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TRANSCRIPT OF MORNING PROCEEDINGS

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INDEPENDENT BROAD-BASED ANTI-CORRUPTION COMMISSION

MELBOURNE

THURSDAY, 5 DECEMBER 2019

(12th 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

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

1 COMMISSIONER: Mr Lewis, I understand that some of the  
2 documents that we talked about late yesterday have been  
3 obtained.

4 MR LEWIS: Yes.

5 COMMISSIONER: But you are in the course of ensuring that there  
6 are no privilege issues that arise in relation to them?

7 MR LEWIS: We have done as much as we can overnight in that  
8 respect in the sense that we have provided copies to legal  
9 representatives for Mr Woodman and for Watsons.

10 COMMISSIONER: Yes.

11 MR LEWIS: So that they may review them and make any claim that  
12 they wish to. I understand from speaking to Mr Juebner  
13 that I don't expect there will be a claim.

14 COMMISSIONER: Yes.

15 MR LEWIS: But the Commissioner should be aware there is a  
16 written legal advice from Mr Chiappi of counsel contained  
17 within the documents that is provided to SCWRAG, but it is  
18 a document that's been provided to my client. So there  
19 may well be, if there is a privilege which attaches, it's  
20 been waived in any event. But I do raise that for the  
21 sake of completeness.

22 COMMISSIONER: Yes.

23 MR LEWIS: Because we have not had contact with anyone  
24 representing the Save Cranbourne West Residents Action  
25 Group, and it's of course a matter for the Commission  
26 whether that document should be quarantined in the short  
27 term. But, Mr Commissioner, of course these documents are  
28 being produced in response. As I understand it, a summons  
29 to produce will be made - - -

1 COMMISSIONER: Issued.

2 MR LEWIS: Issued today, and we have done our best in the time  
3 available to ensure there's no breach of anyone's  
4 privilege.

5 COMMISSIONER: Thank you for that. It's unlikely that any of  
6 these documents will see the light of day before the New  
7 Year some time.

8 MR LEWIS: Yes.

9 COMMISSIONER: So we can attend to that issue as well. Thank  
10 you for your assistance, Mr Lewis.

11 MR LEWIS: Yes, certainly, Commissioner. The date range which  
12 was clarified after the Commission concluded yesterday is  
13 from 1 August '18 to 31 October '18, if I could just make  
14 that clear.

15 COMMISSIONER: Thank you, Mr Lewis. Yes, Mr Tovey.

16 MR TOVEY: Thanks, Mr Commissioner.

17 <MEGAN ANN SCHUTZ, recalled:

18 COMMISSIONER: I just remind you, Ms Schutz, you're still on  
19 oath.

20 MR TOVEY: Ms Schutz, before we adjourned yesterday you will  
21 recall I was asking you some questions about an email  
22 where you had sent on 4 August or 5 August of 2018 a  
23 briefing note to Geoff Ablett. Do you recall what we were  
24 discussing at that stage?---Yes.

25 And you then queried what the briefing note itself  
26 contained?---Yes.

27 And I wasn't able yesterday to refer you to the document. We  
28 now have the document, and if you would look at 4611. So,  
29 just to refresh your memory and for the purposes of the

1 transcript, the email that you sent to Geoff Ablett  
2 attached briefing notes in respect of two things: the  
3 Lochaven Estate and the Hall Road urbanisation project; is  
4 that right?---Yes.

5 All right. Now if you'd look at 4611. Is that the briefing  
6 note in respect of the Lochaven Estate?---Yes.

7 And in the course of that briefing note do you identify that  
8 Lochaven has the benefit of a permit?---Yes.

9 For a subdivision et cetera?---Yes.

10 On the corner of Evans Road and Hall Road?---Yes.

11 And I take it that's the corner, is it, of the H3

12 intersection?---So there's the land - it's a pity there's  
13 not a plan, but the land lies on the corner of Evans Road  
14 and Hall Road, and there's an intersection, the Evans  
15 Road-Hall Road intersection, but then further west is the  
16 H3 intersection location which is - - -

17 All right. Look, there was a map of this. We may as well get  
18 this sorted before we go on so we all know what we are  
19 talking about.

20 COMMISSIONER: Some of these documents are an exhibit, are they  
21 not, Mr Tovey?

22 MR TOVEY: Yes. 4609 was exhibited yesterday?---Yes, that's  
23 that - that's a helpful plan.

24 COMMISSIONER: I just want to be clear, Mr Tovey, as to which  
25 parts of the document have not yet been tendered.

26 MR TOVEY: Yes, I understand that. So as of yesterday my  
27 understanding is that page 4609 and 4610 were tendered as  
28 exhibit 95. 4610 is the photograph of the intersection.

29 COMMISSIONER: Yes. According to my note of exhibit 95, it

1 includes the email and the briefing note, Mr Tovey. The  
2 briefing note is 4611.

3 MR TOVEY: No, I think that's not correct because we didn't  
4 have the briefing note yesterday, sir. I'd suggest that  
5 it's appropriate to leave it at that.

6 COMMISSIONER: We'll make that part of exhibit 95.

7 MR TOVEY: Yes.

8 #EXHIBIT 95 - (Added) Briefing note.

9 MR TOVEY: So if you look at that document you'll see on one  
10 side the Western Port freeway - sorry, the Western Port  
11 Highway on the left-hand side; do you see that mark  
12 there?---Sorry, yes.

13 Do you see the Western Port Highway?---Yes.

14 So as you travel towards the top of the photograph the Western  
15 Port Highway there is heading back towards Melbourne; is  
16 that right?---Yes.

17 And so there is an intersection between Hall Road and the  
18 Western Port Highway?---Yes.

19 Okay. So as you're moving back towards Melbourne what  
20 direction are you moving?---Okay. So the top of the page  
21 is north. The bottom of the page is south.

22 Yes?---And obviously east is Cranbourne-Frankston Road, west is  
23 Western Port Highway, and we're talking about the  
24 intersection which is labelled "Future signalised  
25 intersection H3" on this plan, and the accident hot spot  
26 is the intersection between Hall Road and Evans Road,  
27 which is further east there on the corner in red text.

28 Thank you. Then getting onto the parts of the document itself,  
29 so the Lochaven Estate - now, the Lochaven Estate is in

1 fact the Dacland development?---Yes.

2 So it goes on to indicate that stages 9, 10 and 11 are the  
3 remaining stages to be developed; is that right?---Yes.

4 And further down that "Lochaven is currently negotiating with  
5 council officers for titles to be released on the 44 lots  
6 comprising stage 10"?---Yes.

7 Ahead of delivering the intersection?---Yes.

8 And then, "The Save Cranbourne West Residents Action Group has  
9 a membership of 1,100 Cranbourne West residents, and  
10 residents are sick of the dangerous and congested road  
11 conditions on Hall Road"?---Yes.

12 And, "Dacland is avoiding its obligation to deliver the H3  
13 intersection"?---Yes.

14 And I think you have already told us that the delivery of the  
15 H3 intersection was to be a matter to be resolved between  
16 Dacland and Wolfdene?---There's a background of them, yes,  
17 seeking to resolve it between themselves. But both  
18 developers had a permit on it which required delivery of  
19 that intersection prior to a certain stage of their  
20 developments.

21 They had to negotiate between themselves as to - - -?---Well,  
22 yes, the way the permits would work they either had to  
23 negotiate a solution between themselves or whoever went  
24 first would have the lion's share of delivering it.

25 Would have the?---The lion's share of delivering it or,  
26 alternatively, they could have negotiated an alternative  
27 intersection.

28 Okay. So there was then a financial incentive to have the  
29 other developer go first?---Yes.

1 Then you indicate "Council action", "Council can ensure that  
2 Dacland delivers the H3 signalised intersection by  
3 refusing to release statement of compliance on stage 10 of  
4 the Lochaven Estate until Dacland deliver the signalised  
5 intersection known as H3." So this is one of the  
6 strategies or one of the outcomes that you were advocating  
7 for at that stage?---It's one of the options, yes.

8 I mean you put it forward as an option to be moved towards, if  
9 possible?---Yes.

10 And then you indicated also, "Council can ensure that Dacland  
11 does not achieve approval to dumb down the intersection to  
12 a left in/left out unsignalised intersection by refusing  
13 to release", et cetera, et cetera?---Yes.

14 So that was a second possible strategy?---Yes.

15 I think you wanted to make the point yesterday that this wasn't  
16 the strategy that was - sorry, this wasn't the notice of  
17 motion that was ultimately put before the council?---No,  
18 so overnight I've gone - as I was asked to do, I've gone  
19 through my emails, and I couldn't remember what these  
20 briefing - I couldn't find these briefing notes last  
21 night.

22 Yes?---But I did find an email of 7 August that I sent to Geoff  
23 Ablett which was for an informal briefing of council,  
24 I think, which related to - so yesterday when I said to  
25 Mr Commissioner that I thought I just provided briefing  
26 notes, I actually also provided a note about a potential  
27 motion that could be progressed.

28 All right. Sorry, on 7 August, then, having refreshed your  
29 memory - - -?---Yes.

1 What was it, you sent a note to Geoff Ablett?---Yes.

2 Sorry, an email to Geoff Ablett?---Yes.

3 And what were you seeking in that email? I mean, look - -

4 -?---Yes, I'm sorry, I just have a - - -

5 I just want you to summarise as best you can remember - -

6 -?---I'm trying to be accurate.

7 COMMISSIONER: Just a minute, please. One at a time. Counsel

8 is asking you - - -?---Yes, it was a - it was an email to

9 Geoff Ablett I think suggesting a briefing to council for

10 a notice of motion relating to ensuring the delivery of

11 the intersection.

12 MR TOVEY: When you talk about a briefing to council, were you

13 proposing that you brief the whole council?---No. No, it

14 was a briefing note that I provided. These briefing notes

15 were provided to Geoff Ablett.

16 All right.

17 COMMISSIONER: For him in turn to communicate with

18 councillors?---Yes, yes.

19 And do you maintain your position you could see nothing wrong

20 with engaging a councillor who had a conflict of interest

21 in doing that?---I think at the time - - -

22 No, no, I'm asking you - - -?---Today?

23 Just a moment?---Sorry.

24 As I understood you yesterday, Ms Schutz, your position was as

25 you sit here now - - -?---Yes.

26 You could see nothing wrong with utilising a councillor that

27 had a conflict of interest in that way. Having thought

28 about it overnight, is that still your position?---I think

29 there's two aspects to it in my mind. One aspect is the

1 legal aspect. I think councillors, if they declare their  
2 conflict of interest, can still make submissions in  
3 relation to a matter that they are conflicted on - - -  
4 That's not what I'm asking you, Ms Schutz?---Ethically, like,  
5 I had my planning consultant hat on when I was briefing.  
6 Ethically today, thinking about it from a solicitor's code  
7 of conduct, with that hat on, I think it's an approach  
8 that I wouldn't take today.  
9 But take your solicitor's hat off - - - ?---Yes.  
10 And just ask as a citizen of the community is it your position  
11 that a member of the community should be able to go to a  
12 councillor who has a conflict of interest and urge that  
13 councillor behind the scenes to seek to influence other  
14 councillors in relation to the issue with which he has a  
15 conflict of interest?---No, I think there should be clear  
16 transparency around it. If that's what's happening, there  
17 should be clear documented transparency and probity around  
18 it.  
19 So is it your position now you accept that shouldn't  
20 occur?---Yes, I think there should be regulations in place  
21 which allow it not to occur, yes.  
22 No, no, but there weren't regulations in place that explicitly  
23 addressed that question, but there was a clear,  
24 unqualified duty that councillors must act with integrity  
25 and impartiality?---Yes.  
26 And that process did neither of those things, did it?---No,  
27 Geoff should have said to me, "I'm not accepting your  
28 briefing."  
29 And you shouldn't have asked him, should you?---I acted on my

1 client's instructions in briefing him. I should have said  
2 to my client, "I'm not doing that."

3 MR TOVEY: All right. So we now go on to 27 August. Could you  
4 look at page - perhaps before I do that, just in respect  
5 of your 7 August email, did that provide the notice of  
6 motion which Mr Aziz ultimately used?---No.

7 Okay, we'll see that in due course, and I won't worry about it  
8 until we see it. On 27 August of 2018 - could you look at  
9 3639. Exhibit 96.

10 COMMISSIONER: Thank you.

11 MR TOVEY: These are the notes made by Mr - sorry, recovered  
12 from the office of Mr Walker?---Yes.

13 About a meeting on 27 August of 2018?---Yes, yes.

14 About Hall Road between yourself, Councillor Ablett, Jolene,  
15 which is Jolene Rome; you know her?---Yes. So Jolene is  
16 John Woodman's PA.

17 Yes. And Mr Walker and his wife, Verlie?---Yes.

18 And that indicated that there was discussion held around the  
19 Hall Road network. Do you acknowledge that this meeting  
20 took place on 27 August of 2018?---I can't recall the  
21 meeting, but there's a note of the meeting, and Ray takes  
22 notes of meetings, so I assume I was there if my name is  
23 there.

24 There were a number of meetings of this nature, were there,  
25 involving yourself, Geoff Ablett and a representative of  
26 Watsons?---I can't - - -

27 With Mr Walker?---I can't recall. I met with Ray a number of  
28 times, and through my email correspondence I can see that  
29 there's been - some meetings have taken place.

1 Yes?---But, I'm sorry, I can't recall all the details.  
2 I'll just take you through?---Yes.  
3 Mr Walker - sorry, Mr Walker is going to be giving  
4 evidence?---Yes.  
5 And I assume he'll tell us more about this?---Yes.  
6 But it's apparent, is it not, that there was a meeting on  
7 27 August of 2018?---Yes.  
8 Between you?---Yes.  
9 Yes. And there was discussion about the Hall Road  
10 network?---Yes.  
11 And then - at that stage your role was, was it, to develop and  
12 implement strategy in respect of the Hall Road  
13 issue?---Yes.  
14 All right. So, "Ray to call Pauline Richards today to ask  
15 Pauline where does the Hall Road network now sit." You  
16 would expect that that's something that you have raised as  
17 a way in which to promote the development of Hall Road as  
18 you want?---To get the upgrade of Hall Road, to lobby - in  
19 the face of an upcoming election, to lobby the local  
20 candidate.  
21 Who was Pauline Richards?---So Pauline Richards is now the  
22 member for Cranbourne. She took over from Jude Perera,  
23 who retired after the last election.  
24 And in August of 2018 - - -?---Yes.  
25 Was she already in parliament?---No, because she was the  
26 candidate. So both the Liberal Party and the Labor Party  
27 at that time were - you know, roads were a big issue out  
28 in the growth corridors, so Hall Road being a classic  
29 example of a road that, you know - - -

1 We have evidence of contributions that were made to her  
2 campaign. What did you know of the contributions that  
3 Mr Woodman or Watsons were making to her campaign?---All -  
4 so any sort of knowledge I had of contributions were  
5 through the meetings that I had on a monthly basis with  
6 Phil Staindl and Heath and John Woodman.  
7 Yes?---And I had knowledge, I think, that they had - they were  
8 providing some contributions to her campaign, yes, and  
9 I attended - I attended a fundraiser, I think. I was  
10 invited to a fundraiser.  
11 Where was that?---It was held at the - I think it was held at  
12 the Seaford Hotel.  
13 Initially, the evidence is that it was planned to provide  
14 \$5,000 towards her campaign, then once she made certain  
15 commitments the amount was increased to 20,000. What did  
16 you know as to the value of the contributions that were  
17 being made?---I didn't know that there was anything to do  
18 with commitments.  
19 I assume you would have been told that she had in fact made  
20 commitments in respect of her support in respect of C219  
21 and Hall Road?---I can't recall having knowledge of her  
22 making commitments.

23 COMMISSIONER: Do you have any doubt, Ms Schutz, given your  
24 role was to implement strategies that saw the planning  
25 objective achieved, and here we see one of those - one  
26 part of that strategy is obtaining Ms Richards' support of  
27 the proposal - do you have any doubt that at the point of  
28 time when Mr Woodman indicates that he's secured that  
29 support from Ms Richards he would have told you?---I'm

1           trying to think back to - - -  
2 I'm not now calling on your memory?---Sorry.  
3 I'm asking you whether as a matter of logic if you were the  
4           strategist, if you were the person implementing the  
5           strategy and part of that strategy involved her - -  
6           -?---Yes.  
7 Do you have any doubt that Mr Woodman would not have informed  
8           you when he had secured her support?---No, he probably  
9           would have told me.  
10 Yes?---Yes.  
11 MR TOVEY: Then, "Geoff said he spoke to Luke Donnellan about  
12           eight days ago on the Hall Road agenda. He said that Luke  
13           is now on board with it." Who was Luke Donnellan?---Are  
14           you asking me whether it was Luke Donnellan?  
15 Yes?---So this note talks about Luke Donnellan?  
16 Yes. Who was he?---So at the time Luke Donnellan before the  
17           last election was I think the Minister for Roads, yes.  
18 COMMISSIONER: Have a look at the third line there,  
19           Ms Schutz?---Yes.  
20 MR TOVEY: So Geoff Ablett, we have already seen, you were  
21           sending him rather than other councillors basically the  
22           Woodman agenda in respect of Hall Road?---Yes.  
23 Is that a fair thing to say?---Yes.  
24 And then you see that he is being relied on to make political  
25           contacts to promote the Woodman agenda in Hall  
26           Road?---Yes.  
27 And so it must have been apparent at that stage that Geoff  
28           Ablett was somebody who, although a councillor, was an  
29           active participant in the Woodman PR strategy?---Public

1 relations strategy?

2 Yes?---Yes, I think - - -

3 Well, sorry, perhaps that's not right?---Sorry. Yes.

4 An active participant in the lobbying strategy?---Yes, I think  
5 that that's the more correct statement, yes.

6 Both at government and council level?---Yes.

7 COMMISSIONER: I take it it follows from what you said a few  
8 moments ago to me, Ms Schutz, that you would agree, given  
9 Mr Ablett was in a conflict situation, he shouldn't have  
10 been engaged in this way?---No, I agree with that.

11 Can we just for a moment put aside his conflict?---Yes.

12 Let's assume that there was no conflict?---Yes.

13 Would it be appropriate for a councillor to engage in this  
14 particular way, that is to go beyond simply receiving  
15 information from a lobbyist about why a particular  
16 planning process might be appropriate; would it be  
17 appropriate for a councillor to engage at this level of  
18 detail with an interested party in a planning  
19 issue?---When you refer to "an interested party" are you  
20 referring to - - -

21 The developer?---Constituents often brief their ward  
22 councillor.

23 Yes?---He was - or in this case the mayor.

24 Yes?---On issues.

25 But, I'm sorry, as I said before, this was not a briefing.

26 This was a strategic plan designed to see that the  
27 developer's objective was achieved, and I'm asking, so  
28 that we don't have any confusion here, about what a  
29 councillor's obligations should be. Set aside the fact

1 for a moment that Mr Ablett was in a conflict situation,  
2 would it be appropriate for a councillor to engage in this  
3 sort of strategic plan with a developer?---It's  
4 not - I don't think it's appropriate for a councillor to  
5 be involved in a private developer's working group, which  
6 when I look at this note today that's really what - it's  
7 got actions arising, people doing various things to  
8 achieve an end.

9 Yes. Thank you.

10 MR TOVEY: Further down you see, "Ray to go with the traffic  
11 consultant next week. He'll be notified of the  
12 date"?---Yes.

13 What was that?---So I was asked to instruct traffic engineering  
14 advice from a traffic engineering consultant on behalf of  
15 the Save Cranbourne West Residents Action Group.

16 And who was to pay for that?---So it was paid for by Watsons,  
17 I think.

18 And was that a report that was made by Traffix,  
19 T-R-A-F-F-I-X?---The report was made by Traffix, and it  
20 was for the purpose of - - -

21 And it was ultimately produced to council as part of the  
22 material to be used during a debate?---Yes. So last night  
23 I found a letter dated 31 August that was sent by the Save  
24 Cranbourne West Residents Action Group with the Traffix  
25 Group report attached to it.

26 And was that something you had done?---I had - yes, I was  
27 involved in preparing the letter and finalising the  
28 Traffix Group report, which I then forwarded on to Ray  
29 Walker.

1 Then, "Council meetings on 11 September." That I think in fact  
2 was a meeting - there was no meeting on 11 September, you  
3 might take from me, but the meeting was on  
4 4 September?---Yes.

5 "Ray to mention the residents want to stick with the planning  
6 permit. Attachment A be adopted by council." Are you  
7 able to tell us what that was about?---Sorry, what line?  
8 Can you - - -

9 It's highlighted?---Oh, "Council" - sorry.

10 COMMISSIONER: It's the line in bold?---Yes, I've got it now.  
11 "Council meeting is on the 11th. Ray to mention the  
12 residents want you to stick with the planning permit."  
13 Yes, "Attachment A be adopted by council." So what's the  
14 date of these minutes again? Can I just scroll up? 27th.  
15 Yes. It's 27 August, Ms Schutz?---So obviously that's Ray,  
16 yes, to, yes, send a letter on behalf of the residents to  
17 advocate for the alternative position.

18 MR TOVEY: All right. And that was something you were  
19 organising - - -?---Yes.

20 In conjunction with Geoff Ablett?---So I was organising the  
21 technical Traffix Group report, and I was organising  
22 working with Ray on a letter, yes.

23 And was that the letter that was ultimately produced to the  
24 council?---Yes.

25 In the course of debate?---The letter was dated 31 August 2018.  
26 So I'm assuming that was the letter that Councillor Aziz  
27 tabled, yes.

28 I'll just tell you that on 4 September what occurred was that  
29 Mr - Councillor Aziz made a motion which imposed - which

1 sought to have the intersection built immediately - -  
2 -?---Yes.  
3 And to impose financial costs on Dacland?---Yes.  
4 Without going into the huge detail about it?---Yes.  
5 But in the course of that Aziz produced legal advice?---Yes.  
6 A letter from SCWRAG?---Yes.  
7 And a report from Traffix Group?---He didn't produce legal  
8 advice. He cited legal advice, yes, but he didn't produce  
9 legal advice.  
10 What was it that he was waving around?---Was he waving  
11 something around in the meeting?  
12 He said he had legal advice. I'm not sure that he was waving  
13 it around. Perhaps that's - - -?---Yes. I'm assuming  
14 that he was referring to legal advice from me, but  
15 I hadn't given him legal advice.  
16 In any event, you understood when he's talking about having  
17 legal advice - - -?---Yes.  
18 He had advice from you? Was that in some formal form or?---No.  
19 I was involved in the drafting of the alternative motion  
20 with Geoff Ablett.  
21 Yes?---But I didn't provide any legal advice. But I was rung  
22 up before that council meeting by Sam Aziz or Geoff  
23 Ablett, all panicked, saying, "We're being told this is  
24 legally invalid. Council" - you know, and they asked me  
25 what I thought of it, and I said, "Well, I think it's  
26 okay. I think it's valid." I just didn't - yes. But  
27 I got a phone call from one of them asking me, yes.  
28 COMMISSIONER: Do you mean, Ms Schutz, you understood they were  
29 asking for your legal opinion as to whether there was a

1 problem?---Yes, yes. But I was actually working as a  
2 planning consultant and I think - yes.

3 MR TOVEY: All right. I'll keep it in sequence at this stage,  
4 if you don't mind. If we just scroll down, please. There  
5 were billboards to go up a few days before the council  
6 meeting. What was that about?---I'm assuming that what  
7 was on offer to the community from my client was the  
8 billboards saying "Fix Hall Road" or the like.

9 Yes?---I have - yes, I did have on file some PDFs of  
10 billboards, yes, but I don't - they didn't ever come  
11 from fruition and, yes.

12 Okay. And who were you reporting back to about these  
13 meetings?---John Woodman.

14 All right. So there's further discussion there about  
15 strategies within council and the way in which the  
16 arguments might be presented. Then if we go right down,  
17 thank you.

18 COMMISSIONER: I see there's a reference there, Ms Schutz, to  
19 Kathy - - -

20 MR TOVEY: Seirlis.

21 COMMISSIONER: Seirlis?---So that's Kathryn Seirlis.

22 Who is she?---She was the executive officer to the CEO of  
23 council.

24 And what was Mr Ablett to do with her?---I can't recall.

25 Had you ever dealt with her?---I know Kathryn Seirlis well,  
26 yes.

27 MR TOVEY: Was she somebody with whom you had a particularly  
28 good relationship in the council?---Not at this  
29 stage - not at that stage, but today I have a good

1 relationship with Kathryn Seirlis.

2 Then if you go down further, "Ray to write a letter to SCWRAG,  
3 to Geoff, the mayor, with our concerns"; is that  
4 right?---Yes.

5 So am I right in characterising that as you agreeing that Geoff  
6 Ablett, the mayor, is there planning to have a letter sent  
7 to himself in order to help promote the scheme?---Yes.

8 And that letter, one would expect, would be one that would be  
9 seen by people as something which was coming to him  
10 independently, wouldn't they?---Yes.

11 And that of its very nature was quite a fraudulent exercise,  
12 was it not?---When you refer to "fraudulent", how would  
13 you define "fraudulent"?

14 Misleading and dishonest?---My understanding was that the  
15 community, including Ray and Verlie Walker, were very  
16 committed to and did want Hall Road fixed. Like, it was  
17 on the community's agenda.

18 We don't dispute that there is arguments both ways about this.  
19 What I'm asking you about is the arrangement as to how it  
20 was promoted. It may or may not be the right or wrong  
21 view; who knows? It's the way in which it was promoted.  
22 So if I could just ask you to listen to the question  
23 again?---Yes.

24 What I'm suggesting to you is to have three people sitting  
25 there arranging that SCWRAG will send a letter to Geoff  
26 Ablett advocating certain things in circumstances where  
27 that representation is going to be presented as  
28 independent when it obviously wasn't and which he already  
29 knew about, in fact which he'd arranged, it's dishonest,

1 isn't it?---Ray Walker would not send - the nature of Ray  
2 Walker, Ray Walker would not send a letter on the  
3 community group's letterhead unless it was reflective of  
4 the agenda of the community. So I think - - -

5 COMMISSIONER: You are not grappling with counsel's question,  
6 Ms Schutz. What counsel's putting to you is that it would  
7 be deceptive for the mayor, having engaged in this  
8 intimate way with a developer about a strategy in which  
9 the mayor says, "You get a letter written to me which  
10 I will then produce to my fellow councillors," was  
11 deceptive; it would be a deception perpetrated on the  
12 other councillors?---I want to be honest and I just -  
13 I think - I don't think it's completely fair to say that  
14 Geoff Ablett was dictating what should be sent by the Save  
15 Cranbourne West Residents Action Group. I think  
16 they - the Hall Road - fixing Hall Road was on their  
17 agenda. I agree with you that there shouldn't have  
18 been - the mayor should not have been - - -  
19 Shouldn't have been in this process?---Involved in a working  
20 group of this nature, which, when you read these minutes,  
21 these were a working group, yes.

22 Do you have any doubt that for the mayor to arrange for this  
23 process to occur without revealing it to his fellow  
24 councillors involved a deception of them?---Yes,  
25 I - "deception" meaning trickery, not straightforward, not  
26 being transparent, I don't think it's transparent for him  
27 to attend a meeting of this nature, to suggest actions  
28 coming out of this meeting. I think the words "deception"  
29 and "fraudulent", when I think of fraudulent I think of

1 someone faking someone's signature, being someone else  
2 that they are not. I think "fraudulent" is maybe too  
3 strong a word for what has occurred here. I agree with  
4 you, Mr Commissioner, that this is not a transparent  
5 process and it's not an appropriate process.  
6 Would you accept it would be misleading?---Misleading being  
7 that did Geoff Ablett - - -  
8 Other councillors who were being asked to make a decision did  
9 not know of the process by which these materials had been  
10 created and the role which the developer had played in  
11 them?---I think it's difficult to make absolute statements  
12 because - because - - -  
13 Doesn't it follow by definition - you have agreed Mr Ablett  
14 shouldn't have been here - - -?---Yes, I don't think he  
15 should have been involved.  
16 Participating in this process?---Yes.  
17 But that's not consistent with impartiality and integrity of a  
18 councillor?---Yes.  
19 Does it not follow as night follows day then - - -?---Yes.  
20 That if he did that that there would be - it would be at least  
21 misleading that the other councillors didn't know this was  
22 the process that had been followed?---But he didn't - and  
23 I'm not defending Geoff, but he didn't send the letter.  
24 It was sent by Ray Walker, and I assume Ray Walker had the  
25 support of his community group in sending that letter.  
26 But, you know, this is an example of a developer working  
27 with a community group to further their commercial  
28 objectives, but with the community group also having their  
29 objective of wanting Hall Road improved, the conditions of

1 Hall Road improved. I'm not sure I can go as far as  
2 saying that he was fraudulent or deceptive.

3 Yes, Mr Tovey.

4 MR TOVEY: Thank you. Could we go now to exhibit 97A, which is  
5 3449. So is that an email whereby you have sought to  
6 organise a meeting four days later at the botanic gardens  
7 Cranbourne cafe?---Yes, I was asked to organise a meeting  
8 prior to - so that - I'm pretty sure the meeting was for  
9 the purpose of Geoff Ablett being briefed by the - about  
10 the community's position, but also it was to look at the  
11 council officer's report, I think, that had come - would  
12 have been available by then in the agenda papers.

13 And so did that meeting involve discussing the strategy that  
14 was going to be used in a few days time at the  
15 council?---I assume so, yes. I can't recollect exactly  
16 what - I remember going to the botanical gardens and Ray  
17 and Verlie and Jolene being there as well, yes.

18 Could you have a look at exhibit 97B, which is page 5383?---So  
19 I assume - is that an agenda that Ray has produced,  
20 prepared?

21 Yes. So, in any event, does that agenda fit with what your  
22 understanding was of the matters that would have been  
23 discussed at that meeting?---Yes.

24 And can we go, please, to exhibit 97C?---Can I just in relation  
25 to the agenda - - -

26 Could we go back, please - - -?---Sorry - - -

27 To 3583?---I'm not sure what Kathy Seirlis, her name at the end  
28 means, No. 10. I think there's a mix of items on this  
29 list which were about making - like, promoting, Save

1 Cranbourne West Residents Action Group and its activities,  
2 like, for example, the website and the Facebook, and  
3 I think items 1 to 6 relate to the Hall Road issues, No. 7  
4 relates to the Cranbourne West rezoning, yes.  
5 Insofar as you are dealing with Kathy Seirlis - - -?---Yes.  
6 Was she providing you with information as to what was happening  
7 with planning proposals?---No.  
8 No?---No.  
9 What was the nature of your communication with her?---I don't  
10 think I had any communication with Kathryn Seirlis at that  
11 particular time. I can't recall having any communication  
12 with her.  
13 And, in that case, why was it that her name found its way onto  
14 this list?---Yes, I'm trying to recall why it found its  
15 name on this list. Maybe it was because that's who Geoff  
16 Ablett was dealing with at council in relation to - I'm  
17 just not sure, actually. I'm not sure. What's that other  
18 date in that - is August, the 31st. Yes. And - - -  
19 Were you in receipt of confidential information either directly  
20 or through Geoff Ablett from - - -?---Yes.  
21 Kathy Seirlis?---Not - yes. That was after the 4 September  
22 meeting and council got legal advice on the resolution,  
23 and when the advice came back I was provided with a copy  
24 by either Geoff Ablett or Sam Aziz, yes, and that came via  
25 Kathryn Seirlis, yes.  
26 And had you dealt with her - so it was either Aziz or Ablett  
27 who had been dealing with her to get a copy of  
28 that?---Yes.  
29 And did you deal with her on other occasions in respect of - -

1            -?---Yes, I do deal with her. I do, yes. Yes.

2   And is it on the basis that - sorry, has she given you

3            confidential advice in respect of other matters?---No,

4            Kathryn's a - no, she hasn't.

5   Has, to your knowledge, Councillor Aziz or Councillor Ablett

6            passed on to you confidential information which has been

7            obtained from her?---From her?

8   Yes?---I think I've answered that question. Yes.

9   Other than - well, in respect of one item?---Yes, one item.

10   Were there other things?---Not from Kathryn Seirlis, I don't

11            think, from my recollection.

12   COMMISSIONER: You say that advice was confidential?---Well,

13            I'm assuming an internal document that's provided legal

14            advice to council is provided on a confidential basis.

15   But does that not mean Mr Ablett and Mr Aziz as councillors

16            were entitled to it?---Yes, they would have been entitled

17            to that advice, yes.

18   So the breach of confidence is them passing it to you, not

19            Ms Seirlis providing it to them?---Correct.

20   Yes. On what basis did you understand that they were willing

21            to breach their confidence and pass it to you?---Well,

22            yes, that's a - because they were too close to my client,

23            yes.

24   Did you realise that at the time?---Yes, I think I was

25            so - like, when I reflect on the process I feel like

26            I incrementally just got drawn into this process and

27            I just - like, with the H3 intersection, I was so - I was

28            so stressed by the process, you know, you'll see at one

29            stage I send John an email at 3.41 am in the morning

1 because I've obviously been up all night. I was  
2 just - I was sitting in the client's office, I was doing  
3 all the client's work. I - yes, I think on reflection if  
4 I had have been independent and I had have been, yes, not  
5 practising by myself and not isolating, like I was doing,  
6 I think, yes, I see - yes, there were red flags  
7 everywhere, really, and - - -

8 Is it fair to say, Ms Schutz, that over time because of the  
9 closeness and the level of involvement you had with  
10 Mr Woodman and these issues you lost sight of what the  
11 correct ethical position was?---Yes, I think I lost sight  
12 of what I was - yes, and then I had this - you know, there  
13 was this friendship going on as well, this jocularly,  
14 yes.

15 Thank you.

16 MR TOVEY: I mean, when you are being provided with  
17 confidential documents, looking back at it now, that's  
18 inexplicable, is it not, other than it being corrupt  
19 conduct by councillors? A councillor - it is a basic  
20 betrayal of his duty to be passing on confidential  
21 documents to somebody who is interested in a vote?---He  
22 shouldn't have been passing on confidential information.  
23 It was an internal council document. It should not have  
24 been passed on, no.

25 And it's only explicable as corruption, isn't it?---My  
26 understanding of corruption is when a private individual  
27 pays money or provides some other type of benefit to a  
28 public officer, in this case a councillor, and in return  
29 for that the private individual gets a financial benefit

1 or some other benefit from it. I don't think - like, when  
2 I look at that definition and you are saying to me that  
3 providing an internal council document to a developer is  
4 corrupt conduct, I'm not sure it falls within the  
5 definition.

6 Well, forget about payments.

7 COMMISSIONER: You're familiar with the provisions of the Local  
8 Government Act?---Yes.

9 And you were during this period, and there's a specific  
10 provision, is there not, in the Local Government Act that  
11 forbids a councillor from disclosing information that they  
12 reasonably should know is confidential? Isn't there a  
13 specific provision?---What section is that in the Act?

14 Seventy-seven?---Seventy-seven. You've told me the section in  
15 the Act.

16 Yes?---I understand there's a section in the Act. So they  
17 would have been in breach of that section.

18 You would have been aware of that?---At the time I wasn't aware  
19 of it. But I think the fact that I was feeling  
20 uncomfortable with the whole process and I was very, very  
21 stressed by it, yes, I knew intuitively that there was a  
22 lot of red flags.

23 Yes.

24 MR TOVEY: But, if you define "corruption" as inciting a  
25 councillor to betray his obligations, it was corruption,  
26 was it not?---They weren't acting in accordance with their  
27 requirements under the Local Government Act.

28 So you agree with my proposition?---I agree they weren't acting  
29 in accordance with the requirements under the Local

1 Government Act.

2 Did Ms Seirlis provide you with information in respect of the  
3 C219 matter?---I can't recall.

4 Can I ask about one specific thing. At one stage you were  
5 seeking to determine what the position of the minister  
6 was, and the minister had written a letter to the  
7 council?---What date was the letter?

8 I can't remember the date. But I will just ask if you remember  
9 about this. This was when C219 was being deferred?---So  
10 2018?

11 Yes?---Yes.

12 So the minister has deferred C219?---Yes.

13 And you were, were you not, in conjunction with Mr Woodman,  
14 trying to work out whether or not there had been a letter  
15 from the minister to the council?---It's something that  
16 I would have been asked to do, yes.

17 Do you recall whether you approached Ms Seirlis about  
18 that?---I think I actually approached Adrian Salmon at  
19 DELWP. I approached the actual department, the planning  
20 department. I think I went about finding out about the  
21 letter from DELWP. I'm not sure that I - I can't  
22 recall - - -

23 And did you have to go through FOI or was it - - -?---No,  
24 because I was the proponent's representative. So I was  
25 the proponent's representative on the record in relation  
26 to amendment C219 at that time.

27 All right?---And I think, if I recall correctly, it was - the  
28 officer - the actual day-to-day officer at council,  
29 I think it was Dana who ended up sending a copy of that

1 letter to my client and myself as well.

2 All right. So that's not something that you saw as  
3 confidential; is it was something that you were entitled  
4 to?---No, it was something that as a proponent you are  
5 entitled to because that affects the decision.

6 Could I just take us back, then, to the 4 September  
7 vote?---Yes.

8 So Councillor Aziz gets up and puts forward the motion that we  
9 have already discussed, and I won't go into it again. But  
10 you've indicated that, having refreshed your memory, there  
11 were communications between yourself and Ablett and Aziz  
12 in the lead-up?---Yes.

13 Now, could you explain in as much detail as possible what those  
14 communications were and when?---I had been involved with  
15 Geoff Ablett in preparing a revised notice  
16 of - recommendation.

17 And is that the notice that Mr Aziz ultimately used?---Yes.

18 I think it was reordered slightly, but yes.

19 All right. So where was it that you made the arrangement with  
20 Geoff Ablett about the notice of motion? Was it something  
21 that was happening via email or was it being discussed at  
22 a meeting as you worked through it? Could you just  
23 explain how that process went forward in those last few  
24 days?---Geoff Ablett came to my home and sat with me and  
25 I worked through a revised draft with him.

26 Yes. And what happened after that? So when was that that he  
27 came to your home?---I think it - - -

28 In respect of the council meeting, assuming the meeting is on  
29 4 September?---Yes, I know. It would have been before

1           then.

2   Yes?---So - - -

3   Are you able to recall how long before?---It would have

4           been - it would have been one of those days between

5           Friday, 31 August, and the Tuesday. I think it might have

6           even been the weekend.

7   All right. Then what happened after that?---I sent the notice

8           of motion to - I didn't feel quite right about the notice

9           of motion, and I remember sending it to John Woodman.

10   When you say you didn't feel right about it, are you saying you

11          felt morally compromised by it or are you saying something

12          else?---Yes, I think - I sort of - Geoff Ablett was - you

13          know, he was telling me what he thought it should be.

14   Yes?---And I was assisting in terms of drafting it. But

15          I just - like, I mean - - -

16   What was it that - you didn't answer my question?---Yes.

17   Was it the fact that you felt that you were compromised by the

18          process or did you think the reason you didn't feel right

19          about it was because it could have been better

20          expressed?---No, not because it could have been better

21          expressed. I didn't feel - I just - I think I was - - -

22   You felt ethically uncomfortable; is that a fair

23          description?---Yes, I think I've just been - I don't know,

24          I've been in a process that I wasn't in control of, and

25          I didn't - - -

26   You've described to the Commissioner how you'd had sleepless

27          nights?---Yes, I was stressed out by this whole - - -

28   And what was it that stressed you out?---It was just the whole

29          process. It wasn't right.

1 Thank you?---The process wasn't - like, I - but I was so - you  
2 know, I was drafting motions, councillors were ringing me  
3 up, yes.

4 Had anything like this ever happened before?---No.

5 With councillors at other - - -?---No. No, it was a process  
6 like no other I had been involved in, and I remember after  
7 the 16th I just said, "I do not want to be involved in  
8 this anymore."

9 Yes. And to whom did you say that?---I'm pretty sure I said it  
10 to Heath Woodman. A couple of days after I just said,  
11 "I don't want to be involved in this."

12 In any event, you felt yourself both personally and financially  
13 unable to walk away?---I was just - I'm the income earner  
14 for my family, and, you know, I've had very good quality  
15 work working with John and Heath Woodman and I was - you  
16 know, they offered for me to co-locate my business in with  
17 Watsons' offices and I just - yes, I guess - yes, I just  
18 haven't seen the wood from the trees, really.

19 COMMISSIONER: Did you not appreciate, Ms Schutz, that  
20 Mr Ablett was probably in the same situation as you, that  
21 he had become financially dependent on  
22 Mr Woodman?---I think - I don't know the financial  
23 arrangements between Geoff and John Woodman. I'm not sure  
24 about them. But Geoff would do whatever - you know,  
25 whatever John would want him to do, really, is my - how  
26 I see Geoff Ablett, yes.

27 Which meant then that he had been corrupted, didn't it?---He  
28 wasn't independent, yes.

29 MR TOVEY: So you are describing you have gone through this

1 process with Mr Ablett which made you feel uncomfortable.  
2 What happened next in terms of communications involving  
3 yourself, Mr Ablett and Councillor Aziz?---I wrote to John  
4 very early in the morning on 5 September and said I just -  
5 this is - "I don't feel comfortable with any of this.  
6 Like, the alternative recommendation, Gary Rowe has  
7 proposed a rescission notice. He is saying that part of  
8 the resolution is invalid. I don't know whether it's  
9 invalid." I just - I couldn't see whether it was invalid  
10 or not. I recommended that - I said, "Look, I think  
11 councillors need to get independent legal advice," and  
12 then I suggested - like, it was just all so confused,  
13 I suggested that Sam Aziz should go and see one of the  
14 barristers I had been working with. John came back to me  
15 and said, "Go and get legal advice. You know, find out  
16 whether it's invalid. Get legal advice." So I did get  
17 legal advice, and then I was asked to, yes, clothe that  
18 legal advice in legal advice to the Save Cranbourne West  
19 Residents Action Group.

20 So you did get legal advice - - -?---I did.

21 As to the validity of the resolution - - -?---Yes, I did.

22 Ahead of time?---Yes.

23 And what was that advice?---Not ahead of time. It was post the  
24 4 September meeting, yes.

25 And what was that advice?---The advice was that it was not  
26 right and - because it didn't afford natural justice to  
27 Dacland because Dacland didn't have an actual application  
28 in the system at the time for secondary consent, yes.

29 So the injustice was that it was imposing costs on Dacland

1           which they'd had no opportunity of putting forward  
2           submissions in respect of it?---It was pre-empting an  
3           application that wasn't in the system, yes.

4   COMMISSIONER: Was that the legal advice of Mr Chiappi?---Yes.

5   MR TOVEY: So in this and a number of cases relating to - not  
6           to C219, where there seemed to be a fair degree of council  
7           support, naturally, but in respect of H3 a number of the  
8           votes were very close, were they not?---Yes, and I was  
9           wondering what was going on. Like, Gary Rowe was so  
10          vehemently opposed and with Dacland, championing Dacland,  
11          and he was the ward councillor, and the community - like,  
12          Ray Walker was lobbying him saying, "This is what the  
13          community wants," and I didn't understand but  
14          I think - - -

15   I don't want you to speculate?---Yes.

16   A number of resolutions in respect of H3 were carried on the  
17          casting vote of a councillor who had been voted to chair  
18          the meeting in the absence of the mayor?---Yes.

19   Was it your understanding if you became the chair and there was  
20          an equal split - - -?---Yes.

21   You prevailed because you got two votes?---Yes.

22   So the situation was that Aziz, he never disqualified himself,  
23          even though you knew he was clearly  
24          conflicted?---I maintain that I didn't know he was  
25          conflicted. I thought the reason why Geoff was - that he  
26          was the councillor that was championing the resolution was  
27          because he didn't have a conflict.

28   Did you have any idea about the - you have heard about the  
29          600,000 suitcase?---I have now. I've seen it in the

1 newspaper.

2 Did you know anything about that at the time?---No.

3 Or about earlier that year an arrangement being made for

4 Councillor Aziz to sell his house to Mr Woodman and then

5 get the money and live there rent free and then buy it

6 back for next to nothing?---No.

7 All right. Were you aware at that stage, though, of what

8 seemed to be an extraordinarily compliant attitude by Aziz

9 towards Woodman's agenda?---Yes, he seemed to - yes, there

10 was - like, as you showed yesterday, he didn't - yes, he

11 was just going to do it, and, I mean, I was there trying

12 to brief him because I knew he didn't understand what he

13 was talking about, yes. I feel really stupid, to be

14 honest, that I've ...

15 COMMISSIONER: Just before you leave that, I just want to

16 clarify one thing in relation to that conversation and

17 we'll let you have a break, Ms Schutz. When you were

18 speaking to Mr Woodman in the aftermath of that council

19 meeting when - perhaps we might have a break now and we'll

20 come back to it. We'll adjourn for 10 minutes now.

21 (Short adjournment.)

22 COMMISSIONER: Ms Schutz, if at any stage you want to have a

23 break just let me know?---Thank you.

24 Yes, Mr Tovey. I'm sorry, I was going to ask you a question,

25 Ms Schutz. Just going back to that very first

26 conversation that was played to you by Counsel Assisting

27 in the aftermath of that meeting where Mr Aziz didn't do

28 as you'd suggested he should in terms of the SCWRAG letter

29 and so on?---Yes. That was on the 16 October meeting.

1 I'm not sure of the date?---I think it's - yes.

2 Am I right in saying you were annoyed with him about the way he  
3 had put the argument?---Yes. The plan - I thought from  
4 the work I had done and the work I had done with Ray  
5 Walker as well that the arguments were strong, yes.

6 Leaving aside the merit, you were annoyed with how he performed  
7 at that meeting?---Yes.

8 And that was because you expected him to do as you had  
9 suggested?---Yes, he was meant to be championing that.

10 But - - -

11 And, if we go back, when counsel or immediately before counsel  
12 played that conversation to you he took you to a  
13 conversation you had had with Mr Aziz in which Mr Aziz,  
14 who appeared to know nothing about the issue at all - -  
15 -?---Yes.

16 Was just saying words to the effect, "You tell me what you want  
17 to do and I'll do it"?---Yes.

18 So I wanted to ask you: how did it come about, do you think,  
19 that Mr Aziz was so amenable to just doing whatever you at  
20 Mr Woodman's behest would tell him to do? Do you  
21 know?---No. I was just told that he would be the one that  
22 would champion the motion, yes, the alternative  
23 recommendation.

24 So Mr Aziz I think at this time was the most experienced  
25 councillor there, I think perhaps with the exception of  
26 Mr Ablett, in terms of years served on the council?---Yes,  
27 I wasn't aware of that, yes.

28 But did it never occur to you that it was most curious that  
29 someone who's meant to be exercising an impartial view on

1 deciding issues would be so amenable to Mr Woodman's  
2 needs?---He had no - he clearly when I was briefing him  
3 didn't have his mind on the matter and he was just going  
4 to do it, but I didn't - and I - yes.

5 Wasn't that one of the red flags for you?---Yes.

6 That, "I'm dealing with a councillor here that just seems to be  
7 willing to do whatever Mr Woodman wants"?---Yes. Yes.

8 Yes, Mr Tovey.

9 MR TOVEY: Thank you, Mr Chairman. I now want to go with you  
10 to the setting up of SCWRAG?---Yes.

11 And 3651 on 22 March 2015. Could we get 3651, please. That's  
12 exhibit 14, Mr Commissioner.

13 COMMISSIONER: Thank you.

14 WITNESS: Yes, yes. Yes. Yes, I was asked to - I was asked to  
15 encourage the community to - like, my instructions - yes,  
16 I was working for Leighton Properties on this matter.  
17 John Woodman was the planning strategist on this matter.  
18 I was the worker. I was doing all the work on the matter.  
19 A lot of - yes, I was carrying the load, basically, the  
20 planning load, on this matter.

21 MR TOVEY: When you say "on this matter" at this stage - -

22 -?---Yes, it was the amendment C219 rezoning.

23 So was part of the strategy to set up a community action  
24 group?---Yes. So after - - -

25 And who devised that strategy?---It would have been John, John  
26 Woodman.

27 All right. So then how did you proceed from there?---So I was  
28 asked to - I'm pretty sure that prior to sending this  
29 email - like, what happened was I was originally asked to

1           organise doorknocking and go around and survey the  
2           community.

3   There are documents starting around 21 October - - -?---Two  
4           thousand and?

5   2014?---Yes.

6   Which relate to the doorknocking activities?---Yes.

7   So the strategy is that you want to set up a community action  
8           group - - -?---So at that stage I don't believe I knew  
9           about that bit of the strategy.

10   Could you just tell us then how it developed, how the strategy  
11          developed?---Yes.   So originally I was asked to go around  
12          and canvas the community, so get a group of doorknockers  
13          together, and for three or four weekends we went  
14          around - - -

15   Who is we?---Schutz Consulting.   My company went around and  
16          doorknocked and collected filled-out surveys from  
17          people - we stood with people and surveyed them, and  
18          I think all up we had - there was somewhere between 500  
19          and 600 filled-out surveys.

20   Yes?---And the surveys were - they weren't - they asked people  
21          questions like what were the main things they wanted in  
22          their community, what would they like to see this land  
23          used for.

24   Yes.   Was the survey tilted in favour of getting a result?---It  
25          wasn't too bad, but it was engineered.   Yes, there was a  
26          lot of time spent.   I think I drafted the original survey  
27          and then it was finetuned.

28   By who?---By Leighton Properties development manager, Tom  
29          Kenessey; Peter Williams, who was a contractor of Leighton

1 Properties at the time; I think John Woodman had some  
2 involvement in it; and I mean I'm pretty sure there were a  
3 number of iterations and - - -

4 At that stage I think at one point you indicated that you were  
5 at the time of - in 2018, in September, you had a desk at  
6 Watsons - sorry, at Mr Woodman's premises?---Not in 2014.  
7 No, 2018?---2018 I did, yes. I moved into his offices in July  
8 2018.

9 And were you working there full-time then?---Yes.

10 Did you maintain offices anywhere else?---No.

11 Now, in 2014 where were you operating from?---I was operating  
12 from my home.

13 So you have told us then about the survey that you  
14 conducted?---Yes.

15 How did the SCWRAG strategy develop and with whom?---Okay. So  
16 what happened next was - so I think that survey was  
17 carried out during - like, if you go back to the  
18 resolutions of council, that survey followed council  
19 resolving to carry out an informal consultation process on  
20 the Leighton's land being completely and the Kellys' land  
21 being completely residential, the 203 hectares. The  
22 informal process wasn't part of the C219 process. So as  
23 part of that process I was asked to carry out this  
24 community consultation. I was introduced by Leighton  
25 Properties to a community consultation consultant, who was  
26 asked to write up the results of the survey into a report  
27 which basically found that 92 per cent of the community  
28 wanted residential on the land that had filled out the  
29 survey. But Leighton Properties then organised - they put

1 on a massive community day with jumping castles, free  
2 coffee, free - you know, stuff for the kids. There was an  
3 information tent set up. Gary Rowe came along to that.  
4 The late Mick Morland, who was one of the councillors at  
5 the time. Some council officers came to it as well.  
6 Leighton Properties basically explained their proposals.  
7 I think it was in about February 2015 that that open day,  
8 that community day happened. Then from that open day,  
9 I think Tom Kenessey had met - - -

10 Were you in charge of expenditure on that open day?---Pardon?

11 Did you organise it? Were you the person who was - how much

12 did it cost?---It was quite - I think it was over 20 grand  
13 worth of expenses, yes. And I had put together - I was  
14 asked to project manage it basically as part of my  
15 planning services on the job.

16 COMMISSIONER: I'm sorry, who paid for that?---It was either

17 Leighton Properties or Watsons.

18 I'm just not clear about something?---Yes.

19 At some stage, indeed just shortly after that community

20 information day, you wrote to the Casey Council CEO

21 advising that you were acting for the Kelly family?---Yes,

22 so that was - - -

23 So who actually was your client for the purpose of

24 C219?---Well, in terms of who I was invoicing and who

25 I was paying for - paid by for my planning services, it  
26 was Leighton Properties.

27 Right?---But John Woodman had asked me to be the representative

28 for the Kelly family as well. But Leighton Properties was

29 funding the rezoning, and the Kelly family I don't believe

1 ever paid any money towards that, the rezoning process.  
2 I was just - - -  
3 So why were you writing to the council saying you were acting  
4 for the Kelly family?---John asked me to do that, and I'm  
5 assuming now - I think we know why I was asked to do it.  
6 Why?---Because I didn't have a conflict. I didn't appear to  
7 have a conflict, yes.  
8 So he didn't want you disclosing to the council that in fact  
9 you were acting for Leightons or for Watsons?---Well,  
10 I was acting for Leightons; yes. I was acting for  
11 Leighton Properties. I was their planning consultant.  
12 But presumably you didn't just of your own initiative write  
13 that letter?---No.  
14 You discussed it with Mr Woodman?---No, I was instructed to  
15 send it.  
16 And what was the reason he gave you for you writing saying,  
17 "I'm acting for the Kelly family"?---It was  
18 something - I'm trying to recollect back then, but it was  
19 something to do with him not wanting to be on the record  
20 as acting for the Kelly family.  
21 How would he be on the record, though, if you just disclosed  
22 you were acting for Leightons?---Well, he had written in  
23 February 2014 on behalf of the Kelly family. When the  
24 whole process started Leighton Properties had written a  
25 letter to the CEO and he had also written a letter to the  
26 CEO on Watsons' letterhead asking for this. The original  
27 proposal in February 2014 was to request council to  
28 support the principle of running a rezoning process for  
29 rezoning the land to residential, and for that process

1 to - you know, through the process it would be worked out  
2 whether it was approved or not. So when I spoke to you  
3 yesterday about the steps that the council have, the three  
4 decisions they have got to make, he wanted - rather than  
5 council considering the strategic justification for the  
6 amendment, what was proposed was the principle of the  
7 amendment would be supported in principle and then the  
8 strategic justification for it and the actual formal  
9 process testing and scrutinising the amendment would come  
10 post that in order to get over that first decision making  
11 flag.

12 Do you know whether there was any contractual arrangement with  
13 the Kelly family about acquiring their interest in the  
14 land if the rezoning was successful?---I think there was  
15 some type of development agreement, yes.

16 And who would benefit then from that?---It was between John  
17 Woodman and the Kelly family.

18 Yes, thank you.

19 MR TOVEY: And what had you been told about that?---I think  
20 I had seen a copy of it. I can't remember the content of  
21 it now, but those development agreements are usually of  
22 the - the way they go is the developer or consultant funds  
23 the development process and in the event the land is  
24 rezoned then the developer gets some type of - you know,  
25 there's a decent profit out of it. It's a common - these  
26 development agreements are quite common in the development  
27 industry, from my understanding.

28 While I have you there, what is the justification for people,  
29 whether they are landowners or developers, actually

1 winning windfall profits from redevelopments?---What's the  
2 justification?

3 Yes. Is that something you've ever thought about or  
4 considered?---I think the question might be - it's just  
5 the development industry. Developers make money out of  
6 land, and the skill required to get land rezoned  
7 is - there's a lot to it and it's a very expensive process  
8 and a normal - you know, a run-of-the-mill landowner can't  
9 afford all the expert reports and the uncertainty of the  
10 process, because my experience of rezoning  
11 processes - like, even the small one I talked about  
12 yesterday, the Chelsea Heights one, with everything we had  
13 to do, it was half a million dollars, that process. Now  
14 those people that I acted for, they funded that, but with  
15 a whole lot of uncertainty. It was very stressful to  
16 them, I think. Whereas lots of farm - you know, people  
17 with land that isn't rezoned yet for a highly profitable  
18 use will enter into these development agreements with  
19 people such as John Woodman and he'll bankroll all the  
20 technical reports, the amendment process, and, you know,  
21 if he wins, you know, the developer ends up with a  
22 windfall out of it; if he doesn't win, well, he's wasted  
23 his money.

24 As somebody who has been involved in town planning has there  
25 been any debate or learning as to why somebody who has a  
26 farm one day, having done nothing other than secured a  
27 rezoning, should be entitled to the profits that a  
28 government decision alone generates?---That's a  
29 philosophical question, isn't it?

1 Is it one that is debated or considered?---It's allowed by the  
2 system at the moment. The system allows - you know, it's  
3 part of our current democracy and government.  
4 Thank you. In any event, we were discussing the setting up of  
5 SCWRAG. So it was either Leightons and/or Mr Woodman  
6 paying \$20,000 for the community day?---Yes.  
7 Now, by that stage had the idea of setting up the group already  
8 been discussed?---No. No, it was out of that day, and  
9 I was pretty busy that day with managing, you know, the  
10 actual day, but after that day Tom - I remember having a  
11 meeting with Tom and John - - -  
12 When was that?---I can't remember because it's been - it's  
13 quite a while ago, but out of that meeting Ray Walker  
14 was - I remember Tom talking about Ray Walker and how Ray  
15 and Verlie were very - you know, very enthusiastic about  
16 ensuring the land wasn't industrial and that they would be  
17 good champions for the community, and I was asked to  
18 organise public meetings, yes, which Gary Rowe got  
19 involved in. Tom Kenessey and Gary Rowe were quite, you  
20 know, friendly with each other.  
21 Was Gary Rowe from the outset somebody who seemed to be - who  
22 seemed to embrace the rezoning or - - -?---Yes, that was  
23 my understanding. In 2014 Tom Kenessey and Peter Williams  
24 were involved in briefing the councillors. I was asked to  
25 write some - you know, some I think notices of motion or  
26 the like to draft some wording, and I was asked to look at  
27 the planning history in detail of why the land had been  
28 set aside for industrial in the first place. So my work  
29 was very - it was technical planning work. So they

1           were - and Gary seemed to be the champion. He was the  
2           councillor who was championing the rezoning.

3 All right. You then get to the nuts and bolts of setting up  
4           the group. So there is going to be further community  
5           consultations that you've just spoken about?---Yes.

6 How does that work?---So what happened then was

7           I think - I have refreshed my memory reasonably a couple  
8           of weeks ago. But I was asked to do - I think what  
9           happened then was that we went into a formal - we started  
10          the formal amendment process. So after the community  
11          consultation, the informal surveying, the matter went back  
12          to council and council resolved to request the minister to  
13          prepare - to authorise preparation of the planning scheme  
14          amendment, which means that the amendment goes out on  
15          public exhibition.

16 Yes?---Which the minister didn't do for a very long time. But  
17          during that period before it went out on formal public  
18          exhibition I was doing more doorknocking, asking people,  
19          I think, to - I was asked to organise signs on the land  
20          saying, "No to industrial". There were a lot of signs on  
21          the land.

22 Who was paying for that?---Either Leighton Properties or  
23          Watsons. I was asked to do more doorknocking I think for  
24          the purpose of putting together a list of community  
25          members that were in favour of the rezoning. The other  
26          thing we did was - I was asked to do was the petition.  
27          There were two petitions that were laid before parliament  
28          in favour of the rezoning.

29 And were you the one who was disbursing the money in respect of

1           these various efforts?---Yes, I was disbursing - I'm  
2           pretty sure they were getting disbursed on my invoices and  
3           then I was being reimbursed.

4   And would you still have those records?---Yes.

5   If you could then work forward. How did you come then to have  
6           all that fit in with the recruitment of Mr Walker as the  
7           face of SCWRAG?---Through the public meetings he just sort  
8           of fell into the role of being the leader; yes. But they  
9           weren't an incorporated association at that stage.

10   COMMISSIONER: By this time, Ms Schutz, you and Mr Woodman  
11           realised that you had a battle on your hands with the  
12           council officers of Casey because immediately after your  
13           community day the council officers reported to the  
14           council, did they not, that there had been a lot of  
15           misinformation given to residents, residents who were  
16           writing into the council saying they wanted to see the  
17           land rezoned; the council officer's position was that they  
18           were being misinformed?---I'm not sure I had knowledge  
19           that that's what the council officer's position was. Was  
20           it in - - -

21   In a report to the council?---But I think those reports to  
22           council - - -

23   MR TOVEY: Commissioner, the council officer's report is at  
24           page 2215-22 of - - -

25   COMMISSIONER: Were you going to go to that, Mr Tovey?

26   MR TOVEY: Not necessarily.

27   COMMISSIONER: That's right, though, is it?

28   MR TOVEY: Yes. There was in the council officer's report of  
29           10 March 2015. Just a note I made this morning, it is at

1 2215-22.

2 COMMISSIONER: Thank you.

3 MR TOVEY: And it referred to misinformation.

4 COMMISSIONER: And that remained, did it not - - -?---What date  
5 was that report to council, sorry?

6 That's 2015. But that remained the council officer's position,  
7 didn't it, for the next - for some years thereafter, that  
8 council officers continued to be opposed to this  
9 rezoning?---Council officers, because of the council  
10 resolutions, worked with us on the rezoning to get the  
11 planning scheme amendment documentation together. I'm  
12 just thinking back to - the reason why the whole community  
13 thing started was because - there was an election in  
14 November 2014, wasn't there? There would have been an  
15 election in November 2014.

16 MR TOVEY: Yes, there was?---So I'm pretty sure that John  
17 Woodman had talked to Judith Graley and Jude Perera and  
18 the message back was basically, "Unless you have the  
19 community supporting this amendment, it's going nowhere,"  
20 which is how the - why my role then became that of  
21 facilitating the community, yes.

22 So it was a political process both at local government and at  
23 State government level?---Yes, and the Minister for  
24 Planning has to support - there's no rezoning - if the  
25 Minister for Planning does not support the authorisation  
26 of the rezoning and approve the rezoning, there is no  
27 rezoning.

28 And so that process, as we have seen, involved you and  
29 Mr Walker collaborating on correspondence sent to the

1 council?---Yes.

2 And on correspondence also sent to the government?---Yes.

3 Mr Walker is his own person and Ray Walker writes his  
4 own - and I might suggest changes to something or  
5 additions to it, but Ray Walker will just - he owns what  
6 he puts his name to.

7 You say you were financing him through money you were receiving  
8 from Watsons and Leightons, or were Leightons doing it  
9 directly, Watsons doing it directly; how was it  
10 working?---So there was funding of community activities.  
11 In terms of Ray Walker being financed directly, Ray Walker  
12 came to me in May 2016 - - -

13 What about in 2015?---Yes.

14 The organisation was set up. Ultimately there was a website  
15 which you organised?---There was a website, yes.

16 Who paid for that?---Leighton Properties. I'm pretty sure it  
17 was Leighton Properties. I'm going to - just so I'm  
18 absolutely, you know, truthful and accurate, it was either  
19 Leighton Properties or Watsons that paid for it, yes.

20 And you have records still of - - -?---Yes. I mean, whenever  
21 I had disbursements they went on my invoices.

22 And you still have those invoices?---Yes, yes.

23 This is a document dated 22 March 2015. This is exhibit 14.  
24 Page 3651 is the first page of it. In the course of that  
25 document reference is made to the setting up of SCWRAG and  
26 the fact that it was going to be called - can we just  
27 scroll down?---Is this the 22 March email?

28 Yes?---Yes.

29 And it was going to be called SCWRAG?---Yes, yes.

1 And was it about that time that you also set up a  
2 website?---Yes, yes, which is referred to down here in the  
3 action list, yes.

4 And how much did that cost and who paid for it?---I can't  
5 remember the exact amount, but I have all those amounts.  
6 They would have been - I would have got a quote for it.  
7 I'm just thinking back to the - it may have been that  
8 I actually - I think with that website I may have actually  
9 got Leighton Properties to pay the consultant who did the  
10 work directly because I didn't - it was just a cost burden  
11 to me that I would have to wait to - yes.

12 Was there a bank account set up for - - -?---No, I don't  
13 believe there was a bank account - see, the Save  
14 Cranbourne West Residents Action Group didn't incorporate  
15 until - when the planning scheme amendment finally went on  
16 public exhibition under a formal process, the C219  
17 process, that's when incorporation was discussed because a  
18 community group cannot make a representation - they are  
19 not a legal entity. So they need that incorporation to  
20 make a legal representation.

21 And when was that?---I would have to go back through my  
22 records, but I think I gave - I gave Ray advice about how  
23 to set up the incorporation in about 2017, beginning or in  
24 the first half.

25 And who paid for that?---It would have again been covered as a  
26 disbursement to Leighton Properties, probably, yes.

27 Was there any seed money put in to the establishment of  
28 SCWRAG?---No, it was just the resourcing like the  
29 doorknocking, the signage, the website, the panel

1 representation, the mail-outs, the - - -

2 Yes. There is a discussion which has been played where

3 Mr Woodman and Mr Kenessey discuss the fact that I think

4 it was \$5,000, was it - sorry, \$15,000 had been

5 contributed to SCWRAG and the fact - and that conversation

6 also adverts to the fact that there had been additional

7 expenditure that - the effect of it was they hoped the

8 auditors of Leightons wouldn't identify. Do you know the

9 process by which - sorry, do you know what they were

10 talking about there?---I was just asked to put together

11 costings at various points for, you know, the resourcing

12 that was - - -

13 To your knowledge were there contributions to SCWRAG as opposed

14 to Mr Walker directly going other than through you?---Not

15 that I know of. Whenever there was - the various

16 activities, the doorknocking, the letterbox dropping, the

17 signs, the website et cetera, they were actions that I was

18 asked to implement and the cost of those actions I was

19 to ascertain the cost of them and provide those costs to

20 Leighton Properties.

21 And again that's something that you still have records

22 of?---Yes.

23 In respect of Mr Walker himself were you involved in any

24 arrangement being made for him to have payments being made

25 to him and/or him and his wife or one of his companies

26 through Watsons?---Yes.

27 And when was that?---So originally Ray came to me in 2016 and

28 said, "I need to get some work. We need work. I am not

29 going to be able to continue on with my role in SCWRAG

1 unless I've got some work." So I went to - - -

2 COMMISSIONER: Sorry, when you say "we" he was speaking about  
3 his personal situation?---Yes, him and his wife, and he  
4 sent me his - I asked him to send his CV through to me.  
5 So he sent his CV through to me in early 2016 and I went  
6 to John and Heath Woodman and I said, you know, "Ray needs  
7 to be employed. Has someone got a job for him?" And  
8 that's when John offered Ray the Swan Bay Developments  
9 \$5,000 a month consultancy agreement which provided he and  
10 Verlie went out - you know, they went basically around the  
11 whole of the south-east corridor, on my understanding,  
12 ground-truthing what other estates were doing, what the  
13 cost of lots were, what type of lots were being sold, what  
14 the marketing was, what the branding was, and he did that  
15 separately. I wasn't really - he was directly reporting  
16 to Watsons, like, to one of the - the planning manager  
17 that was employed by Watsons.

18 At that stage - sorry, when was that?---That was in 2016.

19 Now at that stage were you involved in moving payments from  
20 Watsons to him?---No.

21 Did you at some stage become involved in that?---Yes. So  
22 there's been a couple of instances. So one instance was  
23 between April 2018 and December 2018. In April I was  
24 asked to instruct Ray and Verlie to lobby council and the  
25 State Government in relation to Hall Road. It wasn't  
26 directly related to the H3 intersection. It was about  
27 lobbying in relation to improving the conditions of Hall  
28 Road and getting the duplication delivered.

29 And what was the - sorry, what was the implication of the

1 intersection then arising from the duplication of Hall  
2 Road? On your understanding, what interest did Mr Woodman  
3 have in supporting the duplication?---I think it was  
4 presented to me as a good thing for the community.

5 Do you know what implication it had for the intersection  
6 itself?---Well, if you get the funding for duplication of  
7 Hall Road and it's duplicated it's going to make  
8 delivering the intersection cheaper.

9 Did you in fact discuss at some stage with Mr Woodman the fact  
10 that what was being proposed at that stage would end up  
11 with the council paying out a lot of money and him  
12 referring to it as just a technicality and you being  
13 somewhat offended by that?---You are going to have to say  
14 that all again, sorry.

15 COMMISSIONER: Did you point out to Mr Woodman at some stage  
16 that the duplication process would result in a drain on  
17 the council's budget?

18 MR TOVEY: Or that an arrangement in respect of H3 would  
19 be - I will come back to this. At one stage there was a  
20 discussion as to channelling - this is in respect of the  
21 H3 intersection?---Yes.

22 The actual way in which the works would progress?---Yes.

23 There was a proposal discussed between you and Mr Woodman, and  
24 you pointed out to him this was going to cost the council  
25 a lot of money and he said to you, "This is just a  
26 technicality", and you seemed to be somewhat taken aback  
27 by that attitude?---I can't recall.

28 All right. I will take you to it later on?---Yes.

29 In any event if we could just go on chronologically. I think

1 we are at the point where I was discussing with you the  
2 way in which money was provided to Mr Walker at various  
3 times. So you say the 5,000 a month was the original  
4 arrangement; is that right?---That was the arrangement  
5 under the Swan Bay Developments consultancy agreement,  
6 yes.

7 And were you yourself involved in receiving the results of the  
8 research or did it go directly to - - -?---No.

9 So what you knew was that you were going to lose SCWRAG unless  
10 Mr Walker was provided with a job?---What I knew was that  
11 if we wanted Ray Walker to continue his activities on  
12 behalf of the community in SCWRAG that it would be very  
13 helpful to him to give him a job, yes.

14 So Ray Walker then is given a job?---Yes.

15 What were his qualifications? You had his CV?---Yes, he's got  
16 pretty much an accounting background and a business - he's  
17 had a couple of businesses himself, I think, consulting  
18 roles. But he had an accounting type background.

19 And was he working? Was he or his wife in work at the time  
20 that this arrangement was made?---I think Verlie had a  
21 job.

22 Doing?---I don't recall. I recall at some stage she was made  
23 redundant from her job, yes.

24 So were they both unemployed at the time?---I think they - yes,  
25 I think they really needed some work, yes.

26 And - - -?---They were also looking after their daughter, who  
27 was very unwell.

28 And how old was the daughter?---Older. She had just had a very  
29 bad accident.

1 Then at some stage you indicated that the nature of the  
2 arrangement changed?---Yes.

3 And you became involved?---Yes. So I was asked by John  
4 to - there was the Hall Road aspect, which he  
5 asked - there were two aspects. There was the Hall Road  
6 aspect and then there was another rezoning he was working  
7 on out at Strathtulloh in Melton, and he wanted Ray and  
8 Verlie to work on canvassing the community's opinion out  
9 at Strathtulloh. So they did doorknocking out there.  
10 They attended a community day. Again, I wasn't involved  
11 in the Strathtulloh piece. That was through Watsons'  
12 planners.

13 Yes?---But I'm pretty sure that - I don't know, I would have to  
14 go back to my invoices, but I recall there being invoices  
15 where I was actually the one managing Ray and paying Ray  
16 and then disbursing it to Watsons to pay me back and then,  
17 yes, Ray got paid.

18 And was the effect of that to disguise the fact that it was  
19 Watsons who were in fact paying in respect of those  
20 tasks?---I know it seems - I don't know. I don't know why  
21 he did that.

22 Perhaps I could ask you the other way around?---Yes.

23 Was there any reason you could see why Watsons wouldn't just be  
24 paying him directly rather than through you?---No. They  
25 should have just been paying him - like the Strathtulloh,  
26 why not pay Ray directly? The Hall Road stuff, they could  
27 have paid him directly as well.

28 The thing is, though, that by this stage - was it at this stage  
29 that The Age had started publishing articles suggesting an

1 unhealthy association between SCWRAG and  
2 developers?---I think - was that article in October,  
3 I think, 2018?

4 Yes?---So this was before 2018. Well, it wasn't October 2018.  
5 Those payment arrangements were in place - I just didn't  
6 question it at the time.

7 COMMISSIONER: You remember you listened to a conversation  
8 where you talked about Mr Walker not wanting to expose you  
9 all?---Yes.

10 Have you thought any more about what your concern was that he  
11 might expose you about?---When I answered that question  
12 yesterday after looking at the transcript of the telephone  
13 conversation I thought it was about not exposing to  
14 Dacland that both I and John on behalf of Elysian Group  
15 and Watsons were behind SCWRAG working in relation to the  
16 H3 intersection resolutions.

17 Which would mean then not exposing it to anyone else either  
18 that would make it public?---Yes. I mean when  
19 I - I just - - -

20 In any event - - - ?---It seems like - when I look back and  
21 reflect on it, it all just seems crazy to - like, what was  
22 going on.

23 MR TOVEY: Because again after The Age articles you and he  
24 discussed the fact that you didn't want people joining the  
25 dots about his association with SCWRAG or yours?---I was  
26 absolutely - I was dismayed about The Age article. I was  
27 very, very upset about The Age article when it occurred.  
28 Okay. I'll take you to that article. You are a little upset  
29 at the moment. Are you right to go on?---Okay, yes.

1 Perhaps I'll just take you - I think we have already gone  
2 through in detail what you have called the group meetings  
3 leading up to the H3 vote on 4 September. That was  
4 involving Mr Walker. One of the things I got diverted  
5 when I was about to ask was about the way in which the  
6 casting vote worked?---Yes.

7 There are a number of decisions where Wayne Smith as deputy  
8 mayor - - -?---Yes.

9 Ended up as the person who was giving the casting vote?---Yes.

10 Now, it would seem to be unlikely that that was just  
11 coincidental when you had an even break?---Yes.

12 How was that organised?---I just knew - I had been told he  
13 would be the one that stepped into the chair and he would  
14 be the casting vote; yes.

15 And so to your understanding Councillors Stapledon and Ablett  
16 would absent themselves on the basis of conflict?---Yes.

17 Aziz wouldn't?---No.

18 Then were you aware of the process by which before absenting  
19 themselves they would vote on who would chair the  
20 meeting?---Sorry, can you just say that again?

21 Were you familiar with a process by which before they left the  
22 council chamber they would vote in Wayne Smith?---Yes.

23 And that was something that was discussed between you, was  
24 it?---It wasn't discussed directly. I wasn't involved in  
25 the process, but I had knowledge that that was how it  
26 would work.

27 COMMISSIONER: Who told you that?---I'm trying to recall who  
28 told me. Yes, I'm not sure.

29 MR TOVEY: In any event would you know ahead of time that that

1 was the way it was going to work if it was even?---Yes,  
2 I remember saying - I said to John Woodman at one stage,  
3 "Are you sure you've got the votes here?" Like, I just  
4 wasn't sure that, I mean, there were the votes, and that's  
5 when I think I had knowledge about the - part of those  
6 conversations was the knowledge around Wayne Smith.

7 COMMISSIONER: Ms Schutz, should we have different expectations  
8 about the level of impartiality of councillors by  
9 comparison to a judge or should we expect the same  
10 standard of probity of a councillor; that is that they  
11 will bring an impartial mind to their decision  
12 making?---I think, like, a judge isn't voted in through a  
13 democratic process to represent the interests of the  
14 community. The councillors are voted in by their  
15 community to represent the interests of the community.  
16 I think a big problem with councillors at the moment is  
17 it's a very, very poorly paid job unless the job is the  
18 mayoral job. If you were - looking at the agenda papers  
19 for a council and the complexity of matters that  
20 councillors have to consider and they have decision making  
21 power on, I mean, most councillors just don't have the  
22 expertise, in my humble position, to be making such  
23 important decisions about - and on top of that, really, if  
24 you were going to give those agenda papers the justice  
25 they deserve then you should as a councillor be working  
26 full-time.

27 Yes, but I'm just wanting to deal with this notion of  
28 impartiality. It doesn't allow for a councillor being a  
29 little bit partial. The law seems to demand - -

1            -?---Impartiality.

2   That they come with an unbiased, uninfluenced mind to deciding  
3       what's right on a motion. Is that realistic in the local  
4       council setting?---I think it's - councillors get voted in  
5       on a platform to begin with. A person gets voted in to be  
6       a councillor on the basis of the agenda that they think  
7       their community wants them to run. So you are not going  
8       to be impartial and unbiased if you are going to be  
9       sticking to an agenda that you have committed to on behalf  
10       of your community.

11   So I'm just wondering looking at some of the minutes of council  
12       meetings at this time that you are being questioned about  
13       concerning H3 there were two separate occasions when  
14       Mr Rowe made a long speech responding to the motions that  
15       Mr Aziz was pushing at your direction in which Mr Rowe not  
16       particularly subtly was suggesting that there must be some  
17       sinister explanation for why Mr Aziz was putting the  
18       motions that he was?---Yes.

19   Do you recall that?---Yes, I do.

20   Was that another red flag for you?---Yes.

21   Why didn't that cause you to really reflect on what was going  
22       on between Mr Woodman and Mr Aziz?---Because it was clear  
23       from my relationship with John Woodman it was not my role  
24       to question him.

25   Yes. Yes, Mr Tovey.

26   MR TOVEY: I would just like to play you a short excerpt from a  
27       conversation that you had with Mr Woodman on 18 October  
28       2018 relating to the role of Mr Walker. This is at  
29       1.03 pm, a conversation between Mr Woodman and Ms Schutz.

1 This is at tab 105. It hasn't previously been played.

2 Sorry, did I say 105? 205.

3 (Audio recording played to the Commission.)

4 MR TOVEY: At that time we have heard that there has been  
5 before that a conversation between Mr Woodman and Heath  
6 Woodman, and they are talking about the fact that they  
7 have to rely on SCWRAG to get C219 over the line and they  
8 were lobbying politicians, in particular Mr Donnellan,  
9 Mr Wynne and Mr Pallas. In that context - - -

10 COMMISSIONER: Mr Tovey, that phone call has been played, has  
11 it not?

12 MR TOVEY: That phone call has been played. They are a series  
13 of phone calls, tabs 195 to 197, exhibit 39.

14 COMMISSIONER: Thank you.

15 MR TOVEY: That's just to give you some context, and it's  
16 obviously just a couple of days after the 16 October vote.  
17 Are you able to recall what particular issue Mr Walker was  
18 indicating his support in respect of at that stage?

19 COMMISSIONER: Do you agree that "Raymond" is a reference to  
20 Mr Walker?---Yes, it's a reference to Ray Walker; yes.  
21 I have gone back through my emails. I think after the  
22 16 October meeting that's when John started having direct  
23 contact with Ray, and it was about the - the reason why  
24 John didn't want - why the 16 October meeting didn't allow  
25 the secondary consent to proceed for Dacland was  
26 because - and John was having conversations with John  
27 Dwyer from Dacland, he wanted to make sure they delivered  
28 the culverts under the road so that it didn't have to be  
29 ripped up and delivered again, and he wanted to make sure

1 that it was delivered within a particular timeframe. So  
2 I'm pretty sure I was asked to, yes, make - like,  
3 I think - - -

4 MR TOVEY: So this is in respect of the culverts issue, you  
5 think?---Yes, and Ray was very keen to see the developers  
6 working together to get the intersection delivered, yes.  
7 And it would have been something to do with that.

8 The banter about you having trained him well is a reference to  
9 the fact that it was part of your role to try and get him  
10 to comply with the Woodman agenda, even though he was a  
11 fairly independently minded person?---Yes, yes, and it  
12 was - yes. It was grandstanding. Like, I actually  
13 personally respected, like, honestly respected Ray's  
14 objectives in relation to the community and I think - - -

15 And your job was to mould those as best you could to the  
16 advantage of Mr Woodman?---To be honest, I had a  
17 relationship with Ray which was - a great relationship  
18 with Ray where I really - I liked working with Ray a lot.  
19 But a conversation like that is me grandstanding to John  
20 and, you know, being, you know, his consultant.

21 It wasn't you who said those words. It was him who said it.

22 But what I'm saying is that's indicative of the fact that,  
23 although Ray Walker was very much his own man - -

24 -?---Yes, he was.

25 Your job was to have him deliver what Mr Woodman wanted?---Yes,  
26 I had an agenda to deliver, yes. I had things that I was  
27 asked to deliver, yes.

28 COMMISSIONER: Were you correct to say to Mr Woodman that it  
29 had taken a bit of time to get Mr Walker on board?---Ray

1 has his own mind, and I think in saying that I did not  
2 genuinely believe that I had trained Ray. I think  
3 I shared a lot of my planning knowledge with Ray.

4 No, but if you wouldn't mind directing yourself - -

5 -?---Whether I think I have trained him?

6 No, no, was it correct to say that it had taken a bit of time  
7 to get Mr Walker on board?---With the agenda for H3?

8 Or whatever you were referring to there. Is that what you  
9 think you were referring to?---I must have been referring  
10 to, and it was because Ray was very much of the mind that  
11 the two developers should be getting together and  
12 delivering the intersection together, yes.

13 MR TOVEY: I thought you indicated you thought that  
14 conversation was not about H3 totally but about the  
15 culverts?---Yes, but that is part of H3, yes.

16 Yes, I understand that?---Yes, it is part of H3.

17 Did Mr Walker have a different view at one stage about what  
18 should happen with the culverts than Mr Woodman - -  
19 -?---He didn't know them. He didn't know about the  
20 culverts. He wouldn't have had that technical knowledge,  
21 and that's when I think John ended up explaining to him  
22 about the culverts.

23 And when you are talking about him coming on board there - -

24 -?---What John Dwyer tried to do from Dacland was to get  
25 everyone together with the council officers, Dacland,  
26 Woldene, the community all around the one table and work  
27 it out.

28 COMMISSIONER: I must say, Ms Schutz, that this reference you  
29 have made a number of times now to "grandstanding" - -

1            -?---Yes.

2    You are talking in a private conversation with

3            Mr Woodman?---Yes.

4    No idea that this might ever see the light of day?---Yes.

5    And you are dealing with someone who is as intimately involved

6            as you are - - -?---Yes.

7    In these strategies that you are seeking to implement. So is

8            there any reason - I don't know why you use the phrase

9            "grandstanding". Is there any reason why someone reading

10           these transcripts of your private conversations with

11           Mr Woodman, given his intimate knowledge of things as well

12           as yours, should not take at face value what you and he

13           are saying to each other?---I think, though,

14           Mr Commissioner, the way you speak to him was - it was

15           just - I wasn't independently thinking for myself. It's

16           like I got into a rapport with him where I would say to

17           him what he wanted to hear.

18    I see?---Yes.

19    Did you think on this conversation he wanted to hear that it

20           had taken some time for you to get Mr Walker on board? Is

21           that something he wanted to hear from you or were you not

22           simply telling him what was the fact?---I think

23           I was - I think I was communicating to him that I had had

24           a lot of communication with Ray and it had taken a lot of

25           time to explain everything to Ray.

26    Until the point of time when Mr Walker was aligned with your

27           objective?---Yes.

28    Yes, Mr Tovey.

29    MR TOVEY: I tender, please, sir, tab 205.

1 COMMISSIONER: Yes, that's exhibit 105.

2 #EXHIBIT 105 - Phone conversation between Ms Schutz and  
3 Mr Woodman on 18 October 2018.

4 MR TOVEY: What was Wayne Smith's relationship with Woodman as  
5 you understood it?---I think it had something to do  
6 with - like, Wayne Smith was - somehow relates to Janet  
7 and Bob Halsall.

8 Right. And who were Janet and Bob Halsall?---Ex-councillors.

9 Were they people who were involved in the Liberal

10 Party?---I don't know. I've met Janet and Bob one or two  
11 times. I've been with John and I've had coffee with them,  
12 but I can't - it's been - I think it could have even been  
13 in 2013 that I met them.

14 We have heard some evidence that they were assisting John  
15 Woodman in respect of a program to fund councillors during  
16 the 2016 council elections?---Okay.

17 And indeed had provided some false documentation to cover some  
18 of the payments that were made in respect of that  
19 enterprise?---Yes.

20 Were you aware of anything to do with the funding of  
21 councillors during the 2016 election?---No.

22 In October of 2018 there is a call which has not been played,  
23 Mr Commissioner, but wherein Mr Woodman tells Mr Kenessey  
24 that Mr Staindl has been provided with a draft letter from  
25 the community to the minister, and that the  
26 minister - sorry, and that Mr Staindl is going to discuss  
27 the letter with the minister's chief of staff. Did you  
28 provide or assist in the provision of a draft letter from  
29 SCWRAG to be provided to the minister and to be discussed

1 with the minister's office in advance of it being sent to  
2 the minister?---I suspect Ray would have drafted it  
3 himself, but I would have been asked to go to Ray and ask  
4 him to draft a letter.

5 What I'm asking, though, is were you aware of a process whereby  
6 the minister's office would run its eyes over a draft  
7 letter - - -?---No.

8 Before the actual letter was actually sent?---No, I don't think  
9 so.

10 COMMISSIONER: I'm sorry, Mr Tovey, is that what the  
11 conversation suggests?

12 MR TOVEY: To some extent, yes.

13 COMMISSIONER: That a draft was going to be given to someone in  
14 the minister's office before a formal letter was sent; is  
15 that your understanding?

16 MR TOVEY: Yes, there are a number of conversations - when  
17 I say there's more than one conversation which would  
18 suggest an expectation that a form of words is going to be  
19 agreed on and then provided?---I should qualify and say  
20 I don't recollect about a draft going to the minister, but  
21 I would want to refresh my memory, yes.

22 Mr Commissioner, I was going to go on to The Age article.

23 COMMISSIONER: Yes.

24 MR TOVEY: Which is a topic that's going to take quite some  
25 time. I would prefer to do it all at once if we can.

26 COMMISSIONER: Yes, very good. All right. Have a good break  
27 for lunch, Ms Schutz. Come back at 2 o'clock.

28 <(THE WITNESS WITHDREW)

29 LUNCHEON ADJOURNMENT