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OPERATION DASHA

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 14 AUGUST 2018

AT 2.03PM

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

MR BUCHANAN: Mr Stavis, do you have volume 17 there still?---Yes.

10 Could I ask you to go to page 214, please. This is the first page of that part of the officer's report to the IHAP meeting held on 29 February 2016 that dealt with the DA for 538-546 Canterbury Road, Campsie. Do you see that?---I do, yes.

Can you see that the second dot point under the heading "Summary" says:

20 *The application... seeks a departure of more than 10% from our controls regarding maximum building height under clause 4.3 of the Canterbury LEP 2012. The proposed additional floors will increase the maximum height of the building to 26m, which is 8m beyond the 18m height limit. Despite the departure from our height of buildings control, the development is reasonable subject to a condition of consent requiring the deletion of a parapet element which will reduce the height of the building to 24.85m that is in line with Council's resolution to accept 25m maximum height*
30 *limits at this site, under the previously considered planning proposal.*

Just stopping there, do you see that essentially your report treated the council resolution as if it were the planning control?---No, I don't agree with that.

Why not?---Because it - it doesn't say that.

40 It justified accepting the variation on the basis that the parapet would be removed and the 25 metres would be in line with council's resolution to accept 25 metre maximum height limits at this site under the previously considered planning proposal. What could be clearer?---Well, that council resolution is not a development standard. It clearly says, before that, what the development standard in relation to height is. As I said in earlier evidence today, that has probably just been put in there for

information purposes, not that that was the reason why we considered it acceptable to vary the standard.

But certainly insofar as the summary was concerned, councillors were informed that the reason that the variation would be accepted would be that it was in line with council's resolution?---In the summary, yes.

10 Could I take you then to page 228. Can you see that the heading there is "The Variation Request"?---Yes, sir.

This is the notes, of course, to the compliance table in respect of the planning controls in the LEP?---On page 228?

Yes. If you go back to page 226, can you see the subheading is "The LEP"?---Yes.

Can you see then there is a compliance table?---Yes, sir.

20 And can you then see notes to it under various headings?---Yes.

Then we have a heading on page 228, as part of those notes, "The Variation Request"?---Yes.

30 The material that is italicised is extracts from the submission by the applicant in support of the variation request under clause 4.6?---I would imagine so. I'm not sure if that's a complete and exhaustive list, but I do accept that that probably has come from the applicant, yes.

Well, it says so at point 7 on page 228:

The applicant states that the standard is unnecessary in this instance as: ...

And then the rest of the material is italicised; do you see that?---I do, yes.

40 Then going over to page 229, the criterion is underlined for 4.6:

... that there are sufficient environmental planning grounds to justify contravening the development standard.

Do you see that?---Yes, I do.

Then the second italicised paragraph reads:

Council's strategic vision for the site and surrounding area has been made clear with the resolution to amend the LEP and increase the maximum allowable height from 18m to 25m ...

10 ?---Yes.

And then after the extract from the submissions appears the commentary:

The applicant's submission is acknowledged ...

20 It then goes on to say that, well, it's more than 25 metres, so the parapet is going to have to be removed?---Yes.

Then the commentary continues:

Having regard to the above matters and Clause 4.6(3), the applicant's written request has satisfactorily addressed the matters required to be demonstrated by subclause (3).

30 Do you see that?---I do, yes.

It then simply recites the sub-criteria which appear in the subclause, namely subclause (3)?---Yes.

And goes over the page to say:

40 *In addition, strict compliance with the height standard as it currently stands, is not in the public interest, given Council's stated intentions for this section of the Canterbury Road Corridor which includes a resolution to amend the LEP, increasing the maximum height at the site from 18m to 25m ...*

It then refers to the subsequent approval of additional heights at the neighbouring Harrison's timber site to up to

25 metres; do you see that?---I do, yes.

10 So you can see that considerable weight in the recommendation made by you to the IHAP in respect of this DA was placed upon council's resolution for the planning proposal in respect of this site, wasn't it?---I accept that there was an acceptance that council, by way of resolution, was looking at upzoning that particular site to 25 metres. As I said before, the onus is on the applicant to provide the justification as it relates to clause 4.6. Perhaps we should have expanded a bit more in that assessment. Again, I wasn't the author, but I take responsibility for it because it did come under my name. Yes.

In fact, you provided Ms Kocak with guidance as to the direction the report should take, didn't you?---I don't recall that at all, I'm sorry.

20 You indicated to her that the recommendation should be for approval?---She concurred with that.

No, sir, my question was: you indicated to her that the recommendation should be for approval, didn't you?---I believe, yes, sir. I believe so, yes.

30 You also indicated in part that because the site that wraps around this site, namely 548 Canterbury Road, had already received approval for eight storeys and that this was a six-storey building sitting in the foreground now of an eight-storey built form, a two-storey addition to the approved development at 538 was appropriate?---I think it was appropriate in the context of where it was in the street, yes, because you had the corner element that was eight storeys, and this just book-ends that section of the street.

40 This is what you indicated to Ms Kocak in providing her with guidance as to the direction the report should take in her drafting of it, wasn't it?---I recall that I was satisfied with the latest amendments, yes.

The latest amendments of?---Well, the subject of this report, I should say.

You were satisfied with the draft report?---No, no, the latest amendments that were proposed by the proponent in

terms of the revised scheme that they ultimately submitted, which was the basis of this report being produced.

My questions have been focusing upon the guidance you provided Ms Kocak for the task she had to embark upon of drafting the report?---Yes.

You provided that guidance, didn't you, to her verbally?---I did provide some guidance, yes.

10

What I have been asking you is that you indicated to her that the thrust of the report should be a recommendation for approval?---I believe that's true, yes.

And you indicated to her the opinion that you've told us that you held that because the site was where it was in relation to 548 Canterbury Road, it was appropriate that a two-storey addition to the approved development at 538 be approved?---I think that's fair.

20

Can I ask you, please, do you still have volume 22 with you?---No.

We might see if we can provide it to you. Commencing at page 181, if you could turn to that, please, do you see that that's the first page of that part of the report to the city development committee for its meeting on 3 December 2015 in respect of 548-568 Canterbury Road for the construction of two additional levels?---I do, yes.

30

So we're going back now to the 548 Canterbury Road two additional levels DA.---Sure.

If I can take you to page 196, please, can you see again that you have a heading "The Variation Request" in respect of the submission made by that applicant for a variation under clause 4.6 of the LEP to be accepted? Do you see that there, sir?---Yes. Sorry.

40

If you could go then to page 197. I'm sorry, perhaps I could take you back to page 196. It follows exactly the same format as the report in respect of the 538 Canterbury Road two additional storeys DA, doesn't it? That is to say, it extracts material from the submission and italicises it?---Yes.

That commences on page 196 and continues on page 197. Do

you see that against the numerals (3)(a) the criterion from the clause in the LEP, "compliance with the development standard is unreasonable or unnecessary in the circumstances of the case", is set out?---Yes.

And that underneath that is provided the applicant's argument as to why the standard is unnecessary in this instance. Do you see that?---I do see it, yes.

10 Then if you could go to the third dot point, commencing "The merits" - still on page 197, the hyphen point?---Sorry, yes.

It states:

20 *The merits of defining the immediate locality by well-defined buildings and a taller built form have been supported by Council in its recent urban studies. In particular, that planning direction is advocated by the Canterbury Residential Development Strategy which underlies the recent planning proposal to amend Canterbury LEP to increase permissible heights on the site.*

Do you see that that's a reference to the planning proposal for this site, to increase the building height control?---Yes, sir.

30 Then going down to the next criterion, which reads:

... that there are sufficient environmental planning grounds to justify contravening the development standard.

There is another extract from the submission, which reads:

40 *"The development is generally within the 25m building height control as endorsed by Council at its meeting of 2 October 2014, with the exception of minor variations ...*

Do you see that?---I do, yes.

That's another reference, but this time to the planning proposal decision of 2 October 2014 in respect of this

site?---Sure, yes.

Going over the page, can you see that the commentary at the end of that extraction of argument from the applicant's submission reads, commencing in about the middle of the page:

10 *Having regard to the above matters and Clause 4.6(3), the applicant's written request has satisfactorily addressed the matters required to be demonstrated by subclause (3).*

It then continues using the same formula as we saw in the report for the 538 two additional storeys clause 4.6 part of the report. It then simply reads out the sub-criteria in subclause (3) of clause 4.6. Do you see that:

20 *Compliance with the numerical standards is either unnecessary or unreasonable ...*

Et cetera?---Yes.

Then there is a conclusion to the 4.6 component of this report that reads:

30 *Having regard to the above commentary, the preceding matters arising from [the Ashfield Council case], and Council's previous intentions to increase the height limit for the site to 25m, it is considered appropriate in this instance to support the submission under Clause 4.6 of [the Canterbury LEP] 2012 and vary the height standard to permit the proposed development.*

Do you see that?---I do, yes.

40 So it's quite clear, isn't it, that having regard to the fact that the material that is identified as supporting a conclusion that the clause 4.6 submission should be accepted is material that includes reference to the council resolution for the increased building height limit in the LEP, and then the final paragraph refers to those matters arising from the Ashfield Council decision and council's previous intentions to increase the height limit, "it is

considered appropriate in this instance to support the submission under clause 4.6", what I want to put to you is that in this case, another officer's report, considerable weight was placed by you upon council's previous intentions to increase the height limit for the site to 25 metres, as expressed in the planning proposal resolution that applied to the site?---No, I disagree.

10 Why do you disagree?---Well, there are other factors, as I tried to articulate before, that you must have regard to in clause 4.6. I take your point, though, that the report itself places some emphasis on the previous resolutions, but one still has to go through the clause 4.6 provisions and be satisfied that they are adequately met. You know, there's commentary - and, look, with the benefit of hindsight, there probably should have been more detail in the report, but the commentary - we give our assessment on page 198, which says:

20 *The proposal has sufficient planning merit and environmental planning grounds to warrant the variation ...*

Those environmental planning grounds are articulated, if you go - I would imagine if you go beyond that, deeper into the report, where it has regard to, obviously, compliance with the SEPP 65 guides, and so forth. So it isn't - it isn't - as I've been saying all along, it's not a determinative factor or a relevant head of consideration.
30 However, I take your point that the way this report is written, it looks like it places some emphasis on that.

It places considerable emphasis on the council's intention, doesn't it?---It does. It does, sir, but - - -

I failed to draw your attention to another paragraph that says effectively the same thing, the third-last paragraph on page 198:

40 *In addition, strict compliance with the height standard as it currently stands is not in the public interest, given Council's stated intentions for the Canterbury Road Corridor.*

?---Sure.

It's all about council's intentions, isn't it?---It's not, and it shouldn't be. The way it's, I guess, articulated in the report, I take your point.

The evidence that you gave before lunch on this subject was wrong, wasn't it?---I don't recall what - - -

10 You indicated that it was given slight weight?---Well, it was only given slight weight. I'm saying that the report, the way it's written, probably could have articulated it better. And I draw your attention to one thing: the clause 4.6, given the recent court - or the court cases that applied at the time, with Ashfield Council, I took a proactive approach of seeking legal advice from our solicitors to come up with a checklist, which, on his advice, was how we should be assessing clause 4.6. That checklist was circulated to all the development staff and I believe was provided to some, if not all, of the external
20 consultants as well. So there was clear direction in terms of how one should assess a clause 4.6 argument.

The decision-maker, however, was council?---Yes.

All that council had to go on were your reports and the IHAP report?---That's fair comment.

Can I return to 538 Canterbury Road and to volume 17, page 272.---Yes.

30 Can you see that this is part of the business papers for the meeting of the city development committee held on 10 March 2016?---What page are we on, sorry?

I'm sorry, page 272. It might be of some assistance if I take you to the beginning of that component of the report, page 244.---Yes.

40 Do you see that that is the beginning of the officer's report to the city development committee in respect of the 538 two additional storeys development application?---Yes.

If I can then take you, please, to page 272?---Yes.

If you just have a look at the preceding page, you can see it's a series of recommended conditions. Those conclude a third of the way down page 272, and there is set out "IHAP assessment and recommendation"?---Yes.

The panel's assessment from its meeting of 29 February 2016 is reproduced underneath that. Do you see that?---I do, yes.

The panel was said to be of the opinion that the application should be refused:

10 *The issue of concern to the Panel is the Clause 4.6 variation submitted by the applicant.*

If I can jump the rest of that paragraph and go to the next one:

20 *The relevant development standard is the 18 metre height. The Council resolution to increase the height to 25 metres is at this stage no more than a resolution given that there is no gateway determination and no public exhibition of a planning proposal. (This was also noted in the Panel's discussion of a similar proposal for 548-568 Canterbury Road, Campsie in the November 2015 IHAP report).*

Do you see that?---I do, yes.

30 Then the recommendation was on page 273 under the heading "IHAP Recommendation", and it was that the application be refused on the ground that:

40 1. *The Clause 4.6 variation submission has not adequately addressed and demonstrated that:*
 a) *compliance with the 18 metre height limit is unreasonable or unnecessary in the circumstances of this case, and*
 b) *there are sufficient environmental planning grounds to justify the contravention of the 18 metre height limit.*

 2. *Additional housing and lack of specific environmental harm does not address the requirement of clause 4.6(3)(a)(b).*

Do you see that?---I do, yes.

Can I take you to the resolution, which is reproduced below that, of the city development committee at its meeting of 10 March 2016, agenda item 13, in respect of the 538 Canterbury Road additional two storeys DA. It was resolved, moved Councillor Hawatt, that:

10 *The Clause 4.6 submission to vary
 Clause 4.3 of the Canterbury Local
 Environmental Plan 2012 be supported.*

*Development Application DA-243/2014 be
APPROVED subject to the following
conditions ...*

Do you see that?---I do, yes.

20 Did anything happen in between 29 February 2016, when the
 IHAP made their recommendation, and 10 March 2016, when
 council resolved upon the matter, that you can assist us
 with as to how it came to pass that the council did not
 accept the recommendation of the IHAP?---Not that I can
 recall, I'm sorry.

30 Thinking about the time that you learned of the IHAP
 report, it would have been very soon after
 29 February?---Normally, as I said before, it took about
 a week to 10 days to actually get any report from IHAP
 after the meeting that they conducted.

Are you sure you didn't find out the next day?---What IHAP
were - - -

Yes.---I'm not sure. I'm not sure. We had staff that
attended those meetings, and I'm not sure if they
reiterated to me what IHAP were thinking at the time.

40 It's inevitable that they would have, surely? Didn't you
 want to know?---Look, I had a lot on my plate. I didn't
 really think about it, but I can't deny that my staff would
 have told me shortly after the meeting.

Yes.---Yes.

Did you think to yourself, "Oh, this is going to be
a problem. I've got some people out there who are not
going to be happy about this"?---No, because as I have

said, the reports that we put up had the IHAP's recommendations in there and also the recommendations of the Director City Planning. So their ultimate decision was for the council to make the decision on which recommendation to go with, but I can't specifically recall any sort of contact regarding it by - or thinking that way, I should say.

10 So did Mr Maroun contact you to ask what happened?---I don't discount it.

Did Mr Hawatt contact you to ask you what happened?---I don't discount that.

Did Mr Azzi contact you to ask you what happened?---I don't discount that, either.

20 Did Mr Montague contact you to ask you what happened?---With Mr Montague, it probably would have been myself conveying to him rather than him contacting me.

Did Mr Montague say anything when you conveyed it to him?---Not that I can recall, sorry.

30 Can I take you to page 243 in this volume, please. This is an email to you from your PA on 3 March 2016 at 9.43 in the morning. It's asking you to return a call from Mr Maroun in relation to 538-546 Canterbury Road; do you see that?---I do, yes.

Did you return the call?---I really don't know if I did. I can't remember.

Well, is it possible that you ignored the call from the development proponent? It's not really possible, is it?---I'd say unlikely, yes.

40 What did you and Mr Maroun talk about?---As I said, I don't recall.

Did you tell him, "Look, you don't have to worry about it. Michael and Pierre will take care of it at the other end of the process"?---I don't believe I did. I don't remember the conversation, if I did in fact ring him.

Is it likely, however, that you would have thought that it wasn't necessary to be concerned too much about the IHAP

recommendation because it would be taken care of by Mr Hawatt and Mr Azzi, as you understood what was likely to occur?---Look, my job was to put the reports up, and then whatever they decided was a matter for them. But whether it was likely, I'm not sure, to be honest with you. I don't actually remember even speaking to Mr Maroun on that date.

10 But thinking about your understanding of how things worked by this stage in relation to a matter like this, you would not have expected Mr Hawatt or Mr Azzi to roll over and say, "Oh, well, then, we'll go with the IHAP recommendation and refuse this DA", would you?---I accept that.

20 You would have expected Mr Hawatt and Mr Azzi to do whatever they did in order to ensure that there would be a result that would be favourable to the development proponent, in this case Mr Maroun?---Particularly given their considerable interest in this application throughout, yes.

Yes.---Yes.

So is it likely that you would have indicated to Mr Maroun, "Look, don't worry about it. If you need to talk to anyone about it, go off and talk to Mr Hawatt or Mr Azzi and they'll look after it. They are the ones who will be on the CDC meeting when it occurs"?---I don't believe so.

30 Did you take the opportunity of advising Mr Montague that the recommendation of the IHAP should be adopted or followed?---I don't remember doing that, no.

40 By this stage, you had not only the opinions of members of your staff that planning proposals and resolutions of council should not be used or not be allowed to be used to justify a significant variation from a planning control, but you had that opinion expressed, to that effect, anyway, in the IHAP report by an expert panel?---I accept that, yes.

You didn't think it was desirable to approach Mr Montague and say, "Look, there's a problem here. We might have been placing too much weight on the resolutions of council and the existence of planning proposals when it came to accepting these clause 4.6 submissions, and in all the circumstances I think we should intervene and stop this DA

from going ahead and remedy the matter"?--No, because I considered, as I said to you before, there was a strict criteria in terms of how one should assess clause 4.6, and I believe that we - the staff certainly followed that strict criteria. So I didn't really - actually, I didn't even think about it, to be honest with you, to approach the GM and state it the way you've just stated it.

10 But it didn't dismay you that the IHAP was coming down on the side of your staff, who were saying, "We should be not progressing DAs where there is an extant planning proposal to vary the planning control that is breached by the DA"?--No, sir, because it's a DA. Right? Notwithstanding the fact that there may be a resolution or a planning proposal, you have to consider and assess the DA under the relevant sections of the Act and that - - -

20 That's what the IHAP have done?--Well, that's their opinion. We don't always agree.

Did you think that you were necessarily right and that those members of your staff who disagreed and the IHAP were necessarily wrong?--No.

30 Is that what you're telling us?--No. What I'm putting to you is that it got to the stage where the design, as far as I was concerned, was supportable. Obviously I didn't draft the entirety of that report, but I believe that the staff followed due process when it came to assessing clause 4.6.

You know what some members of your staff thought of that, and they told you?--No, I don't recall them - development assessment staff telling me, to be honest with you. I certainly accept - - -

Mr Gouvatsos conveyed Mr Farleigh's opinion to you and, in essence, recommended that it be adopted?--I don't - I didn't read it that way, I'm sorry.

40 What I want to suggest is that given that by the time you had the IHAP report there was a body of expert opinion, which wasn't confined to planners in your own division but extended to the IHAP, that it was inappropriate to allow a variance to a planning control under clause 4.6 on a basis that council had resolved to change the control in the applicant's favour, your failure to try to deal with that and implement that body of expert opinion suggests

that there was something else at play in your calculations?---No.

The "something else" that was at play, I want to suggest to you, was your knowledge that Mr Montague and Mr Azzi and Mr Hawatt all wanted to see this application progressed to approval?---I accept that.

10 And you took that into account and allowed that to influence the approach you took to the proper discharge of your duties?---No.

And you allowed, for that reason, the proponent's interest to be favoured over the public interest in the case of this DA?---No, I disagree.

20 Can I take you, please, to volume 25, page 224. We are going to move to another property, 212-218 and 220-222 Canterbury Road and 4 Close Street. Turn, if you can, please, to page 224. There's a copy on the screen in front of you. We might need to enlarge that. Can you see that this is a development application and that it's in respect of - this is item 3 - 212-218 Canterbury Road?---Yes, sir.

That the applicant is identified as Chanine Design, the contact person being Ziad Chanine?---Yes.

30 And that the received stamp has the date 27 April 2015 on it?---Yes.

If I can take you then to page 235, can you see that that is another development application. It's for 220-222 Canterbury Road and 4 Close Street, Canterbury?---Yes.

40 And that there's a receipt stamp again of 27 April 2015 on it and that the applicant is Chanine Design; contact person, Ziad Chanine?---Yes.

You recall, I take it, these two development applications?---Yes.

It was, in combination, a large development?---It was.

That had been split into two DAs?---That's correct.

For 212-218 Canterbury Road, just for the record, it was DA 168/2015. And for 220-222 Canterbury Road and 4 Close Street, it was DA 169/2015. Can I take you to pages 225 and 236. If you could put your finger on maybe page 236, and we'll have a look at page 225.---Yes.

Can you see that item 7 in the document was "Estimated cost of development"?---Yes.

10 And that the estimated cost was \$18,919,800?---Yes.

Can I take you then to page 236. In the case of the 220-222 and 4 Close Street DA, the estimated cost of development was \$18,266,200?---I see that, yes.

Each estimate was a little more than \$1,000 less than the \$2 million threshold for referral to the JRPP for determination?---The \$20 million?

20 The \$20 million threshold.---Yes.

Do you know whether the applicants provided quantity surveyors reports to accompany these estimated costs of development?---Not off the top of my head, I'm sorry, no, but it was usual practice that they would. Otherwise ordinarily they wouldn't be accepted over the counter, yes.

30 Was that the practice at Canterbury?---Yes, I believe so, and it should be in a - I remember reading it in a checklist, submission checklist.

That the counter staff were meant to tick off - - -?---Yes, yes.

I made a mistake, not \$1,000 less; \$1 million less in each case. Do you see that?---I do, yes. Sorry.

40 No, that's not your fault. It's mine. It would have been apparent to you from the DAs and from the plans that the developments were essentially one development project?---Yes, I accept that.

Do you recall that they shared a common basement garage?---I do, yes.

The effect of splitting the development into two DAs, given the estimated cost of development in each case, was to

avoid determination by the JRPP, wasn't it?---I see no other reason for it, yes.

Was anything done to verify the estimated cost of development in each case?---I'm not sure.

10 Sorry, I should indicate - I should be clearer - was anything done by council to verify the estimated cost of development in each case?---I'm not sure, because I left that sort of thing to staff. It normally got allocated to a particular staff person whose responsibility was to go through the proposal and do, like, a preliminary review. In a lot of cases, we had a certain timeframe in place that we had to submit letters of responses back to applicants. So if there were any deficiencies in the applications, they should have been articulated in letters back to the applicant. I'm not sure whether my staff actually checked it, but it was ordinary practice to do so.

20 Did it concern you that, on the face of it, there were grounds to investigate whether the cost of development in each case had been underestimated in order to avoid determination by the JRPP and, instead, ensure determination by council?---As I said before, it wasn't up to me to do those initial checks, so I don't remember thinking that.

30 Did you do anything with a view to ensuring there was a system in place to analyse the surveyors reports and these estimates to ensure that they were genuine in circumstances where, like this, the estimates had all the colour of having been calculated in order to avoid determination by the JRPP?---I don't think there was any need for me to, because I think there were already systems in place to check QS. I believe so, anyway, to the best of my recollection.

40 No systems beyond those that you've told us about - the preliminary assessment by the initial assessing officer?---I don't recall if - sorry, I believe that there was a system in place where, if it was close to the \$20 million, we'd get that verified by another quantity surveyor.

Can you recall that ever being done at Canterbury while you were there?---I believe so, yes. I can't think of a property at the moment, but I believe so, yes.

That is to say, you believe that while you were there, a quantity surveyor was commissioned by council to provide at least a second opinion, if not in fact verify the estimate that had been provided by the proponent?---I believe so.

10 Have you, in your experience at Strathfield and Botany Councils, been aware of whether there were systems in place there for these estimates to be checked?---I don't recall, but it's likely that they did, yes.

When you were assessing DAs for those councils, did you ever check the estimates for the cost of development?---Nothing comes to mind, because most of the developments that I dealt with were in excess of the \$20 million, anyway, so I can't think of a circumstance where I did.

20 When was it that you first became aware that there was a project to develop 212-222 Canterbury Road and 4 Close Street, Canterbury?---I really don't recall.

Was it a time before the development applications were received at Canterbury Council on 27 April 2015?---That I can't be sure about, I'm sorry.

30 What is it that you have in mind when you say you can't be sure?---You're talking about prior to my tenure at Canterbury?

Or just prior to 27 April 2015. Is there anything - - -?---Oh, sorry, it is - I don't remember any real detail, but I remember Mr Chanine - the two Chanines, Marwan and Ziad, coming to see myself, and I believe the general manager as well, almost like a - in the usual way, as I've explained before how these meetings occurred, which was that they would show plans of what they had in mind. I remember having that - - -

40 Was the meeting organised by Bechara Khouri?---That's likely, yes.

Was he present at the meeting?---I believe so, yes.

What was the upshot of that meeting?---There wasn't much - I mean, it was more a case of them presenting what they had

in mind. There wasn't really any commitments or assessments done at that meeting, for obvious reasons, but it was more a presentation that they, the architect, Ziad in this particular case, would present to us in terms of what they were looking at and how they were redeveloping these two sites.

10 I'm not suggesting there was more than one, but I'm just asking you to think, was there more than one pre-DA meeting at which you were present?---That's possible. I just don't recall.

Surely something was said by you or Mr Montague, or both of you, to the Chanines at such a meeting indicating some degree of non-disapproval. Otherwise the meeting would have been a bit of a waste of time from their point of view, wouldn't it?---When you say "non-disapproval", what do you mean?

20 Indicating that you weren't going to oppose it, at least.---I don't remember - as I said, I mean, I remember having a meeting around that time prior to them lodging, but I don't recall any discussion to that effect at all.

Was anything said by you or Mr Montague that, you know, you liked the look of it, or anything like that?---That I can't recall, I'm sorry.

30 So what would the Chanines have gone away from that meeting thinking?---I don't know how to answer that, to be honest with you. I'm not sure what they were thinking.

40 What would they have thought, given that you were at the meeting? Would they have been likely to have been thinking, "Well, that was a waste of time, wasn't it", or would they have been likely to have been thinking, "Oh, well, they've given us a preliminary thumbs-up", or would they have been likely to have been thinking, "Oh, well, we had better stop any more work being done on this, because they clearly don't favour it"?

MR PARARAJASINGHAM: I object. This is really entering the realms of speculation now to ask these questions of this witness. He has no recollection. Any answer given to this question, in my submission, would be of such little weight to be of no use.

MR BUCHANAN: It's not correct that the witness doesn't have a recollection. He has told us he does.

THE COMMISSIONER: I'm going to allow it. It might jog his memory. Also, I'm just interested in what the purpose of these pre-DA meetings was, if it wasn't to give some kind of - I'm sorry, I won't say anything further.

MR BUCHANAN: Assurance.

10

THE COMMISSIONER: Assurance, or what the purpose of the pre-DA meeting was.

MR BUCHANAN: Do you understand my question? You were there. Would they have been justified in going away from the meeting thinking, "Oh, well, we should stop work on this, because they don't like it"?---I don't recall that at all, sorry.

20

Would they have been justified in thinking, "Well, that was a waste of time. They didn't give us a hint of what they thought"?---Again, I don't - I don't recall.

Would they have been justified in going away and thinking, "Oh, well, we should power ahead with this. They've indicated that they look with favour upon the plans"?---Again, I don't recall.

30

THE COMMISSIONER: What was the point of a pre-DA meeting?---Look, these were not pre-DA meetings. These were - - -

40

That's how they have been described by some of the proponents.---I know, yeah. We had a pre-DA process, which was a lot more formal, where applicants would lodge an application, a pre-DA application, with a package, and it would be assigned to an officer and an officer would go away and do a more detailed assessment, and then we'd provide a letter advising them of the likely issues. It was a non-binding letter. It offered no commitment. That's what I refer to as a "pre-DA". This was more of a - - -

So this meeting wasn't part of that process?---No, no, not at all.

So what was this?---It was not unusual for Mr Montague and

I to have these informal meetings with proponents where they would come in and generally give you a gist of what they were looking at doing. Obviously in a lot of cases, they tried to get some feedback from us, but very rarely did certainly I provide any real constructive feedback at those meetings, because quite often the plans or the documentations that they would present were very basic. So you couldn't really give them any constructive comments. And I remember in a lot of cases - and I'm not sure if we did with this one - we would always recommend that they go through a formal pre-DA, particularly with larger ones.

So what was the point? It just seems a complete waste of time.---I don't know. It was a process that I - that was adopted - - -

Did you inherit it when you arrived there?---Yes, yes. Yes.

20 MR BUCHANAN: What was in this process for the development proponents, as far as you could see?---In a lot of cases, they were trying to get information from us, obviously, and our thoughts, generally speaking. I'm not sure about this one, okay, because I don't really remember. As I said, Commissioner, before, generally because of the documentation they presented, if any sometimes - and often it was just a scribble on a bit of paper - you just couldn't give them any constructive comments. So I guess in their minds, they were probably thinking, "Well, let's see what they think about our proposal."

How would they find out what you think?---They don't necessarily find out. Then they probably - we generally send them away. Well, I - we used to send them away to provide further detail. That was the normal process in that circumstance where you had these initial, pre-DA meetings, if you like.

40 How many, if we can call it pre-DA, meetings, subject to the qualification you've given us about the formal process existing - how many such meetings did you take part in with Mr Montague, irrespective of who the proponent was, whilst you were at Canterbury?---There were quite a few.

What was Mr Montague's approach to these meetings, this type of meeting?---It was not - it wouldn't say he was negative. That's probably the best way I can describe it.

THE COMMISSIONER: Why was he attending? My understanding is that Mr Montague didn't have planning expertise, so what was the point of him being there?---In most cases, the proponents would contact him direct.

10 MR BUCHANAN: But do you know why they wanted him there? What was your understanding of why they wanted Mr Montague to be present?---Obviously because he was, I guess, the boss of the staff, yes.

And would have influence with you?---Yeah, absolutely.

And, as well, be able to provide feedback on a likely attitude of council, the councillors?---Yeah, that's likely, yes. Yes.

20 Did Mr Montague ever say anything in these meetings about wanting more development, or wanting more development of this kind, referring to the particular kind under discussion at that particular meeting?---Just in general, you're talking about?

Yes.---He certainly expressed in some of those meetings the need for development at Canterbury, because it had been long overdue. His words, not mine. So yeah.

30 Did he provide any rationale to you, whether in these meetings or outside them, as to why he thought development in Canterbury was long overdue?---Well, you'd only have to walk through the LGA to see that there was very little development that had happened, and his concern was that we were, I guess, lagging behind other councils in terms of redevelopment. Campsie Centre comes to mind. He always had an interest in the Campsie Centre being revitalised, what have you, being a centre that really should be on par with some of the other centres around, like Burwood and so forth. So he was definitely expressing that view, that there was, I guess, a need for development to occur in the
40 LGA.

I did ask you to tell us what he said to you on the subject generally, whether in these meetings or outside. What was the occasion of him conveying those opinions to you? Was it in these meetings or outside or both?---Both.

The DAs were lodged on 27 April 2015. The pre-DA meeting

obviously took place between 2 March, when you started, and 27 April, when the DAs were lodged?---I think that's fair, yes.

And you admit of the possibility that there might have been more than one such meeting?---Yes.

That is to say, with Mr Montague and yourself.---Yes.

10 When was it that you first learnt of a proposal to develop those sites or a site sort of on the corner of Canterbury Road, next to the railway, opposite the station?---I can't recall when that would have been.

Did you learn about it before those pre-DA meetings?---I really don't recall, I'm sorry.

20 Did Ziad or Marwan Chanine tell you anything about such an idea or proposal in any of the times that you met with them, or either of them, before these pre-DA meetings?---Not that I can recall, I'm sorry.

Just thinking about Marwan and Ziad Chanine, can I ask you, between the time you left Strathfield Council and the time you started work at Canterbury Council, how many private consultancy jobs were you offered?---Not many. I - - -

Any more than two?---I think maybe two.

30 Were those the two that you undertook for the Chanines?---Yes.

Before you started work at Canterbury, you had a relationship with Ziad and Marwan Chanine which was cordial?---That's fair.

And close?---No.

40 You had lunch with them?---I did. I think I've already - I may have stated this before, but I - - -

And that means that you socialised with them?---No, I wouldn't call a lunch socialising with them, no.

Are you sure you didn't have more than one lunch?---I can't - I really can't recall if it was more than one, I'm sorry.

You had two or three lunches with them between 25 October 2014 and 2 March 2015, didn't you?---It's possible. It's possible.

10 If you had three lunches with developers in that space of time, that's to socialise with them, isn't it?---Well, for me, "socialise" is actually meaning that you're actually - the way I look at it with my friends, close friends that I socialise with, that's the context that I use the word "socialise". I didn't class them as being close friends.

You socialise with Pierre Azzi?---I wouldn't say "socialise", no.

20 Even though you'd be having a drink with them?---Yeah, but that was more a case of them telling me - giving me information or thoughts on things, and so forth. There were beverages served, yes.

You were doing that essentially as part of your work; is that how you saw it?---That's how I saw it, yes.

Between the time you left Strathfield and the time you started at Canterbury Council, did you have lunches with developers or architects other than the Chanines?---Yeah.

30 Who?---Chris Tsioulos from CMT Architects. They're friends of ours.

Family friends?---Yes, I would class them as family friends. I can't think of anyone else, to be honest with you.

40 Certainly between the time you left Strathfield Council and the time you started work at Canterbury Council, you hadn't socialised with any developer or architect more than you'd socialised with Marwan and Ziad Chanine?---I'm just trying to think. Not that I can recall, no.

And you had a closer relationship with them than you had with any other developer or architect; that would be fair to say, wouldn't it?---No.

Why not?---Look, because I didn't consider them as being friends, and, as I said before, I'd class Chris Tsioulos as a closer person, closer friend, than I would the Chanines.

Did Chris Tsioulos have a project in the Canterbury LGA whilst you were DCP?---I believe so; he did, yes.

Which project was that?---I'm just trying to think. There was one on the corner of Canterbury Road - it's where - I forget the address, but it's where Euro Funerals is on Canterbury Road.

10 What was the nature of that project, sir?---It was, I think, a mixed use development as well.

How big?---I think six storeys, yeah.

Was that the subject of a development application that went to determination while you were DCP?---No, no. I believe they - I believe it was lodged, but I had left. I don't think it ultimately got - I'm not sure what happened to it, to be honest with you.

20

It certainly wasn't determined while you were DCP?---I don't believe so, no, no.

Going back to Marwan and Ziad Chanine, you had lunch with them on 28 October 2014 at the Tennyson Hotel, Botany; do you remember that?---Yes.

A Tuesday?---Sure.

30 You discussed the consultancy you were being offered to prepare a statement of environmental effects for Kanoona Avenue, Homebush?---Yes.

You accepted that offer, the offer of a consultancy?---I believe so, yes.

40

It's inevitable, isn't it, that at that lunch with them, you would have discussed with them that you were applying for appointment as the director of planning at Canterbury?---I can't - it's possible, certainly possible, yes.

It's inevitable, isn't it, given that you applied by a document dated 25 October, the same day as they had first approached you in relation to the consultancy and, indeed, made the appointment for the lunch?---It's likely, yes.

Is it likely that, at that lunch, they would have indicated whether they had development jobs in the Canterbury area?---In general terms, yes.

Who paid for that lunch? Who paid for your lunch at the Tennyson Hotel?---I don't recall, I'm sorry.

Did they pay?---I really don't recall.

10 Did one of them pay for you?---I don't recall, sorry.

You don't have a recollection of being careful to make sure you paid for your lunch?---I don't - come to think of it, I'm not sure if we actually ate lunch or had a meal at all, so that's why I don't recall, because I remember it being a very quick meeting. It wasn't anything - we weren't there for an hour or so. And I'm not sure if it was lunchtime or early afternoon.

20 It was 12.30 or so, wasn't it?---Was it? I'm not sure. I could be wrong.

We can pull up the screen shots of your phone, if need be.---Okay, I accept that.

It was about the middle of the day, wasn't it?---I accept that, but I don't recall having lunch there, to be honest with you.

30 But you do recall in February 2015 having a couple of lunches at Frappe Cafe in Earlwood, with Marwan and Ziad Chanine?---Yes.

One appointment with Marwan was for lunch on 3 February 2015; is that right? I can provide some assistance, if you would like.---Yes, please.

40 If you could go to page 138 of the volume you have in front of you, volume 25, and if I can just assist by going to page 137 first. Can you see - it's in very fine print, but we can enlarge it on screen - that under the heading "Summary", the table which appears there in the last row has "Notes":

Method 1 extraction of SStavis Black and silver Apple iPhone ...

And then there is an IMEI number. Do you see that? That's the title page of what I'm about to show you.---Okay, yes.

So going over the page, this is from the calendar in your phone?---Yes.

It indicates on 3 February 2015, 12.30pm, lunch scheduled with Marwan Chanine at Frappe?---Yes.

10 While we're here, it also indicates a lunch scheduled on 23 February 2015 at 12pm, a lunch at Frappe with Marwan?---Yes.

Those lunches occurred?---I believe so, yes.

20 Do you remember giving evidence in these proceedings, page 3377 line 43, that at a lunch with the Chanines after the lunch at the Tennyson Hotel, Botany on 28 October 2014, but before you had learned you had been appointed, the Chanines were happy that you had applied for the director's position and they felt that you would be someone who would be a good candidate to actually find solutions?---I do recall that, yes.

The date of the second lunch that you likely had at Frappe with Marwan Chanine, before you started work at Canterbury, was 23 February 2015. You've seen that in your calendar?---Yes.

30 In your evidence on 30 July 2018, I think you accepted that on 2 February, when I provided you with the information, Mr Montague wrote a memo saying he would honour his offer of employment to you. I asked you to accept that, and I think you accepted it on me indicating that that was evidence before the Commission. That was a decision therefore made by Mr Montague on 2 February, and you started work on 2 March 2015. What I want to suggest to you is that on that basis, if the decision had been made to honour the offer of employment on 2 February, it's likely
40 that by the time of your lunch with Marwan Chanine on 23 February 2015, you knew that you were going to start work as Director City Planning very soon?---I don't accept that, because at some point in time, around that time, Mr Montague withdrew his offer, from the best of my recollection. I'm not sure if it was before - - -

I might have confused you. I apologise if I have. Do you

recall that you were only made one offer of employment; it was an offer of employment made in writing to you, dated 8 December 2014?---Okay.

10 That, then, was not honoured about a week later by Mr Montague, but I want to suggest to you that the evidence before the Commission shows that, in writing, Mr Montague indicated - indeed informed the mayor - that he had an intention that he would honour his offer of employment to you, and the date of that memo is 2 February 2015. I said 2014 earlier. I apologise for misleading you. Do you see what I mean? It's highly likely, isn't it, by the time of your lunch with Marwan Chanine on 23 February 2015, you knew that you were likely to be starting work as director of planning quite soon?---I really don't recall, to be honest with you.

20 How did you find out that the offer of employment was going to be honoured after all?---That I can't be a hundred per cent sure.

Were you contacted by Mr Montague by phone?---At some point I was, yes, yes, but I just don't recall when that was, in terms of the dates.

30 What I want to suggest is that there has to be a likelihood that at the lunch at Frappe on 23 February 2015, Marwan Chanine discussed with you the project for which his brother lodged a DA only two months later?---I don't believe that's the case, I'm sorry. I don't recall that.

40 You tell us that you don't recall that, but what I'm suggesting to you is that it is highly likely, given the length of time and the effort and money that would have gone into planning a proposed development of that magnitude, that Marwan Chanine had lunch with you on 23 February 2015 and indicated to you that this project was on foot, with a view to lodging a DA?---No, to the best of my recollection, I certainly was aware that he had projects in the LGA, but I don't remember ever discussing any specific projects with him at all around that time.

Do you remember telling Mr Chanine that it had been indicated to you that you were going to be working as director of planning at Canterbury after all?---I don't recall that, no, I'm sorry.

Do you recall the tenor of that lunch? Was it a happy lunch?---Yeah - yes, I think it was.

What was the purpose of it?---I really don't remember.

What was the purpose of the first lunch in - - -

THE COMMISSIONER: October, or the one on 3 February?

10 MR BUCHANAN: Yes, thank you, 3 February 2015. What was the purpose of these two lunches?---In all honesty, I can't recall. I don't remember what it was about.

But why would you have been having lunch with Marwan Chanine or he wanting to have lunch with you?---I don't recall.

20 Did you seek him out and ask to have lunch with him?---No, I don't believe I did, no.

So he would have sought you out and asked to have lunch with you on these two occasions?---That's probably more likely, yes.

You say that you weren't best friends, so it wouldn't have been for that reason; correct?---Yes.

30 So it's likely to have been for a business reason, as far as Mr Chanine is concerned, that he wanted to have lunch with you?---Again, I don't recall, to be perfectly honest with you.

40 No, but I'm putting to you what is likely to have been Mr Chanine's motivation for wanting to have lunch with you in February 2015, shortly before you started work as director of planning and long after you'd applied for the job and, indeed, after an offer of employment as director of planning had been made to you in December. Why would Mr Chanine have been wanting to have lunch with you?---Again, I don't recall exactly why.

It's not your recollection I'm after now. What I'm after is your understanding.---Yes, sure.

You're the person who knew Mr Chanine, Marwan Chanine. You're the person who went to these lunches and who agreed to go to these lunches. What did you think was

happening?---Again, I don't know how to answer that, sorry.

Did you think you were being recruited - - -?---No.

- - - to Marwan Chanine's plans for projects that he had in the Canterbury area?---No, I didn't get that feeling.

10 Did it occur to you that that might be on Marwan Chanine's mind, that you could be useful to him, given that you were going to be director of planning, given he had projects in the Canterbury area?---No, it didn't cross my mind. I didn't think of it in those terms, sorry. Look, I remember him expressively talking about - that he had projects and that I would be a good - - -

Director of planning?---Yes. I mean, it was very general discussions. They weren't anything specific, from what I can recall, but - yeah.

20 It just seems very difficult to understand why Mr Chanine would bother having these contacts with you unless he thought he was going to get something out of it for his business. Do you see what I'm asking you?---I do, yes.

You would accept that as a general proposition?---I don't know what was going on in his mind, but at the end of the day I could see that point of view, yes.

30 They were astute businessmen, weren't they, Ziad and Marwan Chanine?---I really didn't know at that point in time.

You had been dealing with them now quite a bit, hadn't you?---No.

40 You had been working with them?---The architect, mainly, Ziad. I didn't really have much to do with - sorry, I take that back. My dealings were largely with Ziad in terms of providing, to the best of my recollection, one statement of environmental effects report for a project. And there was another one that I - ultimately because I got the position, I basically refused to do that. I can't remember. That's the best of my recollection.

You told us there was an SEE you did for a section 96 on the Liverpool Road, Strathfield development that you had worked on while you were at council; that was one. Then you told us that there was the Kanoona Avenue, Homebush SEE

that you did, and indeed we have the screen shots showing that you submitted the draft report and sent an invoice for it?---Yes.

So there's two?---Two, yes, yes.

10 You can see why the Commission would be interested in what was going on in you having lunches with this developer. You say that most of your contact had been with Ziad Chanine. Why was Marwan Chanine wanting to have lunch with you in February 2015, if he was not the person you had largely been dealing with beforehand, if it was not to cultivate you in respect of a project like 212-222 Canterbury Road?---I believe at both those lunches, Ziad was present as well. I didn't take it like that. I didn't take it as being cultivated or groomed or whatever. That certainly wasn't - - -

20 You don't think that that was possible, possibly occurring? You are, with respect, an intelligent man. It didn't occur to you that that might be what was occurring?---No, not at the time. No.

Or was it that you enjoyed being cultivated?---No, that's not true.

30 You enjoyed being cultivated by Pierre Azzi; you enjoyed being cultivated by Michael Hawatt, didn't you?---No, that's not true.

You enjoyed spending time with them and, as it were, looked up to Michael Hawatt?---No, that's not true.

Would it be fair to say that Ziad and Marwan Chanine came across to you as smart people whom you respected?---I didn't know them very well, to be honest with you. Certainly they were smart people, yes.

40 Do you want a short break?---If you don't mind, yes. Thank you.

MR BUCHANAN: Thank you, Commissioner.

THE COMMISSIONER: We will adjourn for five minutes.

SHORT ADJOURNMENT

[3.30pm]

MR BUCHANAN: Mr Stavis, you know now that a major issue with the two DAs for 212-222 Canterbury Road was the extent to which the development exceeded the maximum FSR permitted under the LEP?---Yes, sir.

10 When did you first learn that would be an issue?---I don't remember when. It was during the life, I believe, when the application was lodged, at some point.

You didn't learn from Marwan or Ziad Chanine at either of these lunches in February 2015 that they would have an issue with a development application or development applications that they would be lodging, about a significant variance from the planning control and - - -?---No - sorry.

20 You indicated "No"?---Sure.

Your attitude towards variances from the planning control wasn't explored in any way at these lunches?---No.

Was anything said about your attitude to facilitating development applications at these lunches?---They certainly were aware that I was a sort of solutions kind of person, yes.

30 Did they take that any further by trying to find out how far your definition of solutions extended?---No.

Obviously, on 23 February 2015, two months out from the lodgment of their plans, the Chanines would have been well aware that their proposed development was going to be significantly non-compliant with the FSR control that applied to the site?---That I don't know.

40 Well, you know about the preparation of plans like this?---Sure, sorry.

The size of this particular development was such that it was obvious that they must have been planning this for months and months?---I would accept that.

So they would have known, unless all of a sudden they had made very dramatic changes at the last minute to their plans, that their plans would have been significantly

non-compliant as at the lunch with you on 23 February 2015?---Obviously I don't know the detail of what happened, what they were preparing, but I would imagine, because it takes at least six weeks to prepare these sorts of proposals, so they probably would have been, yes, in design mode, yes.

10 It seems very difficult to understand why the issue of how to deal with the non-compliance which was being factored into their plans wouldn't have been raised with you, given their knowledge that you were likely to be, if it wasn't actually knowledge that you were going to be, starting work as director of planning?---I can't speak for them, but they certainly knew that I was, I guess, more pro development, yes.

20 Did you indicate what your attitude was towards non-compliance with planning controls so far as clause 4.6 was concerned?---Not that I can recall, no, not at that meeting.

They didn't indicate any trouble in their minds about a hurdle, for the achievement of their plans, of the non-compliance with the FSR control that applied to the site?---At around that time?

Yes.---No.

30 Even though you were the person who would have to sign off on the recommendation as to whether or not the requirements of clause 4.6 had been satisfied in their case, they didn't raise it with you?---No, they didn't, no.

Do you think it was appropriate for you to have lunch with developers in the Canterbury area, where there was an unresolved offer to employ you as the director of planning in that area?---No, because at that point in time, it was unresolved, I guess.

40 So you're saying it was not inappropriate, I think is the burden of your evidence; is that right?---I think so, yes.

I was to suggest to you that it was inappropriate, given that you knew they had projects in the area and given that you knew you had, at the least, an unresolved offer to employ you as director of planning in that area?---It would have been - it was an offer that may not have come to

fruition, in any case, but I didn't think it was inappropriate, no, because we didn't discuss any specific applications that I can recall in relation to those meetings.

You don't recall knowing, as at the second of those lunches in February, that you were going to be starting work as director of planning?---I can't remember, to be honest with you. I don't recall.

10

How could you not remember something like that?---Well, it's a specific date. I mean, you know, I take it - I defy anyone to remember that far back on a specific day.

An experience that would have been unique in your life, that here you were, talking to developers in the area in which you were going to start work as director of planning and have the power of life or death over their DA?---I didn't think of it that way, I'm sorry.

20

It's just that given that that was the situation - that is to say, you were going to have that power - and given that you knew that they had projects in the area, it is difficult to accept that you don't have a memory of what happened at that meeting or at least the tone of it?---As I explained to you, the best of my recollection is that they raised with me that they had a number of projects as well in the LGA. That was the extent of it. It wasn't a case of - we didn't discuss any specific applications that I can recall.

30

And there was no testing of your attitude towards variance with planning controls?---They knew, sir, they knew, from my couple of dealings that I had with them, what my attitude towards development was.

And that included non-compliance with planning controls?---No, that included finding solutions.

40

But finding solutions means overcoming planning controls?---Not in all instances, no.

Have I been through this with you already? I do apologise if I have. A solution means you have a problem?---Sure.

The premise for a solution is that you have a problem?---Yes.

10 If you comply with the planning controls, you have no problem?---No, but complying doesn't necessarily mean that that's a solution. I gave you an example earlier in my evidence where - I think it was the one on Liverpool Road, from memory, where they were the proponents of, where we took the bulk from a section in the building away from adjoining residential properties and plonked it on the corner. That resulted in a breach in the height; however, a better planning outcome, particularly for the adjoining residents.

After you left Strathfield, you'd accepted a consultancy from Ziad Chanine to prepare a report for them on the same project with which you'd been dealing or overseeing at Strathfield Council?---That would be Liverpool Road.

Liverpool Road?---I think so, yes.

20 Do you think that could have been reasonably viewed by the Chanines at the time as involving the potential for a conflict of interest on your part?---In the future or at the time?

At the time and in the future.---I don't believe so. I don't know what they were thinking in that regard.

30 You don't think that working on both sides of the processes for approval to carry out development in respect of a particular site could reasonably be viewed as involving the potential for a conflict of interest?---On my part?

Yes.---No.

Why not?---Because I wasn't working for the council any more.

40 By preparing a consultancy report for the developer, though, you inevitably would have been drawing on the knowledge you had gained from your employment by the agency which had assessed the DA and which would assess the section 96 application; isn't that correct?---That's correct, but that's not uncommon.

How common is that in the industry?---It happens, absolutely.

How common is that in the industry?---I can't say with any degree of certainty, but I'm just saying it's not uncommon.

THE COMMISSIONER: On the same project that you were working - - -?---There are - - -

10 No, no, let me finish. On the same project that you were assessing as a staff member at the council, you then leave that council and you do work for the proponent on the same application?---Yes.

MR BUCHANAN: Can you give us an indication of your understanding of the extent to which that is prevalent in the planning and assessment consultancy industry?---I know that there have been other colleagues that have done it. I see no conflict between moving away from a council, doing consultancy work and working on an application that you worked on before. I don't believe that that is a conflict, because ultimately I was not the decision-maker. It would have had to have gone through proper process.

20 But you don't think you would have been utilising, even if unconsciously, information that you had obtained by reason of the fact that you were involved in assessing the same project from the other side?---No, because there's reports that are prepared, and they're on public record, on the assessment process and any breaches of controls. So anyone could pick up that report and read it and even review the plans.

30 You don't think that the Chanines would have been entitled to view your acceptance of that offer of that consultancy as indicative of a predisposition to not be concerned about potential conflicts of interest?---Again, it's a question probably for them. I don't know what they were thinking at the time, to be perfectly honest with you.

40 And you, I suggest, provided fuel for such a view by having lunch with these men after you knew that you had been offered the job of director of planning, even though it hadn't been resolved, and that these men had projects that you would be called upon to make recommendations in respect of?---No, sir, because at that point in time, I didn't know whether I had a job.

THE COMMISSIONER: What about if you did know you had the job? Is it your view that it would have been inappropriate

to have lunch with them?---Perhaps. Perhaps.

Why? Why would it be inappropriate?---Obviously for the mere implication, I guess.

For the what, sorry?---Sorry, the mere, I guess, inference that you would be looking at potentially projects in the future that you ultimately would be making decisions on, I guess, yes.

10

Is part of that the appearance it gives that you were socialising with an applicant for a DA or a proposal that you may ultimately be putting forward a recommendation to council about?

MR PARARAJASINGHAM: I object, Commissioner. At no point has he accepted that he socialised with these people. He has been firm in that. He has characterised it in a different way - just in response to your question, Commissioner.

20

THE COMMISSIONER: All right. Had lunch with?---Perhaps.

Right.---Yes.

MR BUCHANAN: But you think it's different, do you, if it's only possible that you are going to be doing that, that is to say, exercising that power over their future, their income?---Sir, that was a very volatile time in my life. I did not have a job. I didn't think of it in those terms at all, to be perfectly honest with you.

30

Should you have thought of it in those terms?---If I had the job, perhaps, yes. But I didn't. I didn't see it, and there was a lot of toing and froing about that position, the potential for me to get that job. And I had to make a living, obviously, at the end of the day.

How were you supporting yourself?---My wife worked, yes.

40

THE COMMISSIONER: If they weren't your friends, if you weren't socialising with them, at that point if you weren't doing any consultancy work for them, what did you talk about over lunch?---I actually thought that there may have been potential for work, to be honest with you. That's probably - that's the likely reason why I took those meetings in the first instance.

The two lunches in February?---Yes, yes, given that I had done work for them in the past.

MR BUCHANAN: Thinking now of 2015, the calendar year, how many times did you have dealings with Ziad and/or Marwan Chanine in relation to 212-222 Canterbury Road?---Quite a few. Quite a few. He was - - -

10 So many times that you really couldn't count?---Yeah, I don't know - but it was a lot, yes.

How many times did you have face-to-face meetings with them in 2015 concerning these two DAs?---Quite a few.

Did you have contact with Mr Khouri in relation to these two DAs?---Absolutely.

20 What was that, sir?---I think I may have mentioned this before.

You mentioned that he was present at at least one meeting with Mr Montague; is that right?---Yeah, and there was more than one; I remember that.

With Mr Montague?---Correct.

And Mr Khouri?---Correct.

30 Yes.---But as I said before, Mr Khouri was almost acting as an advocate, lobbyist - I think I used that word before - representing the interests of the Chanines.

Did Mr Khouri organise those meetings, or any of them?---Most of the meetings were organised through the GM.

That is to say, you found out about it because Mr Montague asked you to attend?---A lot of them, a lot of them, yes.

40 Did Mr Khouri contact you with a view to organising meetings that didn't involve Mr Montague?---There were occasions, yes, yes.

With whom were those meetings conducted?---They were - are we talking generally or are we talking - - -

Yes.---Okay.

I'm sorry, I do mean specifically in relation to 212.---Okay. There were occasions where it was myself, Mr Khouri and the two Chanines. There were occasions when it was all the above, plus my staff. So it was sort of a mixture of the two.

10 In each of those meetings, was the role that Mr Khouri played characterised as an advocate, as far as you're concerned, for the project?---Yes.

I overlooked an email trying to establish a meeting at page 139 in volume 25. If I could take you back to 6 March 2015, this is the Friday of the week that you started work. Do you see that?---I do, yes.

20 Ms Rahme sent you this email for a pre-meeting involving Ziad Chanine, and she sent it also to Stephen Pratt, Jade Shepherd and George Gouvatsos. Do you recall whether that meeting occurred?---I don't, I don't, but it's likely.

To what extent did you have meetings with the Chanines, or either of them, in relation to any other project they had in the local government area, thinking now of 2015, if you can?---Sure. The only projects that I can recall, other projects - there was one, a smaller one, a very small one, on Canterbury Road as well, so there were not many meetings around that one. I just can't think of any other ones, to be honest with you.

30 MR BUCHANAN: It might be a convenient time, Commissioner.

THE COMMISSIONER: Can I just ask you, in the lead-up to applying for the job as Director City Planning, you met with Mr Vasil with an aim of developing some expertise about what was happening in the Canterbury area?---Are you talking about the meeting in the cafe?

40 Yes.---Yes, yes.

I think we've heard evidence that although you had experience in assessments, you needed some assistance with the planning proposal side of things?---I admitted that I certainly would be classed as more of an expert in development assessment than in the planning proposals, yes.

And Mr Vasil was helping you with that?---No, no.

What did you discuss with Mr Vasil?---That was in relation to my employment.

Yes, but before you applied, I thought before your interview, you'd met with Mr Vasil?---Yes.

10 And you were getting, I'll say tips or some assistance about what was happening at Canterbury?---In that mini-interview, I'd call it, Bechara Khouri was present as well. Yeah, Mr Vasil did point out that there were, in general terms, issues pertaining to inconsistencies with the LEP, DCP, and so forth, and gave me a bit of an insight in terms of, I guess, what the director before me went through. It was along those lines.

20 If the February lunches with the Chanines were because of potential for work, you must have been asking them about what jobs they had on their books, in a way, mustn't you?---No, no, I don't recall that at all. When I got to those meetings, it was obvious that they were just talking in general terms about, you know, to the best of my recollection, anyway, that they had projects in Canterbury, and so forth.

30 But you had some expertise now, or at least some knowledge, about Canterbury. Weren't you putting that forward and asking them about their projects within Canterbury, kind of selling your skills to see if you could get some consultancy work with them?---They knew my skills from before, because I had done previous work for them. So, no, I don't recall ever discussing that.

MR BUCHANAN: Was Mr Khouri at either of those lunches?---No.

THE COMMISSIONER: All right. We are adjourned until tomorrow morning at 9.30.

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THE WITNESS STOOD DOWN [4.00pm]

AT 4.00PM THE MATTER WAS ADJOURNED ACCORDINGLY [4.00pm]