
TRANSCRIPT OF MORNING PROCEEDINGS

WARNING - CONTAINS LAWFULLY INTERCEPTED INFORMATION AND INTERCEPTION WARRANT INFORMATION.

These documents contain information as defined within ss 6E and s 6EA of the Telecommunications (Interception and Access) Act 1979 (Cth) (TIA Act). It is an offence to communicate to another person, make use of, or make a record of this information except as permitted by the TIA Act. Recipients should be aware of the provisions of the TIA Act.

WARNING - CONTAINS PROTECTED INFORMATION.

These documents contain 'protected information' within the meaning of s 30D of the Surveillance Devices Act 1999 (Vic) (SD Act). It is an offence to use, communicate or publish this information except as permitted by the SD Act. Recipients should be aware of the provisions of the SD Act.

INDEPENDENT BROAD-BASED ANTI-CORRUPTION COMMISSION

MELBOURNE

WEDNESDAY, 4 DECEMBER 2019

(11th day of examinations)

BEFORE THE HONOURABLE ROBERT REDLICH QC

Counsel Assisting: Mr Michael Tovey QC
Ms Amber Harris

OPERATION SANDON INVESTIGATION

PUBLIC EXAMINATIONS PURSUANT TO PART 6 OF THE INDEPENDENT BROAD-BASED ANTI-CORRUPTION COMMISSION ACT 2011

Every effort is made to ensure the accuracy of transcripts. Any inaccuracies will be corrected as soon as possible.

1 COMMISSIONER: Yes, Mr Tovey.

2 MR TOVEY: I call Megan Schutz.

3 COMMISSIONER: Ms Schutz, would you come forward and sit in the
4 witness box, please.

5 <MEGAN ANNE SCHUTZ, affirmed and examined:

6 COMMISSIONER: Ms Schutz, these are public hearings and save
7 that when there's a need to make a suppression order or to
8 go into private session, which has not thus far been
9 necessary, the proceedings will be conducted in public.
10 The Commission is not bound by the rules of evidence and
11 the Commission regulates its own proceedings.

12 Mr Lewis, you appear for Ms Schutz?

13 MR LEWIS: Yes, Commissioner, I announced an appearance, but
14 I do so again for Ms Schutz.

15 COMMISSIONER: Yes, thank you. At the conclusion of Counsel
16 Assisting's examination, Mr Lewis will have an opportunity
17 to examine you on any matters that require clarification
18 or if there are additional matters that he wants to lead
19 from you, or he may elect to defer doing that until the
20 remainder of the evidence that's being called is
21 completed.

22 There may be parties who will wish to
23 cross-examine you. If they do, I will receive
24 applications to do so. Whether or not I permit it will
25 really depend on the nature of the cross-examination.
26 That might also get deferred.

27 I need to, however, cover some formal matters
28 with you now. You were served with a summons and with a
29 document entitled "Rights and obligations", and you have

1 read the rights and obligations, and has Mr Lewis
2 discussed them with you as well?---Yes.

3 Do you understand them?---I believe so.

4 Do you want me to go over them again with you?---Yes, please.

5 Very good. So firstly I will deal with the nature of the
6 matters which are to be the subject of the examination.

7 I am required to advise you that the evidence that you are
8 going to be questioned about will be (a) your knowledge of
9 City of Casey Council in relation to consideration of
10 development applications and other planning matters within
11 the City of Casey; the transparency of planning and
12 property development decision making within Victoria,
13 including but not limited to local government; whether
14 public officers involved in planning and property
15 development decision making have been improperly
16 influenced through donations, gifts or other hospitality;
17 the circumstances surrounding any actual and potential
18 financial benefits obtained by any public officer, their
19 families or their associates resulting from or otherwise
20 in connection with planning and property development
21 decision making within Victoria; and the systems and
22 controls in place within public bodies and in particular
23 the City of Casey Council concerning planning, with
24 particular focus on the existence and adequacy of systems
25 and controls for ensuring the integrity of the planning
26 process, including by detecting instances of public
27 officers providing benefits to themselves, their families,
28 friends or associates.

29 You appreciate, Ms Schutz, that you are entitled

1 to be legally represented and to have legal advice and you
2 have exercised that right?---Yes.

3 If necessary - you don't require an interpreter, but I should
4 say to you that, if at any stage you are not clear about
5 questions that you are asked, you should ask the
6 questioner to repeat the question or perhaps to
7 reformulate it. I'll assist you if there's any obscurity
8 in the question. If at any stage you want to have a break
9 because you are finding the process onerous, you just let
10 me know and we will take a break. Do you follow?---Yes.

11 You may claim a privilege in relation to answering questions,
12 but you are not excused from answering questions or giving
13 information or from producing a document or other thing on
14 the ground that the answer, information, document or other
15 thing may tend to incriminate you or make you liable to a
16 penalty. If you do give an answer, information, document
17 or other thing that does incriminate you, there is an
18 immunity that is likely to apply in your situation, and
19 that is to say the answers that you give can't be used in
20 a court of law against you. Do you understand
21 that?---Yes.

22 So, in summary, what you are obliged to do, Ms Schutz, is to
23 answer the questions truthfully, even if they incriminate
24 you. If you give false testimony you then render yourself
25 liable to the offence of perjury, and if you have given
26 false evidence then your false evidence can be used
27 against you. So in that limited sense your evidence would
28 be admissible against you. Do you understand?---Yes.

29 Very good. Counsel Assisting will ask you frequently what can

1 be described as open-ended questions; that is, there's no
2 answer being suggested in the question. But you should
3 not assume that because the question is open-ended counsel
4 don't already know the answer to it. So I mention that to
5 impress upon you the importance of you being truthful. Do
6 you follow?---Yes.

7 Now, having come with Mr Lewis, I take it then that you are
8 content to proceed today with his representation?---Yes.

9 Very good. Yes, Mr Tovey.

10 MR TOVEY: What is your full name, please?---Megan Ann Schutz.

11 Did you attend here today in response to a summons served on
12 you?---Yes.

13 Could you have a look at the documents which are being handed
14 to you. Now, amongst those documents is a summons
15 numbered SE3189?---The summons says SE3197.

16 Can I just have a - I will just have a look at what I have
17 here. I'm sorry. It's okay, the note I have is
18 incorrect. So you have a summons 3197?---Yes. It says
19 SE3197.

20 And with that summons did you receive a document titled
21 "Section 121(3)(c) - Statement of rights and
22 obligations"?---Yes.

23 And a covering letter dated 18 October 2019?---Yes.

24 I tender those documents, Mr Commissioner.

25 COMMISSIONER: Exhibit 100.

26 #EXHIBIT 100 - Summons SE3197, and document titled "Section
27 121(3)(c) - Statement of rights and obligations" with
28 covering letter dated 18 October 2019.

29 MR TOVEY: Ms Schutz, before I ask you any questions I want to

1 refer you to some taped conversations involving you and
2 some other records involving you, first of all in respect
3 of the dealings of Casey councillors in respect of the H3
4 issue on 16 October 2018?---Yes.

5 Now, I want you to listen to these carefully because it is
6 important you understand the issues they raise and I want
7 you to be able to respond to a series of questions
8 following hearing this?---Yes.

9 First of all, could the witness have played, please, tab 23.

10 COMMISSIONER: Is that an existing exhibit, Mr Tovey?

11 MR TOVEY: Yes, that is an exhibit. It is exhibit 35, sir.

12 COMMISSIONER: Thank you.

13 MR TOVEY: Actually, before I actually take you to that, while
14 it's being cued up, just to put this in context, you are
15 familiar, are you not, with the fact that on 16 October of
16 2018 there was before council a proposal by Dacland which
17 had been supported by a council officer to defer the
18 construction of the H3 intersection?---Yes, there was the
19 secondary consent application.

20 Yes, and you, on behalf of Mr Woodman and his interests, were
21 opposed to that?---So my client was Elysian Group Pty Ltd,
22 and Mr Woodman was involved in instructing me.

23 Yes. I will get back to - - -

24 COMMISSIONER: Can I just interrupt you for a moment, Mr Tovey.

25 You say your client?---Yes.

26 Are you a lawyer by profession?---So during the period - I am
27 a - - -

28 You are a qualified lawyer?---I am a qualified lawyer, but
29 during - - -

1 In what capacity were you acting for Mr Woodman?---So during
2 the - between early 2015 and 30 June 2019 Schutz
3 Consulting was a planning - practising as a planning
4 consultancy, and I had a separate business called Schutz
5 Legal where - in which I gave legal advice. So during the
6 period when I was acting for Elysian Group in relation to
7 the - related to the intersection I was practising as a
8 planning consultant.

9 So what's the group you were acting for?---Elysian Group Pty
10 Ltd.

11 And what about before 2015? Had you been doing work with
12 Mr Woodman?---Yes.

13 Since when?---When I originally started my business in 2011 -
14 I think I started my business in May 2011 - John
15 Woodman - I went and saw John Woodman because I lived in
16 Mornington, and he offered me work on a rezoning which
17 I pretty much ran independently for a client of his.

18 What matter was that?---It was a rezoning of some land in
19 Chelsea Heights. It was a small parcel, and we - it was a
20 proposal to - quite a bit of it laid in an urban floodway
21 zone and a bit of it laid in the residential 3 zone, and
22 it was slightly increasing the area in the residential 3
23 zone and the rest was to be left as reserve for stormwater
24 management purposes, and I think it ended up vested in
25 Melbourne Water, yes.

26 What council was involved?---It was the City of Kingston.

27 Between 2011 and 2015 did you do any work for Mr Woodman in
28 relation to the Casey Council?---In 2014, that was when
29 the Cranbourne West rezoning proposal commenced. I'm just

1 trying to think. At this stage I can't recall if there
2 was any other planning matters, but there may have been.
3 I just can't recall because I haven't refreshed
4 my - I have refreshed my memory in relation to the
5 Cranbourne West matter and the H3 intersection matter and
6 the Pavilion matter. That's a lot of detail. But
7 I haven't - and I've refreshed my memory in relation
8 to - there was a pro bono project, the Blairlogie disabled
9 living, the housing project that I had been working on.
10 I have refreshed my memory in relation to that as well.

11 Yes?---But that - - -

12 What about - are you familiar with the contents of the
13 Ombudsman's report of 2015?---No.

14 So Botanic Ridge, did you have anything to do with that?---So
15 I acted for Bayport and Delplant in relation to Botanic
16 Ridge. There were two parcels. There was one on
17 the - - -

18 How did you come to be acting for them? Were they - -
19 -?---I came to be acting for them - I was introduced to
20 them I think by Heath Woodman to assist with their
21 planning process.

22 Yes?---Yes. Because they had some quite complicated planning
23 issues.

24 What about Brompton Lodge?---Sorry - yes. I'm sorry, I'm
25 quite - - -

26 Nervous?---Yes.

27 Just relax?---Brompton Lodge is a project that I have been
28 doing the day-to-day planning on.

29 Since when approximately?---Since - I became involved in the

1 day-to-day planning I think towards the end of 2017, and
2 I also appeared before panel for UDIA Consolidated.
3 Which was one of Mr Woodman's companies?---I don't know if it
4 was - it was the - my understanding is the UDIA
5 Consolidated was in a development agreement with the owner
6 of the land, which was the Carpenters and I think a
7 Brompton Lodge superannuation entity.
8 But for UDIA you were acting for - who was giving you the
9 instructions?---Heath Woodman.
10 Yes?---Yes.
11 Thank you. Yes, Mr Tovey.
12 MR TOVEY: And are you familiar with the fact that on
13 16 October 2018 when the H3 deferral issue came up before
14 council Mr Aziz moved an alternate resolution referring to
15 accident data and a letter from SCWRAG, and his
16 alternative resolution sought to have Dacland commence
17 construction of the H3 intersection immediately? Was that
18 the situation?---Sorry, can you repeat that question?
19 On 16 October of 2018 - - -?---Yes.
20 There was a proposal supporting a request from Dacland before
21 council, that request being that construction of H3 be
22 deferred?---So there was a secondary consent application
23 before council for its consideration which sought to
24 release stage 10 statement of compliance prior to stage 9,
25 which the H3 intersection construction was tied to.
26 So, in any event, on that day there was a motion before council
27 which effectively involved the deferment of the building
28 of the H3 intersection by Dacland?---So my recollection is
29 that the council officer's recommendation was to support

1 Dacland's secondary consent application which allowed them
2 to get release of stage 10 before delivering the H3
3 intersection.

4 Yes, all right. And in the course of that - that resolution,
5 to your knowledge, was moved by Councillor
6 Aziz?---So - - -

7 Sorry, that resolution was opposed by Councillor Aziz?---So
8 Councillor Aziz moved an alternative recommendation.

9 And that was an alternative recommendation which you had
10 drafted?---Yes, I'd had involvement in, yes.

11 I will go to the detail before I ask you some further
12 questions. These are just some general questions?---Yes.

13 In the course of moving that alternate resolution he provided a
14 letter from SCWRAG; is that right?---I recall there being
15 a letter from - sorry, I'm just trying to - I recall there
16 being a letter from SCWRAG in relation to the 19 September
17 resolution. I'm just - I'm not sure about the - I would
18 need to look at my file. I can't - - -

19 In any event, was it the case at that stage that SCWRAG, to
20 your knowledge, had provided from time to time letters
21 supporting H3?---So SCWRAG's main concern, and I had
22 been - - -

23 No, I'm just asking about letters. If you would just address
24 the question?---Yes.

25 Were you aware that SCWRAG from time to time had provided
26 letters to either council or to the minister supporting
27 the construction of H3?---It wasn't just about H3. It was
28 about - the main thing that SCWRAG was concerned about was
29 getting Hall Road duplicated and sorting out the safety of

1 Hall Road, and the main points, as I understood it, were
2 the Hall Road-Evans Road intersection and the traffic
3 flows along Hall Road. SCWRAG's position in relation to
4 the H3 intersection was that they thought that both
5 developers should be getting together and working together
6 to deliver the intersection.

7 What was Mr Woodman's interest in respect of the H3
8 intersection?---So Mr Woodman's interest, as I understood
9 it, was to - it started off as an interest to get the Hall
10 Road duplicated, and there was money in the Cranbourne
11 West Development Contributions Plan - I think it was
12 called project RDO2B - which had money to duplicate Hall
13 Road. There was also RDO9, which was for the culverts
14 under the road. And originally, having refreshed my
15 understanding of my file, the Watsons engineers and
16 Dacland were working together to try to get that
17 additional money released. It was pretty much driven by
18 Watsons to get those funds out of the development
19 contributions plan from council because it would make the
20 H3 intersection cheaper to deliver.

21 How much in savings was there for Mr Woodman's interests?---So
22 what happens with - - -

23 No, did he discuss with you?---His savings - - -

24 I won't be mysterious about this?---Yes.

25 There is a call where he discussed with you making 1.75 million
26 out of the early development of the H3 intersection. Does
27 that resonate with you? I can take you to it
28 later?---Yes, I think need to be - I don't - I'm not -
29 I just can't recall my telephone conversations and - - -

1 COMMISSIONER: Did understand that Mr Woodman had a financial
2 interest in seeing the H3 motion or alternate motion that
3 Mr Tovey's referred to passed?---I'm not sure if
4 Mr Woodman is a director of Elysian Group Pty Ltd, and my
5 understanding is that Elysian Group owned the land, Alara
6 Estate, where part of the H3 intersection was required to
7 be delivered.

8 MR TOVEY: Was it Mr Woodman who was directing you in respect
9 of your dealings with council on H3?---Yes.

10 What was his interest, if it wasn't a financial one?

11 COMMISSIONER: You mean his financial interest.

12 MR TOVEY: It had to be a financial interest, didn't it,
13 otherwise he wouldn't have been paying you to do
14 this?---So he wasn't paying me to - - -
15 Who was?---Elysian Group Pty Ltd was my client. Elysian
16 Group Pty Ltd was paying my invoices for the planning work
17 I did in relation to the - - -

18 COMMISSIONER: And who is the principal of Elysian? Who was
19 the client in person from there that you were dealing
20 with?---So Wolfdene develop the Elysian Estate.

21 Yes?---And every week I've been attending project control group
22 meetings, and I get most of my instructions from Wolfdene.
23 However, Wolfdene and, like, Watsons do the engineering
24 and the surveying on the Elysian Estate, and their
25 planners in Watsons originally doing the planning on the
26 Elysian Estate as well, and I was brought in to work on
27 various aspects of the planning.

28 Yes?---And John Woodman often directed the planning strategy.

29 Who was it from Wolfdene that you were answerable to?---Heath

1 Woodman.

2 But was it clear to you that the arrangement between Heath and
3 John was in relation to strategic steps in relation to the
4 H3 issues you were to take your instructions from Mr John
5 Woodman?---Yes, John was instructing me in relation to
6 planning strategy for the Hall Road upgrades and the H3
7 intersection.

8 Were you ever privy to what financial arrangements existed
9 between Mr Woodman Senior and Junior?---No.

10 MR TOVEY: Thank you. So could we now have played and bring up
11 tab 23, which is exhibit 35.

12 (Audio recording played to the Commission.)

13 MR TOVEY: If I could just stop it there, thank you. Just for
14 the transcript, this is a conversation between Megan
15 Schutz and Sam Aziz at 4.40 in the afternoon on 16 October
16 of 2018. This is coming up to the vote which has just
17 been discussed. Thank you.

18 (Audio recording played to the Commission.)

19 MR TOVEY: I now want to take you to some texting that was
20 going on, some messaging that was going on between
21 yourself and Sam Aziz during this day and indeed during
22 the council meeting itself. So that's 3425 to 3428.

23 COMMISSIONER: Exhibit?

24 MR TOVEY: No, it's not been an exhibit yet, sir.

25 COMMISSIONER: Very good. So what's the date of those,
26 Mr Tovey?

27 MR TOVEY: 16 October of 2018. At 10.16 am - could we just go
28 back to the top, please. This is on 18 October?---It's on
29 September.

1 Sorry, just go to the next one, if you wouldn't mind. This is
2 on the - no, could we just go up, please. Thank you. All
3 right. So that's at 9.40 am you message - these are
4 WhatsApp messages. As you would've understood it,
5 WhatsApp was an encrypted system?---I'm just trying
6 to - I have got WhatsApp on my phone. Do the WhatsApp
7 come out as - I can't - I often - sometimes I send an
8 email and then some people are on different things,
9 I think, and, like, I'm not - - -

10 I just want to ask you about your knowledge?---Yes.

11 We know from previous evidence that communications over
12 WhatsApp can't be intercepted. However, once the messages
13 are on your phone, unless you delete them, they are there;
14 you understand?---Yes, there's - - -

15 Were you aware of that?---I wouldn't have been deleting
16 anything. I've got nothing to hide.

17 No, were you aware of the fact that WhatsApp was a secure
18 application and more secure than normal
19 texting?---I didn't know that about WhatsApp, yes.

20 In any event, at 9.40 am you message Sam telling him to look at
21 his email and there is a SCWRAG letter on the next hour;
22 is that right?---From reading this, yes, it appears I've
23 sent him a text message, yes.

24 All right. Was it the case that at that stage - sorry, I'll
25 just ask you this. What SCWRAG letter is it that you are
26 talking about?---I can't recall what the exact
27 letter - have we - is there a copy of it I can have a look
28 at?

29 COMMISSIONER: Ms Schutz, can you come a little closer to the

1 microphone?---Sorry. I can't recall the letter exactly,
2 but if there's a copy of it that I could have a look at?

3 MR TOVEY: At this stage did you yourself take part in
4 composing a letter for use by Sam Aziz at that
5 meeting?---I was - without seeing the letter, I have - so
6 Ray Walker and I were in communication during the H3
7 intersection and - - -

8 And were you composing letters to be sent off to council?---So
9 I was inputting into letters.

10 COMMISSIONER: You have heard the conversation that Mr Tovey
11 played to you?---Yes.

12 And in that conversation you are asking Mr Aziz, "Haven't you
13 seen the email?" He was expressing ignorance about the
14 SCWRAG letter?---Yes.

15 So this is the letter, isn't it? This is a reference to that
16 letter because this is the communication by email or
17 WhatsApp earlier in the day?---To be honest,
18 Mr Commissioner, I can't remember the conversation. I've
19 seen the conversation now and I've seen this text message.
20 I want to be honest and I want to tell the truth. I'm
21 just not sure. Without going through my own emails and my
22 own file I - - -

23 What are you not sure about, Ms Schutz?---I can't remember
24 the - I can't remember the SCWRAG letter, the contents of
25 the letter or - and I can't remember - I haven't - I know
26 that it's happened because you've shown me, that there's
27 been the text messaging, and I believe there has been.
28 I just am not sure what SCWRAG letter it is.

29 MR TOVEY: Could we - the letter is at 3 - before we move away

1 from this, could I tender that series of WhatsApp
2 communications, being pages 3425 to 3428, and we'll come
3 back to that.

4 COMMISSIONER: I don't think the witness has actually said
5 anything yet about them. I'll mark it for identification.
6 You'll come back to it, Mr Tovey. WhatsApp communications
7 at pages 3425 to 3428.

8 MR TOVEY: Could you look at 3470. That's 31 October - I'm
9 sorry, I just need to check. Okay. I didn't read the top
10 line. So that is a communication from Save Cranbourne
11 West - that's SCWRAG, I take it - to Councillor Sam Aziz
12 on 31 October resending a letter of 16 October and that
13 letter is attached?

14 COMMISSIONER: Would you like the witness to look at the
15 letter, Mr Tovey?

16 MR TOVEY: Yes, could we look at the letter?---Thank you.
17 So that's the letter?---Yes. Are you able to scroll down,
18 sorry? Yes. Yes. Yes.

19 COMMISSIONER: What exhibit number is that, Mr Tovey?

20 MR TOVEY: That is not an exhibit at this time. Could that be
21 given a number, please, Mr Commissioner?

22 COMMISSIONER: So it's an email from SCWRAG on 31 October
23 resending the letter of 16 October?

24 MR TOVEY: Yes.

25 COMMISSIONER: That will be 101.

26 #EXHIBIT 101 - Email from SCWRAG on 31 October resending the
27 letter of 16 October.

28 MR TOVEY: It's self-evident that that's a letter that had been
29 composed for presentation at the council meeting that

1 night?---Yes.

2 That's a letter that you had been referring to in conversation

3 and in WhatsApp communication with Mr Aziz?---I assume so.

4 And that's a letter in which you took part in

5 composing?---I think it was originally drafted by Ray

6 Walker and I - yes, I had some input. I reviewed it and

7 suggested some additions to it, yes.

8 Thank you. Could we now please go back to the exhibit for

9 identification at page 3425. I apologise - I don't want

10 to mislead you - I'm told now this is an iMessage. It's

11 not WhatsApp. This is a series of iMessages using the

12 Microsoft application?---Is that like on your phone - - -

13 Don't ask me. But, in any event, it's not simply WhatsApp.

14 But if we go through I think you can assume that iMessage

15 is a Microsoft - sorry, is an iPhone's Apple messaging

16 application?---Yes, it's like the little envelope on

17 the - - -

18 COMMISSIONER: You don't doubt the blue entries are from your

19 phone?---I assume so. I have - - -

20 Is that your phone number there at the top?---Yes, that is my

21 phone number, yes.

22 MR TOVEY: All right - - -

23 COMMISSIONER: So, Ms Schutz, I just say something. You're

24 right to ensure that you are completely satisfied about

25 something before you agree with it. On the other hand,

26 where something should be obvious to you it's probably in

27 your interests not to lengthen the proceedings?---Okay.

28 So you'll obviously have to make a judgment in each case about

29 whether it's something you can agree with?---Yes.

1 But you don't want to be in the witness box any longer than you
2 have to be?---No. I think my issue is that I can't
3 remember sending it, so - but I accept that if it's got my
4 phone number on top of it and it's been extracted from my
5 phone I sent it.

6 But, Ms Schutz, I imagine there will be a lot of things that
7 you will see in the course of the next day that you will
8 accept originated from you, even though you have no memory
9 of it now?---Okay.

10 MR TOVEY: So, anyway, you sent an email to Mr Aziz relating to
11 the receipt of the SCWRAG letter. If we could just scroll
12 down, please. He sends back a message thanking you. Then
13 you say - this is at 7.20 pm. At 7.20 pm the council is
14 in fact sitting; do you understand? You say, "Sam, you
15 need to read the SCWRAG letter sent to councillors out to
16 the chamber"; all right?---Yes.

17 That's a message you have sent during the council
18 meeting?---Yes.

19 And you agree that was the case?---Yes.

20 If we just go on. Councillor Aziz says to you, "I have used
21 parts of it"?---Yes.

22 If you go down. So that's you giving him directions during the
23 meeting?---Yes.

24 Then you indicate at 7.22, and you see him reading it virtually
25 the same time, at 7.23, you say, "But it's muddled. You
26 need to read it out in full. It shuts them down.
27 Further, not only will council be putting the existing
28 community lives at risk but also the 120 new residents
29 that will move into the 44 lots. Does council really want

1 that on its head?" So you are providing him with
2 arguments in real-time?---Yes.

3 Go down.

4 COMMISSIONER: How did you know it was muddled? Were you at
5 the council meeting?---No.

6 So how were you getting information - - -?---I was watching it.
7 There was a livestreaming of it, was there?---Yes.

8 And where were you?---At home.

9 MR TOVEY: Can we just scroll down. A minute later he texts to
10 you, "They have argued they have other access." So he's
11 telling you what the argument from the other side
12 is?---Yes.

13 Go down further. You respond a minute later, "Yes, through
14 Hall Road-Evans Road intersection, which is the black spot
15 where seven accidents have already happened this year.
16 It's an accident waiting to happen. Read the SCWRAG
17 letter, please. It was sent to all councillors and that
18 nails it"; all right?---Yes.

19 That's things going on, and again you are coaching him during
20 the council meeting?---I'm lobbying, I'm advocating
21 arguments, yes.

22 You are not advocating. You are directing him in what
23 arguments to give, are you not?---I'm not directing him.

24 Are there any other councillors in any other councils who have
25 you on livestream during council meetings with you telling
26 them what to say?

27 COMMISSIONER: I'm sorry, you don't agree with that? You don't
28 concede that you are telling him what to say; is that your
29 position?---I have put something to him, but I can't make

1 him - - -

2 No, I'll ask the question again, Ms Schutz?---Yes.

3 Do you dispute that you are telling him what to say?---I am

4 advocating that for my client's position, but I can't make

5 anyone say something.

6 I'm not asking you that. I'll ask you once more?---Yes.

7 Are you disputing that in these iMessages you are telling him

8 what to say?---I'm advocating for a position.

9 Advocating?---Yes.

10 Where does that notion come from, advocating? What do you mean

11 by advocating?---Putting arguments that support a

12 particular position.

13 That he can take or leave as he sees fit; is that what you

14 mean?---Yes.

15 Is that what you are doing here? Saying, "It's entirely a

16 matter for you whether you use this argument" - -

17 -?---I haven't used those words.

18 No?---But my understanding and my intention has always been you

19 can't - like, I don't - I can't make someone do something

20 they don't want to do.

21 It's not about whether you can make them?---Yes.

22 It's what you are trying to do. Do you dispute that you were

23 telling Mr Aziz here what he should say?---I was - yes,

24 I was saying to Councillor Aziz, "These are the arguments

25 in support of the alternative recommendation."

26 MR TOVEY: Were you providing him with a script? Did you

27 perceive yourself to be providing him with a

28 script?---I was providing him with useful - - -

29 Look, yes or no?---Suggestions.

1 I mean, you must be aware by now from publicity - - -?---Yes.
2 That there is a recording of you talking about him here - -
3 -?---Yes.

4 Having been provided with a script. Now, is that the way you
5 saw it or not?---So when - - -

6 You are not doing yourself any service here; you understand
7 that?---With the - I originally - - -

8 No, the question was: did you understand yourself to be
9 providing him with a script; yes or no?---When I've read
10 about the script I think it's referring to - - -

11 Yes or no? Was it a script or wasn't it?---When the script has
12 been referred to I understand that it's referring to
13 a - - -

14 No, look, I'm just asking you about - - -?---I wrote him some
15 briefing notes - - -

16 COMMISSIONER: Mr Tovey, let the witness answer?---I wrote him
17 some briefing notes and I also wrote him a speech that he
18 could use.

19 MR TOVEY: Did you see it as a script?---I saw it as a briefing
20 note and a speech that I wrote that he could use if he
21 wanted to.

22 Did you see it as a script?---I'm using the words that I saw it
23 as a briefing note and a - - -

24 No - - -?---I'm not sure what - - -

25 All right?---The script - I'm not - like I - I'm not
26 trying - I'm really not trying to be - the way you're
27 questioning me, I'm not - is there somewhere where I have
28 said, "He didn't follow the script"? Is there something
29 that you have where I have said I haven't followed the

1 script or - - -
2 It's not a matter of what I have, you understand; it's a matter
3 of what the truth is?---But I can't remember if I've used
4 the word "script" in relation to what I have been
5 saying to him - - -
6 I'm not asking you what words you have used. I am asking you
7 what you had in mind at the time you were giving these
8 directions. Did you see it as a script? Did you later
9 bemoan with Mr Woodman the fact that he hadn't followed
10 the script?---Now I understand. So there is a
11 conversation, a telephone conversation, that's been
12 reported where I've - yes, I think I've used the words
13 that he hasn't followed the script.
14 COMMISSIONER: When you go back to - - -?---Yes.
15 When you go back to the conversation that Counsel Assisting
16 initially played you - - -?---The original - - -
17 Yes?---The six pages of transcript?
18 Yes?---Yes.
19 Where you were telling Mr Aziz that you had sent him an email
20 setting out - including the SCWRAG letter - - -?---Yes.
21 And setting out what you were looking to him to say - -
22 -?---Yes.
23 Did you notice that his response to you was essentially, "Tell
24 me what you want me to do?" Did you notice that in his
25 response to you?---I do when I read it.
26 Yes?---I think my - my - I'm a planning advocate and
27 I - I guess sometimes I passionately champion the
28 arguments that I've put together, and I think it was a
29 case of passionately championing the arguments that I had

1 put together, and I assume that - you know, Councillor
2 Aziz was the person I was briefing in relation to the
3 alternative recommendation.
4 Well, no doubt we'll come to - - -?---Yes.
5 We'll come to why you were briefing him rather than some other
6 councillor?---Yes.
7 But at the moment we're just wanting to look at precisely what
8 you were actually doing?---Yes.
9 And I'm just reminding you that in that initial conversation
10 that was played - - -?---Yes.
11 The thrust of it was, "What is it you want me to do? Tell me
12 what it is that I'm to do"?---Yes.
13 That was his position?---Yes.
14 And you didn't seem to have any difficulty with that?---Well,
15 I had instructions to brief him on the alternative
16 recommendation.
17 And isn't what's - - -?---And the reasoning, the rationale for
18 that alternative recommendation that I drafted.
19 No doubt you had instructions?---Yes.
20 But isn't what appears in the iM, the message here - -
21 -?---Yes.
22 You continuing to do what you had set out to do in that
23 conversation?---Yes.
24 Which was to tell him what it is you wanted him to say?---Yes,
25 I was putting the argument, advocating the arguments, yes.
26 I was lobbying him with arguments that I think were good
27 arguments for supporting the alternative recommendation.
28 MR TOVEY: Were there other councillors who you coached real
29 time as to how they answered questions during council

1 sessions?---I cannot recall.

2 Well, you would recall, wouldn't you, if you had that degree of
3 access. Is there anybody - - -?---I cannot recall at the
4 moment, but if there is something you would like to show
5 me - - -

6 You think there might be? Do you think there might be other
7 councillors at some other council you had the same access
8 to?---I cannot recall.

9 COMMISSIONER: So you as a lawyer would be acutely aware of the
10 importance of decision makers being impartial? You
11 understand that concept?---Yes.

12 About the impartiality of the decision maker?---Yes.

13 And I take it, Ms Schutz, you are familiar with the obligations
14 recited in the Local Government Act about councillors
15 making impartial decisions?---Yes. So - - -

16 Were you here contributing to that impartiality, or were you
17 doing something that resulted in Mr Aziz breaching his
18 obligation of impartiality?---I was lobbying arguments as
19 a planner that supported my client's position. Councillor
20 Aziz has obligations under the Local Government Act. He
21 is responsible for those obligations.

22 What about you as a citizen? Do you have any obligations in
23 terms of not taking steps which will result in him
24 breaching his obligation?---I cannot make a
25 councillor - - -

26 No, I'm not asking you that. I'm asking you - - -?---Do a
27 particular - - -

28 As a person with a law degree do you not understand that it's
29 not just about councillors breaching their integrity but

1 it's about persons dealing with their councillor not
2 taking steps that will result in them breaching their
3 integrity? You surely knew that?---As a lawyer I'm aware
4 of my fundamental duties, yes, and on reflection
5 I wouldn't do this again.

6 Why not?---Because councillors I think - I think it's okay to
7 brief a councillor on an alternative position or a
8 politician at State government level, which I have done on
9 numerous occasions. I have provided briefing notes.

10 Yes?---But, on reflection, it should end where you provide the
11 briefing note, and that is the end, and they can take
12 those - what I have been lobbying them about on behalf of
13 my client, they can take those alternative - the
14 alternative position, and if they choose to support it
15 they can support it.

16 Yes. But you recognise - don't let me put words in your mouth,
17 but I take it from that last answer you recognise you went
18 a step beyond that here?---I think what I did was - yes,
19 was advocate too hard for a position, but I did not have
20 any influence - I've never - like, I was asked to brief
21 Councillor Aziz on this matter, and on reflection, you
22 know, when I've looked at my obligations I wouldn't do
23 this again. I wouldn't send text messages again.

24 I'd provided my briefing note, and that should have been
25 the end of it.

26 Yes, Mr Tovey.

27 MR TOVEY: I want to go through the text messages. I want to
28 take you to what your response was afterwards with
29 Mr Woodman?---Yes.

1 And Mr Aziz?---Yes.

2 Then I'm going to go back and take you through the whole again
3 and get you to explain how all this came about.

4 COMMISSIONER: Can I just clarify. You weren't here, though, a
5 lobbyist for Mr Woodman or Heath Woodman, were you? You
6 were a planning consultant - - -?---I'm a planning
7 consultant.

8 Yes. You weren't engaged as a lobbyist, were you?---No, but
9 I think a planning consultant - a planner - planning is a
10 very - it's not a black and white area of expertise.
11 There's 10 different ways you could make a decision -
12 hundreds of different ways you can make a planning
13 decision, and I think - so the role of a planner becomes
14 one where you, like, advocate, lobby, you've got a
15 position, a planning position that's supported by
16 arguments that supports your client's position.

17 I understand that?---Yes.

18 Do you have any doubt if we lined 10 lobbyists up to give
19 evidence that every one of them would say it's not part of
20 a lobbyist's function to tell councillors what they must
21 do in relation to a motion?---A lobbyist's function is
22 to - yes, to brief. On reflection, I think I shouldn't
23 have - I don't think it's unlawful what I did. In terms
24 of the existing regulations that are in place this isn't
25 unlawful. But from a - it's putting pressure on someone.
26 It's putting my - like, really, Councillor Aziz should
27 have turned the phone off.

28 He should have turned it off when you talked to him earlier in
29 the day?---Yes.

1 And said, "It's no place for you to tell me what I should do in
2 a council meeting"?---Yes, I agree.
3 He didn't do that, and you were happy to tell him - when he
4 said, "What do you want me to do" - - -?---Yes.
5 You were happy to tell him. How did that come about? What was
6 it? What was it about Councillor Aziz that led you to
7 think that you could deal with him that way?---I was asked
8 to brief him. He was the councillor I was asked to brief.
9 By? Who asked you to do that?---It was either - it was either
10 Councillor Ablett or John Woodman, yes.
11 MR TOVEY: I'll be coming back to that question, sir.
12 COMMISSIONER: Yes.
13 MR TOVEY: If we could just scroll down, please.
14 COMMISSIONER: Just to be clear, Ms Schutz, the reason I've
15 engaged with you - - -?---Yes.
16 Is because I've felt that you were not responding as openly as
17 you should to what these messages tell a reader. So
18 that's why I've engaged with you about that?---And I'm
19 trying to take myself back to that time and remember what
20 my intention was in what I did.
21 MR TOVEY: 7.25, there is another message from you as you're
22 watching the livestream, "Don't take Rowe's bait about
23 Woldene. Not relevant. This is about community safety";
24 all right?---Yes.
25 Now, these are comments - these are directions from you coming
26 basically by the minute, are they not?---Yes.
27 You are coaching him through this minute by minute?---He hasn't
28 responded to either of those text messages.
29 That's what you are attempting to do?---I've sent him text

1 messages with arguments that I think are the arguments he
2 should be - if he wants to support the alternative
3 recommendation.

4 If that's the case, you are coaching him through it minute by
5 minute, aren't you?---To coach someone you have to have a
6 willing person that wants to be coached.

7 You thought he was willing. That's why you are sending him the
8 messages, surely?---I was instructed - I was under the
9 understanding that Councillor Aziz would be the councillor
10 who moved the alternative and would support and champion -
11 would be the champion for the alternative recommendation.

12 You knew, I'd suggest to you from what we have seen from the
13 taped conversation that you have already heard, that he
14 would do whatever you asked him to do in respect of
15 putting forward the notice of motion?---I was asked to
16 brief Councillor Aziz - - -

17 No, I'm just asking you what you knew. Can you please - look,
18 you are a lawyer, you understand these things?---I know
19 that, and what I know - - -

20 Well, I'd ask you to think about the question and answer the
21 question and not the question you want to answer; all
22 right? Now, you knew at the time that you spoke with
23 Mr Ablett when he had no knowledge at all about what you
24 were talking about, you expected that he would do what you
25 asked him to do?---Councillor Ablett?

26 Sorry, Mr Aziz?---Sorry, can you repeat that again?

27 Yes. When you spoke to Aziz it was your expectation, clearly,
28 that he would do what you asked him to do even if he
29 didn't understand what it was at that

1 stage?---I understood that Councillor Aziz would be the
2 champion for the alternative recommendation.

3 Yes. And it was apparent from your conversation with him that
4 he didn't know much about what you were putting to
5 him?---Yes.

6 Yes. All right. So put those two things together. You knew
7 that, even though he didn't know much about what you were
8 talking about, he would still do what you asked, before
9 you even went to him?---My understanding was that he would
10 champion the recommendation, the alternate recommendation,
11 yes.

12 COMMISSIONER: You can't remember now whether that information
13 or advice came from Mr Woodman or Mr Ablett?---I've
14 tried - it must have been - I've been through pretty much
15 I believe most of my emails, and I - I think it
16 was - I think it was Councillor Ablett who said to me that
17 Sam would be the person championing the alternative
18 recommendation and it was because Councillor Aziz was a
19 councillor responsible for road safety at the time.
20 I didn't - yes.

21 No doubt Counsel Assisting is going to take you to
22 communications well before this time that would indicate
23 that from a whole range of dealings that you had over the
24 various planning matters you have mentioned - - -?---Yes.

25 You knew that Councillor Aziz - - -?---Yes.

26 Was one of two go-to persons on the council that would champion
27 issues that Mr Woodman wanted pursued?---My understanding
28 was that Councillor Ablett had a conflict with John
29 Woodman. My understanding was that the reason why

1 Councillor Aziz was the person championing both Pavilion
2 and H3 intersection was because he didn't have a conflict.
3 That's how - that's where I had a - I'm not - - -
4 Is that an answer to the question I asked you, Ms Schutz?---No.
5 It's not?---No.
6 You try and answer it?---But that's - so you asked me whether
7 they - - -
8 I asked you whether or not from years of dealing with these
9 various planning matters that you've enumerated
10 yourself - - -?---Yes.
11 You came to understand that Mr Aziz and Mr Ablett were the two
12 councillors to whom you would go in order to further
13 Mr Woodman's interests on a planning issue?---I was
14 instructed to brief - - -
15 I'm not asking what you were instructed to do. I'm asking
16 about your knowledge acquired over time?---Particularly
17 Councillor Ablett, yes. He was the main councillor who
18 I briefed, and in 2018 Councillor Aziz was the councillor
19 I briefed, yes.
20 And you did that because you were instructed to do it?---Yes.
21 By? By who?---It was either Councillor Ablett or John Woodman.
22 MR TOVEY: So far as you contacted Councillor Ablett, was that
23 at Mr Woodman's direction?---Yes, but - yes.
24 And that was in respect of matters relating to C2 - in relation
25 to the Cranbourne West rezoning?---No, with the Cranbourne
26 West - - -
27 Just yes or no?---No.
28 Pavilion Estate?---Sorry, can I just go back to the Cranbourne
29 West rezoning?

1 Yes?---I'd like to get - I think it's important I give some
2 context of my role in that.

3 I don't want to go there at the moment. We'll go there later.

4 All I'm asking is - - -

5 COMMISSIONER: Just a moment, Mr Tovey. Counsel was asking you
6 about how you came to see Mr Ablett as the go-to person
7 for these planning issues. Now, is there something that
8 you need to say in order to answer that question?---Yes.
9 Geoff - Councillor Ablett was just very friendly with John
10 Woodman. He'd come down and have cups of tea with John in
11 Mornington.

12 MR TOVEY: How often?---I've been to cups of tea with them
13 both, you know, quite a few times, yes. I can't enumerate
14 the number but, yes. They used to talk about footy and,
15 yes, council matters.

16 COMMISSIONER: Again, I don't follow why that's an answer to
17 the question. Are you saying - - -?---That's how I came
18 to - - -

19 Just bear with me?---Yes.

20 Are you saying that because Mr Ablett had cups of tea with
21 Mr Woodman on a number of occasions and you were there - -
22 -?---Yes.

23 That that led you to automatically conclude that in relation to
24 planning issues in which Mr Woodman had an interest that
25 he was the person you should go to?---No.

26 No. So come back to the question?---Yes.

27 What is it that led you to understand he was the go-to person
28 for planning issues concerning Mr Woodman?---I was asked
29 to instruct him.

1 By?---I'm assuming it was John Woodman or - or it might have
2 been Geoff Ablett. Geoff might have been the one who
3 asked me to brief him.
4 To instruct you to - Mr Ablett would instruct you - - -?---He
5 wouldn't have instructed me.
6 To ask him?---He would have - he wouldn't have instructed me
7 because he wasn't my client.
8 No?---He would have said to me - but I would have been asked -
9 like, I either contacted - I would have either been
10 instructed by my client, which - my client's
11 representative, which was John Woodman, to brief Geoff
12 Ablett, and then Geoff Ablett asked me to brief Sam Aziz
13 because he would be the one moving the recommendation.
14 I just can't remember which - - -
15 On this occasion?---Whether I - I think on the H3 intersection
16 occasion I originally briefed Geoff Ablett. I was asked
17 to brief Geoff Ablett.
18 Yes?---Yes.
19 Yes, Mr Tovey.
20 MR TOVEY: Now, for years Geoff Ablett had been declaring a
21 conflict, had he not, in respect of Woodman
22 matters?---Yes.
23 What was the basis of the conflict, as you understood
24 it?---I understood it was something to do with a
25 racehorse.
26 Did you know more than that?---No.
27 Did Mr Woodman ever tell you that he was making monthly
28 payments to Mr Ablett?---No.
29 In respect of a racehorse or anything else?---On the basis of

1 my memory right now, I don't believe he - - -

2 All right?---He told me anything about - - -

3 So in any event - - -

4 COMMISSIONER: Just let the witness finish, Mr Tovey?---So on
5 the basis of my recollection I don't believe he ever told
6 me. I don't believe he ever spoke to me about the details
7 of the conflict, yes.

8 MR TOVEY: All right. So, in any event, you understood that
9 the reason that a conflict is declared - - -?---Yes.

10 Is because a councillor acknowledges that because of the
11 relationship between him and a proponent it would be
12 improper for him to be assisting in respect of that
13 issue?---If they've got - I think if they've got a
14 declared conflict of interest they can't vote on a matter.
15 I think when you look at the law as it is today a
16 councillor could be briefed on a matter in relation to
17 which they have a conflict but they cannot vote on it.

18 I just want to know about your understanding. So your position
19 is that, even if a person is conflicted in respect of
20 dealings with a certain person, you can still go to that
21 councillor, who can work behind the scenes to assist you
22 by lining up others to do what you couldn't do through
23 him? As a lawyer, is that your understanding of the
24 morality and the legality of the situation - sorry, of the
25 legality of the situation?---I think there's two separate
26 matters here. I think there's the law as it is today and
27 how councillors are regulated, and I think the second
28 element of what you are talking about is the conduct of a
29 solicitor and the fundamental duties of a solicitor.

1 I think briefing a councillor on a matter in relation to
2 which they have got a conflict is not unlawful. It's
3 not - I don't think it's unethical to brief a councillor
4 in relation to a matter in which they have got a conflict.
5 What they do with it from there - - -

6 COMMISSIONER: That's precisely the question, isn't it,
7 Ms Schutz?---Yes.

8 It's not about whether you can talk to them. It's about what
9 they might do with the information you are giving
10 them?---Yes. Yes.

11 MR TOVEY: So when you brief Mr Ablett, to use your neutral
12 term, do you expect him or do you do that in the
13 expectation or hope that he will follow through with other
14 councillors?---I've briefed - I briefed him on the
15 understanding that - sorry, I briefed him because I was
16 instructed to brief him on a matter, and I did understand
17 that, you know, in briefing him he would be seeking
18 to - yes, he would be talking to other councillors and
19 briefing other councillors in relation to the briefing I'd
20 given him, yes. Yes.

21 So the reason he declares a conflict is because he's not
22 impartial in respect of dealings with Mr Woodman because
23 of a financial relationship; that's true, is that
24 right?---The relationship, as I understood it, was - like,
25 the conflict related to something to do with horses, is
26 what - the knowledge I - - -

27 So, in any event, your position is, even though he couldn't
28 directly vote, there was no problem in him going behind
29 the scenes and lining up other councillors to do what he

1 couldn't do?---The law doesn't prohibit it.

2 How does that line up with - - -

3 COMMISSIONER: Was that something you were conscious of between
4 2015 and 2019, that there's no law that precludes me
5 from - whether we use the word "advocating" or some other
6 stronger term, that there was no law that precluded you
7 from approaching a councillor who had a conflict and
8 advocating a particular course to that councillor?---At
9 the time I briefed Geoff Ablett I knew he had a conflict,
10 but I didn't see a legal issue with that.

11 No, no, what I'm asking you is you turned your mind during this
12 period, 2015 to 2019, during which Mr Ablett declared a
13 conflict, you turned your mind to the fact that there was
14 no legal impediment to you briefing him?---Yes, I didn't
15 think there was a legal impediment to me briefing him.

16 And did you turn your mind to the next step: would there be a
17 legal impediment to using Mr Ablett to in turn brief
18 councillors who didn't have a conflict?---I wasn't using
19 Mr Ablett to brief councillors in turn who didn't have a
20 conflict.

21 So you didn't turn your mind to that question?---I briefed
22 Mr Ablett because I was asked to brief him on the planning
23 merits.

24 So we have listened over the last two weeks to many
25 conversations involving you, Ms Schutz?---Yes.

26 With various witnesses, and I will tell you my
27 impression?---Yes.

28 You come across as a very strong person?---Yes.

29 With very clear ideas about what your expectations were of

1 councillors that you were dealing with. During that
2 four-year period did you have a clear sense of what you
3 should be doing with each councillor when you were briefed
4 to engage with them to advance Mr Woodman's
5 interests?---I think I - when I reflect on my relationship
6 with John incrementally over the last four years
7 I have - yes, I've increasingly talked to him the way he
8 talks to me, and it's a jocular, blokey - like, his
9 approach has always been a top-down approach of briefing
10 me decision makers first, and I think when I listen to my
11 other conversations I have listened to that have been put
12 online now, yes, it sounds like I'm well and truly
13 involved in briefing councillors. But I honestly have not
14 known that they have been paid money and they have been
15 bought, and I - yes, I think we need to go through each
16 conversation, if you want to do that, go through each
17 conversation, and I can explain what my - you know, what
18 my knowledge was at the time and what my intention was at
19 the time.

20 I'm not sure that we are going to do that, Ms Schutz?---Yes.

21 It's a matter for Counsel Assisting what conversations he takes
22 you to. But, I'm sorry, you made a reference there to
23 persons being "bought". You at no stage were told that
24 either Councillor Aziz or Councillor Ablett had been
25 bribed to take up the positions that they did?---No.

26 Reading the newspaper, I didn't - - -

27 No, no, I think the answer to that question is, no - -

28 -?---Yes.

29 You were never told. Did it cross your mind?---On reflection,

1 I think it should have crossed my mind, but at the
2 time - you know, I was sitting in meetings with people
3 like - you know, with John and Heath and Phil Staindl
4 talking about where donations should be going so they were
5 lawful. I've always just thought John was complying with
6 the law, and he never asked me for advice on the issue
7 around donations or - - -

8 Yes?---I mean, John asked for the advice he wanted from me
9 and - or asked me to do what he wanted me to do. But I -
10 you know, I got into this rapport with John of, you know,
11 talking to him in this - you know, a blokey, jocular,
12 off-the-cuff type of dialogue where - you know, often
13 involving grandstanding and, you know, supporting his ego,
14 which, you know, on reflection I think - you know, the
15 thing I'm most disappointed in about myself is that, you
16 know, I should have been more - and I think it's hard as a
17 sole practitioner because I've - they've - I've had so
18 much work planning quality work through John and Heath
19 Woodman as well, they have been, like - and I'm a sole
20 income earner for my family and I think I've just gone
21 about, you know, working hard as a planner, not maybe as a
22 lawyer asking all the questions I should have, and I think
23 that's hard as, like, a sole practitioner. I think
24 I should have - and it's part of the reason why between
25 2015 and 2019 I tried to separate my businesses out and
26 have a - you know, try to cordon off the legal, yes, and
27 it's only been in the last - you know, since 1 July this
28 year that I've - Schutz Consulting is now registered as a
29 legal practice after I went and talked to LPLC about it,

1 and because the work that I'm doing is clearly - you know,
2 I think - I haven't really been working with John at all
3 this year as well on matters, and I think, you know, I've
4 also had an employee who's a lawyer as well. So there's
5 been the ability to talk about the law and talk things
6 through more.

7 Yes, Mr Tovey.

8 MR TOVEY: Thank you. Could we go back to pages 3424-8.

9 COMMISSIONER: I see the time, Mr Tovey. We might give the
10 witness a 10-minute break and then we'll resume.

11 Ms Schutz, when we have breaks you are entitled to leave
12 the building, refresh yourself. It's just important that
13 you come back at the time that we say that we are going to
14 resume. Do you follow?---Yes.

15 So we'll adjourn now until quarter to 12.

16 (Short adjournment.)

17 COMMISSIONER: Ms Schutz, there's something I wanted to ask you
18 arising out of your evidence this morning. You were
19 talking about how you had a very sort of blokey form of
20 conversation with Mr Woodman. Mr Woodman has told you,
21 has he not, that apart from his own family you would be
22 the closest person to him that he has around him? He's
23 said that to you, hasn't he? You had a very close
24 relationship?---Yes. I don't feel it's close because
25 I had no idea - - -

26 I'm sorry?---I don't feel it's close now today because I had no
27 idea.

28 No, no, but back then - - -?---Yes, I thought of him as - yes.

29 Yes, thank you. Yes, Mr Tovey.

1 MR TOVEY: Could we go back then to the exhibit tendered for
2 identification at 3424-8, and could we just scroll down,
3 please. Could we just scroll down. Keep on going. Then
4 at 7.25.55 it would appear that there has been a
5 suggestion by somebody advocating against the proposal
6 that Wolfdene is behind it, and you say to Mr Aziz,
7 "Nothing to do with Wolfdene. This is a request from the
8 community only." That's the way in which you were seeking
9 to have him respond?---My client's case was aligned with
10 the community's case. We were - - -

11 Look - - -?---Yes.

12 You don't have difficulty understanding what I'm saying, do
13 you?---That the - the - okay.

14 The question had nothing to do with the answer you gave; you
15 understand that as a lawyer?---Can you please ask me the
16 question again?

17 All right. When you said to Mr - you texted to Mr Aziz,
18 "Nothing to do with Wolfdene. This is a request from the
19 community only," and that was what you wanted him to
20 say?---That's what I suggested, yes.

21 COMMISSIONER: And that was false, wasn't it, because you
22 weren't just advocating something on behalf of the
23 community; you were advocating, to use your word, on
24 behalf of your client?---I acted for Elysian Group, and
25 Elysian Group were using the community as the basis for
26 their position, yes.

27 That's not an answer either. You had a commercial arrangement
28 with a commercial entity to advance this argument?---I had
29 a commercial arrangement with a commercial entity, but the

1 commercial entity was also using the whole community
2 argument, and that's what I was engaged to resource - - -
3 But it wasn't right to say to him, "It's got nothing to do with
4 Wolfdene," was it?---The arguments - when I wrote that
5 text, which is in abbreviated words, the arguments to
6 support the position that the H3 intersection shouldn't be
7 deferred was about community safety and it was nothing to
8 do with Wolfdene. So the way I - and I was acting for
9 Wolfdene, I was - Elysian Group was my client, yes.

10 MR TOVEY: And you had provided him with the SCWRAG document;
11 is that right?---So that emails - - -
12 That is, you'd provided Mr Aziz with the SCWRAG document that
13 he was using during the debate?---So the SCWRAG document
14 had been sent by Ray Walker, as I understand it.
15 That was part of your strategy, wasn't it?---It was part of the
16 planning strategy, yes.

17 All right, so - - -?---It was not my strategy.

18 I would just like to see whether you agree with what
19 I'd suggest is reasonably obvious bottom line. You didn't
20 want anybody to know that the motion that was being
21 passed - sorry, that was being advocated for by Mr Aziz
22 had anything to do with you or your client?---Everyone
23 knew that my client had aligned itself with the community
24 and was - sir, it wasn't a secret. It wasn't a secret.

25 I know. That's the point, isn't it? You wanted this to appear
26 like this was community motivated by SCWRAG when in fact
27 it had been promoted by a commercial interest - it's that
28 simple, is it not - Wolfdene?---The commercial interest
29 was aligned with the community's interest. We used the

1 community safety argument as the basis for supporting

2 a - - -

3 You were acting for the commercial interest, weren't

4 you?---I was acting for Elysian Group.

5 And it was the commercial interest which was exhorting Mr Aziz

6 to make the arguments that you were putting forward;

7 true?---I was briefing Councillor Aziz in relation to the

8 community's arguments, community safety.

9 But you were - - -?---If I was - I wasn't saying to Councillor

10 Aziz, "Oh, we need to defer" - "you can't approve the

11 secondary consent because Wolfdene" - - -

12 What you wanted is simply - - -

13 COMMISSIONER: Let the witness finish, Mr Tovey.

14 MR TOVEY: I'm sorry, Mr Commissioner.

15 COMMISSIONER: Had you finished your answer?---Yes, I think

16 there's no doubt that my client was paying me to advocate

17 the community safety arguments in relation to the

18 decision.

19 MR TOVEY: And you didn't want it to come out that it was your

20 client who was behind the arguments being put by

21 Mr Aziz?---I think everyone knew it was my client behind

22 the arguments.

23 Look, I'm asking you whether it was the case that you did not

24 want people to become aware that the community argument

25 was in fact the developer's argument being promoted by you

26 . You didn't want people to know that?---But everyone

27 knew I acted for Elysian Group. It was in the council

28 officer's report to council. Everyone knew that I was

29 acting for Elysian Group, and that Elysian Group was

1 promoting the community safety arguments - - -
2 Do you think anybody knew that you were there coaching Mr Aziz
3 through his presentation that night?---I don't think
4 people realised that I was sending texts to Councillor
5 Aziz, no.
6 Or that you had provided the notice of motion or the SCWRAG
7 letter?---So the SCWRAG letter, as I understood it, was
8 provided by Ray Walker to councillors.
9 You had arranged it. We have heard you arrange it; you
10 understand that, don't you?---Yes, and I did speak to
11 Ray - because Ray was - - -
12 Look, I'm not asking you whether it came from Ray
13 Walker?---Yes.
14 You were the one who provided it?---When you say I provided
15 it - - -
16 We heard you on the tape indicating the letter was coming. You
17 arranged for that letter to be provided?---To be provided
18 to Councillor Aziz, yes, I did, yes.
19 All right. You didn't want anybody to know that, did you? You
20 wanted it to appear that this was something which was
21 coming from the community when in fact it was something
22 that had been orchestrated by you and Aziz. That's a very
23 simple proposition. The community was your strategy,
24 wasn't it?---The community safety - yes, we were - the
25 community safety argument served the purpose - the
26 commercial interests of my client, yes.
27 And you were pushing it?---As a planning consultant, yes,
28 I was.
29 And you didn't want anybody to know that you were pushing it?

1 You didn't want anybody to know that you were pushing this
2 motion before the council?---I thought everyone did know.
3 People knew that you had been briefing Councillor Aziz - -
4 -?---Yes.
5 In the way in which we have seen; is that
6 right?---I don't - people wouldn't have known about the
7 text messages. But I'm pretty sure the - - -
8 And what about the other material you sent to him directing
9 him - - -?---Yes.
10 In respect of a notice of motion - - -?---The briefing
11 notes - - -
12 No, just listen. We'll just take it a step at a time?---Sorry.
13 Did you expect, and tell me honestly - - -?---Yes.
14 Did you expect that Mr Aziz would tell other councillors that
15 you had provided him with the notice of motion that he was
16 going to read out?---I don't think I had an expectation in
17 relation to it.
18 Look, you expected that he wouldn't because that would blow the
19 whole community driven plan, would it not?---I don't
20 think - I don't think - the community safety position in
21 relation to the planning decision was completely
22 legitimate. Hall Road and Evans Road-Hall Road was a
23 black spot. There was 2018 data that Ray Walker had got
24 from the police which clearly showed that it was a black
25 spot and it was extremely dangerous for the community.
26 COMMISSIONER: Was that an honest answer, Ms Schutz, that you
27 didn't have any expectation as to whether or not Mr Aziz
28 might reveal the fact that you'd told him what the motion
29 was, the alternate motion was, that he should advance,

1 that you had told him what the argument was that he should
2 adduce? Is that an honest answer, that you had no
3 expectation as to whether or not he would reveal
4 that?---I can't recall, and maybe there is something that
5 I have said, but I can't recall saying to Councillor Aziz,
6 "This is a big secret. Don't tell anyone I'm briefing
7 you." I can't recall saying that or indicating that to
8 him.

9 You may not have said it?---Yes.

10 I'm simply asking you whether or not it's truthful to say that
11 your expectation was that Mr Aziz could as he chose reveal
12 or not reveal the role that you and your client had played
13 in this motion coming before the council. Is it true to
14 say you had no expectation one way or the other?---I'm
15 sorry I'm taking so long to answer, but my recollection of
16 the planning strategy on this matter was that it was a
17 commercial interest dressed up in a strong community
18 safety argument and, yes, we were using the community as
19 the basis for my client's commercial interests. Yes.

20 You think that's an answer to the question I've now asked you
21 three times?---Sorry.

22 In the four years, '15 to '19, that Mr Ablett or Mr Aziz was
23 the go-to councillor for advancing arguments on planning
24 issues in which Mr Woodman had an interest did you at any
25 time think that either of them would reveal to the
26 community generally or to their fellow councillors the
27 role that they were playing with you and Mr Woodman?---Now
28 that I know what's been going on, no. It's obvious that
29 it's been kept a secret.

1 But you really mean that at the time you had no reason to think
2 that if Mr Aziz wanted to he could have said to the
3 council, "I've got this alternate motion. I don't have
4 much of a view about it. Ms Schutz just rang me and said,
5 'Here's the motion we want you to put, and here's the
6 argument in support of it, and here's the letter from
7 SCWRAG,' but really this is all the material that I've
8 been given by Ms Schutz on behalf of Mr Woodman and
9 Wolfdene"; you really thought that might be what Mr Aziz
10 could do?---I was instructed that Councillor Aziz was the
11 champion and I was to brief him on the technical arguments
12 to support the resolution, the alternative recommendation.
13 Yes, Mr Tovey.

14 MR TOVEY: Insofar as you said to him during the meeting,
15 "Nothing to do with Wolfdene. This is a request from the
16 community only," you are aware that was incorrect and a
17 lie that you were asking him to say?---It wasn't an
18 intentional lie.

19 Just an intentional lie, was it, that was untrue? What's the
20 difference?---I can see that those words could be given
21 the meaning that they - literally read they look dishonest
22 and they appear to be a lie. What I actually meant, and
23 it is in shorthand, was that the arguments in favour of
24 the alternative recommendation were clothed in a community
25 safety argument and there was nothing - the arguments that
26 supported that alternative recommendation, there was no
27 mention of Wolfdene in them.

28 I think you indicated in response to the Commissioner's
29 question a minute ago that this was a commercial interest

1 dressed up as a - using your own words, dressed up as a
2 community safety argument?---Yes, which is often the case
3 with planning arguments.

4 I don't want you to make a speech?---Okay.

5 That's what you said to the Commissioner?---Yes.

6 All right. So if it was dressed up as a community safety
7 argument it's implicit in that, is it not, that you didn't
8 want people to know that this was just a dress-up?---It
9 wasn't - the community safety was bona fides and it was a
10 real position - - -

11 I'm not asking you whether the community safety was a bona fide
12 arguable proposition. Clearly it was?---Yes.

13 That's not the issue. You understand what I'm talking about?

14 That's not the issue. The issue is who was promoting the
15 argument. You wanted to keep that a secret?---I don't
16 think I was keeping it a secret, though, that I was
17 promoting the argument for Elysian Group, that Elysian
18 Group were behind the community and they were supporting
19 the community safety arguments . I don't think that was a
20 secret.

21 COMMISSIONER: I think we might move on.

22 MR TOVEY: Yes.

23 COMMISSIONER: Ms Schutz has made her position clear on that.

24 MR TOVEY: Before we do, can I just ask you this question. We
25 are coming back to this. Mr Woodman has given evidence
26 that basically he got you to set up SCWRAG; do you agree
27 with that?---Leighton Properties and John Woodman asked me
28 to work with the community on the Cranbourne West
29 rezoning. It started as a survey where I went around - it

1 was a page survey that I went around and obtained the
2 community's position whether they would actually
3 support - what they wanted for the land, did they actually
4 want industrial or did they want residential or did they
5 want something else. So it was a page-long survey. Out
6 of that I think we had about 659 responses to that survey,
7 and then Leighton Properties held a community information
8 day and that is where after that community information day
9 we met a number of residents during that community
10 information day which Leighton Properties resourced, and
11 from there I was asked to start getting people together,
12 having public meetings and from that came the idea of, you
13 know, start a residents action group.

14 So you set up SCWRAG?---So I was instructed - - -

15 In the way you have just described?---Yes, so I was instructed
16 to - - -

17 Could you just listen?---Yes.

18 You set up SCWRAG in the way in which you have just
19 described?---I worked with the local community to assist
20 them setting up a community action group, yes.

21 And that was financed by Leightons?---Yes, Leighton Properties
22 financed me.

23 And also Mr Walker was financed by Watsons?---So
24 Mr Walker - - -

25 Was he financed by Watsons?---I've got to explain the context
26 of - - -

27 I just want - - -?---No, because it's important to explain the
28 context of Mr Walker.

29 I will ask you this question then - - -

1 COMMISSIONER: Ms Schutz. Just a moment, Mr Tovey. If a
2 question can be answered directly without qualification
3 then you should answer it. The fact that you may want to
4 also explain why you have done something is another issue
5 again. But was the answer to that question yes or
6 no?---Mr Walker was - Mr Walker's company, DCT Consultancy
7 Services, I think it's called, was employed by a number of
8 entities from 2016 to 2019. In 2016 Mr Walker was
9 employed by a company called Swan Bay Developments. I've
10 seen the consultancy agreement that Mr Walker had with
11 Swan Bay Developments.
12 That's a Woodman company?---It was organised by John Woodman,
13 the employment.
14 Yes?---And it was for the purpose of carrying out market
15 research in the south-east growth corridor.
16 MR TOVEY: And did you yourself funnel money to DCT or
17 Mr Walker?---So - - -
18 No, did you? Yes or no?---When you say "funnel", though - - -
19 Did Watsons or Mr Woodman provide you or your company with
20 money that you then passed on to Mr Walker?---Mr Walker's
21 engaged on a number of matters and the costs of
22 Mr Walker's - - -
23 Look, can't you answer a straight question? I'm just asking
24 you was there an arrangement whereby a Woodman company
25 would give you or your company money which you then passed
26 on to Walker: yes or no?---He was a cost disbursement on a
27 number of my invoices for work he carried out.
28 In respect of Hall Road?---Yes. Elysian Group between - well,
29 originally in April 2018 I was asked to engage Ray and

1 Verley Walker to lobby in relation to Hall Road.
2 You are passing - sorry, Woodman is paying you. You are then
3 paying Walker in respect of matters relating to Hall Road
4 with Woodman money, aren't you?---Elysian Group was the
5 invoice - the cost disbursement was on Elysian Group
6 invoices.

7 Walkers were in fact sending you money which was passed on,
8 were they not?

9 COMMISSIONER: Not Walker. Woodman.

10 MR TOVEY: Sorry, Watsons?---So in January this year John asked
11 me to engage - well, yes, in January this year John asked
12 me to engage Ray Walker for two aspects. One aspect was
13 the lobbying in relation to Hall Road and the other was
14 market research and monitoring, and for some reason John
15 asked me to be the invoicing entity for - - -

16 And why did you think that was? Why wasn't Watsons just paying
17 direct?---I don't know. In the last 48 - - -
18 Were you - - -

19 COMMISSIONER: Just a moment, Mr Tovey?---In the last 48 hours,
20 because it's something I haven't understood, I've just
21 written to them and said, "Why am I the invoicing entity?
22 Like, he's doing the work for you. You're getting the
23 reports, Watsons. So let's just change the arrangement,"
24 and I let Ray know, I copied Ray into the email that
25 I provided yesterday and I said, "Look, Ray should be
26 invoicing Watsons for the work because he's doing these
27 market monitoring and research reports, which" - - -

28 COMMISSIONER: I take it you asked your close friend
29 Mr Woodman - - -?---Yes.

1 I take it you asked him why he had introduced this arrangement
2 using you as the conduit?---I've gone back to the emails
3 which were around January 25 this year and it was
4 just - I didn't even question it. I just said, "Okay."

5 Does that mean you haven't asked him?---No.

6 Is that because you are frightened to ask him?---I don't know.

7 I just think - I honestly think it's because I have been
8 busy and I just didn't - I thought, "Oh, maybe John wants
9 me to deal with Ray directly because it's easier for him
10 and I can just send an invoice in." But, I mean, all I've
11 been doing with those invoices is, you know, Ray sends me
12 an invoice, I send an invoice with a cost disbursement on
13 to Watsons, Watsons pays me, I pay Ray for the market
14 research and monitoring work, and then the report gets
15 delivered to Watsons, the market research and monitoring
16 report.

17 Mr Tovey, just remind me, would you, in one of the
18 conversations concerning H3 at around this time one of
19 the participants in the conversation that's been played
20 says when it was learned that Mr Rowe was going to oppose
21 the motion that Mr Woodman wanted to see carried, one of
22 the proponents to the conversation said, "Oh, well, maybe
23 Mr Rowe is on the take." Do you recall who it was who
24 said that? I can't now remember.

25 MR TOVEY: It was this witness. It was this witness.

26 COMMISSIONER: Do you remember saying that?---Yes.

27 So here you were, use your term, advocating a motion that you
28 wanted to see Mr Aziz promote at the council meeting,
29 understanding that Mr Rowe might be opposed to it, and

1 immediately thinking, "Maybe that suggests Mr Rowe is on
2 the take," and yet you've told me it never crossed your
3 mind until very recently that the explanation for
4 Mr Woodman's arrangements with Mr Ablett or Mr Aziz was
5 that they might be on the take?---Yes, I remember
6 saying - because I - my thought process was, "Gary Rowe is
7 the ward councillor. Why would he be opposing a community
8 safety argument?" And my comment, "He must be on the
9 take," was like an off the cuff comment, yes.

10 What was the position of the council officers in relation to
11 that issue on this night? Were they supporting the motion
12 that Mr Aziz was wanting to advance or was their report to
13 the contrary?---Their report - and it's interesting
14 because in May 2017 when we got a deferral of, you know,
15 stages 4 and 3, we got a resequencing, [REDACTED]
16 at council had said, "There is no way anyone else is going
17 to get another deferral until this intersection is
18 delivered," but then council officers had put up a report
19 that clearly supported a further deferral, yes.

20 Did you think they were on the take, Ms Schutz?---I think
21 council officers had close relationships with various
22 developers and they liked certain consultants more than
23 other consultants, and it is helpful if you are liked.

24 So is the implication of what you are saying - - -?---Yes.

25 That, notwithstanding the council officer's report would not
26 have - if implemented would have meant you would have
27 failed on this night, that they were advocating something
28 which unarguably was contrary to community safety?---The
29 reports - planning is such a grey - it's an art, not a

1 science.

2 It is, isn't it? It is, isn't it? And I think Mr Tovey said

3 on the first day that on most planning issues there are

4 reasonable arguments on both sides?---Correct.

5 So this was not a clear-cut issue where there was only one

6 reasonable position to take?---Correct. Correct.

7 MR TOVEY: Could we go on, please, with the texts that are on

8 the screen or the communications that are on the screen.

9 Just scrolling down. Do you see there at 7.26 and then at

10 7.34 - - -?---Yes.

11 You are giving Mr Aziz directions as to the minutiae of what's

12 being put by other people?---I'm informing him, yes, about

13 arguments that support the community safety position, yes.

14 Can we just go down further, please? "You need to read the

15 SCWRAG letter out. It's spelt out in there. So

16 clear"?---Yes.

17 All right. That's a direction by you, isn't it?---Yes. But

18 I can say something but it doesn't mean someone will do

19 what I've asked - you know, suggest they do or direct they

20 do, if you want to use that word.

21 Then if we can just go down further on 3427. So at 7.39 you

22 ask him what the result is, and then 20 minutes later he

23 indicates, "Yes, you won"; true?---It says, "Yes, the

24 alternate motion carried."

25 And then Mr Aziz, if we just go down, responds to you, "After

26 dickhead made up some false allegations again, I'm so sick

27 of him"?---Yes.

28 Did you understand "dickhead" to be Councillor Rowe?---Yes.

29 Then if you go further down still on the same night, 8.07, you

1 message, "Will be interesting to see if they try the
2 rescission notice again." What does that mean?---Well,
3 originally on 4 September Gary Rowe - I think it was Rowe,
4 Flannery and Jackson supported the rescission of the
5 original alternative recommendation that was passed, yes.
6 And was there an issue as to the legality of the original - -
7 -?---Yes.
8 As to the legality of the original motion that was
9 passed?---Yes, the 4 September had an issue.
10 And what was the problem with it?---There was no secondary
11 consent application, as I understood it, and - - -
12 Sorry, what's that?---Dacland on 27 September lodged a
13 secondary consent application.
14 Yes, sorry, what is a secondary consent application?---So under
15 a planning permit if you want to re-sequence, like Dacland
16 wanted to bring forward 10 before 9 so the order of stages
17 goes, you know, 10 and then 9, so they don't have
18 to - they can get their 44 titles out before they have to
19 deliver the H3 intersection in stage 9, you apply for
20 secondary consent as a condition on the planning permit
21 that says you have to develop in accordance with the
22 permit and the endorsed plans, unless otherwise approved
23 in writing by the council.
24 All right. At that first council determination to your
25 knowledge had Mr Ablett - sorry, had Mr Aziz produced what
26 he said was legal advice?---He was referring to my advice.
27 Yes. So the legal advice was you?---Which wasn't legal advice.
28 No, all right. And of course he didn't tell anybody that what
29 he was waving about was advice from a developer's

1 advocate?---No.

2 COMMISSIONER: But you knew he was going to identify it,
3 though, as legal advice? That was part of the strategy,
4 wasn't it?---No. I got a phone call from - I think it was
5 from Councillor Aziz before the 4 September meeting and he
6 sort of pushed me, like, "I'm being told it's invalid,"
7 and I sort of - I felt pressurised and I said, "Well,
8 I think it's valid. There's no legal validity argument."

9 I'll just repeat my question?---Yes.

10 The strategy, though, was that at that meeting Mr Aziz was
11 going to refer to your advice as legal advice?---Not on my
12 understanding.

13 And he was not going to identify the source of it?---Not on my
14 understanding.

15 Did you think he was going to tell the fellow councillors that
16 it was you that had provided the advice or is this another
17 example of you having no expectation either way?---I did
18 my - I followed - I was asked to instruct - I was asked to
19 brief Councillor Aziz on the alternative recommendation,
20 or I think it might have even been Geoff Ablett that
21 I briefed, and I briefed them and I thought that was it.

22 I wonder whether you will try and grapple with my
23 question?---Yes.

24 Was this another occasion when you had no expectation or view
25 as to whether the councillor would disclose the full
26 circumstances that lay behind what they were
27 saying?---I wasn't - it wasn't an open and transparent
28 process.

29 No, and you didn't expect it to be, did you?---No.

1 I mean, what was your thinking, Ms Schutz? Again, I come back
2 to the fact that someone that has professional training in
3 the obligations of integrity, conflict of interest,
4 transparency, what did you think was the position when a
5 councillor conceals from the fellow councillors that the
6 information that he's relying on to support a particular
7 position that he wants the council to adopt is information
8 that comes from the consultant to a person who has a
9 material financial interest? Did you not think that that
10 would be an entirely improper process for the councillor
11 to follow?---I just did what I was asked to do which was
12 to brief the councillor, and I haven't - like, I haven't
13 been asked to scrutinise the client's position or provide
14 advice in relation to conflicts of interest. I was asked
15 to brief the councillor on an alternative recommendation
16 that supported the position that the intersection
17 shouldn't be deferred by Lochaven.

18 Look, Mr Woodman has told the Commission that he now recognises
19 that at that time Mr Aziz should have disqualified himself
20 from participating in these motions because he had a
21 conflict of interest. Let's put that to one side. He
22 didn't disqualify himself. He went to the council meeting
23 and he put forward a motion and sought to support it on
24 the basis of advice you had given him. But you knew that
25 there would be a lack of transparency in the way he would
26 present that argument. Why did you allow yourself to be
27 used in that way by a councillor who would thus not be
28 properly disclosing to his fellow councillors the true
29 position?---At the time I didn't think I looked beyond

1 drafting an alternative recommendation. I think at the
2 time I prepared the draft recommendation as I had been
3 asked to do and that was it.

4 All right. Yes, Mr Tovey.

5 MR TOVEY: But it was the case, was it not, and I will be
6 taking you to this, that you came time and time again with
7 notices of motion to either Ablett or Aziz and on each
8 occasion they introduced it as you requested?---It wasn't
9 as I requested. I was acting on instructions to prepare
10 alternative motions or alternative recommendations.

11 But they acted on your expectation that those notices of motion
12 would be put forward invariably?---I drafted the notices
13 of motion and they had those notices of motion. I wasn't
14 involved in going around and lobbying a lot of different
15 councillors. I was involved in briefing, yes, on an
16 alternative motion and drafting it, yes.

17 Okay. So you would go to them, would you not, in the
18 expectation that they would follow through and introduce
19 the motion that you had drafted?---My understanding is
20 that's what was proposed.

21 COMMISSIONER: And the difference between you and a lobbyist
22 was that if a lobbyist thought there were any councillors
23 there that might be open to hearing arguments for or
24 against a particular motion the lobbyist would go to them.
25 You weren't doing that. You were only going to two
26 councillors that were designated as the champions of
27 Mr Woodman's interests?---I was only ever asked to brief
28 Councillor Ablett or Councillor Aziz, I think. I think.
29 There may be other councillors, but I'm pretty sure it was

1 Councillor Aziz and Councillor Ablett, yes.

2 MR TOVEY: I take it you were never registered as a

3 lobbyist?---No. So my understanding - - -

4 You just weren't?---No.

5 Did you also deal with Councillor Stapledon?---Yes.

6 Was it your understanding from anything Mr Woodman told you

7 that he had provided any money or benefits to Councillor

8 Stapledon?---Yes.

9 And what had he told you?---I understood she always had a

10 conflict of interest. The one conversation I had with him

11 where specifically money was identified was him paying her

12 I think it was \$15,000 because she didn't have a job and

13 she was looking for a job and she needed - he supported

14 her during the time she was looking for a job, yes.

15 And when had he done that?---It must have been - it's been 2017

16 or 2018, I think.

17 All right. If we can continue down through the communications

18 of 16 October, later on into the evening. So there's talk

19 about a rescission notice. Can we keep on going down,

20 please? We are now on to page 3428. More talk about

21 rescission notice. And then your message indicates, "It's

22 a pity the SCWRAG letter wasn't read out. It nailed the

23 whole thing"; is that right?---Yes.

24 If we just go down. Then Aziz later that evening indicates

25 that he's going to call you?---Yes.

26 Can we continue to go down? That's it. I tender - - -

27 COMMISSIONER: That will be exhibit 102, iMessages between

28 Ms Schutz and Mr Aziz of 16 October 2018.

29 #EXHIBIT 102 - iMessages between Ms Schutz and Mr Aziz of

1 16 October 2018.

2 MR TOVEY: During this period, indeed as the council meeting
3 was about to come on stream, there was a conversation
4 which you had on 16 October at 6.55 pm with Mr Woodman,
5 and that is a conversation which is at tab 6. Would you
6 listen to this?---This is on 16 October?

7 This is on 16 October?---Okay, sorry. Thank you.

8 COMMISSIONER: This has not been previously played?

9 MR TOVEY: It has not been played.

10 COMMISSIONER: Thank you.

11 (Audio recording played to the Commission.)

12 MR TOVEY: All right. So there was some interference there.

13 What was it that you were only doing for the
14 sport?---I think this is an example of the off the cuff
15 type of conversation I had with John, and I don't
16 think - I don't think there's anything particularly deep
17 in it, to be honest, deep in terms of intention.

18 Even if it is off the cuff - - -?---Yes.

19 Even if it is off the cuff conversation you must have intended
20 it to mean something. What did you mean when you said in
21 respect of that vote, "It's just for
22 sport"?---I honestly - when I go back to thinking about
23 conversations I've had like that it was blokey, jocular,
24 yes, like, everything was pretty - you know, I'm basically
25 mimicking, you know, the - not mimicking, but it was the
26 rapport we had with each other. It was, yes, just - - -
27 Were you at that stage indicating that you thought it was
28 something of a hoot that you and he were just gaming the
29 system?---I didn't think my planning work was a hoot and

1 I think it was - I honestly think when I talked to John
2 I had a pattern of conversation I had with him which
3 was - didn't have depth to it, and jocular and blokey is a
4 good way to describe it. You know, it was grandstanding.
5 It was - you know, sometimes when you - you know,
6 incrementally over the years the rapport that I had
7 developed with him was a lot of this nature. It
8 was - yes, it was - but in terms of the intention behind
9 it, it didn't really mean much.

10 Wasn't it the fact that the tenor of that conversation was such
11 that you and he thought it was just a joke that you were
12 corrupting the system?---I wasn't corrupting the system.
13 Corruption, as I understand it, means a private individual
14 paying a public officer money for a decision from which
15 they receive a financial benefit. I was not corrupting
16 the system.

17 COMMISSIONER: And if corruption also includes encouraging a
18 councillor to misuse their position as a councillor, you
19 were corrupting the system?---How have I encouraged
20 Councillor Aziz to misuse his position?

21 I thought you acknowledged that there was a lack of
22 transparency in the way in Mr Aziz's arguments to the
23 council?---It wouldn't have bothered me if Mr - - -

24 I'm not asking you whether it bothered you?---I know.

25 I'm asking you whether or not you now recognise that's a form
26 of corruption?---I think what you are asking me is whether
27 a person briefing a councillor on a secretive basis,
28 whether I think that is corrupt; is that what you are
29 asking me?

1 Yes. Look, let's be explicit. On a secretive basis
2 influencing a councillor as to how they should conduct
3 themselves in a council meeting?---Am I influencing
4 Councillor Aziz or am I just advocating - - -
5 What do you think? What do you think the answer to that
6 is?---I think my intention at the time was to advocate.
7 I don't think I was - and in fact in advocating to him he
8 did what he wanted.

9 Yes, Mr Tovey.

10 MR TOVEY: I mean, "advocating" is just a merely mouth word,
11 isn't it? If you are advocating you are intending it
12 influence, otherwise you wouldn't be doing it?---Can you
13 please - what does "merely mouth" mean?

14 It means a process of avoiding the real import of the meaning
15 of a word. You don't advocate, do you, unless you want
16 the person you are advocating to do what you are
17 advocating; that's the whole point of it?---I'm a planning
18 advocate. That's what I've been - well, I'm not a
19 planning advocate probably going forward, but I have been
20 a planning advocate advocating for planning arguments.
21 That has been my role as a consultant.

22 Insofar as the councillors were obviously happy to receive
23 secret briefings and notices of motion from you, if that
24 demonstrated lack of integrity by them you thought that
25 was a matter for them, not for you?---You said there
26 "secretive". I'm not - I don't know whether that was the
27 case, whether they were secretive or whether they were
28 discussed between councillors.

29 Assuming the fact of your involvement with the councillors

1 setting out notices of motion was to be a secret that
2 would involve, would it not, a certain lack of integrity
3 by the councillor involved?---Sorry, are you saying if it
4 was secret that would mean it lacked integrity; is that
5 what you are saying?

6 Yes, of course. If it is secret it's not transparent and it
7 lacks integrity, doesn't it, by definition?---So I'm
8 not - like, was it secret? I'm not sure it was secret.

9 COMMISSIONER: I thought you said not very long ago that you
10 recognised in relation to this particular motion that
11 Mr Tovey's been exploring with you that you recognised
12 there would be a lack of transparency by Mr Aziz in terms
13 of his argument, the source of his argument, that it was
14 coming from you and ultimately from a party that had a
15 financial interest in the outcome?---Yes.

16 Did you not agree with that, that you recognise there would be
17 a lack of transparency?---So the arguments were
18 actually - the arguments were coming from SCWRAG.

19 No, I'm just asking did you say earlier on that you recognise
20 there was a lack of transparency?---Yes, it would seem
21 there was a lack of transparency. With the text messaging
22 there was a lack of transparency; I agree with that, yes.

23 So it's perhaps important to find out from you, Ms Schutz, with
24 your level of experience about planning in local council -
25 - -?---Yes.

26 Is it your belief that consultants doing the same sort of thing
27 as you would share your view that there was nothing
28 improper about seeking to influence councillors in terms
29 of what they argue at a council meeting and that they do

1 so without transparency as to the source of their
2 arguments? Do you think that's a generally accepted view
3 amongst consultants, that it's okay to do
4 that?---I think - I'm just thinking of other developments
5 or rezonings that I have been involved in where I haven't
6 been the lead consultant.

7 Yes?---And I can think of other examples where, yes, the
8 development manager or a planning consultant or whoever
9 the lead consultant on the project is has advocated
10 strongly with councillors for an alternative position,
11 have provided them with the arguments and the basis for
12 alternative positions. It's not an extraordinary
13 practice, I don't think.

14 But the important point being in those examples - - -?---Yes.
15 Have the councillors advancing the argument disclosed to their
16 fellow councillors the source of the information? Have
17 they disclosed that it's coming from an interested
18 party?---I don't know.

19 Because that's the issue here?---Yes, and, look, I think that
20 personally the system should have a disclosure requirement
21 in it.

22 Yes. And would that not best be advanced by imposing an
23 obligation on both the councillor and the consultant who's
24 providing the councillor with that information so it's not
25 left to one of them to do the right thing?---Or the
26 alternative is that councillors are prohibited from
27 meeting with a consultant or an advocate for a developer
28 without a consultant - sorry, a public officer in
29 attendance also.

1 So there is a code of conduct for lobbyists in relation to
2 State government?---State government, yes.

3 There is no such code at all in relation to local
4 council?---Not at this point.

5 And there would be many that say you need more than a code; you
6 need some regulation that imposes statutory obligations on
7 the member of parliament or the councillor and the
8 consultant to disclose the content of those sorts of
9 communications?---Yes.

10 You agree with that?---Yes.

11 MR TOVEY: I now seek to play exhibit 36, which is tab 8.

12 COMMISSIONER: I'll make the phone call of 16 October 2018
13 exhibit 102.

14 #EXHIBIT 102 - Phone call of 16 October 2018.

15 MR TOVEY: This is a conversation between yourself and
16 Mr Woodman at 7.41 pm again on 16 October.

17 COMMISSIONER: It's not previously in evidence, Mr Tovey?

18 MR TOVEY: Yes, I apologise it is, and it's exhibit 36.

19 COMMISSIONER: Thank you.

20 MR TOVEY: Sorry, it's tab 8.

21 (Audio recording played to the Commission.)

22 COMMISSIONER: I see the time. We'll adjourn now until
23 2 o'clock. Go away and have such lunch, Ms Schutz.
24 2 o'clock, please.

25 <(THE WITNESS WITHDREW)

26 LUNCHEON ADJOURNMENT

27

28

29