysis that suggested that 2.8:1 was too much and 2.5:1 was possible.

10 I simply offer this as a possibility and invite your response. Is the absence of a reference to the FSR that is set out on the previous page under the heading of Recommendations on page 35 of volume 14, connected at all with any discomfort you felt at making the recommendation of 2.8:1 on the previous page?---It's a possibility.

Were you feeling uncomfortable - - -?---I was.

- - - about the product that you were being asked to provide - - -?---I was.

20 - - - and you were providing? Can you tell us a bit more about that, please?
---I think you've, I think - - -

We talked about it yesterday, did we?---Yeah, did we have up a letter that suggested that I was uncomfortable about, I think it was about 2.4 or 2.5:1, but that basically because I could see a justification for six storeys and eight storeys on the corner as a tower, but I, I couldn't, I didn't feel comfortable about something that would result in a full eight-story building.

So - - -?---And 2.8:1 I believe would.

30 So you can understand my next question then. In that case, why did you express the opinions that are recorded on page 14, I'm sorry, page 34 of volume 14 in this report as to a maximum FSR of 2.8:1 could be permitted and can be supported?---I don't know. I really don't remember. I'm surprised that it's there to be honest.

Did you express those opinions because of pressure you felt you were under to express those opinions?---I don't remember. It's possible.

40 If you were uncomfortable for the reason that you were under pressure to express those opinions, what or who was the source of that pressure?
---The pressure would simply be the desire to get the project completed and off the books. It had been lingering around for a very long while and there had always been pressure to resolve it and the pressure would come from Spiro in the sense of, you know, he was very keen to get the thing resolved.

But it's more than getting it resolved, you could have got it resolved by saying in my professional opinion the FSRs and indeed the building height limits proposed by Statewide Planning can't be supported.---Yes.

You didn't provide a report to that effect.---No. I provided information to that effect and that's why, you know, it's a long while ago, in retrospect I'm surprised that that 2.8:1 ever made it into that report.

And you disappointed it made it into the report?---I am.

Are you disappointed in yourself?---Yes.

10 You see it could be suggested that by doing so you didn't act with professional integrity.---It could be, yes.

And what would you say to such a suggestion if it were made?
---I wouldn't answer that, sorry.

And why would you not answer it?---Well, I don't believe I can clearly define one way or the other what the position was or is in terms of professional integrity and in terms of -- I'm, I'm disappointed it's in there, I'm surprised that it's in there, I don't recall - - -
20

But it's exactly what Statewide Planning was asking you for, you knew that?---It is, and that surprises me, given the analysis that had been, we'd been through.

In expressing those opinions that you expressed in that report, you were, as you understood it, providing what appeared to be a professional opinion from an urban design, and with considerable standing in the profession, which in your opinion was not justified?---Which in my opinion wouldn't deliver the best result.
30

But you had been asked to provide an assessment of what was being sought of council by the proponent and you didn't provide it, you provided what the proponent wanted to see expressed?---I, I provided the data, the information. And, look, there's some, there's something that's a bit loose here and I, I just can't pinpoint it, I'm sorry, but the, I, I, I cannot quite comprehend this step from the analysis that we saw yesterday to this report.

Well, an explanation would be what we discussed earlier, that you felt you were under pressure to provide it.---Well, that's, that's an explanation but it's, it's not a fact. I don't, I don't recall that it was you know, that that was the reason.
40

But you can't provide us with any other explanation?---No.

And it would be a logical explanation because Spiro Stavis was the person you were dealing with and he was telling you what was required?---Yes, but I, I, I still don't get the, the leap from 2.5 to 2.8. It just, it just doesn't, it just doesn't fit in my head.

The leap is because you had been asked to assess a different proposal?---I, I, I hadn't been asked in the sense of I, it had been proposed and I had analysed it and reviewed it and said 2.5. Now, you know, there, there wasn't a situation where someone, someone said, "Oh, and by the way, I must have 2.8."

And you're quite sure about that?---Well, as far as I can recall.

- 10 You can recall - - -?---No, no. So, I, I just don't, I just don't understand how that 2.8 gets there, you know, because it was, it was quite clear in the documentation yesterday that I was, that I didn't believe it could be done with a floor space ratio above 2.5.

Do you recall yesterday, I took you to some correspondence you'd been in with Mr Stavis in which you were having a debate about FSR. If I can show you volume 12, page 289, please.---Is this one of those ones you read from the bottom up?

- 20 All of them are, sir. If you could just, if we could, do you recall, this was 26 June, 2015. Your email's at the bottom. You're talking to Spiro and Warren, "A heads-up, the new design guide setbacks are as interpreted, increased the setbacks on Punchbowl Road. This had the effect of dropping potential FSR from 1.8:1 to 1.3:1. Please discuss urgently." And then Mr Stavis says to you, on the same day at 8.32am, "Please come and see me Monday. We've already let the cat out of the bag to the applicant when we received your draft report. We need to get as close as possible to that FSR." Now, was that the sort of - - -?---That's 1.8:1, it's a bit different to 2.8:1.

- 30 Oh, absolutely but it's, what I'm trying to suggest to you is that this is a snapshot of the relationship that you had with Mr Stavis at that point of time and what it would appear to indicate is that at that point of time you were being asked to change a provisional opinion that you were expressing, admittedly, or revise it in favour of the applicant because the applicant had been told that you would say the 1.8:1.---Yep.

Do you see what I mean?---Yeah, I do see what you mean.

- 40 And so what I'm asking is whether the nature of that sort of relationship continued during the time you were dealing with Mr Stavis to the point where you recommended 2.8:1, and that explains why you came up with that figure.---Well, that could be an explanation but I'm not, I'm not able to confirm that it is or it isn't.

Because we do know that was the figure that the applicant wanted because that was what was in their proposal. That was what was in their submission for a proposal.---And, and, and that is what appeared to be able to be delivered until the new interpretations of the ADG came in.

Can I just ask you about that? Did you express that opinion before you were aware of these new interpretations of the new ADG, that 2.8:1 was permissible or could be supported?---No, but 2.8:1 has got nothing to do with ADG. It doesn't comply with ADG full stop. I'm talking about the 1.8 at this stage.

I see, thank you. Right, sorry. We're back in June - - -?---Yeah, yeah. At the bottom of the page.

10

Thank you. Excuse me. So I wonder if we could have a look, please, at volume 14, page 8. Sir, I'm showing you an email from Mr Stavis to you, dated 4 January, 2016. And after greetings he says, "Can you provide me with an update on this? Last we met, you were going to prepare an updated report supporting 2.8:1 and six to eight storeys," sorry, when we say six, we mean six and eight storeys, "as per the sketch I had given you. Call me tomorrow if unsure." It would seem there that Mr Stavis was of the impression that you had indicated you were prepared to support 2.8:1.---It would.

20

And that would have been, according to Mr Stavis, as the result of a discussion you had when you met him face to face?---Yes, I would think so.

And just note the date of that. That's 4 January.---January. Yes.

If we could now go to page 9 of volume 14. And this is, if I have it correctly, the email under cover of which the report we've been looking at was sent to Mr Stavis. It's an email from Ms Avval to him dated 7 January. And here we have, at page 34, 2.8:1.---Yeah. How many days on is that?

30

Three or four days from the previous suggestion.

Three days.---Mmm.

Is there any comment you'd care to make about that temporal relationship between the expression of opinion and the email?---It seems like a quick turnaround.

Sorry?---It seems like a quick turnaround to get a redrafted report in three days.

40

Can we go to page 8, sorry, of volume 14.---Yes.

This might assist you on that subject. It's an email responding to Mr Stavis's request for an updated report as to 2.8:1. On 5 January you say, "Lili not back till Thursday, I will try to get a rough draught by COB Thursday and final by noon Friday and can get comments back by 10.30am Friday." And then Mr Stavis expresses thanks for that. Does that assist? I mean you're not saying are you that you expressed 2.8:1 because you didn't

have enough time?---No, I'm not, no. I, I'm just surprised that there's a turnaround from one draft of the report to another in two or three days, four days.

So that is a draft. Then if we could go to page 86 of volume 14, and this is an email that I suggest covered the final draft.---Ah hmm.

The final version of the report.---Yes.

10 Dated 8 January to Mr Stavis. I'm sorry, start again, start again. At the bottom, I've got to read up from the bottom, 8 January at 12.42pm from you to Mr Stavis. "As promised, final report." And then if you turn over the page, this is page 87 of volume 14, you can see the coversheet of the report and page 111 - - -?---Which one?

We're just getting it up on the screen.---Okay.

The block under the heading Conclusion has the - - -?---Yeah.

20 - - - support of the building height and support for a maximum FSR of 2.8:1. So that's how it ended up with that chronology. You'd accept that that is consistent with you being under pressure from Mr Stavis to provide an opinion - - -?---I'd, I'd accept that, yeah.

- - - for 2.8:1. Can I just put to you – I withdraw that. First of all, sorry, can I just ask, it doesn't appear to us, and please refer to the hard copy of that report if it will, if you think there's material that might assist you in answering the question, but it doesn't appear that there's any discussion of the desirability or the merits of 2.8:1 in that report, there's simply a flat
30 expression of opinion without supporting argument.---That's conceivable, yes.

Again that's not consistent with expressing a professional opinion honestly held on grounds that could be identified, is it?---No.

And I'm right in saying that you're agreeing that you didn't honestly hold that opinion at the time?---And I don't now.

40 Can I take you to the evidence that the Commission has received from another planner. Was it physically possible to fit 2.8:1 worth of floor space into the available area?---Yes.

You did think so?---Yes.

And still end up with a building that would fit within the relevant controls, whether it would be SEPP 65 or the DCP in terms of setbacks or density requirements?---I need to go back to the analysis that was done earlier on. Yeah, I can't find it now. If, if we - - -

I understand that might be on, sir, page 6 of volume 14 in that separate document.---Page 6, did you say?

6.---Yep, that's sounds probable. Yes.

In that separate document that you identified yesterday, dated 20 November, 2015.---Okay, well that demonstrates how you can get 2.8:1 on - - -

10 See, it says a full building height of eight storeys which indicates the whole site.---Exactly.

Which is not consistent with - - -?---Well, it's not what I was recommending at this, at this stage particular, all right.

And in any event, in the last paragraph of that memo, you say, "I would prefer a six-storey building with an eight-storey corner at a maximum FSR of 2.5:1, rather than 2.8:1."---That's right. It's, it's a, a bit of a last whimper, I expect. That's what it sounds like.

20

Would it be fair to say that the proposed FSR in that final report of yours was too high for the site?---Well, yes.

Now, in your original brief, and I suppose I need to take you back to volume 12, page 36. You were asked, at that stage, and I'll just get the, this is around February/March, 2015. At that stage, you were being asked to provide an independent urban design assessment of a planning proposal, correct?---Yes.

30 And the one you provided in the December report was not independent, was it, having regard to what I think we've agreed is the high likelihood that the opinions you expressed on the subjects that we've canvassed, you were pressured into expressing by Spiro Stavis.

MR PARARAJASINGHAM: I object, Commissioner. The evidence is not that it was a high likelihood. It was put to him as a possibility. My recollection of the evidence is that was acknowledged that perhaps it was possible but the witness has no memory of any such pressure being brought to bear on this issue. It is not correct to put it in that term.

40

MR ANDRONOS: Commissioner, I was about to make the same objection. The way Counsel Assisting expressed the question did not reflect the evidence.

THE COMMISSIONER: Mr Buchanan.

MR BUCHANAN: I accept the submissions, Commissioner, respectfully and reframe the question. You cannot give an explanation for the opinions

you expressed in your final report on FSR, other than that you expressed them because you were pressured to do so by Spiro Stavis, is that fair?
---Yes.

So what you provided in that December, 2015 report was not an independent assessment of a planning proposal?---No.

10 And can I just go down, in respect of, go down to the bottom of page 36 of volume 12. In that case, in February/March 2015, you were told that council had received a request for further information from the department in respect of a draft planning proposal for which the following issues were to be resolved, “Demonstrate adequate justification for the 2.2:1 FSR to clearly demonstrate it has strategic merit.” That is not something you provided in respect of the 2.8:1 opinion in the December 2015 report, that’d be fair to say. You agree that would be fair to say?---No.

20 You don’t agree?---I, the, the, the December report is a very long way from this brief. The brief is, the parameters of the brief have changed twice at least, and the report has been completed. A review of particular documentation has taken place, and then another proposition has been put forward which is completely different to the first. At no time is there sort of a suggestion that the original brief is necessarily still applicable.

But nevertheless, just taking a step aside from the original brief, there wasn’t anything in your December 2015 report to provide justification for the 2.8:1 FSR, to demonstrate that it clearly had strategic merit.---No.

Or that it would be good design.---No.

30 Thank you. Now, I just want to go over now, take a bird’s eye view of the different reports and invite you to comment. What I’m going to do is take you to the opinions as to FSR that you expressed over time in these reports. Now, the second draft of your March/April 2015 report indicated that an FSR increase from 0.5:1 to 2.2:1 represented an overdevelopment. That’s volume 12, page 176. And you went on to say on the same page a proposed FSR of 2.2:1 and height of 15 metres do not appear to be achievable given the site constraints and assessment against SEPP 65 and DCP controls. So that’s what you said in that report. The third and final draft of that report, you said an FSR increase from 0.5:1 to 2.2:1 does, however, represent an
40 overdevelopment, which is not inconsistent with what you’ve said in the previous draft. That’s at page 101 on volume 12. Then you sent that email that we saw yesterday to Spiro Stavis and Warren Farleigh. “The new setbacks,” this is 26 June, 2015, “The new setbacks have the effect of dropping potential FSR from 1.8:1 to 1.3. Please discuss urgently.” And Mr Stavis replied, “We’ve already let the cat out of the bag to the applicant.”---Yeah.

You remember that. “We need to get as close as possible to find that, to that FSR.” That’s page 289 of volume 12. And you replied, “I think I know how to fix it.” Is that right?---Yeah.

And that’s also page 289. And you said that, in an endeavour to meet the concern or to satisfy the concern that had been expressed to you by Mr Stavis, that, quote, “We need to get as close as possible to that FSR of 1.8:1.” Is that fair to say?---Yes, that’s fair.

10 Then in the first draft of your supplementary report, that’s the August 2015 report, that’s at volume 13, page 14, you concluded that a maximum FSR of 2.1 could be permitted.---2:1.

2.1. Sorry, my mistake 2:1 could be permitted.---Yes, and I think also said that 2.4 was a possibility if we had roof gardens, is that right? Is that that one?

Yes. So can you explain that - - -?---The difference between those - - -

20 - - - shift of opinion?---The shift is we go from five to seven storeys to six to eight and that, that represented an increase in floor space ratio from 1.8 to the 2.4 I think it is.

2.1:1?---Mmm. Or, or 2:1 if – I think it was 2:1 with the ADG-compliant setbacks and 2.4 if you squashed those up a bit. Was that correct?

Well, we can go to volume 13, page 14, if I have my note correctly. You might need to perhaps look at the hard copy of Mr Annand in order to – have you got volume 13?---No, I don’t. 12 and 14 I have. Sorry, what page was it again?
30

Page 14 is the page I’ve taken you to.---You always go to the wrong one.

But there are a couple of other pages that might assist.---I need to go to 9 I’m afraid.

Yes. Your calculations?---Mmm, yeah, so the 2.4:1 has a reduced setback and, and requires roof gardens, the C, which is the 2:1 still has non-compliant setbacks but has a common court.
40

Sorry, has a?---A common court, common open space.

The communal open space?---Yeah.

Yes.---So from there the next sort of move up is by putting in the roof garden enables you to do away with the communal court at ground level, thereby giving you a bit more floor space up through the whole building. That sort of moves towards the 2.4:1 which then is pretty close to the 2.5:1

which appears in the final report before it turned into, morphed into 2.8. So there's a sort of consistency going on there as we go from the five/seven storeys to the six/eight storeys that 2.8:1 is getting to be a, sorry, 2.4:1 is getting to be a possibility or thereabouts.

And so at the end of the day were the higher FSRs possible pursuant to your thought which you expressed to Mr Stavis, "I think I know how to fix it?"
---Yes.

10 By reshaping the building and - - -?---Yes.

- - - increasing the height and - - -?---Yes.

- - - moving the common area, communal open space.---I'm not sure if it was in that order and if they were all in the one - - -

No, I'm not suggesting it was, but those are - - -?---But, but I'm not sure that they were all part of the one program to get there.

20 Step.---It might have been a range of, certainly a range of factors that could be tested to see if we could improve the floor space ratio delivered.

Excuse me a moment. Now, there's just a couple more matters that I wanted to take you to if I could. One is volume 14, page 14. If I have the page number right, no, I don't. Excuse me a moment. Yes, page 182. I don't know where I got 14 from.---182?

Yes.---It's close. 182, yes.

30 Yes. And it's now – no, sorry. Sorry, I've changed the number. This is not your document, sir. This is a council document.---No, never seen it, yeah.

You can see it says at the top, "Report by director of city planning."---Ah
hmm.

And you can see that it's in respect of amendment to planning proposal at 998 Punchbowl Road, Punchbowl.---Yes.

40 And amendment, I'd ask you to assume, is the alternative proposal received from the proponent. The second-last dot point says, "The amended scheme has been assessed by our external urban design consultant, Annand Associates, who has recommended approval of this amended scheme from an urban design perspective." Now, you've seen the recommendations. That's not correct, is it? I can take you back to them. Remember how we showed you your original recommendations. You had a recommendation as to FSR of 1.8:1, and then we took you to your recommendations in this final report which had no recommendation as to FSR.---I see what you're saying. I see what you're saying. Okay. That's an interpretation. The, it, it's

conceivable that you could arrive at that statement by including the reference to 2.8:1 in the conclusions. But certainly in the recommendations, it wasn't recommended in the recommendations.

Now for your information, so that you understand my next question, on 17 March, 2016, council resolved to adopt this alternative proposal for 998 Punchbowl Road with an FSR of 2.8:1 and a height of 25 metres.---Sorry, what was the date again?

10 If I have it correctly, 17 March, 2016.---Oh, okay. Right. That's right.

So if I can take you now to 28 April, 2016. I might be able to show you a document. Exhibit 85, page 57. And while we're getting that together, sir, can you recall, did you do further work for Mr Stavis – or what I really mean is for council, Canterbury Council – after that December 2015 report?---I think so.

20 And when did you next do work?---Oh, look, I, I wouldn't, I wouldn't know. I, I did, if, if I remember rightly, I did three, four reports over a period of a couple of years.

And how many of them, well, if we call this one one report – I know there were three – if we call it one report, how many did you do for Spiro Stavis? ---I would say three or four.

30 And what I'm putting up in front of you is an extract from an electronic calendar which indicates that a meeting was scheduled between you and Mr Stavis on 28 April, 2016. Now, do you have a memory of whether the meeting occurred?---No idea. Do we have a subject matter?

No. That would have been my next question.---It would seem unlikely that it would refer to this, to 998, given that it's been up to council and, and resolved, was it, at that, at that meeting?

Yes. Yes.---Yes. So I can't see why there'd be a further meeting on that.

If I can ask that you be shown please, volume 14, page 201.---201?

40 201. This is an email conversation, starting from the bottom on 29 April, 2016 at 10.04am. You said to Mr Stavis, you noticed that council was calling for tenders for urban design reports, "Do you need to apply?" And Mr Stavis wrote, "You can." You responded, "Do I need to?" And he responded on 29 April, at 11.07, "Not really, only if you want. It is only to comment on DAs." Were you interested in further work after that report, if I can call those three reports one compendious report?---Certainly.

And did a desire for further work from Canterbury City Council influence the opinion you expressed of 2.8:1 in the final report?---No. That wouldn't have even been on the radar at that stage, I don't think.

And why not?---Well, the tender, council's calling for tenders, I don't know what the date of the tender calling was but it was sort of, probably afterwards or running parallel. I don't think, I don't, it wouldn't have influenced me anyway.

10 Did the desire for further work from Canterbury Council influence the opinion you expressed in the December, 2015 report of 2.8:1?---No.

But you were certainly interested in further work from council?---Certainly. And I think, I think you noticed yesterday that I had written a couple of notes to the general manager suggesting that there are things that I thought the council should be pursuing.

20 Thank you for reminding me. Did you take up that subject with Spiro Stavis?---I, we, we probably, we probably discussed it, in fact I think somewhere in the reference here he'd suggested I'd take it up with Jim Montague.

So you had had discussions with Stavis about the desirability of a more holistic approach to development along Canterbury Road?---Correct.

And accommodating development pressures?---Yes. And also to looking at the implications of the state government rail - - -

30 Sydenham-Bankstown?---Strategy, whatever it was called. And also, there was another thing where I suggest to Jim Montague, I think, I'm not quite sure what the sequence was there, but I suggested they might consider investigating a construction of a plaza over the railway station at Canterbury Station.

40 Now, just confining yourself, if you wouldn't mind, to your ideas for a more holistic approach to dealing with development pressures along Canterbury Road and focussing on Canterbury Station as a centre from which you would radiate out, in terms of looking at - - -?---That's not, that's not what the Canterbury Road Master Plan talks about but it's, it's one of the things it talks about.

Yes. I'm not talking about the master plan now, I talking about what you proposed to Jim Montague in those emails that we looked at yesterday. ---Oh, I talked about Canterbury Road for one.

Yes. And that's what I'm asking to focus on, if you don't mind.---Okay. And, and it doesn't radiate from Canterbury town centre.

Well, I thought you talked about 200/400/800 metres radii.---That, that was, that was another, that was the rail's strategy, looking at the, all the Canterbury, Canterbury centres, in the context of the rail strategy.

Thank you. Now, you said you, you did to it's likely that you discussed them with Mr Stavis?---Oh, I certainly would, would have mentioned it to him and said, "I, I think this needs to be done," and I think we noticed somewhere in the missives that he suggested I take it up with Jim.

10 In your conversations with Mr Stavis, do you have a recollection of whether he seemed to think that it would be a good idea to have a more holistic approach to looking at how best to accommodate development pressures along Canterbury Road?---I can't say. It, it wasn't evident. And my, my attitude to the whole thing was with these, they, they had an outbreak of planning proposals and my sort of, and I was working on some of them and I, my attitude to it was, if you got your planning strategies right, you wouldn't have planning proposals and the, the response to that was, "Well, we don't really have the budget to do the studies." And I was suggesting that the amount of money that they spent on planning proposals was
20 probably more even if they invested in the strategy.

Do you remember who indicated that a lack of funds for the study was the obstacle?---I don't. It would have either been Spiros or Warren Farleigh.

And can you – yes?---You know, when I say a lack of funds, I interpreted that to be a lack of funding priorities.

Yes. Can you, as you sit there now, and I know it might seem obvious to you, but if you could just spell it out for us, why would it be preferable to
30 have a more holistic approach to the subject of accommodating development pressures along Canterbury Road, having regard to centres link the railway station, rather than dealing with them on a site-by-site basis?
---Okay. Removing the railway station, because that wasn't part of it, Canterbury Railway Station is taken care of, it's appropriately zoned developing strongly as a focus, however, the problem as a result of the Canterbury Road Master Plan was that it was only, only parts of it were ever rezoned and they were the industrial parts, consequently all the residential parts remained as they were, usually in an undevelopable context. So that was beginning to lead to planning proposal popping up here, there and
40 everywhere with landowners or prospective developers coming along and saying, oh, I think we could get a block of flats on here, and putting in a planning proposal. And that became difficult to manage. I mean it's difficult to manage in this situation because we've got, every time you reached an approval, every time you reached a point someone would put in another one that upped it a bit further or a bit further and so there was a sort of Dutch auction going on, on sites, on many sites, and it was, it was beginning to look quite dangerous in the terms of providing a hotchpotch, so

it leads to a hotchpotch of development which can't be a good result. You know, if you go ahead and get the strategy right you don't have the planning proposals because you have a rezoning that is not contestable.

And that is a better outcome from an urban design point of view?---Well, it's a better outcome from an urban design and from a strategic planning point of view. It actually gives you what you want rather than what various people think you, think they can get from you.

10 Now, you might have said this yesterday but in case not, can I ask the question, did Jim Montague take you up on your offer to make a presentation to him?---No, I don't think he did because I would have remembered the presentation, putting it together, I think. I'm not 100 per cent sure, I might have, because I, I, I had researched the rail corridor myself at the same time as the State Government was doing their, their own studies and consequently I had quite a substantial amount of documentation, so I virtually had a presentation which I could have shown if requested and I just, I don't, just don't recall showing it to Jim.

20 That's my examination of Mr Annand. Thank you, Commissioner.

THE COMMISSIONER: Thank you, Mr Buchanan. Any questions?

MS BULUT: Yes, Commissioner. Mr Annand, I appear for Canterbury-Bankstown Council and a number of their employees and former employees. I just have a couple of questions for you.---Sure.

30 Firstly, just to clarify the timeline with respect to the planning proposal concerning the site at 998 Punchbowl Road, Punchbowl. It's my understanding that you were engaged by Canterbury City Council, that is the former council, sometime in early 2015.---Yes, I think it was about – it must have been very early because the first report was March/April.

That's correct, yes. And the final report – or the final version of the report, I should say – was dated December 2015, but in accordance with the evidence that Counsel Assisting took you to this morning, the final report was provided in early January 2016.---That sounds right.

40 Yes. And your evidence earlier this morning was that you had provided a number of reports to the Canterbury City Council – that is, Spiro Stavis – on a number of different projects or sites. That's correct?---You mean other, other projects?

That's right.---Yes.

And so in relation to payments you or your company received by Canterbury City Council, I want to put to you that the financial records as held by the Canterbury-Bankstown Council show that the last payment

made to you or your company by the council for any report or any project was in November 2015. Does that account with your recollection?---It could, yes. I, I'm not, I'm not sure. I have no idea.

But that certainly is not inconsistent with your memory?---No, well, if the report, if the final report came out, if there was a final draft and, yeah, it's conceivable there would have been a bit of work after the final, but I'm not sure. I've got no idea. I hope I don't owe them one.

10 And you're of course aware that there was amalgamation on 12 May, 2016.
---Yes.

Yes. And so from that time it's now the Canterbury-Bankstown Council. And it's correct, isn't it, that you haven't been engaged by Canterbury-Bankstown Council to provide any services to it?---No. No.

That's all the questions I have, Commissioner.

THE COMMISSIONER: Thank you.

20

MR ANDRONOS: Yes, Commissioner. Not very many. Mr Annand, my name is Andronos. Mr Annand, you'll recall yesterday Counsel Assisting asked you some questions about a view you expressed, which is recorded at page 6 of volume 13 of the bundle, if Commission staff would be good enough to get that up on the screen. You may remember the exchange, Mr Annand. It was where you had expressed the view - - -?---I'm sorry. Could I, could, may I have a bit more volume?

30

Sorry. I used to have a taller one of these. I don't know where it went. You had expressed the view, Mr Annand, that a certain height of a tower on a corner of where 998 Punchbowl Road is, at the corner of Canterbury Road, you said that could celebrate the entry into I think it might have been the Canterbury municipality. I think your exact words are, I think in the report you said, and this is hopefully up on everyone's screen, the second paragraph from the top under 2.2.1, in the second paragraph, "This height is acceptable on Punchbowl Road only because it marks a major intersection and entry into Canterbury LGA." Local government area, I assume that means.---Yes.

40

And Mr Buchanan challenged you and asked you whether there was any other reason, and you said it could "celebrate" entry into the local government area. Now, the term "celebrate", is that a professional view you expressed when you described it as celebrating?---Yes. Yes. Not anymore.

Sorry? Not - - -?---You can't celebrate entering Canterbury anymore because you're already in it when you're in Bankstown.

Oh, yes. Yes, okay. I follow, thank you. Now, Mr Buchanan challenged that reference to celebrating, as it then was, as a specious argument. Do you recall that?---As what?

As a specious argument.---He did, yes. He repeated that a few times.

10 Now, like Mr Buchanan, I am not a town planner, so if you could please help me understand what you mean when you express the professional view of a tower being able to celebrate entry into a local government area?

---Well, a tower is able to celebrate a number of things as, as a, a visual icon and it's, it is simply a matter of a visual statement when arriving or passing a particular point, that suggests that something is going on, we are arriving at a new place, this is a significant intersection, we're entering a new land-use zone, a variety of things.

Yes. It can be, in other words, it can be a landmark, couldn't it?---A landmark is fine.

20 Yes. Now, Mr Annand, in your, well, sorry, I'll withdraw that. You recall having a meeting with Mr Montague which may have been in connection with the property at 998 Punchbowl Road. Do you recall attending a meeting in which you met with Mr Stavis?---Yeah. I'm not, I'm not a hundred per cent sure. I, I, I recall having a meeting at which Jim was in attendance with a number of people over a particular development proposal and I, I suspect it was this one.

Yes. I wonder if Mr Annand could be provided with a copy of his record of interview. Mr Annand, could you please turn to page 9 of the record?

30 ---Yes.

Perhaps if you could just read page 9 to yourself and let us know when you're done. I just have one question to ask.---Yes and it's, it's a bit alarming when you open a page it had yourself saying, "I'm pretty."

Yes, well there's really nothing I can say. Mr Annand, you see down the bottom of the page, about line 27, from line 25.---25, yes.

40 You were asked whether you have a recollection of what his, that being Mr Montague's position on this matter was.---Yes.

And your answer is, "I think he wanted resolution. He wasn't specific about what the resolution was but he wanted the thing to get settled. Can you see that?---That was my impression.

Is that still your recollection of that meeting?---Yes.

Mr Annand, you've had a number of dealings with Mr Montague over the years in his capacity as general manager of Canterbury Council?---Yes.

Those dealings have always been professional?---They have.

They've always been amicable?---They have.

10 You've never been intimidated by anything Mr Montague has said or done?
---Not at all.

Commissioner, they're my questions.

THE COMMISSIONER: Thank you. Mr O'Gorman-Hughes.

MR O'GORMAN-HUGHES: No questions, Commissioner.

THE COMMISSIONER: Mr Drewett.

20 MR DREWETT: Commissioner, I've got no questions.

THE COMMISSIONER: Mr Pararajasingham.

MR PARARAJASINGHAM: Thank you, Commissioner. Sir, can you hear me all right?---Sorry, just.

30 You can hear me all right? I appear for Mr Stavis. I've just got a few questions for you. You gave some evidence, or you gave evidence yesterday about your experience. It's also the case that you have particular experience in context sensitive corridor master plans?---That's correct.

Just briefly, what is that?---What is the, the, the field of work to what is the experience?

Yes, the field of work.

THE COMMISSIONER: Could you just repeat?

40 MR PARARAJASINGHAM: Sure. You have particular experience in context-sensitive corridor master plans. Can you just explain what that field is briefly?---Yes. Okay. So corridor master planning is the process of master planning a transport corridor, usually a highway or a road, sometimes a railway, and assessing the appropriate land uses along that in order to both vitalise the corridor and activate usually a number of nodes along it. The context-sensitive being the approach that has the least negative environmental impact on the surrounding areas and indeed on areas within where you have traditional neighbourhoods, heritage buildings, et cetera, et cetera.

Okay. And so the Canterbury Road Master Plan - - -?---Yes.

- - - that you've given some evidence about, that is an example?---Yes.

Have you been involved in any other?---Yes.

10 Can you tell us?---Yes. I think, I think Canterbury Road was the first that I did and it won an award from the State Government in terms of, a planning award in terms of its attitude and scope. After that I did one in Main Road, Glenorchy in Hobart, Victoria Road, Gladesville, Mount Albert Road, Auckland, New Zealand, there might have been another one or two in there, I can't recall.

And these ones that you've just referred to, were they after you did the Canterbury Road?---I think so, yeah.

20 Yes.---I think Canterbury was the first one, and some of the, because it won an award, some of the, that gave my firm a note in terms of that particular type of work because I think probably we were one of the first people to do that sort of work in Australia.

Okay. I'll ask you about the Canterbury Road Master Plan in a moment. I just want to put some general propositions to you and see whether you have any comment. Firstly, it is the case that you have worked with different councils obviously?---Yes.

You have a dealt with a number of different urban planning teams?---Yes.

30 And it is the case isn't it that when it comes to assessing a particular planning proposal, that is done by reference to a number of planning instruments and planning principles. You accept that?---Is that planning proposal in parentheses?

Yes.---Yes, that's correct.

40 And in your experience there are some urban planning teams that tend to adopt a conservative approach to the application of these instruments and principles?---Yes.

You're nodding?---Yes.

There are other planning teams that adopt an approach that is perhaps more facilitative of development?---Correct.

And is this the case, that whether a particular urban planning team is conservative or facilitative depends on a number of factors, including the personnel?---Correct.

Including the content of the applicable planning instruments or planning policies for that area?---Probably.

The nature and the quantity of the planning proposals put forward by proponents?---Yes.

The specific needs of the community?---Yes.

10 And indeed the specific needs of the particular area to which the proposals relate?---Yes.

In terms of this, still saying with the - - -?---You might add to that - - -

Yes, of course.---?--- - - - the particular attitudes of the elected representatives.

So you're talking about the councillors?---The councillors.

20 Still staying with these general propositions, in terms of this concept of strategic merit that you were asked about yesterday by Counsel Assisting, it sounds like that is an amorphous concept. Would you agree with that?---I, I, I'd say it's a buzzword.

Why do you say that?---Well, because it's, it's, it's precisely the sort of word that gets, pops up in a planning document somewhere and then everyone rushes to use it. There's some real deadly ones going around at the moment. But it doesn't necessarily mean a lot. It means different things to different people.

30 Sure. To the extent that it can be defined, do you agree with this? Informing a view as to whether a planning proposal has strategic merit, one is feeding into that consideration various contextual matters which vary from site to site.---Yes.

You've been asked a number of questions about 998 Punchbowl Road. Is it the case that part of your considerations into the strategic merit of that particular proposal was the geographic location of the site?---(No Audible Reply)

40 You're nodding?---Yes.

And is one aspect of that proximity to town centre and railway lines, so forth?---No.

Sorry, no?---No.

Can you explain that to me?---Well, it's not, it doesn't have proximity to railway lines.

Sure. But does the fact of that, is that something that you take into account in forming a view as to the strategic merit of the particular proposal?---Yes.

And is another discrete aspect of what I've turned geographic location where the site sits within the boundary of the municipality?---Not necessarily.

10 You were asked some questions by Mr Andronos about the site being on a prominent corner. Do you recall those questions?---On what corner?

A prominent corner. Maybe those are my words.---Yes, yes.

That's another way of saying that this site, in your view, was a focal point building, wasn't it?---Yes.

And that is a factor that you took into consideration when you were forming a view about the strategic merit of this particular - - -?---Yes.

20 Yes. Now, just in terms of your dealings with Canterbury City Council prior to Mr Stavis's involvement.---Yes.

It's the case that before 2015 you did have some dealings with Canterbury Council?---Many.

30 Can you just very briefly tell me the nature of those dealings?---Yeah, I can. Over a number of years Canterbury Road Master Plan, Canterbury Town Centre Master Plan, Campsie – I forget what it was called but it was the council-owned land, the council chambers, that whole block there, Campsie Special, it was Special Area Study or something like that. I did a review of 10 town centres, the 10 town, the 10 major town centres. I looked – no, that might be it. I think that's it. There might have been one or two others but I suspect that's it.

Sure. So - - -?---That was over a number of years, yeah, from about, from about sort of, I don't know, mid-80s or something through to 2010.

40 So you were, it's fair to say, an expert in terms of the – I'm trying to use a neutral term here – the planning demands of the Canterbury area?---I was very knowledgeable of the planning work that had gone on there, and particularly in terms of the centres and the growth pressures.

Yes. You referred to the Canterbury Road Master Plan and you've given evidence about what that is. In terms of the Canterbury LEP 2012 and the associated DCP, is it – and correct me if I'm wrong – is it your evidence that recommendations that you made in the Canterbury Road Master Plan, many of those were not adopted in the Canterbury LEP and associated DCP?---

Yes, but I'm not sure which LEP that was. I would have thought it was before 2012.

Okay. So - - -?---But I'm not sure. I'm not sure when. But certainly the residential-zoned areas weren't upgraded as recommended in the master plan.

10 What do you mean by that?---I mean that the residential-zoned areas – which were zoned either as low-density residential or what I think was called R3 but was a residue from the three-storey walk-up era and which couldn't be developed viably under SEPP 65 – these, these areas were not up-zoned to a degree which would enable them to be redeveloped.

So is this a fair comment, that you certainly held a view that the LEP had deficiencies in it?---It did.

And I can take you to it if you like, but in your interview with ICAC officers, you described the Canterbury LEP 2012 as “an anachronism”.
---That sounds likely.

20

Why did you use that word?---Well, as previously stated, when you go and give something a zoning and then that zoning isn't able to lead to, to what appears to be the objective – i.e. R3 residential density zoning – and you can't actually develop it because it's an inappropriate set of circumstances, you know, in terms of development controls, that's an anachronism. It's a zoning that can't be delivered.

30 And is it your evidence that, as a result of what you perceived to be a deficiency, there was this influx of planning proposals submitted by proponents?---Correct.

And when you say an influx, I mean, was it, to your knowledge, a kind of steady flow? Or was it just all of a sudden developers - - -?---It was over, it was over a period of a few years but there were regular planning proposals arriving at council, which would then go on to the Department of Planning, which were all pushing for a range of density housing, some of which were appropriate, some of which were not.

40 And it would be the case that from an urban planning team standpoint, that would constitute an increase in workload, wouldn't it?---Conceivably. And a level of, increased level of irritation too, I expect.

Yes. Just one moment. Do you still have your interview transcript in front of you?---Yes.

Could you just – just one moment. Could you turn to page 53, please.---6-3?

53. 53. 5-3.---Right.

So just for a bit of context, you're talking to the investigators about this 998 Punchbowl Road property, and at the top it reads, "Did you speak to Warren Farleigh about this site, can you recall?" Answer, "I'm sure, yeah." "Yeah, do you recall any conversations that you had with him?" Answer, "I don't recall the content or the subject of the conversations but I do recall talking to him about it. I seem to recall that. I think Warren was a bit more conservative than I was in terms of height and floor space ratio, but that's the nature of the beast. Warren's very much your, you know, your council sort of – not that it happened and it wasn't sort of, that's not the nature of a planning proposal." Do you see that?---Yes. Don't ask me to try and interpret it, however.

Well, what I am interested in, where you use the word, "Conservative," what do you mean by that in that particular context?---Let's not change things too much, too often.

And so, just so it's clear, you are saying there that Mr Farleigh had a conservative approach, sorry, do you agree with this, that Mr Farleigh had a conservative approach to the application of planning instruments and planning principles?---Yes.

And then if you just go to page 56, please. And I just want to take you to a passage. So, it's from 56 over to 57, starting at 56, line 27, I'll just read this to you. So you've been asked questions about seeing Mr Montague. I'm not interested in that. You go on to say, "I might have seen him somewhere at a conference, but I thought he was a, yeah, he was a terrific guy, and so when this came up I was surprised. And Spiro's, let's say, because I've only known him for a relatively short period of time and he kept, he seemed to, I've got to be careful how I say this, he seemed to not be fully engaged with his staff in the sense that Warren, who was someone who I had known," this is going over to page 57, "for all those years, you know, 20 years or something, was not a happy chappy. With Spiro, I think he," referring to Mr Farleigh, "was with Marcelo. I'm not sure about that, but it's." "How did you find Warren's work, and dealing with him?" Answer, "Well, Warren was solid, always very conservative, and you know, and a very nice guy and you know, we became friends over the years." "Sure." "But he was, he was always, you know, he didn't like change, yeah, and so you know, occasionally he'd be putting the brakes on it, on a bit further than I felt the brakes needed to be put on." My question's this, where you say, "I think he was with Marcelo," are you aligning Mr Farleigh's conservative approach with an approach that Mr Marcelo Occhiuzzi had?---No, I'm not because I'm not particularly aware of, I think it's Marcelo, of his approach because I didn't do an awful lot of work during his years with the council. Most of my work was before that. But I do, yeah, I did notice that Warren was less happy in the more recent times.

But, just where you say, "I think he was with Marcelo," what are you saying there? I mean clearly, you're drawing some kind of, you're aligning the two men.--I, I think, I, I think, you know, happy, I think he was with Marcelo. He was happy at that period as, as I understand it. You know, this was just through occasional conversation.

10 The evidence you've given about Mr Farleigh's conservative approach, is it your understanding that the urban planning team generally had a conservative approach to the application of planning instruments and planning principles?--I can't say that with any level of absoluteness, because I didn't know them all but certainly, some that I had come across were quite conservative in their approach.

Are you aware, I appreciate you may not know anything about this, but are you aware how long the, you know, still asking prior to Mr Stavis' appointment, how long it was taking the urban planning team to process, be it development applications - - -?--I've got no idea.

20 Sorry?--No idea.

No idea. Now, just asking you some questions about Mr Stavis. Clearly you have some strong views about the way planning instruments and planning principles ought to be applied. That's a fair comment, isn't it?--Oh, yes.

And is it fair to say that in your dealings with him, Mr Stavis was sympathetic to that point of view?--Um - - -

30 THE COMMISSIONER: Sorry, sympathetic to Mr Annand's point of view?

MR PARARAJASINGHAM: Yes, yes.--Yeah, I, I, I couldn't say that. We might have thought similarly about things but I wouldn't say he was sympathetic to my point of view because I don't know that I put my point of view.

But I mean clearly it was known that you prepared the Canterbury Road Master Plan, I mean that was - - -?--Yes.

40 And your experience with Canterbury Council, one can assume that that was known?--(No Audible Reply)

You're nodding. Yes?--Yes. Sorry.

My question is, did you form the view that Mr Stavis was on the same page as you when it came to the application of planning principles and planning instruments?--No, I didn't form that view.

Did you form any other view?---No.

So you say that - - -?---I, I, I, the only view I formed about Mr Stavis was that he seemed to be overworked.

10 Okay. And you certainly formed the view that your experience with Canterbury Road and indeed planning instruments and principles as applied to the Canterbury area was superior to Mr Stavis's?---I wouldn't say superior but it was sort of, it was probably broader and, broader and perhaps more holistic.

Sure. You're talking about your views?---Yes.

Yes. Are you aware whether part of Mr Stavis's job as the director was to, was to fix the DCP?---Was to what?

Was to fix the DCP.---Fix?

20 Fix.---Fix.

Fix.---No.

Did Mr Stavis ever speak to you about ways in which the DCP could be upgraded?---I don't recall, no.

30 Did he ever speak to you about ways in which the kinds of suggestions that you made in your Canterbury Road Master Plan, how they could be incorporated into the LEP or anything of that nature?---No, no, I don't think so.

So if you could just go to page 11 of your interview, please. Just before, clearly when you spoke to the investigators you were doing your best to be truthful and accurate. Sir? When you spoke to the investigators - - -?--- Yes.

- - - you were doing your best to be truthful and accurate?---Yes. Yes.

40 And this was – just bear with me. This interview occurred on 4 July, 2017. ---Yes.

If you go to page 11, the following appears at line 6. "Spiro was always professional. He always, he always made a point of saying this is, this is your report, this is your opinion. He, however, was strongly seeking an outcome but not a specific outcome. Again it was let's get this thing moving, get it off, off the boards." Do you see that?---Yes, I see that.

Can you just explain what you meant there?---Yes, well, he seemed to be under a great deal of pressure to be getting stuff through the machine, you

know, sort of, in, in the things that I saw, the planning proposals generally, moving them along so that they could go through the process of resolution, and that's a perfectly appropriate approach.

Commissioner, I have one final discrete topic. It arises in light of some evidence that fell from this witness this morning. I just would like some time to take some instructions. Alternatively, I certainly have no difficulty with this witness being recalled at some later point, but I do need some time in light of something that fell this morning. We certainly weren't on notice
10 about it – not that we need to here – but I would like some time to consider.

THE COMMISSIONER: If we take an early morning break, can you contact Mr Stavis and get those instructions?

MR PARARAJASINGHAM: I can try and do that, yes.

THE COMMISSIONER: I would prefer to do that. I understand you're about to go overseas.---I've got commitments all next week.

20 Yes. I would like to finish Mr Annand today.

MR PARARAJASINGHAM: I understand.

THE COMMISSIONER: I'm sorry, Mr Buchanan. Are you all right with that if we take an early morning tea break?

MR BUCHANAN: Absolutely.

30 THE COMMISSIONER: If we have a 20-minute morning tea break, do you think that will give you enough time?

MR PARARAJASINGHAM: It will certainly give me enough time to contact Mr Stavis.

THE COMMISSIONER: All right. We'll adjourn until 20 to 12.00.

SHORT ADJOURNMENT

[11.21am]

40

MR PARARAJASINGHAM: Commissioner, thank you for that time. I am about to proceed. Mr Annand, I just have one brief discrete topic to raise with you. Do you recall today, you were asked questions about the FSR of 2.8:1, that not appearing in the recommendation section of the December 2015 report and you were asked questions about the circumstances surrounding that. So you've already given evidence about your experience in this area. It is also the case that you are a well-regarded expert in the field, correct?---Correct.

You have prepared hundreds of reports?---Hundreds of reports, yes.

Yes. Sir, it's the case that you have always placed a premium on your integrity as an expert?---Yes.

You place a premium on your words and opinion?---Yes.

And I also suggest that you are certainly not a meek man?---No.

10

And you hold views and you are and you can be, as in fact we saw yesterday, forthright about those views?---Correct.

And your interest in the Canterbury area and in planning issues is evidenced, for example, in your preparation of the master plan report? ---Correct.

Could the witness be shown volume 14, please, page 20.---20?

20

Yes, page 20 of volume 14. So, I'm taking you to the December, 2015 report that you prepared with respect to 998 Punchbowl Road. If you go to page 20, you see there are four dot points in the middle of the page.---Yes.

If you just go to the third, it reads – firstly, before I take you to that, true it is, in your recommendation section of this report, you say nothing about FSR, correct?---Say that again, please?

True it is, that in the recommendation section of this report, you say nothing about FSR?---Correct.

30

If we go to point 3 of page 20, volume 14, it reads, and this is under the heading Urban Design Analysis. It reads, “An FSR increase from 0.5:1 to 2.8:1 does not represent an overdevelopment of the site. Our investigations confirm that an FSR of 2.8:1 can be achieved within a height of 25 metres (eight storeys).” Can you see that?---Yes.

Can you now go, please, to same volume, page 23 and just under the heading Density the second paragraph reads, “The proponent sought 2.8:1 in his planning proposal which is possible within the required setbacks and building height, and particularly if a reasonable and usable communal open space is provided as roof garden on top of the building.” Do you see that? ---I do.

40

Do you accept that an objective observer, reading those two portions that I've taken you to, would come to the view that that particular FSR was capable of being supported?---Correct.

You were asked some questions by Counsel Assisting around the topic of you know, your, sorry, I'll withdraw that. So, you were asked questions about the circumstances in which you came to express the view of an FSR of 2.8:1, you recall those questions. Now, can I suggest that when you were first asked about this topic today, your response was something to the effect of you could not explain why it is that you may have endorsed that particular FSR?---Correct.

10 And can I suggest that when the issue of pressure was introduced by Counsel Assisting, your position was something to the effect of that you did not have a memory of the fact of any pressure being brought to bear on you, certainly by Mr Stavis, to endorse an FSR of 2.8:1. Is that correct?
---Correct.

Do you still have the interview before you?---Yes.

20 Can you just please go to page 50. Here you are being asked by one of the officers about this issue, and this what appears, page 50. "There's nothing to say that in that conclusion that you didn't support the 2.8:1." "Or, or that I did, there's nothing that mentions floor space ratio at all." Question. "So why in that context if you're asking, if you'd been asked to provide a report and also in the context of the Exhibit 4 that says that, that you had been given approval of the, of the amended scheme, why is there, why does your report make no mention of it, why is there no discussion of floor space or height or setting the parameters for development?" Answer. "No idea." Question. "Did you purposely do that or did you, or was there a reason that you may have - -" Answer. "I can't."

30 - - - "decided to omit it?" "I can't think why I'd do it purposely and, and I don't recall 2.8 ever being sort of seriously considered. I'm surprised at that." "In the council's report in Exhibit 4, and I quote, it say, 'The amended scheme has been assessed by external urban design consultant, Annand Associates, who has recommended approval of this amended scheme for an urban design perspective.' Is that a misrepresentation of your position?" Answer. "Well, no, not necessarily. From an urban design perspective we talked about eight storeys at the, at the corner, roof gardens, six storeys elsewhere. There's no mention of floor space ratio particularly and that is strange and I don't quite understand why that would be." Plainly it is the case that you simply cannot account for why you may have
40 endorsed the floor space ratio of 2.8:1. Correct?---Correct.

Clearly in that extract you say nothing about pressure being brought to bear on you by anyone, including Mr Stavis?---Correct.

And just finally can I suggest that in fact Mr Stavis never put any pressure on you to embrace a floor space ratio of 2.8:1. Having me taking you to those, to that, to what you've said in your interview and just reminded you

of some of your evidence today, do you accept that?---Do I accept what, that he didn't - - -

Do you accept that Mr Stavis in fact did not put pressure on you to, to embrace or adopt an FSR of 2.8:1?---No, I don't accept that.

THE COMMISSIONER: You don't accept that?---I don't.

10 MR PARARAJASINGHAM: So you're saying that what, he did bring pressure to bear on you?---What I'm saying is that I don't accept that he didn't put pressure on me. And there's no, there's, there's – if we go back to this morning, the, the circumstances I remember was put that that was a logical explanation of how it might have occurred.

Sure.---It remains that.

20 Sure. But that's you - - -?---I, I, I have, there, I can think of no other explanation of why the 2.8 could be there, would be there, given that I was still writing notes to Spiros sort of a relatively short period before saying that I thought 2.5 was more appropriate.

But is that you speculating as to an explanation?---Yes, that is.

Right. And can I suggest that if indeed Mr Stavis had pressurised you, that is the type of thing that you would have a memory of. Do you accept that? ---I would think so, yes.

Yes. I have nothing further.

30 THE COMMISSIONER: Mr Buchanan?

MR BUCHANAN: No questions, thank you.

THE COMMISSIONER: Right. Thank you for coming to give evidence. ---Okay.

You're excused.---Thank you very much.

40 **THE WITNESS EXCUSED**

[12.05pm]

THE COMMISSIONER: Now, before our next witness is called, Mr Kirby.

MR KIRBY: Commissioner, with the Commission's leave I seek to appear for Mr Chanine.

THE COMMISSIONER: All right. You are authorised to appear for Mr Chanine. Mr Chanine's here?

MR KIRBY: He is.

THE COMMISSIONER: If you come down to the witness box. Mr Kirby, do you have a solicitor?

10 MR KIRBY: I do.

THE COMMISSIONER: Would the solicitor like to come down as well?

MR KIRBY: I'm sure he would. Thank you, Commissioner. This is Mr Nehme.

THE COMMISSIONER: Now, oath or affirmation?

MR CHANINE: Oath.

THE COMMISSIONER: Mr Kirby, you've explained that I can make a direction under section 38 of the Act?

MR KIRBY: I haven't. I did on the last occasion that we were here.

THE COMMISSIONER: Ah hmm.

10

MR KIRBY: I'm not sure whether Mr Chanine remembers my explanation. He just indicated with a shake of his head that he doesn't.

THE WITNESS: No.

MR KIRBY: I apologise.

20

THE COMMISSIONER: That's all right, Mr Kirby. Mr Chanine, an order under section 38 means that any answers you give today, with one important exception, can't be used against you in any other proceedings. So if you're asked something for example that may incriminate you, you have to answer the question but it can't be used against you. Now, the very important exception is if you give false or misleading information, sorry, false or misleading evidence in this public inquiry, because there's an offence under the ICAC Act which is like a form of perjury, and in those circumstances your answers could be used against you. It's a very serious offence, brings with it a maximum penalty of a term of imprisonment.

30

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

40

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

THE COMMISSIONER: Mr Buchanan.

MR BUCHANAN: Commissioner. Mr Chanine, your name is Ziad Chanine?---Yes, it is.

And what is your occupation?---I'm an architect.

10 And do you have any professional qualifications?---I've got a degree from university.

Sorry?---I've got a, I've got a degree from university.

And what's that degree and what university?---A Bachelor of Arts (Architecture) from UTS.

20 Thank you. Can I ask you about your immediate family, please. And I'm focussing if you wouldn't mind on the period 2014-2016. Was your father's name Camile?---Yes.

And your mother's name Yvette?---Yes.

Yvette spelt with a Y. And you had a brother, Marwan?---Yes.

Do you have any other brothers or sisters?---No.

Okay. In 2014-16 you operated an architectural company, the business name of which was Chanine Design Architects. Is that right?---Correct.

30 Also known as CD Architects for short?---Yes.

You were the Chanine in that business name?---Yes.

Is that right?---Correct.

And so were you the principal of that firm, the main decision-maker of that firm?---Architecturally-speaking?

40 Yes.---Yes.

Was there a person who was above you in the firm, in the hierarchy of decision-making?---My father was director of the company.

Thank you. Did you have the title of director of the firm?---I can't recall.

Now, there was a corporate vehicle for that firm of Chanine Design Pty Limited?---Yes.

And it was of that company that your father was the sole director and shareholder in 2014-16, is that right?---I believe so.

And when did Chanine Design Architects start operating?---Chanine Design Pty Ltd was the main vehicle, Chanine Design Architects, or CD Architects, from recollection was a business name that we associated with Chanine Design Pty Ltd.

10 Yes. And when - - -?---When did Chanine Design Pty Ltd commence operation?

Yes, as against the date of incorporation, when did it commence operations?---At date of incorporation. I can't recall the exact, I believe so.

Thank you. That'll do. Thank you very much. Now, can I ask you some questions about your brother Marwan. In 2014-16, did he have a property development firm known as Chanine Developments?---I don't recall. I don't recall at that particular time if he had Chanine Developments.

20 Right. In 2014-16, did you know what your brother was doing for work? ---Developing property.

And was he using a business name for that purpose?---As far as I understand, they establish special-purpose vehicles, SPVs, for different projects.

Right. And you've never, are you saying that, I'll withdraw that. You know that there was a company called Chanine Developments Pty Ltd?---Yes.

30 To your knowledge, when did it commence operating?---I don't know.

What's your first memory of when it first started operating?---The year?

Yes, please.---Okay um, probably '16.

2016?---2016.

Around 2016?---Possibly.

40 Was there a business name that your brother used for the firm?---His, his development company?

Yes.---I believe Chanine Developments.

And do you say that before 2016, you don't have a memory of that business name being used by your brother?---I don't know when it came into existence.

Thinking about 2015 for a moment if you wouldn't mind, was your brother operating a property development firm then?---Yes, I believe so.

What was its name?---I don't know. I, when you say firm, I don't believe it was a firm. They would do, he would do a project at a time and each project would be an SPV, as most of my clients do.

Special-purpose vehicle?---Special-purpose vehicle.

10 And did Mr Chanine employ any staff, sorry, did your brother employ any staff?---In 2015?

2014-16, if you wouldn't mind.---I can't recall.

Did you have a relationship with whatever entity it was that your brother used for development purposes in 2014-16?---Yes.

And what was that relationship?---I was the architect on the project. Our firm, my firm was the architect on the project.

20

How many projects, as best as you can recall, did your brother conduct in the three year period of 2014-16?---I'd be speculating, I just, I'd be plucking a figure out of the air, to be honest with you, if I was to say a figure. Six-seven, possibly.

Does that mean, I withdraw that. Did you act as architect for each of the development projects that your brother conducted in 2014-16?---Yes. Sorry, do you mean, can you repeat that, please?

30 Yes. You've told us that you you're really only speculating as to the number but you've picked a figure of six or seven development projects that your brother conducted in 2014-16, correct?---Yes.

And did you operate as architect on each of those projects?---Yes.

So, you operated as architect on, as best as you can recall, six or seven projects that your brother conducted in 2014-16?---Can you repeat that again, please? Just so I can get an understanding of the question.

40 Is it right that you operated as architect on around six or seven projects that your brother conducted as development projects in 2014-16?---My company did, yes, and I was involved.

Did you yourself provide architectural services on those projects or any of them personally?---Our firm did.

Your firm did.---Yes.

But did you provide architectural services?---Yes, I was involved in the firm, yes.

Yes. But did you provide architectural services on those projects? You've said your firm did.---Yes.

You said you were involved.---Yes.

10 That doesn't tell us whether you provided architectural services.---Can you clarify "architectural services" then, please?

Well, you're an architect.---Yes.

You don't know what architectural services are?---I do but I'm not quite understanding your question.

Well, you tell us what architectural services are, Mr Chanine.---Design of the project. I was, I was - - -

20 Providing plans?---Yes, providing plans, of course.

Did you yourself provide architectural services so defined to your brother in 2014-16?---I believe so.

What sort of services did you personally provide to your brother in 2014-16 for development projects?

30 MR KIRBY: Commissioner, I object. The repeated focus on "you personally" has, in my submission, confused the distinction between Mr Chanine – who readily admitted that he was involved in the services that his firm provided – and, in contradistinction, a suggestion that he maybe as a sole trader or independently of the firm provided services for his brother's developments. I think that is where the confusion lies and perhaps the witness and the cross-examiner are at cross purposes because of that. And so I would just ask for clarification in respect of when Counsel Assisting is asking "you personally" whether that is on his own account or whether that is "as an employee of or an officer of Chanine Design Architects.

40 MR BUCHANAN: Well, Commissioner, I would have thought that the words "personally involved" made precisely the distinction that needs to be drawn between what this witness did and what his firm did.

THE COMMISSIONER: I agree with Mr Buchanan. Do you want to put the question again to the witness.

MR BUCHANAN: Yes. I'm asking you, do you understand, Mr Chanine, about what you yourself did with your own hands and eyes and brain. Do

you understand that when I mean personally involved?---Yes. Personally, yes.

Yes. And did you personally provide architectural services – meaning design and drafting plans – on the projects that your brother conducted in the period 2014-16?---Yes, I did, as an officer of the company.

10 Yes. Was everything that you did by way of yourself, with your own eyes and hands and brain, did by way of providing architectural services, defined as design and drafting plans, was that done through your company, Chanine Design Pty Ltd?---Yes, correct.

Did you check plans that were provided by Chanine Design Pty Ltd for projects that your brother conducted in 2014-16?---Generally, yes.

And that was in the course of providing architectural services?---Correct.

20 Now, can I change the subject slightly now. Talking about whatever entity it was that your brother had in conducting property development in the period 2014-16, did you have a share in or a financial interest in that entity? ---No.

Did you have a share in or a financial interest in any of the development projects that your brother conducted in 2014-16?---No, I don't believe so.

Now, whatever entity it was that your brother used to conduct the development projects he conducted in 2014-16, that entity operated out of an office space physically, is that right?---Yes.

30 And was it the same office space throughout that period, 2014-16, or would it change?---As far as I recall, the same.

And what office space was that, or what address was it?---An office in Drummoyne.

Thank you. Now, did you work out of that same office?---Yes.

40 Throughout 2014-16?---Yes. I, we moved office, I just can't recall the exact year, whether it was '15 or '16 but we moved offices.

And when you say, "We," was that you and your brother moving offices or you moving out of the office space that was used by your brother?---Me primarily and then my brother joined us in the, on the same floor.

And when you moved, I'm sorry, when did you move?---I think 2015.

I'm sorry '15 or '16?---'15, I think.

'15, you think. Yes. And was Drummoyne where you moved to or Drummoyne where you moved from?---From, moved from.

And where did you move to?---To Park Street, Sydney.

Now, when you said you didn't believe you'd had a share or an interest in any of the developments that your brother undertook in 2014-16, were you member of a family trust with an interests or an interest in any of those developments?---I don't believe so.

10

Were you the beneficiary of a family trust with interests to an interest in any of your brother's developments in 2014-16?---Can I get come clarification on that in terms of beneficiary?

Beneficiary, person who derives a benefit, whether an entitlement to a benefit or an actual monetary payment.---I'm not sure how he's set up the, his organisations.

20 That's not the question I asked. What I asked is, did you receive an entitlement to payment or did you receive any actual payment as a result of the operation of a family trust with an interest in any of your brother's developments in 2014-16?---I don't believe so.

Have you heard of the Chanine Family Trust?---Yes, it sounds familiar.

When did you first hear of the Chanine Family Trust?---I don't know, I don't recall. I don't know the particular date as to when I heard about it.

30 What's your best memory as to when you first understood that such an entity existed?---I can't pinpoint a date.

Did you know that the entity existed in 2014-16?---Possibly.

Now, have you received any benefit from the operation of a family trust, in respect of your family, with an interest in any of the developments your brother conducted in 2014-16?---I don't know.

You don't know whether you've received a benefit?---I, I don't think so.

40 What do you mean by that? You don't think you did receive a benefit or you don't think you know?---I don't think I did receive a benefit.

Did you ever check your bank accounts to see whether there was a payment that looked a bit odd and you couldn't understand it?---In terms of that respect, no, then in terms of whether they had put in money into my account from one of their entities?

Yes.---I don't know. I don't think so. In terms of from one of their entities, no.

I mean, you would plan your finances on a week to week, month to month, year to year basis, wouldn't you?---Yes.

10 Like most people. Wouldn't you take into account whether you understood you were going to be receiving funds from the operation of a family trust in any of the developments your brother's conducted?---I don't know where the money comes from in terms of where it came from, but I was having assistance from my father at a particular point in time, financially, but personally from my father.

Right. Do you know whether you received or derived an income from the operation of a family trust?---I don't know.

That seems to be very difficult to understand, Mr Chanine, as to whether, as to now knowing - - -

20 MR KIRBY: I object.

MR BUCHANAN: - - - whether you received an income.

MR KIRBY: This is not a question, it's a comment and - - -

MR BUCHANAN: I'm giving the witness an opportunity of responding to what might be a submission to you, Commissioner, about this witness's evidence.

30 MR KIRBY: Well, that's not apparent from the terms of the comment that just issued from Counsel Assisting, which is, it's very difficult to understand the answer that was just given, that is not a question, it is just argumentative.

THE COMMISSIONER: Just hold on for a sec.

MR BUCHANAN: Mr - - -

THE COMMISSIONER: Mr Buchanan, sorry.

40 MR BUCHANAN: Sorry.

THE COMMISSIONER: We haven't got an answer yet. Mr Kirby is maintaining his objection.

MR BUCHANAN: Well, I'll withdraw the question and reframe it. I want you to, I want to give you an opportunity of responding to this suggestion, that it's very difficult to understand how you could not know whether you

have received or derived any income from the operation of a family trust, namely your family's trust. What do you say?

MR KIRBY: That is, I object again, that is exactly the same framing that I objected to a moment ago. If there is a question to ask the witness then it should be asked, but that is not a question, that is a - - -

10 THE COMMISSIONER: All right. Mr Chanine, you run a business. I think what Counsel Assisting is putting to you is that, and I'll put it to you, one would expect that a person who is running a business would realise when income comes into a bank account that that income has come from a family trust, and your answers suggest that you don't know whether you received such a benefit. Now, have I correctly described the evidence you've given?---Yes, Commissioner. Can I, do you mind me making a point about that?

20 All right.---I don't know where the, if you want to call it, I don't know about a particular amount per se about any funds or money coming in to me, I don't know whether that came from a family trust per se. I know that I was receiving money from my father from time to time, whether it was into my account or not I can't recall, but I was getting assistance from my father, but I don't know about family trust and the like.

So your evidence is during the period '14 to '16 you were getting financial assistance from your father and you were uncertain whether that was personally from your father or as a beneficiary of the family trust?
---Correct.

30 MR BUCHANAN: Did your father then – I withdraw that. As far as you know, was there a family trust of which you were a beneficiary called CZM Chanine Family trust?---There could be, it sounds familiar.

In that context C would stand for Camile, Z would stand for Ziad, M would stand for Marwan.---Presume so.

But you're expressing a state of relative ignorance about all of this. Is that right?---Correct.

40 And have you heard of a company called Karantina Pty Limited, K-a-r-a-n-t-i-n-a?---Yes.

Do you understand Karantina Pty Limited to have a relationship to CZM Chanine Family Trust?---I don't know what the interrelationships are.

What is Karantina Pty Limited?---It's a company that my brother, it's a company that - - -

That your brother what?---Um, is involved in.

Was your father involved in it as well?---Possibly.

Thinking of the – and I'll be coming to it soon, but I just need to ask a few more questions about how things worked financially – thinking of the proposal or the proposals for development at 212-222 Canterbury Road and 4 Close Street, did you derive an income from, I withdraw that. Was it intended that you would derive an income from the development of that site?---No.

10

And was there a reason for that, as far as you understood, why you wouldn't receive an income?---On the development front?

Yes.---No, I was engaged as the architect on the project.

But you wouldn't receive an income from the development of it?---No, I'm not a developer.

20 Can I ask what, thinking now of your firm, what proportion of your firm's work – generally speaking, for as long as you've been working with your brother on development proposals – what proportion of your firm's work has been for Chanine Developments or your brother's business?---As a percentage?

Yes, if you can.---It'll be a guess. It'd be a mere guess because of the volume of work we do. Maybe 15 per cent, 20 per cent.

30 And in 2014-16, what proportion of your firm's work was for your brother's entities or for him?---I couldn't say.

Was it more or less than 15 to 20 per cent?---I'd be, I'd be really guessing. Maybe 20 per cent but that would be a speculation.

Now, you and your firm were involved in development applications for the site 212-222 Canterbury Road and 4 Close Street, Canterbury.---Yes, correct.

40 Was there an in-house name in your firm for the project of Doorsmart?
---Correct.

Capital D, lowercase o-o-r-s-m-a-r-t. And is that simply the name of a retail business that happened to operate on one of the properties that were located in that site?---That's correct.

And so it was called the Doorsmart project to your knowledge?---Yes. Yes.

Did the project have that name as well with your brother, Marwan, and anyone who worked with him on the project?---I'm not sure.

When you were discussing the project with your – I'm sorry, you discussed the project with your brother from time to time?---At the time we'd, I'd refer to it as Doorsmart with him and vice versa, I believe.

Thank you. Now, you played a role in that project, is that right?---Yes. As architect of the project.

10 Well, that was my next question. What role?---As architect of the project.

And if I can now just be a bit more precise. You personally on the one hand, your firm on the other hand, were either you or your firm engaged to act as architect on the project?---Yes.

Who was engaged? You or your firm?---My firm.

And who engaged your firm?---The partnership on the project.

20 And what was that partnership?---My brother had partners on the project, I believe.

Who were they?---Barry Barakat, Simon Srour, S-r-o-u-r, and Bechara Khouri.

Was there a written contract or agreement?---Between the firm and - - -

The partnership.---The partnership. I can't recall.

30 Can I just explore that a little bit. The amount of work that was done by your firm on the project was not a small amount, was it?---Correct.

It was a fairly extensive amount of work and it was complex?---Correct.

Relatively complex. How was your firm remunerated for the work it did on that project?---I believe we were paid for the work, I can't quite recall but I believe we were.

Well, I suppose I need to go back to my question.---Ah hmm.

40 You've agreed, or sorry, you haven't agreed that you were described as director of your firm, I'm not talking about the company now, I'm talking about the firm, but what was your - - -?---Sorry, can you - - -

Yes?---You said firm and company.

That's right. I'm making a distinction - - -?---Yes.

- - - between the firm and the company.---Which firm and which company, sorry?

Well, we've spoken about a firm called Chanine Design.---Yes.

Or CDA Architects.---Yes.

And there's a company as well, Chanine Design Architects Pty Limited?
---It's one and the same.

10

Right. I'm sorry, I misunderstood. Was Chanine Design or CDA Architects simply a business name or not?---CD Architects was simply a business name.

Right. And Chanine Design is simply an abbreviation of the company name?---Chanine Design Pty Limited is the company.

Right. What was the position you held in the company?---I can't recall specifically.

20

Mr Chanine - - -?---I was an architectural director there but in terms of office-holding I can't recall.

Was there a board?---I don't believe so.

Was there a CEO?---I don't believe so.

How many people – I withdraw that. Was there a payroll with people employed who had to be paid a wage?---Yes.

30

How many people were on the payroll in 2014-16?---Maybe nine.

Were meetings of your company held from time to time to determine questions of strategy in the work that was done by your firm, how it would evolve, what work it would do, how it's going in keeping up with demands by clients, that sort of meeting?---Not really.

Did anyone keep track of what work the company was doing?---In terms of projects coming, projects coming in?

40

And the product going out and the interface between the two, that is to say the labour and skill that had to go into it, was anyone keeping track of any of that?---I would look into that, my father would look into that I believe.

Did you and your father have meetings on that subject?---Yes, from time to time.

Did you and your father run the company?---I would say so.

Did anyone else run the company?---No, I don't think so.

So the people running the company were you and your father.---Yes.

Right.

THE COMMISSIONER: Can I just ask, is your father an architect?

---No, he's not.

10

MR BUCHANAN: Did you have a bookkeeper?---Yes.

Was that person employed or was it outsourced?---Sorry, I'm pausing because I'm trying to recollect if it was outsourced at the time or if we had somebody full-time. I can't recall, I can't recall.

Fair enough. I should be saying in the period 2014-16 for these questions.

---Yes, sorry, I assumed '14-16.

20

Yes.---I'm trying to recall. I'm trying to recall if we had somebody in-house at that point in time. I can't recall.

Did the company file accounts with ASIC or any regulatory entity?

---I believe we had external accountants that, that did that, yes.

Did you ever see accounts that were presented for approval as to the income and expenses and - - -?---I believe so.

30

- - - state of solvency and the like for the firm?---I believe, I believe so.

And when you say you believe so, are you saying it's possible that you never saw anything like that?---No. I believe it is possible that I did see those documents. I just can't specifically recall.

So in terms of strategic decisions being made by the company as to what work it will take on, and the high-level decisions as to how the work will be done, that was, that rested with you, did it? Or was your father involved in that decision making as well?---In terms of the volume of work we would pick up, et cetera?

40

Yes. Whether a job would be taken on, for example.---I would take on most projects, yes.

But you were the person who made the decision, is that right?---Yes, it was entrusted in me.

And did you review all the product that went out of the firm?---Not all the time, no.

Was there a particular, what criteria were there for your having an input into the product of the firm?---I would generally come up with a concept sketch and the team would deliver that into a drawing, a formal drawing of some kind, whether it be plans, elevations, cross-section, et cetera, and I would do a review from time to time through there, but as, as the company started to grow and we hired people, then I did rely on a lot, you know, other people within the office to start picking up that role in terms of the checking. I would still check, of course, but sometimes things did slip through the cracks and I'd rely on others to, because of the fast-paced nature of, I guess, the, the industry.

So did you ever see accounts that were prepared to show what the income was that was expected to be derived from any particular project your company had taken on?---Can you repeat that, please?

Yes, did you ever see a document that would say, "We expect to derive this income from X project"?---The architecture firm you're referring to? The architectural firm, Chanine Design?

Is there any other?---No, I'm just, I'm, I'm asking for clarification.

Well, you've told me that company is the firm.---Yes.

And so in this case company and firm are interchangeable, aren't they?
---Yes.

Right. Well, you said that the decision makers were you and your father. Is that right?---Yes.

So, did you see any documents that estimated the income that would be derived from projects that your company took on between 2014-2016?---If I'm understanding the question correctly, we would issue a fee proposal, and if the fee proposal is accepted, then obviously we take on the project. In terms of deriving what that fee would be, it would be a calculation I would do internally to see what that fee would be. Does that answer the question?

Yes, yes it does. Thank you. And to whom would the fee proposal be submitted as a matter of practice in 2014-16?---To the client, whoever has asked us for a service.

Does that include your brother? Sorry, did that practice extend to the projects where the client was your brother?---I don't believe so, no.

And was there a reason for that?---He was my brother. He, we would do things on a different level so to speak. We wouldn't have that formal line of communication per se, between myself and a, a stranger as a client.

But you're talking about the operation of an incorporated firm. How were the interests of the shareholders of the firm protected, so far as concerned ensuring that you were getting sufficient income from the work done on a particular project to make it worthwhile working on that project?---I don't quite understand the question, sorry.

10 Was there anything that was done with projects that came in from where your brother was the client to ensure that your firm wasn't going to make a loss on the work it did on that project?---We would generally charge a, a rate for a development at, if you want to call it, what we would look at as a standard industry rate, in terms of competition and what competition was providing. A lot of the times that would be worked out on a pro rata basis, in terms of number of units derived in a site. That's generally how we would calculate and it would be a fixed price lump sum arrangement.

At the outset when the project is taken on or some later time?---At the outset when the project is taken on.

20 And was that done with projects where your brother was the client?---I believe so. We would - - -

And so you kept, I'm sorry, your firm, your company kept documents which indicated the charge rate that had been calculated, and that would be applied for the work done by your firm for the projects which came from your brother in the period 2014-16?---Not always.

30 And in what circumstances did that not occur? What was the - - -?---I can't recall a specific circumstance where that did, where that did occur or would occur, but I do know that I wouldn't treat him in a way where I would issue him a formal proposal or a formal figure. We would just do, we would just do the works, commence the works. And we had that practice with many of our clients that we had a long-standing relationship with, where they would buy a site, give me a phone call and saying, "We've bought a site, get started," because we've developed that relationship with other, with those particular clients over the years, and if I'm doing that externally I'm obviously going to do that with my brother.

40 And at some stage you would need to be remunerated for that work, wouldn't you?---Yes. Correct.

And what would be done in order to calculate the remuneration which you would seek where no charge rate to be applied to the project had been calculated at the outset?---We would look at a fair and reasonable figure.

How would you calculate that?---I'd look at what it would potentially have cost us at that time.

And how would you do that? By reference to what?---I'd look at, I'd look at what the general industry in terms of the particular region and architects would be charging on a per unit rate in that, in that area.

Yes, it's not so much the per unit rate that I'm asking about, it's how would you determine the quantum of work. What would be the measurement units that you would use to assess the amount of work that had been done for which the company needed to be remunerated?---At that point in time I don't think we were looking at that. As a company, we weren't specifically.
10 We didn't have the, the expertise, per se, whereas if I bring you to 2018 we have time sheets and the like within the company. It's all electronically diarised so we know how much time people are spending on different projects and the like. In 14-16, that sort of period, I don't think we were, we weren't, we weren't operating on that system. So it was, if you want to call it, by gut feel.

And you would pluck a figure out of the air to charge the client - - -?---To a certain - - -

20 - - - when the time came to render a bill?---At times, yes. At times, yes.

Did you keep files, whether electronic or paper, for particular projects in 2014-16?---I believe so.

And so, for example, for the Doorsmart project there was a file?---Yes.

Was it paper and electronic, looking back on it?---Electronic mainly, I think. I think only electronic.

30 And does that file still exist?---Yes.

And, sorry, I'm just a little bit curious, if you don't mind me asking, what's the application by which you can open that file? Is it a Word document or is it an Excel spreadsheet or is it PDF? What is it?---The file as in the project file?

Yes.---It's a file in Microsoft - - -

40 Project?---No, Microsoft. Just documents and folders and then they have subfolders. That's how we - - -

I understand. Thank you. So it's a series of files.---So it's a series of files, yes. So it has council letters received, a DA folder which has all the submission documents in it, et cetera. So it's a series of files.

In 2014-16, did you keep a diary for the work that you did on a project?
---No.

Did you keep a diary of meetings that you needed to attend, a schedule where meetings were coming up and you needed to be somewhere?---I believe so.

Was that paper or electronic?---I can't recall. I can't recall.

In 2014-16?---It would have been Microsoft Outlook, possibly.

10 Now, in respect of the Doorsmart project, was your firm remunerated?
---Yes, I believe so.

And on one occasion or more than once occasion?---I can't recall.

Were there part payment received, is what I'm asking?---I, I can't recall.

And was a bill prepared and rendered?---It should have been. I presume it would have been.

20 Who would have done that?---Sorry, I'm just trying to distinguish between
the two periods, and of you know, sort of the current period in time and '14-16.

Yes. '14-16 is what I'm asking about.---Yeah, that's why I'm just trying to just refer, sorry, I'm trying to work out who is was at that time. I can't recall.

An internal person or an external person?---Possibly external. I can't, I really can't recall, I'd be speculating.

30 And did your brother pay that bill or bills personally or through an entity?
---He wouldn't have paid it personally, I don't believe so. And the bill for the Doorsmart project, as we're referring to, I can't, I really can't recall.

Can I just take you back. You were uncertain as to when Chanine Developments commenced business, but I think you indicated you thought it had by 2016, is that right?---I think so, yes.

40 And so could it have been that the remuneration ultimately came from Chanine Developments Pty Ltd?---I'm not sure.

Did your company make a profit or a loss on the Doorsmart project?---We haven't analysed it but I can, based on my gut feel, I would say a loss.

And what's the basis for that gut feeling?---Generally this project, and invariably most projects, when it comes to DA we take a fixed price lump sum because that's what developers essentially expect. They want to know what they're up for in terms of a dollar figure that they're going to pay for a DA, well, to the architect. Nobody likes variation, so they want you to lock

it in. That's locked in and no matter how many iterations of plans are required through the process, we don't, we don't charge for that, it's, it's fixed essentially, up until through to determination. And this project, amongst many others, we go back and make many, many changes and when you look at the amount of change, when you look back and you realise the amount of changes, you do know that on, you go, you would have gone into a loss on those particular projects individually.

10 What was the fixed price lump sum that you took on this project?---I can't recall.

What's the ballpark figure?---I really can't recall.

You mentioned Bechara Khouri. Who was he?---He was an associate of ours.

20 Yours in terms of the company? Or you and your brother?---I had met him, I, I can't recall if I had met him prior to my brother or not but I had met him a while ago.

When did you first meet him?---I, I guesstimated when I was here previously, and I'll guesstimate again. I think it was probably maybe 14, 13 years ago, thereabouts.

30 And I'm now not confining it to 2014-16, but asking about the extent of the time that you knew Mr Khouri, from the beginning to the end of 2016, what was the nature of the relationship that you had with him?---From time to time he would recommend clients to come see us and I know that my brother had engaged him from time to time to project manage or manage development applications for him.

And when you say manage development applications for your brother, do you mean development applications that have been lodged by him or do you mean simply development applications that have been made on projects that were being conducted by your brother?---Sorry, I got a little bit lost just in that last - - -

40 That's okay. That's okay. In the case of the Doorsmart project, you lodged the development applications, didn't you?---Yes.

In saying that, as you understood it, Mr Khouri managed development applications for your brother, I'm just trying to ascertain what is it that you understand or remember in terms of whether the development applications were lodged by your brother or by somebody else?---They, they were always lodged by myself or our firm. My brother would never go on as a, we, we would be the applicant on all of our, all clients' projects.

All clients' projects, including your brother?---All clients including my brother.

I understand.---And all other clients, yes.

I understand. Thank you.---Sorry, if I can just say that.

Yes, sure.---Very rarely would we have a client go on as the applicant of a development.

10

Yes. Thank you. And when you say your brother used, or rather had Mr Khouri manage development applications, what was it that you understood Mr Khouri managed?---I think from my experience it was facilitating, I guess, freeing up my brother from actually being the developer that was – because he, he, he was, my brother is hands-on, et cetera, in the sense that he is the developer per se, so he would ride the wave, in terms of the DA, through, through the period of getting an approval, so to speak, or the assessment process. In some instances he would have Bechara be the one who, I guess, managed that process, the DA process.

20

And what activities would that management involve on the part of Mr Khouri, in your experience?---Following up councils. Meeting with councils. Discussing, I guess, with the project team the justifications, et cetera, from any departures and the like.

And when you say project team do you mean your brother's project team or your project team?---Both. My project team namely, sorry, in terms of my reference there, what I just said. Mainly my project team.

30

So now thinking of 2014-16, do you have a recollection of Mr Khouri being involved in doing that sort of work in respect of the Doorsmart project?---I don't, I can't recall specifically his role. I do know that, as I mentioned earlier, my brother had partners on that, on that project, so it was a, a, for lack of a better phrase it was a joint venture. I don't know how they set it up, but a joint venture between these four people.

And you've indicated Mr Khouri was one of them.---Yes, correct.

40

Yes.---So my brother wasn't necessarily the one that I took complete direction from on all matters for that project. I would actually speak to the, the partnership, the joint venture, or however you want to refer to them.

So you would refer – I'm sorry.---Yes.

You would speak with Mr Khouri yourself on the Doorsmart project from time to time?---I would, I would, from time to time I would present to all four of them.

How often did that happen, you presenting to all four of them, to them as a partnership?---I can't recall specifically, minimum half a dozen times.

And when was it that Mr Khouri started as a member of the partnership?
---I don't know.

When was it that Mr Srouer started as a member of the partnership?---I don't know when they started, I just presume all four of them are partners from the inception of that - - -

10

When it was formed?---When it was formed.

And thinking of the time that the DA was lodged, you don't need a specific date for this question, just simply if you can think back to the period when the DAs were lodged, was Mr Khouri part of the partnership at that stage?
---I believe so.

And the partnership existed as an entity at that stage?---I'm, I'm not sure.
In terms of legal entity?

20

Well, let's go with legal entity first, yes.---I don't know.

You don't know. You're not, you don't have a memory of when it became a legal entity or you never knew?---No, I never knew. I wasn't privy to their inner workings.

But was there a time when those four, I'm sorry, yes, those four, your brother, Mr Barakat, Mr Srouer and Mr Khouri, were all around a table and you were present?---Yes.

30

And when was the first time that happened?---I can't recall, I can't pinpoint that date.

Okay. In relation to when the DAs were filed, when was it, when was that first time?---I really can't, I can't recall or pinpoint a date. I can, to give you an answer, I can say that prior to the DA being formally lodged with the council I would have had several meetings with the four of them, four of them present.

40

I note the time, Commissioner. This would be an appropriate time.

THE COMMISSIONER: Can I just ask.---Yes, ma'am.

The other projects that you worked on for your brother, was it your brother by himself or did he usually form other partnerships?---In some instances it would be him by himself and in other instances he would have, like I say, for lack of a better phrase, joint venture, it would be a joint venture project, he'd do a project with a partner.

All right. So it just, it varied?---It varied, yeah.

All right. We're adjourned until 2 o'clock.

LUNCHEON ADJOURNMENT

[1.02pm]