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TRANSCRIPT OF AFTERNOON PROCEEDINGS

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INDEPENDENT BROAD-BASED ANTI-CORRUPTION COMMISSION

MELBOURNE

WEDNESDAY, 4 MARCH 2020

(16th 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 UPON RESUMING AT 2.09 PM:

2 COMMISSIONER: Come back into the box, please, Mr Patterson.

3 Yes, Ms Harris.

4 <GLENN ANDREW PATTERSON, recalled:

5 MS HARRIS: Mr Patterson, just prior to the break I was asking  
6 you about the recruitment of the two directors, Ms Bednar  
7 and Mr Collins. Was that part of a recruitment  
8 process?---Yes, it was.

9 And were you part of that recruitment process?---Yes.

10 How were they recruited?---We advertised extensively. So we  
11 didn't engage a consultant to help us with the  
12 recruitment. We did that through our own in-house people  
13 and culture team, HR team, and we advertised extensively  
14 and specified the requirements for the position and  
15 prepared all the normal documentation - position  
16 descriptions, performance expectations and the like - and  
17 advertised that nationally.

18 And how many people did you interview for each of those  
19 roles?---Approximately eight.

20 And presumably they were both the preferred  
21 candidate?---Correct, yes.

22 In relation to planning staff indicating that Mr Woodman and  
23 Ms Schutz were difficult to deal with, did they indicate  
24 or make any such indications about Wolfdene?---No.

25 Were you briefed about any issues to do with Wolfdene?---No.

26 In your briefing note from Mr Dalton did he highlight to you  
27 that one of the significant issues was the relationship  
28 between councillors and senior management within  
29 council?---Yes.

1 Did that issue persist after you commenced?---My experience was  
2 with a lot of concerted effort and a range of new  
3 initiatives to improve the relationship that that improved  
4 significantly.

5 And what did you do specifically to address it?---A whole range  
6 of things. For example, as I mentioned before, to improve  
7 the engagement with councillors we instituted a monthly  
8 forum or briefing session where we actually sat down and  
9 went through informally strategic challenges that the  
10 organisation and council and community faced. We wanted  
11 to make that fortnightly, but there was only support for a  
12 monthly meeting of that committee. We also - I had  
13 monthly one-on-ones with the councillors to keep them  
14 abreast of my progress in that initial phase. We  
15 obviously set up my performance plan for that initial  
16 12-month period, put in place quarterly reviews for that,  
17 and one of the key objectives within that performance plan  
18 was around enhancing the relationship, and we found other  
19 ways to have the council represented in organisational  
20 initiatives. So, for example, I had the mayor - and this  
21 practice continues to this day - come and address all the  
22 new staff as we induct those, and we have large numbers of  
23 those, probably 50 or 60 come in at a time, just to  
24 explain the role, the relationship, those kind of things.  
25 So we took a whole range of fairly practical, tactical  
26 approaches to better engaging with them, and also used  
27 different methods for engaging on issues that were going  
28 through the council decision-making process.

29 What do you mean by that?---What I mean by that is that, rather

1 than just delivering a report to a council meeting on an  
2 issue, we would actually engage with them through a  
3 briefing process and provide more background, more insight  
4 and seek their views about things and ensuring that they  
5 made more informed decisions that were based on evidence,  
6 data and insight; and that was a gap as we perceived it in  
7 terms of the historical decision making.

8 Do I take it from that you mean that you didn't think some  
9 councillors were basing decisions on those particular  
10 aspects?---Yes.

11 Council as a whole or councillors in particular?---I think  
12 there's different levels of commitment to reading material  
13 and engaging with material that's presented to  
14 councillors. But, as a group, I would say there was a  
15 relatively low level of commitment to actually doing the  
16 research and reading the various papers and articles and  
17 reports that were presented to them.

18 Was that something you observed by sitting in council  
19 meetings?---Yes.

20 COMMISSIONER: Mr Patterson, given your experience, had you  
21 observed that at other councils?---I have,  
22 Mr Commissioner, yes.

23 So this is not a unique experience?---No.

24 These deficiencies in the way councillors approach their  
25 job?---Yes, correct. And I think that was one of the  
26 motivations for looking for alternative ways of engaging  
27 with them outside or ahead of formal council meetings: to  
28 appeal to different preferences for how they engage with  
29 information to make it as accessible and as easy for them

1 to engage with that as possible.

2 MS HARRIS: Did you make - sorry, did you also observe that in  
3 relation to planning matters that councillors didn't seem  
4 to be across all the material relevant to a particular  
5 planning matter?---I think my comment would be a broad  
6 application, including planning applications. I think  
7 having a ward-based structure to the council electoral  
8 arrangements also reinforces the view that councillors  
9 specialise in particular issues in their own locality and  
10 quite often defer to other councillors and seek guidance  
11 from them about their preferred decision on a matter  
12 rather than all signing up to forming a view about a  
13 particular matter.

14 COMMISSIONER: You mean if the issue relates to a particular  
15 ward; is that what you mean?---Yes, that's what I mean.  
16 There might be a bit of deference to the one or two  
17 members from that ward as to their opinions, and that more  
18 often than not guided the opinion of some of the others  
19 too.

20 Are most councils divided by wards, Mr Patterson?---Most are,  
21 yes. Some are unsubdivided, but the majority are  
22 subdivided, yes.

23 And how does it work when it's unsubdivided?---There are pros  
24 and cons to all the different electoral models. The view  
25 of the Victorian Electoral Commission, the VEC, would be  
26 that subdivided wards on balance are a preferred approach  
27 in that it creates a greater degree of accountability and  
28 transparency and clarity from constituents as to who they  
29 approach if they wish to be represented on a matter rather

1 than having a group of councillors representing the whole  
2 municipality.

3 MS HARRIS: Did it cause you concern then that if there were  
4 some councillors not reading all the relevant paperwork  
5 and not being informed of all the issues that they weren't  
6 perhaps making decisions in accordance with their  
7 obligations under the Local Government Act?---Yes.

8 And what did you do about that?---As I said, we tried to find  
9 other ways of doing that. So, for example, there were  
10 different templates prepared for some of the standard  
11 reports that we presented to council to make them easier  
12 to engage with and to read and briefer in form. I think  
13 that was one thing we made an attempt to do, especially  
14 with planning, which can be complex and convoluted. So  
15 there was an attempt to write reports in plain English and  
16 make them, as I say, more accessible to them, combined  
17 with what I was talking about earlier, which was different  
18 methods of briefing them on matters ahead of those matters  
19 coming to council to ensure that they had all of the  
20 context, background and history on those items that they  
21 needed.

22 Did you ever engage one on one with any councillor and express  
23 concerns to them about not being familiar with  
24 the material?---I spoke to a number of the mayors last  
25 year and the year prior and also councillors about our  
26 attempts to have the councillors more thoroughly assess  
27 the material that was coming before them and what the  
28 options were for doing that.

29 And when you engaged with them in that way did you reiterate in

1 any way how it interacted with their obligations under the  
2 Act?---Yes.

3 Was governance involved in any of these processes?---Yes,  
4 definitely. Yes.

5 Who from the governance department?---The main one was Holly de  
6 Kretser, who is our manager of governance, who is a highly  
7 capable person and who leads a very well-rounded team  
8 again that was acknowledged in the monitor's report as  
9 being high performing. Her and her team had input into  
10 those improved arrangements for getting councillors to  
11 engage with those matters.

12 COMMISSIONER: So the concept of governance within the council  
13 applies both to the council staff and the  
14 councillors?---Yes, that's correct, yes.

15 And are either under the existing local government regime  
16 or - I take it you are somewhat familiar with the new  
17 scheme that's proposed?---I am, yes, very familiar with  
18 that.

19 I don't think it's passed the - - -?---No, it's just moving  
20 through the Upper House at the moment. So it's in the  
21 process.

22 Is there any mechanism proposed, Mr Patterson, that would give  
23 any teeth to the CEO or executive in terms of governance  
24 of councillors?---Yes, I think there's a number of  
25 initiatives in the new Local Government Bill that are  
26 welcome, not just by me and our organisation but by the  
27 sector as a whole and certainly from my colleagues around  
28 a whole range of matters to do with conflicts of interest,  
29 to do with mandatory training, to do with a standardised

1 code of conduct, a whole range of matters that I think are  
2 welcome, and I'm happy to talk in more detail about those  
3 at some stage.

4 Yes?---Appreciating the electoral donations aspect of the bill  
5 has been withdrawn pending the outcomes of this process.

6 While there are specific provisions both in the existing  
7 legislation and the proposed legislation that govern  
8 aspects of councillors' behaviour, I'm really asking you  
9 now about whether or not the legislation gives any  
10 capacity to the CEO or executive to explicitly monitor or  
11 control that behaviour?---Yes, it does. There's a number  
12 of provisions in the Act or the new bill as it's proposed  
13 that would address that. For example, there's powers not  
14 so much to the executive and the CEO but to the minister  
15 to actually - to stand down a particular councillor if  
16 there's behaviour or conduct that's considered  
17 inappropriate and compromising the health and safety of  
18 staff. That action can be taken against an individual  
19 councillor rather than - whereas in the current  
20 arrangements that's not possible. There's also provisions  
21 in there about appointing a principal councillor conduct  
22 coordinator, which has to be someone other than the CEO.  
23 So, again, that's a welcome initiative. That person is  
24 overseeing references to code of conduct panels, which is  
25 a process that's in place now that will continue. And  
26 also a new provision which is around arbitration, and,  
27 again, there's a mechanism that's being proposed where  
28 there would be a register of arbiters and they can be  
29 brought in when there are situations that are considered

1 to be breaches of the code of conduct. So they are just a  
2 few examples. There's a strengthening or a simplification  
3 of the conflict of interest, again not so much giving  
4 council CEOs powers but certainly making it much easier  
5 for councillors to make those sorts of declarations.  
6 There's a few. There's plenty more which I can talk to,  
7 but there's a few examples.

8 So the first two that you mentioned are fairly draconian  
9 measures where you would think things have got to a point  
10 where by normal means of working relationships and  
11 communication a problem isn't being adequately addressed.  
12 But I'm rather looking more at the question in terms of  
13 day-to-day conduct and the working relationship between  
14 CEO, executive and council. Are there currently any  
15 proposed provisions that would give the CEO or executive  
16 any force to insist upon councillor compliance?---Not  
17 specifically, no. It's more powers to the minister rather  
18 than to CEOs. I see an opportunity I think for measuring  
19 those things. So, for example, there's a local government  
20 reporting framework that measures a whole range of service  
21 indicators for the sector. There's no measure within that  
22 to actually measure the health of relationships and  
23 cultures within organisations and councils. To me,  
24 mechanisms like that could be things that could be  
25 considered so that you can actually flag when there's a  
26 deterioration of those things and then take some  
27 corrective action. So things like that I think are  
28 important. The mandatory training is an interesting one  
29 too. So, again, we are waiting on sort of guidelines or

1 practice notes to come out post assumingly the adoption of  
2 the bill, when it becomes legislation, which would  
3 actually indicate what that might be. But to me that's an  
4 important factor too.

5 Yes?---That candidates for council, when they are considering  
6 nominating, when they are elected it's part of their  
7 induction process, and ongoing they are going to have to  
8 submit to mandatory training around a whole host of  
9 things. So again the detail of that hasn't been disclosed  
10 in the practice notes yet, but I would have thought  
11 there's some opportunities apart from just general  
12 governance and legislative awareness raising to actually  
13 focus in on a range of competency based training that  
14 would address some of the matters that have been raised  
15 through this hearing, taking on the likes of, you know,  
16 company director responsibilities and ethics and  
17 integrity, leadership programs, that type of thing. So,  
18 whilst not specifically powers to the CEO, there's some  
19 other measures like that that are being introduced which  
20 I think are very helpful.

21 So we'll come to the monitor's report, but I can already see  
22 from some of the things that you have said that at least  
23 some of the criticisms that the monitor has made of the  
24 council are reflected in your observations. So you were  
25 there for the best part, then, of two years. If you had  
26 had some power to require compliance by councillors do you  
27 have a sense that you might have been able to address some  
28 of those problems?---Potentially, yes. The behaviour,  
29 given those other interventions I was talking about and

1 just a general uplift in mutual respect and recognising  
2 each other's roles and working on that actually enhanced  
3 behaviour significantly. So we actually measured that  
4 from when I started until the end of my first year in the  
5 role. And that was done independently. So there were  
6 some improvements. A lot of the behaviour that has been  
7 referenced and which historically had certainly been  
8 present in relation to bullying, intimidation, exclusion,  
9 councillor conduct panels and the like was all prior to my  
10 time, and certainly the council has presented in a much  
11 more positive and cooperative fashion in the last year.  
12 But, yes, to answer your question the answer would be,  
13 yes, if there was an opportunity with further provisions  
14 in the Act for us to enforce further sort of good  
15 governance or good behaviour, that would have certainly  
16 been useful and something we could have taken advantage  
17 of.

18 You would see some benefits in that?---Yes.

19 MS HARRIS: Given that you consulted extensively internally and  
20 externally and obviously identified some issues, how did  
21 you go about presenting a message to councillors and  
22 council staff around what your expectations were with  
23 regard to behaviour and compliance?---The first step  
24 I took was to do a 100-day report. So that was part of my  
25 final presentation in the last stage of the recruitment  
26 process, was to indicate to the councillors what my  
27 objectives and outcomes would be in that first 100 days.  
28 So at the end of that period I presented a report to the  
29 council which covered off a whole range of things,

1 including the matters that we are discussing here now, and  
2 with the organisation it was a very clear philosophy  
3 around shared leadership, shared values and shared  
4 purpose, and we did a lot of work to actually get clarity  
5 around that and the values most importantly that underpin  
6 that. So we have got three very clear corporate values,  
7 which are not just espoused, they are values that are in  
8 use, and we have developed a whole range of programs to  
9 reinforce that. So they find their way into all of our  
10 systems, if you like, in the employee lifecycle, and  
11 that's the way we systemise it, and it's a continued  
12 conversation with the organisation and councillors about  
13 those matters. But, as I say, I saw a significant step-up  
14 in behaviour over that, say, 18-month period.

15 Did you engage with councillors around what your expectation  
16 was, for example, with declaring conflicts of  
17 interest?---Yes. The process of submitting or making  
18 those declarations assists with that. So when a  
19 councillor identifies they might have a potential conflict  
20 of interest there are two ways that they can submit those.  
21 They can do that at the meeting or just prior to the  
22 meeting or they can submit an email to me to indicate that  
23 they have a potential conflict. Most of the councillors  
24 took the option of doing that via email, and my governance  
25 manager would be copied into those. So that was an  
26 opportunity to go back to the councillors to make sure  
27 that they understood whether they had a direct or an  
28 indirect interest and what the category of that was, given  
29 there's quite a bit of complexity around that within the

1 current legislation.

2 COMMISSIONER: That's an understatement, Mr Patterson. I think  
3 most lawyers would have difficulty in being confident that  
4 they have understood the full ramifications of the  
5 provisions?---Yes, I would agree with that, and I think  
6 that's one reason as to why councillors struggle to make  
7 the correct classification of interest, and the new Act or  
8 bill, Local Government Bill, addresses that we think quite  
9 effectively where it just has two broad categories, either  
10 a material or a general interest, and I think the general  
11 interest provision has the opportunity to capture a whole  
12 lot more potential conflicts than the more prescriptive  
13 and complex regime that was in place previously. So  
14 that's certainly beneficial.

15 Ms Harris, are you intending to return to conflicts of interest  
16 in some specific settings?

17 MS HARRIS: I am, Commissioner.

18 COMMISSIONER: We might leave further discussion, then, until  
19 later.

20 MS HARRIS: If I could just ask you this question. When  
21 councillors were declaring conflicts of interest to you  
22 were you satisfied that they met the criteria of  
23 the legislation?---That wasn't done all the time. As  
24 I say, the opportunity for us, being myself and my  
25 governance team, was to have that ongoing awareness  
26 raising and education of councillors when they submitted  
27 those declarations. In the majority of cases they were  
28 done effectively. In some cases it was done without the  
29 kind of prescription that the Act would envisage.

1 And on those occasions what did you do in response?---As I say,  
2 the opportunity for those who submitted their potential  
3 conflicts ahead of the meeting via email was to have a  
4 conversation or an email response to give them guidance  
5 around the type and classification of conflict that they  
6 had. That's more difficult to achieve if the conflict is  
7 announced at a meeting in the middle of proceedings.

8 If it was announced in a meeting, was that something that you  
9 could then take an opportunity following the meeting to  
10 address with that councillor?---Yes, and we did take that  
11 opportunity, and I probably also should note that there  
12 was guidance material available to them in compendiums at  
13 the council meeting as part of their pack. So there was a  
14 reference there to help them again to make the appropriate  
15 declaration.

16 Is it your understanding that councillors only received  
17 training in relation to conflicts of interest and how to  
18 declare them and their obligations under the Act once  
19 they - following election and again at no other  
20 time?---I don't know the answer to that. I certainly know  
21 that my governance team had said there was training when  
22 they were first inducted. As to what further training was  
23 provided in the subsequent, say, two years before  
24 I arrived, I'm unsure. I can't talk to that.

25 And which councillors did you have reason to speak to in  
26 relation to not adequately declaring a conflict of  
27 interest?---I observed a number of councillors regularly  
28 making declarations, at least three in relation to  
29 electoral donations either for local government or State

1 Government electoral campaigns. I also observed two  
2 councillors who regularly made conflict declarations in  
3 relation to candidacy, again one for the Federal election  
4 last year and one at the State election in 2018.

5 Who were those two?---Those two were Councillor Susan Serey,  
6 which related to a State election candidacy, and  
7 Councillor Rosalie Crestani, in relation to her Federal  
8 candidacy for the Senate.

9 Sorry, just so I'm clear, was it your view that they didn't  
10 declare it adequately?---No, I'm saying I observed those  
11 people declaring them.

12 I follow?---Yes.

13 And then the three that you referred to in relation to  
14 donations; who were they?---That would be Councillor  
15 Serey, Councillor Geoff Ablett and Councillor Amanda  
16 Stapledon.

17 And in your view did they declare those conflicts  
18 adequately?---As far as we were aware of their  
19 circumstances, yes. But of course this gets back to the  
20 construct of the legislation that it's not up to us to  
21 make a judgment, whether it's myself or my staff around  
22 that, and certainly the Victorian Local Governance  
23 Association, one of the peak bodies representing local  
24 government in Victoria, has a four-point guidance note  
25 around this and it makes it very clear that it is up to  
26 the individual councillor to take - to be accountable for  
27 their decision, to make that decision, to not necessarily  
28 need to seek advice around that, and, fourthly, to make  
29 sure that it's not used as a political weapon. So there's

1 very limited powers for - there are no powers for the  
2 council executive or other staff to investigate or enquire  
3 further about perceived conflicts that may not be  
4 declared.

5 COMMISSIONER: Given we are still dwelling on the conflict  
6 issue, are you able to tell me what the rationale was for  
7 the scheme of the legislation that permits a councillor to  
8 provide the CEO with full detail of the nature of the  
9 conflict but not have to reveal it to other  
10 councillors?---I don't believe - that's the initial point  
11 of contact. But the details of those need to be disclosed  
12 in full to their colleagues. So I didn't think there was  
13 a distinction between the two.

14 No, the Act provides that they identify the nature of the  
15 conflict as either direct or indirect?---Yes.

16 But the detail of it, that is the facts which give rise to the  
17 conflict, the legislation provides that the councillor can  
18 tell you but doesn't have to tell their fellow  
19 councillors?---That's correct.

20 Do you know what the rationale for that was?---No, I do not.

21 Can you see a sound rationale for it?---No, and I applaud that  
22 changing.

23 Isn't it critical that if a councillor who is in a conflict is  
24 to be properly understood by fellow councillors they need  
25 to know why?---Yes, I would have thought that promotes  
26 transparency.

27 MS HARRIS: Just one further question before we leave that  
28 topic for a moment, what is your expectation as the CEO  
29 around involving councillors in decisions in which they

1 have declared a conflict of interest?---Well, it depends  
2 on the nature of the conflict as to whether they  
3 participate in the decision making or not. Our advice  
4 generally is to err on the side of caution. That is a  
5 very simple maxim, and that is if in doubt get out. So if  
6 that's the nature of your question that's our advice. If  
7 you are unsure about the extent of your conflict, it's  
8 best to remove yourself from the decision-making process  
9 entirely.

10 What about the discussion that goes on behind the decision  
11 making?---The same principle applies to that.

12 So it would be your expectation that a councillor that has  
13 declared a conflict of interest in a matter not be  
14 involved in any discussions to do with that  
15 matter?---Correct.

16 COMMISSIONER: But the legislation is not specific, is it,  
17 about precisely what course has to be followed by the  
18 councillor?---That's correct.

19 And we have seen, Mr Patterson, different courses followed by  
20 different councillors. Is there something to be said for  
21 legislation which makes much clearer what are the  
22 obligations which must follow a declaration of a  
23 conflict?---Yes, I think that would be extremely helpful,  
24 yes, supported by a mandatory training regime that's  
25 ongoing to the point that was made earlier.

26 MS HARRIS: If a councillor was to continue being involved in  
27 discussions about a matter that they had declared a  
28 conflict in, what mechanism would be available in terms of  
29 any sanction for that councillor?---Well, I think that

1 would be a matter that - I would report a matter of that  
2 nature, if there was such a flagrant transgression as  
3 that.

4 COMMISSIONER: But I think, following on from the two matters  
5 that have now been discussed, the state of the  
6 legislation - present and perhaps future, if the bill goes  
7 through in its current form - is that you could observe  
8 what you regarded as an inadequate response by a  
9 councillor to a conflict situation, that is it's been  
10 declared but the councillor has resolved how they intend  
11 to manage it, you could regard that as quite inappropriate  
12 but you would have no power to insist or require the  
13 councillor to act differently?---That's correct. I don't  
14 have a solution to it, but it's definitely something that  
15 should be considered. The constraint of having the  
16 decision and the accountability for that resting solely  
17 with the councillor we have seen in our organisation and  
18 in many organisations across the sector is quite  
19 ineffective. So there has to be a different way of doing  
20 that. So whether that's to give their colleagues some  
21 further powers, I see some problems with the CEO having  
22 that power in terms of the dynamic and the relationship  
23 that you have from an employment point of view, but  
24 somewhere in the mix of all the options there there must  
25 be a mechanism that takes it beyond just being a  
26 responsibility of the individual, because that system is  
27 not working as effectively as it should be.

28 One of the findings of the monitor was that there was an  
29 avoidance culture amongst the councillors which, as

1 I understand the information which preceded that  
2 conclusion, indicated councillors were afraid, reluctant  
3 to raise their concerns if they thought another councillor  
4 was doing something that was inappropriate. So there  
5 might be difficulties in leaving to the council the  
6 monitoring of inappropriate responses to a  
7 conflict?---Potentially, yes. But it's something worthy  
8 of consideration.

9 We might as well tender the monitor's report, Ms Harris.

10 MS HARRIS: Yes.

11 COMMISSIONER: Because it's going to be the subject of frequent  
12 reference. I will mark the report of February 2020 by the  
13 City of Casey Municipal Monitor exhibit 142.

14 #EXHIBIT 142 - Report of February 2020 by the City of Casey  
15 Municipal Monitor.

16 MS HARRIS: Just following on from something you just said  
17 then, Mr Patterson, around it would be difficult to give  
18 the power to the CEO given the dynamic that exists between  
19 the CEO and the councillors, could you just expand on what  
20 you mean by that?---I just would make the observation that  
21 in the current model the CEO's employment  
22 relationship - like, I'm the council's only employee. So  
23 the Act prescribes that I'm the employer for all the rest  
24 of our officers. That, yes, to make determinations  
25 about - potentially without adequate information or  
26 investigative powers to be associated with it, as to  
27 whether a councillor should or should not be declaring an  
28 interest I think could be quite problematic. So it's a  
29 complex area that I think requires some further

1 consideration. But, as I say, my principle would be the  
2 sole reliance on the individual making the declarations  
3 and the determination of when they perceive a conflict is  
4 not working. There has to be a better alternative. But  
5 it needs to be in consideration of all the  
6 potential - likely impacts of alternatives.

7 COMMISSIONER: Your previous experience of other councillors  
8 has revealed difficulties in understanding by councillors  
9 with the conflict of interest requirements?---Yes, I think  
10 it's a sector-wide challenge. To your point, it's a  
11 reflection I think of the complexity. I think that's  
12 certainly one part of it. And the other one, which we  
13 have touched on in the conversation just now, is about  
14 having that ongoing reinforcement to make sure there's  
15 clarity of understanding and obligation around that, and  
16 that mandatory training I think is very critical as well.  
17 But, yes, it's certainly a challenge for the whole sector.

18 So we have heard a considerable amount of evidence about the  
19 conduct of councillors when they are faced with a conflict  
20 have removed themselves from the council meeting room but  
21 have continued to indirectly participate in the decision  
22 making on that motion. What do you say about such  
23 conduct?---I'm not familiar with that evidence,  
24 Mr Commissioner, but that would be completely at odds with  
25 the spirit and the letter of the law when it comes to  
26 declaring conflicts. So that would be very undermining of  
27 that and I think that's sort of deceptive conduct, if that  
28 were occurring.

29 But there's nothing in the Act that explicitly proscribes

1 it?---Correct, yes. That's right.

2 Although one might say under the general requirements of acting  
3 with integrity and impartiality that conduct might be in  
4 contravention of those characteristics?---Yes, there's  
5 plenty of principles and objectives that are clear for the  
6 role of councillor and the code of conduct applying to  
7 councillors that would I think in principle give some  
8 clear guidance around that. But to your point, yes,  
9 there's no proscription around that being inappropriate.

10 And, again, if the CEO was aware that that was occurring, the  
11 CEO has no power to deal with it?---Correct. That's  
12 right.

13 MS HARRIS: In relation to your comment about the CEO being the  
14 council's only employee, is it the situation, as the  
15 legislation stands now, that following your appointment on  
16 a merit based process it's then a matter for council to  
17 re-appoint you or to extend your term; is that  
18 correct?---The provisions allow for a five-year contract  
19 employment term. So that's the maximum term for a local  
20 government chief executive officer in the State of  
21 Victoria. Council at the end of those terms or towards  
22 the end of the term contractually and under the  
23 legislation has the opportunity or the option of either  
24 renewing that person's contract or re-advertising, and  
25 that's a choice they can make and there's no tenure limit  
26 on that. That can happen multiple times over a series of  
27 terms.

28 Does that in your view create an unsatisfactory tension then  
29 between - in the situation where you may have to call into

1 question a councillor's behaviour?---I and I'm sure all my  
2 colleagues, CEOs in the state, take our roles very  
3 seriously, and we understand the statutory and other  
4 obligations that come with the role. But I would note  
5 there's an inherent risk and we have seen plenty of  
6 examples of that where CEOs have done the right thing and  
7 asserted themselves around all sorts of matters with  
8 councillors and haven't - the outcome hasn't been positive  
9 for them in terms of their continued employment.

10 Is that another area of potential review, in your  
11 opinion?---Yes.

12 COMMISSIONER: Do you know whether any roof body concerned with  
13 local government structure has previously considered  
14 whether - alternatives to the appointment of a CEO by the  
15 council?---No, I'm not aware of that. The only thing  
16 I would note again in the new Local Government Bill is  
17 again a welcome development on that front, that there  
18 would be a mandated requirement to install an employment  
19 matters committee for the chief executive officer which  
20 would advise the council, and that person would be an  
21 independent expert that would chair that committee, would  
22 advise the council on chief executive officer's contracts  
23 of employment, remuneration, performance reviews and  
24 management, those sorts of matters. We already do that,  
25 but that's not something that's done universally. So  
26 I think there's some movement in the right direction in  
27 relation to that in the new bill.

28 MS HARRIS: Mr Patterson, as part of your due diligence before  
29 taking on the role did you become aware that there had

1           been an ombudsman investigation in relation to certain  
2           councillors at Casey?---No.

3   COMMISSIONER:   Would you expect a CEO who receives an ombudsman  
4           report in which allegations of corruption are being made  
5           involving in part councillors and developers would upon  
6           receipt of the report read it?---Yes.

7   So it comes as a surprise to you that your predecessor - not  
8           the acting CEO but his predecessor - did not read the  
9           ombudsman's report in 2015?---I have no knowledge of  
10          whether he did or did not read that report.  All I'm  
11          clarifying is that I wasn't aware of that report until two  
12          months after I commenced employment.

13   Did you look at it then?---Yes.

14   And you will be aware of the fact that the ombudsman was unable  
15          to make adverse findings against councillors that were the  
16          subject of the allegations because they refused to give  
17          evidence to the ombudsman?---Yes.

18   You would expect, would you not, that, that situation having  
19          occurred, the CEO thereafter would need to be vigilant in  
20          relation to the council's affairs?---Yes.

21   Because those allegations in effect had never been properly  
22          resolved?---Yes.

23   MS HARRIS:   Did that report raise any red flags for you?---Yes.

24          I also suspect that it was - it was something that was  
25          referenced around the time that the issues that are being  
26          considered in this hearing were getting some media  
27          profiling through October, November 2018.  That's when  
28          I became aware of that 2015 ombudsman's report that's  
29          being referred to.  And I think it was used and referenced

1 by councillors as an endorsement of what had happened  
2 historically. So that was how it was kind of portrayed to  
3 me, that there had been a thorough investigation, seven  
4 allegations put, none substantiated, and so there was an  
5 endorsement really of their behaviour and hence no change  
6 really had taken place post that report.

7 COMMISSIONER: Which councillors expressed that view to  
8 you?---I don't recall specifically which ones, but I just  
9 know a number of them were talking in those terms to say  
10 that once these matters were aired through those two Age  
11 reports in October and November 2018 that the matters had  
12 been thoroughly investigated, nothing found and that  
13 represented some form of closure on the issue for them.

14 MS HARRIS: You indicated the report did raise some red flags  
15 for you. What action did you take, if any?---So my role  
16 is to make sure that we have got robust governance systems  
17 in place across all of our statutory obligations,  
18 including conflicts of interest and managing those. So  
19 what we do is we use the good governance framework which  
20 was developed after the City of Greater Geelong period of  
21 administration, and we self-assess against that each year  
22 across all our governance systems to make sure that we are  
23 compliant and meeting all our statutory obligations, and  
24 that assessment or the results of that are reported  
25 annually to our audit and risk committee. So that is one  
26 of the ways in which I can have assurance that our systems  
27 are robust and complying with our statutory obligations.  
28 Beyond that, it was that ongoing education piece that  
29 I talked about before just to make sure that councillors,

1 to the fullest extent we can make them aware, are aware of  
2 their obligations and how they should go about managing  
3 those potential conflicts and other declarations.

4 Did you take steps to reiterate those obligations following the  
5 publication of The Age articles?---Yes.

6 How did you do that?---We did that by way of briefings, and  
7 that was one of our responses to those matters being aired  
8 at that time.

9 When you say "briefings", are they verbal briefings - -  
10 -?---Yes.

11 To the council?---Yes, yes.

12 And who conducted those?---They are conducted generally by our  
13 governance team.

14 In your presence?---Yes.

15 And specifically what topics were covered during those  
16 briefings?---I don't recall. It was mostly around  
17 conflict of interest declaration. That was it. So it was  
18 a reminder, a refresher around the process and making sure  
19 that they had access to all the information they needed to  
20 remind them what processes they needed to follow in doing  
21 that.

22 In terms of the way conflicts of interest that are declared to  
23 the CEO are recorded, whether it be in a database or on a  
24 register, is there any way for you, for example, to go  
25 back and check who's made a conflict of interest  
26 declaration in relation to which particular  
27 matter?---There is a register that's retained as you  
28 mention, and that goes back historically. So, yes, that  
29 is available for me or anyone to inspect.

1 COMMISSIONER: Three years, Mr Patterson?---I think so. I'm  
2 not entirely sure. I think you are correct. I think it's  
3 three years.  
4 Would it come as a surprise to you if the former CEO, Mr Tyler,  
5 was not aware that such a register needed to be  
6 kept?---I wasn't aware that he wasn't aware,  
7 Mr Commissioner.  
8 He gave evidence in private examination?---Right. Yes, that  
9 would surprise me.  
10 Because that's a critical way in which the CEO can monitor the  
11 councillors, even if there's no power to deal with  
12 them?---Yes, that's correct.  
13 MS HARRIS: After the publication of The Age article did you  
14 take any steps to go back to the conflict of interest  
15 register to see if appropriate declarations had been  
16 made?---No.  
17 Did you cause that to happen?---No.  
18 Why not?---My obligation was to ensure that there was  
19 compliance from that time forward, and that was my focus.  
20 I do understand without my prompting, though, that our  
21 governance team did that historic check and I think in  
22 broad terms found that there were omissions.  
23 And what was done about that?---As I say, that was back to that  
24 refresher of what their obligations were and making sure  
25 that we had conversations about that. We did discuss the  
26 opportunity for formal training around that. That wasn't  
27 something that there was interest in taking up at that  
28 time. In hindsight, possibly the organisation could have  
29 insisted on that occurring. Whether that would have been

1 well attended or not is another matter. But, yes, it was  
2 just through that refresher, as I say, and then the  
3 ongoing week in/week out reminders as councillors are  
4 making declarations to prompt them into appropriate  
5 behaviour and responses to those.

6 Not seeking refresher training in light of the IBAC  
7 investigation was a comment made by the monitor in her  
8 report; do you recall that?---I do recall her making that  
9 comment, yes.

10 Did it surprise you that councillors weren't seeking that  
11 training?---Given the gravity of the matters and the  
12 breadth of them, yes, it did surprise me.

13 COMMISSIONER: It comes back to the view expressed to you by  
14 some councillors that the way to view the ombudsman's  
15 report was, "Nothing to be seen here. Everything's as it  
16 should be." That's a curious view to have formed if one  
17 had read the report?---Yes, and that was the general view.

18 And did that not of itself give you some disquiet about the  
19 wisdom of the councillors in terms of their understanding  
20 of integrity issues?---My observation would be that there  
21 was a general lack of appreciation of their obligations in  
22 broad terms and the rationale for that. There was just a  
23 lack of appreciation of that.

24 That, I suspect, is a charitable view, Mr Patterson. The  
25 ombudsman explicitly stated that the allegations could not  
26 be substantiated because the councillors who were at the  
27 heart of the allegations refused to give evidence on the  
28 grounds that it might incriminate them?---Mm-hm.

29 Now, if someone read that, that would hardly lead them to

1 conclude that everything should be concluded to be fine  
2 and above board?---I would agree.

3 MS HARRIS: Mr Patterson, earlier you indicated that within the  
4 planning department there had been adverse comment around  
5 Ms Schutz and John Woodman and their dealings with those  
6 two individuals. Did you know John Woodman prior to  
7 becoming CEO?---No.

8 Did you know Heath Woodman?---Yes.

9 How did you know him?---I had had two meetings with Heath  
10 Woodman in relation to developments that he had in train  
11 again at the Shire of Yarra Ranges in that period 2008 to  
12 2018.

13 And who was he working for or under what company?---I don't  
14 recall. I don't believe it was Wolfdene. In fact, I know  
15 it wasn't Wolfdene, but I can't recall who it was.  
16 I think it was certainly a different structure. As to  
17 which firm or company it was that he was actually  
18 proceeding with those developments through, I don't  
19 recall.

20 And what were those developments?---I don't recall the detail  
21 of that either.

22 Have you had any involvement with Heath Woodman in your time at  
23 Casey?---Yes.

24 And what was the nature of that?---I have seen him around three  
25 times, I would say, in the last 18 months, and it's in  
26 relation to him providing feedback on the fee for service,  
27 that MOU - what we frame as the partnerships for a growing  
28 Casey process, and I recall at least two of those meetings  
29 were held - this is all at Bunjil Place, at our

1           headquarters, were to give me positive feedback on their  
2           experience with that process.

3   Are you aware of any connection between Heath Woodman and  
4           Andrew Wyatt?---I know there is an arrangement or some  
5           relationship. I'm unsure as to the nature of that.

6   When you say you are unsure of the nature, do you mean whether  
7           or not it's a business relationship or a  
8           friendship?---I know they have a business relationship.  
9           The nature of that, I'm not familiar with.

10   What involvement have you had with John Woodman since becoming  
11           CEO?---I met him once on - again as part of my orientation  
12           to all of those various stakeholders around the City of  
13           Casey. As I said earlier, he wasn't on the list of  
14           developers or development firms to contact. But the  
15           previous mayor, Councillor Geoff Ablett, had suggested to  
16           me that I should meet with him. I agreed to do that, and  
17           I did that on 7 January 2019, and we spent around  
18           45 minutes together at - again at our office at Bunjil  
19           Place in Narre Warren.

20   Did Mr Ablett suggest why it was that you should meet  
21           him?---Nothing more than the fact that he was a  
22           significant developer in the City of Casey and he had  
23           observed that I had met with all the other firms,  
24           companies that were active in Casey and he thought  
25           I should meet with Mr Woodman as well on that basis.

26   COMMISSIONER: So historically what this shows is how difficult  
27           it is to know when a councillor votes in favour of a  
28           motion whether there are factors unknown to others that is  
29           improperly influencing that councillor. But here was a

1 setting where you had an ombudsman's report. By the end  
2 of 2018 you had an Age article making further, quite  
3 specific allegations, and yet the councillors who were at  
4 the heart of those allegations continued to vote on  
5 council motions or to influence other councillors as to  
6 how they should vote, and nothing could be done about  
7 it?---There's no visibility of some of the evidence that's  
8 been provided through this hearing process, and I'm only  
9 familiar with some of that. But my broad understanding  
10 around that is that, you know, the organisation, the  
11 executive and others wouldn't have visibility of that. So  
12 the answer regrettably to your proposition is, yes, there  
13 is nothing that, you know, could be done about that.

14 And may I ask from your private perspective did you have any  
15 sense of disquiet by the end of 2018 when The Age article  
16 had been published, given the ombudsman's report and the  
17 lack of consistency in the way conflicts were being  
18 declared, did you have any personal disquiet?---As I say,  
19 I took the approach that I didn't see any conduct that  
20 I considered to be improper that would - sort of meet a  
21 threshold or anywhere near a threshold for reporting to  
22 IBAC or the ombudsman or anyone else. I also took the  
23 attitude, as I say, about making sure that our governance  
24 systems were compliant. So we do - we review those. We  
25 have those assessed. So I took that action. But the  
26 other factor I think is that in that period from my  
27 appointment in September 2018 onwards, the rather sort of  
28 tumultuous period of mid-2018, when all these matters sort  
29 of came to a head, had subsided. So there was really only

1 two matters that came before council, or really one matter  
2 twice, I should say, that came before council in my early  
3 times that is the matter of subject of this hearing that  
4 might give rise to some concerns. But even the nature of  
5 that wasn't really a red flag. So I suppose in summary my  
6 answer would be we had compliant governance systems. We  
7 made sure there was ongoing reviews and endorsement of  
8 those. And there was nothing else beyond that that was  
9 reportable. In that sense I didn't have staff coming to  
10 me. I didn't see any evidence that was anywhere near  
11 meeting a threshold for reporting.

12 Which all rather suggests then, Mr Patterson, that if these  
13 matters are in the end left to the integrity of each  
14 individual councillor, then as far as one can one needs to  
15 have a legislative regime that minimises the risk of them  
16 being unduly influenced?---Yes, I would agree with that.

17 We don't have that at the moment, do we?---No, that's correct.

18 MS HARRIS: Prior to meeting with Mr Woodman were you told or  
19 did you become aware that he had a lot of applications or  
20 he was involved in a lot of applications before  
21 council?---I was aware that he was very active in the City  
22 of Casey, yes.

23 How did you become aware of that?---Just again talking through  
24 matters that you become aware of who the main developers  
25 are and who are most active, and certainly Mr Woodman's  
26 interests were one of those.

27 You would consider him one of the main developers within  
28 Casey?---When you say "him", certainly the company  
29 Wolfdene would be one of the top seven or eight companies

1           that operate in Casey, yes.

2   And what about Mr Woodman's company, Watsons? Was Watsons  
3           involved in a lot of development within Casey?---I don't  
4           have line of sight to that. I know they were. So they  
5           are a large land development consultancy and provide a lot  
6           of planning, engineering and other services to all sorts  
7           of applicants. So I was aware that they do a lot of that  
8           work, and certainly in Casey's case, given our size and  
9           scale, there would have been, you know, hundreds of  
10          applications that they were associated with over a number  
11          of years.

12   When you met with him on 7 January who was present?---No-one.

13          Just he and I.

14   And what was discussed?---As I say, my recollection clearly was  
15          that it ran for about 45 minutes. We had allowed an hour  
16          but we were done prior to the hour expiring. And the  
17          majority of that time Mr Woodman spoke about his business  
18          achievements and was trying to impress me - that's how it  
19          appeared to me - with his achievements over time. So that  
20          was the vast majority of the conversation. The only  
21          matter which - issue that he spoke about was the  
22          Cranbourne West rezoning and, while he wasn't looking for  
23          me to do anything or to intervene or to take any action,  
24          he gave me his view about the fact that he had an opinion  
25          that there was surplus employment and industrial land in  
26          the south-east of Melbourne and that therefore there  
27          should be a strong case for that site to be rezoned to  
28          residential. That was really the only reference. He  
29          didn't discuss any other sort of planning issue or matter

1 with me in that meeting.

2 And that was in relation to C219?---Yes.

3 COMMISSIONER: Have you been involved from time to time in your  
4 previous employ as a CEO with councillors concerned with  
5 large rezoning issues?---Yes, I have.

6 And as a generalisation how often is it that a council on  
7 issues of that level of seriousness depart from the  
8 recommendation of the planning officers of the  
9 department?---The majority of the time the advice of a  
10 panel and/or council staff at different stages in that  
11 process would be followed. So it is somewhat unusual that  
12 there was a variation in that case.

13 And you talked earlier about looking at planning problems  
14 within the department, and I think you indicated it wasn't  
15 so much your concern about the quality of their decisions  
16 but their efficiency. Did you have any reason to doubt  
17 that the decision that had been made by the council  
18 officers was a reasonable one?---No, I mean that all  
19 occurred prior to my time in the position. But, to the  
20 extent that I've been briefed around that and read  
21 material about that, I was satisfied that the assessment  
22 that was made by staff at different stages in that process  
23 was demonstrably credible and of a quality that I would  
24 expect.

25 MS HARRIS: So you were briefed in relation to C219?---Sorry,  
26 I didn't hear that.

27 You were briefed in relation to C219?---No, I was not.

28 When did you first come to know about that matter?---That was  
29 when The Age articles were published. So again in that

1           October/November 2018 period. Really the two matters,  
2           there was the H3 intersection, Hall Road, Wolfdene/Dacland  
3           scenario, and the C219. Those two issues came to my  
4           attention at that time, and I familiarised myself with  
5           them.

6   And what did you understand John Woodman's involvement to be in  
7           the C219 issue?---I understood that at different times he  
8           historically - again prior to my time in the role, he had  
9           acted for the proponent who was leading that rezoning  
10          request, but that that relationship, that engagement had  
11          ceased.

12   I think it was during your time that the minister wrote to  
13          council to indicate he would defer his decision; is that  
14          correct?---That's correct. I think that was in November  
15          2018, yes.

16   I think that was October?---October, was it? Yes.

17   Did you have any part in formulating a response or in any way  
18          engaging with the minister's office about that  
19          issue?---I don't recall doing that, but I do recall that  
20          there was pressure being applied from some councillors to  
21          encourage the minister to make a decision which would  
22          accord with their preferred outcome. So there may have  
23          been some correspondence. I just don't recall.

24   Which councillors were they?---The main councillors that were  
25          pushing for that I think were Councillor Ablett and  
26          Councillor Rowe was one of the others that I recall being  
27          keen on that as well. But they had the majority support  
28          on council. So I don't respond to individual councillor's  
29          requirements. They only have power as they come together

1 as a whole to make decisions, and certainly you appreciate  
2 what their decision or position was on that issue.

3 Would it be usual for a CEO to become involved in a matter like  
4 the C219 once the minister had written to council?---My  
5 role is to represent the position of the council. So if  
6 I'm instructed by the councillors as a whole to take a  
7 position or to advocate for a particular position, and we  
8 do that on dozens of issues all the time, then that's my  
9 obligation to fulfil that.

10 Did you receive those instructions in relation to  
11 C219?---I don't recall.

12 Have you had any engagement with any stakeholders to that  
13 application, and I mean obviously external stakeholders to  
14 the council?---Yes.

15 Who?---Mr Kenessey from - who was formerly an employee of  
16 Leightons and I think now is - I understand now is a  
17 consultant to the successor company to Leightons.

18 And what was the nature of Mr Kenessey's contact with you about  
19 C219?---That was mostly in the context of a State  
20 Government program which was funding the development of a  
21 range of community hospitals across I think 10 sites in  
22 Victoria. One of the sites that had been chosen was  
23 Cranbourne, and we now know that's in the first tranche of  
24 investments that the State is going to make and that was  
25 something between a 70 and \$100 million investment. So  
26 that's very welcome for a growing community. And we were  
27 invited by the State Government to propose or be involved  
28 in proposing or making an assessment of proposed sites for  
29 that facility at Cranbourne, which we did. So we engaged

1 Urbis to do some work for us. I think they assessed  
2 around seven or eight sites, and the site that's being  
3 referenced here was one of those, that a portion of that  
4 land could be used for that particular purpose. So that  
5 was one point of contact with Mr Hennessy around that -  
6 Kenessey around that issue.

7 COMMISSIONER: Kenessey?---Kenessey, isn't it?

8 Yes?---Kenessey, sorry, around that issue.

9 MS HARRIS: Was that the only contact you had with him, around  
10 that issue?---Yes, I believe so. I think I also saw him  
11 at developer forums. So three times a year we run forums  
12 where we bring together all the key developers with our  
13 key sort of planning, engineering and senior staff just to  
14 really update them on what we are doing and the amendments  
15 we are doing and things like that to improve our service  
16 delivery, and sometimes he would attend those as well. So  
17 I do recall speaking to him at those functions.

18 Did you have any involvement with the resident group or  
19 community group known as SCWRAG?---No, I didn't have any  
20 involvement with them at all.

21 No communication directed to you from them?---There might have  
22 been communication directed to me, but I get literally  
23 hundreds of emails and letters a day sent to me. That  
24 doesn't mean that I see all of those, but I don't recall  
25 receiving anything and I certainly don't recall - I didn't  
26 meet with them and I don't recall responding to anything  
27 from that group either.

28 Returning to Mr Woodman, did you observe him spending time at  
29 council offices?---No, quite the opposite. My observation

1 was that Mr Woodman had virtually no contact with staff  
2 from the time I commenced to this day.

3 Are you aware of him having friendships with any  
4 councillors?---Yes, through some of the general matters  
5 that have been aired through this hearing process.

6 Do I take that to mean through the media?---Yes.

7 Was that the first time you were made aware that Mr Woodman had  
8 friendships with councillors?---Yes.

9 COMMISSIONER: Just to be clear about that, does that mean that  
10 those councillors who declared a conflict of interest  
11 because of some linkage to Mr Woodman or Wolfdene did not  
12 reveal in that declaration the nature of that  
13 conflict?---My understanding of those declarations was, as  
14 I mentioned earlier, that they either related to electoral  
15 donations at either state or local government elections or  
16 in relation to candidacy, which doesn't relate to  
17 Mr Woodman. So, yes, that was the nature of it. The  
18 question that was posed to me was was I aware of a  
19 friendship. The answer is, no, I was not. That wasn't  
20 declared at any stage.

21 But you were aware then of when Mr Woodman or one of his -  
22 Watsons contributed by way of a campaign donation?---Yes,  
23 I was aware of that.

24 MS HARRIS: Did anyone within council raise concerns with you  
25 about Mr Woodman's relationship with any  
26 councillors?---No.

27 It's become apparent during the course of this investigation  
28 that Mr Woodman had business relationships or consultancy  
29 agreements with some councillors. Do you know about

1 that?---All I know about that is in general terms what  
2 I have read in the media. As I say, I'm not seeking that  
3 out given the constraints that exist upon me as a witness  
4 to this hearing. But, yes, that's the extent of my  
5 knowledge, is what's been aired in the public realm around  
6 those matters.

7 If a councillor was to engage in a financial arrangement with  
8 somebody like Mr Woodman, would you expect them to declare  
9 that as a conflict of interest?---Of course, yes,  
10 absolutely.

11 Would you consider that to be an inappropriate  
12 relationship?---Well, I'm not sure of the nature of what  
13 you are referring to there.

14 COMMISSIONER: Do you mean by definition that a business  
15 relationship would be inappropriate?

16 MS HARRIS: That it would be inappropriate for a councillor to  
17 engage in a business relationship with somebody that had  
18 matters before council?---I wouldn't accept the premise  
19 that that's necessarily inappropriate. You would have to  
20 delve into the detail of what the nature of that  
21 relationship is, and also if it's declared appropriately  
22 and people take appropriate action around the declaration  
23 then there may not be necessarily a problem with that.

24 Since the IBAC investigation commenced has anybody or any  
25 councillor come forward to you to declare a conflict of  
26 interest with Mr Woodman; that is, a new conflict that you  
27 weren't aware of?---I don't believe so, no.

28 COMMISSIONER: So, again, if I could take you for a moment to  
29 the monitor's report, according to the monitor the

1 responses of all of the councillors was indignation about  
2 where the Commission was at and that they had done nothing  
3 wrong. Is that the overall feedback you got from  
4 councillors?---Yes, in the main I think there was a view  
5 amongst the broader group that there was two amongst their  
6 number that had a case to answer and that if those two  
7 were dealt with or excised from the group in some way that  
8 the remaining nine should be allowed to continue to serve.

9 And were you aware of any facts which enabled you to say that  
10 that view by a significant number of the remainder of the  
11 councillors was plainly wrong?---It's not really my role  
12 to form a view around that, but I can tell you that we  
13 have had endless conversations through this November to  
14 January period with our elected members trying to get them  
15 to view this matter objectively and impartially and to  
16 respond accordingly, sometimes with success and sometimes  
17 not.

18 You didn't view it as part of your responsibilities to explore  
19 with the councillors other than the two that they were  
20 referring to that should be excised - you didn't regard it  
21 as part of your responsibility to explore with them  
22 whether or not there were any declared or undeclared  
23 conflicts of interest which should have resulted in them  
24 not participating in particular motions?---I don't have  
25 any powers to do that, firstly, formally. My second point  
26 would be that we had had lots of earlier, as I said,  
27 ongoing awareness raising around those matters and the  
28 councillors sort of got to a stage where they weren't  
29 really listening around these matters and had their view

1 about how they wished to proceed in terms of preserving  
2 their tenure in office. So that was my position.

3 So I think you indicated earlier ultimately it's a matter for  
4 them?---Correct, yes.

5 MS HARRIS: Was it ever suggested to you by a councillor that  
6 the Woodmans, that is Heath and John, weren't treated the  
7 same as everyone else amongst the council; that is, either  
8 they received preferential treatment or they were unfairly  
9 treated?---I think there was a view amongst some senior  
10 planning staff in the organisation that historically that  
11 might well have been the case, that there was a sense that  
12 they were well - you know, well looked after.

13 That is that the interests of the Woodmans were looked  
14 after?---Yes.

15 Did any councillor have a conversation with you along the lines  
16 of the Woodmans not being treated equally?---As in do you  
17 mean they were being discriminated against or - - -

18 Or that they weren't being treated the same as everyone else,  
19 either that they were being discriminated against or they  
20 were receiving preferential treatment?---I don't recall  
21 councillors specifically referencing that, no. It was  
22 more a view, I think, just a feeling that senior staff  
23 had, given historic patterns of decision making around  
24 applications relating to those - to that person.

25 We have heard evidence that there were financial arrangements  
26 between Mr Woodman and two councillors in particular, that  
27 is that he paid money to them and in one particular case a  
28 councillor paid money to Mr Woodman. Are you aware of  
29 those allegations?---I am, yes.

1 Did that come as a surprise to you?---Yes, I was shocked,  
2 probably devastated for the organisation, really, and  
3 appalled I think as well.

4 In relation to Mr Aziz, to the best of your knowledge, he's not  
5 declared a conflict of interest to Mr Woodman, has  
6 he?---No, that's my understanding; he has not.

7 And the nature of the declaration or declarations made by  
8 Mr Ablett wouldn't cover the receipt of money from  
9 Mr Woodman, would it?---I don't believe so, no.

10 Have you ever had any financial involvement yourself with  
11 Mr Woodman or any of his entities?---Yes, I have.

12 Can you tell us about that?---A purely private matter, but in  
13 2017 my wife and I did a two-lot subdivision in Mount  
14 Eliza, which is our principal place of residence. We  
15 still live there to this day. We engaged Watsons, which  
16 was our local land development consultancy, to undertake a  
17 planning assessment and planning report to support our  
18 application to Mornington Peninsula Shire Council in  
19 relation to that two-lot subdivision.

20 And what was the cost of that service?---I think we paid  
21 around - I have furnished all these documents to my legal  
22 team and I mentioned the Commission has these documents,  
23 but my recollection was it was around 15 or \$16,000.

24 Was that association between you and Watsons something that you  
25 were then required to declare as a conflict of  
26 interest?---No.

27 Why is that?---It's too remote. This was a matter that  
28 concluded before I even commenced at the City of Casey,  
29 and my contact and use of Watsons did not come through

1 Mr Woodman. I didn't even know him at that stage. I was  
2 referred to a senior planner under the recommendation of a  
3 former Watsons employee who we used, and that was the way  
4 that I connected into the company.

5 Who from Watsons were you dealing with?---A woman by the name  
6 of Caitlin Nash.

7 COMMISSIONER: Whilst you were the CEO of Casey you had no  
8 contractual arrangements of any sort with Watsons or  
9 Mr Woodman?---None at all. We commenced the planning  
10 process in early 2018, and it was concluded well before  
11 I commenced at Casey. There was some implementation of  
12 conditions, but, yes, there was no further involvement  
13 and, as I say, it was completely separate from Mr Woodman.

14 MS HARRIS: Mr Commissioner, would that be an appropriate time  
15 for an afternoon break?

16 COMMISSIONER: Yes, we'll have a break for 10 minutes,  
17 Mr Patterson. You are welcome to leave the building if  
18 you want. We will see you back here at 25 to four.

19 (Short adjournment.)

20 COMMISSIONER: We took a bit longer than we intended. We might  
21 just sit on a little after quarter past 4 then.

22 MS HARRIS: Returning to the relationship Mr Woodman had with  
23 councillors, were you advised or briefed that Mr Woodman  
24 had a relationship or a close relationship with any  
25 particular councillor?---No.

26 That didn't form part of your conversations when you were first  
27 speaking with people when you first started?---No.

28 Did you become aware other than through the IBAC hearing that  
29 Mr Ablett, for example, had a close association with

1 Mr Woodman?---Not really, no. As I say, he referred me to  
2 that - requested that I meet with Mr Woodman. So  
3 I appreciated there was some form of relationship there.  
4 But beyond just that of a normal sort of  
5 developer/councillor relationship in the normal course of  
6 things, no, I wasn't aware of anything beyond that.  
7 No-one made any suggestion to you that they were particularly  
8 friendly?---No, definitely not.  
9 Could we show the witness the document at page 4819, please.  
10 Is this a summary of your notes? If we just scroll down.  
11 I appreciate some of it has been redacted. Quite a lot of  
12 it has been redacted. Can we keep going, please? Are  
13 they your notes of meeting with Ms de Kretser?---Yes, they  
14 are.  
15 And if we scroll down, please, and we just stop there. Just  
16 further, if we can keep going, please, just to give  
17 Mr Patterson the opportunity to familiarise himself. If  
18 we can stop there, in relation to the hand-over note from  
19 Steve Dalton it refers to Geoff being very close to John  
20 Woodman, Megan Schutz, that they have Geoff's ear, and it  
21 goes on then to explain that Ms Schutz is quite  
22 aggressive, has named under-performing staff?---Yes.  
23 It would seem that Mr Dalton suggested that Mr Ablett was quite  
24 close with Mr Woodman?---Yes, I didn't recall that.  
25 Certainly there was no reference in the written notes that  
26 I gave. These are my notes from a conversation with  
27 Mr Dalton I imagine on 12 September. I didn't recall him  
28 talking about that relationship, but do observe that that  
29 was stated, yes, and they are my notes.

1 Reading that now, does that prompt any recollection of what he  
2 said about that relationship?---Yes, well, the notes there  
3 reflected that they are close to Woodman and Schutz, or he  
4 was, Councillor Ablett, yes.

5 Did he then, Mr Dalton, elaborate further on what that  
6 meant?---No, I touch type. So I take fairly comprehensive  
7 notes when people are talking to me. So I would imagine  
8 that was the full extent of the observation made.

9 Can you recall if he gave any examples of their close  
10 association?---No, he didn't. As I say, the focus of that  
11 was really more on I suppose the way in which they engage  
12 with the organisation, their manner, both Woodman and  
13 Schutz. But, no, there was no elaboration. As I say  
14 those notes are quite comprehensive.

15 The reference to "Geoff very close to John Woodman, Megan  
16 Schutz may have Geoff's ear", that's not so much a comment  
17 about their engagement, is it, as to their  
18 relationship?---It talks about their relationship, yes.  
19 But as I say no elaboration was made to me on that.

20 All right. Can we keep scrolling down, please. If we can just  
21 hold it there for a moment. I will give you an  
22 opportunity to read that. It would seem that Mr Fitchett  
23 also describes Geoff as very close to Wolfdene, Brompton  
24 Lodge?---Yes.

25 What did you take that to mean?---I didn't interpret any  
26 meaning into that at the time. As I say, there's a lot to  
27 take in when you have just started in a role and  
28 councillors have extensive relationships with all sorts of  
29 stakeholders and communities. It was just I think one to

1 be, you know, aware of. I think that was the nature of  
2 it.

3 Did you ask questions about it?---I don't recall doing that,  
4 no.

5 And then if we can keep going. Can we stop there. Does that  
6 refer to your meeting with Mr Ablett, does it?---It does,  
7 yes.

8 He doesn't refer to a particular close association with  
9 Mr Woodman?---I haven't read all of that but, no, I don't  
10 think he does. No.

11 I tender that document, Commissioner. It commences at - - -

12 COMMISSIONER: Before we move off it, would you mind going back  
13 to the very first unredacted piece under the heading,  
14 "Holly de Kretser". Now, is that your note,  
15 Mr Patterson?---These are all my notes, Mr Commissioner.

16 So are these your opinions of the various councillors?---No,  
17 these are verbatim comments from the people with whom  
18 I was engaging. So this is a summary of all the internal  
19 staff that I met with. So all of those words would be  
20 words uttered by the people with whom I was meeting.

21 They are not your opinions?---No, no.

22 They are opinions that have been given to you?---It is, yes.

23 Correct.

24 Without unnecessarily dwelling on any particular part of those  
25 descriptions, some of them are quite troubling, aren't  
26 they, in terms of if you were wanting to make any  
27 assessment about whether particular councillors could  
28 discharge their functions properly?---Yes, they are. But  
29 again that's not something over which I have any control

1 or jurisdiction. But, yes.

2 Tell me exhaustively what is open to you to do as CEO if you  
3 see a councillor that is being non-compliant with the  
4 councillor's code of conduct?---Well, there's a number of  
5 avenues. It depends on the nature of the issue. But at  
6 the first instance there can be a reference off to a  
7 councillor code of conduct panel. So that's one option,  
8 to contact the Local Government Inspectorate and to have  
9 that matter reviewed. So that's certainly - probably the  
10 most likely option in that scenario, yes.

11 And more draconian, what other options?---Depending on the  
12 nature of it, if it's, you know, gross or - serious or  
13 gross misconduct, as you know intimately - - -

14 You can refer it to IBAC?---Correct, IBAC, the ombudsman, other  
15 integrity authorities. But I think to your initial  
16 question my answer would be off to either a councillor  
17 code of conduct panel constituting that or having a  
18 conversation with Local Government Victoria to seek their  
19 advice on what other options might be available. But the  
20 code of conduct in itself is not reportable and it's not  
21 enforceable in that sense to any great extent outside that  
22 quite complex and long-winded process.

23 So I just want to see whether we can put your position in its  
24 right perspective. For you to complain in any way, raise  
25 an allegation about councillor misconduct, there are  
26 plainly political risks for you in doing so in that you  
27 are at the behest of the council. If they don't like what  
28 you are doing, you lose your job; that's plainly a risk  
29 that CEOs are conscious of?---Yes, I'm conscious of that.

1 But that doesn't stand in the way of my - you know, doing  
2 the right thing. So if I were to see something that  
3 I think, you know, in my opinion justified that sort of a  
4 referral then, whether it's a protected disclosure  
5 arrangement or other avenue, I certainly wouldn't hesitate  
6 taking that option. But I think the first - to use an  
7 example, the first time that I became aware of what  
8 I would consider to be corrupt conduct in relation to  
9 evidence that's been provided before this hearing, I made  
10 contact with IBAC, which was probably in about October  
11 last year. So when I hear things directly like that  
12 I don't hesitate to actually take up - take that up.  
13 Because if we just look at what we have covered this afternoon,  
14 you have got the ombudsman's report, you have The Age  
15 article, you have Mr Ablett making a special effort to  
16 introduce you to Mr Woodman, you have these numerous  
17 conversations with staff and sources of information  
18 suggesting that there might be an inappropriate  
19 relationship or favouritism; none of that was sufficient  
20 from your perspective to do anything?---No. As I said,  
21 I think some of those comments in there don't necessarily  
22 constitute impropriety or improper conduct. It is simply  
23 saying they are close. But it's to appreciate that  
24 councillors are close to lots of members of the community.  
25 There's all sorts of groups and other interest groups that  
26 they are close to. So that in itself doesn't mean a lot.  
27 It's what flows from that. I think that's the significant  
28 thing.  
29 Yes?---In relation to the other matters, The Age articles, the

1 previous ombudsman's report, you know, my sense was to  
2 make sure I got across those issues. So the two issues  
3 for me in my time were the H3 intersection, Hall Road, and  
4 the C219. So my obligation was to make sure we prosecuted  
5 those two decision-making processes impartially, fairly  
6 and appropriately, and I can go into more detail about  
7 that. But I was satisfied with that. So again I didn't  
8 see - have any visibility of any evidence that would  
9 constitute improper conduct or likely corruption through  
10 either of those processes.

11 Are you going to pursue H3 with Mr Patterson?

12 MS HARRIS: I will, Commissioner. If I could just pursue  
13 something that you just said, though, Mr Patterson. It  
14 may not have caused you some concern around corrupt  
15 conduct, but by November 2018, as the Commissioner has  
16 indicated, there were two Age articles, there was the VO  
17 report and the briefings that we have seen in your file  
18 note. Did none of that cause you any concern about the  
19 nature of the relationship between Mr Ablett and  
20 Mr Woodman?---Again I just reiterate there was no evidence  
21 available to me between - in terms of the relationship  
22 between Councillor Ablett and Mr Woodman. Certainly with  
23 evidence that's been produced through this hearing process  
24 subsequent to that it appears there was a whole lot of  
25 other things occurring, but none of that was visible to me  
26 at that time nor to any of the people in my organisation  
27 that I spoke to. The extent of it was that there was a  
28 close relationship and, you know, nothing more than that.  
29 I couldn't - I had no visibility of any of the evidence

1 that's been produced here over the last part of the  
2 hearing.

3 Why did it not cause you to engage with Mr Ablett one-on-one to  
4 enquire more about the nature of the relationship with  
5 Mr Woodman?---I wouldn't have had confidence that I would  
6 probably get the full story from that, and again I didn't  
7 have anything that would be a catalyst to me doing that,  
8 that was actually, you know, suspected corrupt conduct.  
9 That just wasn't evident to me or to the organisation.

10 But what if it didn't hit the threshold of suspected corrupt  
11 conduct; it was just something that concerned you? Given  
12 the allegations made in The Age article, did you not  
13 consider that would be enough to engage with  
14 Mr Ablett?---No, I did not, no.

15 With those matters combined, the VO's report, The Age articles,  
16 you didn't consider that there were any issues that you  
17 should address around - from a governance perspective  
18 around transparency and integrity?---As I say, we had a  
19 robust governance system in place. We do an annual check  
20 of that. They are fully compliant. So we were meeting  
21 all our statutory obligations and that's really my  
22 obligation, is to ensure that to the fullest extent that  
23 we have to according to law that we have all those  
24 arrangements in place, and we had assurance through that  
25 review process that that was the case.

26 You didn't think that good governance would suggest you should  
27 engage one-on-one with Mr Ablett?---I'm not sure what the  
28 prompt to that would have been.

29 The Age article?---Well, again, a series of allegations made,

1 but I didn't see that as constituting a catalyst for that  
2 sort of conversation.

3 You didn't want to satisfy yourself as to the strength of those  
4 allegations?---I didn't think it was a necessary prompt  
5 for me to do that with Councillor Ablett, no.

6 Do you still think that in hindsight?---Yes, I do.

7 I tender the document, Commissioner. It's dated 13 September.

8 COMMISSIONER: Yes. Is there a date?

9 MS HARRIS: 13 September 2018.

10 COMMISSIONER: Are these all notes of that date?

11 MS HARRIS: No, sir. The dates vary depending on the  
12 conversation with the particular person, as I understand  
13 it. But the actual document is dated 13 September.

14 COMMISSIONER: Are these all conversations with staff that you  
15 had recorded?---That document was, yes; correct. Not all  
16 of that date, though. That was over a number of weeks,  
17 possibly even a couple of months.

18 They cover a period of time. Thank you. What's the date  
19 again? 13th of?

20 MS HARRIS: September 2018.

21 COMMISSIONER: Thank you . Mr Patterson's notes of  
22 conversations over time with staff commencing 13 September  
23 2018, 143.

24 MR WOINARSKI: May we just raise one matter in relation to  
25 that?

26 COMMISSIONER: Yes.

27 MR WOINARSKI: A large amount of that has been redacted,  
28 Mr Commissioner.

29 COMMISSIONER: Yes.

1 MR WOINARSKI: I'm conscious that what's there is the  
2 expression by one or other persons of certain things to  
3 Mr Patterson, not Mr Patterson's own thoughts. But if  
4 what was happening yesterday when I was watching the  
5 evidence the document has not been shown on the screen,  
6 I would ask that consideration be given so far as the  
7 author of the content of the - no, so far as the person  
8 who has provided the information is concerned to the whole  
9 of the document being redacted so far as the public are  
10 concerned. It seems to us that it would be inappropriate  
11 for that to become public, given that particular person is  
12 expressing a view in those circumstances to the  
13 incoming - - -

14 COMMISSIONER: I'm sorry, I hadn't appreciated, Mr Woinarski.  
15 You say that the name at the top of each notation is an  
16 indication of who's providing the information?

17 MR WOINARSKI: As I understand it, and the witness can correct  
18 me if I'm wrong.

19 COMMISSIONER: I'll treat that exhibit as not for publication,  
20 Mr Woinarski.

21 MR WOINARSKI: Thank you, sir.

22 #EXHIBIT 143 - (Not for publication) Mr Patterson's notes of  
23 conversations over time with staff commencing 13 September  
24 2018.

25 MS HARRIS: In relation to the meeting you had with Mr Woodman  
26 on 7 January, to the best of your knowledge did Mr Wyatt  
27 have any involvement in arranging that?---No, my office  
28 arranged that meeting.

29 Your office arranged it?---Yes, my assistant, my support staff

1 arranged the meeting.

2 And I just want to clarify something you said earlier just to  
3 make sure I understood you correctly. When you were  
4 provided with a briefing you weren't provided with any  
5 information around - concerns around Wolfdene's behaviour  
6 or representatives from Wolfdene's behaviour; is that  
7 correct?---That was in the written material, that's  
8 correct, yes.

9 Sorry, are you agreeing with me that you weren't provided with  
10 any briefing material or that - - -?---My recollection is  
11 that in the written material that I was given upon or just  
12 prior to my commencement there wasn't - apart from the ban  
13 that had been placed on Mr Woodman, that was the extent of  
14 the concern around that particular development and his  
15 associates.

16 Nothing to do with Wolfdene?---I don't recall that, no.

17 Could we bring up page 4828, please? Was this the cover of the  
18 written briefing you were referring to earlier?---I don't  
19 recall, but I imagine so, yes.

20 If we just scroll down and indicate that significant parts of  
21 this document have also been redacted. If we could go to  
22 4832, please? You might need to make that a bit bigger.  
23 Does that refresh your memory?---As I say, that to me  
24 relates to the behaviour which - I don't recall that  
25 particular paragraph, but that's consistent with what  
26 I was saying previously, that there was Woodman and his  
27 associates in Wolfdene and their relationship with the  
28 organisation was very stressed as a result of the stance  
29 they took and the way they approached that from a

1 behavioural point of view which I think is consistent with  
2 that statement there.

3 So earlier when you were indicating about Ms Schutz's behaviour  
4 and Mr Woodman's behaviour, you also were referring to any  
5 allegation around Wolfdene?---I was specifically talking  
6 about Mr Woodman and Ms Schutz. But, yes, there's some  
7 relationship clearly with Wolfdene as well.

8 When you commenced with the council in September 2018 the  
9 matter of the H3 intersection came before council the  
10 following day; is that correct?---That's correct, yes.

11 Were you briefed on that matter beforehand?---I don't recall  
12 being briefed on that, no.

13 Sorry, I should pause there, Commissioner, and tender that  
14 document. I'm sorry.

15 COMMISSIONER: That's the confidential briefing to the CEO. Is  
16 there a date on that, Ms Harris?

17 MS HARRIS: It's undated, sir.

18 COMMISSIONER: Undated. Yes, Mr Woinarski?

19 MR WOINARSKI: I haven't had a chance to see all the unredacted  
20 parts of that document, Mr Commissioner, but we would make  
21 a similar application in relation to that document. I am  
22 just not in a position to say sufficiently - - -

23 COMMISSIONER: Do you mind bringing it up again for a moment,  
24 please? What part of it, Mr Woinarski, do you think  
25 warrants treating it confidentially?

26 MR WOINARSKI: I can't say how much of it has or has not been  
27 redacted. Certainly the passage that we were just taken  
28 to I would not make an application with respect of,  
29 because I don't think there's any potential problem there.

1 COMMISSIONER: Yes.

2 MR WOINARSKI: But I don't know what else is in it that's  
3 unredacted.

4 MS HARRIS: I can indicate, sir, I can provide a copy of that  
5 to my learned friend.

6 COMMISSIONER: Yes.

7 MS HARRIS: I suspect that the same application will be made in  
8 relation to this document.

9 COMMISSIONER: Look, as presently advised I don't see anything  
10 there that needs to be made confidential. But out of an  
11 abundance of caution I will direct that it shouldn't be  
12 published. I understand Mr Patterson will have to come  
13 back tomorrow morning, and we can revisit the matter first  
14 thing tomorrow morning.

15 MR WOINARSKI: I'm grateful to you, sir.

16 COMMISSIONER: Very good. That will be exhibit 144, presently  
17 not for publication.

18 #EXHIBIT 144 - (Not for publication) Confidential briefing to  
19 the CEO, undated.

20 MS HARRIS: Thank you, Commissioner. The issue of the H3  
21 intersection, did you attend the council meeting on  
22 18 September 2018?---Yes, I did.

23 What did you know about the status of the H3 matter prior to  
24 attending the council meeting?---My recollection is I had  
25 been made broadly aware of the issue, without being across  
26 the specifics at that meeting on 18 September.

27 And how did you become informed of the issues broadly?---After  
28 the meeting, because it was testy in terms of the  
29 relationship between some of the councillors, it was a

1 strong debate and there was - I was curious about the  
2 nature of what was sitting behind that. So I ensured that  
3 following that meeting I got a thorough briefing on who  
4 was aligned to whom and who was pushing for what  
5 particular outcome and what the nature of the issue was in  
6 great detail. So I appraised myself of that subsequent to  
7 that meeting.

8 Who provided that briefing?---It was senior planners. I think  
9 it was my manager of planning services, planning and  
10 building services.

11 Were you told about what the position of council  
12 officers - what the position of the council officers  
13 was?---Yes, yes.

14 What was that?---Well, under a secondary consent Dacland had  
15 actually submitted an application to defer construction of  
16 that particular intersection, and the council officers -  
17 which was inconsistent or different or a variation from  
18 what was proposed in the precinct structure plan, and the  
19 council officers' recommendation to the council was that  
20 that application for deferral or rephasing of that should  
21 be supported, but that wasn't a position taken by the  
22 councillors.

23 COMMISSIONER: Sorry, that was not?---Was not, no.

24 MS HARRIS: There was a rescission motion on that night; is  
25 that correct?---Yes, I believe so.

26 There was some discussion during that meeting about obtaining  
27 legal advice in relation to that motion?---Yes.

28 Were you provided with that legal advice?---No.

29 COMMISSIONER: Sorry, there was reference made by the person

1           who moved the motion for rescission, that's Mr Aziz, was  
2           it not?

3 MS HARRIS: Yes, sir.

4 COMMISSIONER: He made reference in the course of his  
5           submission to having legal advice.

6 MS HARRIS: In relation to the - - -

7 COMMISSIONER: Is that what you are referring to?

8 MS HARRIS: Yes, in relation to the lawfulness of the motion  
9           passed on 4 September. Is that your  
10          understanding?---That's my understanding, yes. Certainly  
11          he made reference to that.

12 When council acquires legal advice in that way in relation to a  
13          matter like this, the legality of a motion passed, who  
14          actually acquires that information - that legal  
15          advice?---It varies. It depends on who's managing the  
16          issue through the council decision-making process.

17 Who on this occasion acquired that advice?---I imagine it was  
18          one of our senior planners. I don't recall specifically  
19          who it was. But that wasn't the advice that Councillor  
20          Aziz was referring to.

21 COMMISSIONER: I may be mistaken, but wasn't Councillor Aziz  
22          referring to advice that he had been given, not the  
23          council, that he had been given - - -

24 MS HARRIS: My understanding was that there was advice referred  
25          to in the meeting of 4 September, and then there was legal  
26          advice sought about the lawfulness of the motion moved on  
27          4 September.

28 COMMISSIONER: I see.

29 MS HARRIS: And then that was referred to on 18 September.

1 COMMISSIONER: And the legal advice sought then was by the  
2 council, was it?

3 MS HARRIS: Yes, and that's my question to the witness.

4 COMMISSIONER: That doesn't accord with your  
5 recollection?---Well, 4 September obviously was before  
6 I arrived. But certainly there was a briefing of the  
7 councillors on the night of 18 September prior to the  
8 council meeting, and a barrister attended in order to  
9 speak to his advice, and that was the advice received by  
10 the council and that was obviously shared with and worked  
11 through with all the councillors prior to that decision  
12 being taken on the 18th.

13 MS HARRIS: Who was that barrister?---I can't remember his  
14 surname, but his first name is Ragu. I should be able to  
15 think of his surname, but I can't, sorry.

16 And you indicated there was a meeting prior to the council  
17 meeting?---Yes.

18 Who attended that meeting?---Well, all - I can't recall  
19 exactly, but certainly there was a number of senior staff  
20 there and all the councillors that were presenting or  
21 attending the meeting that evening would have attended  
22 also.

23 Were you there?---Yes.

24 Is it common to have a pre-council meeting meeting?---Yes.

25 At that meeting - - -

26 COMMISSIONER: Indeed, if I may interrupt, that's one of the  
27 criticisms the monitor makes of the process being followed  
28 at Casey?---Yes.

29 That there's a long agenda and the vast majority of items are

1        dealt with by the councillors before the council meeting  
2        and they are not part of the council meeting?---Yes. So  
3        just to clarify that, that's not a decision making body.  
4        So I do share the concern that it doesn't appear to be  
5        transparent and accountable, and certainly as of last  
6        night at our council meeting with our now interim  
7        administrator we have ceased that practice of en bloc  
8        decision making. It's a mechanism that's used by a number  
9        of councils and what it is - at Casey what we do we have  
10       30 minutes prior to the council meeting and it's really  
11       just working through the logistics and the operations of  
12       the evening. In relation to this particular aspect what  
13       happens is that councillors withdraw items that they  
14       either wish to amend or change the recommendation from  
15       officers or that they want to speak to, and then for the  
16       balance of items they just get passed in bulk in the  
17       council meeting. So just to clarify the half hour prior  
18       to the council meeting is not decision making, it's not  
19       agreeing what the decision will be. It's just agreeing on  
20       what's going to be withdrawn for debate or discussion and  
21       what's going to be allowed to be passed through without  
22       that occurring.

23      That's the current - - -?---That was the system that was in  
24       place there and, as I say, it's pretty common across local  
25       government. Now each of those items is considered  
26       separately in the council meeting as of last night's  
27       council meeting. We made a number of changes, and that's  
28       one of them.

29      Even if no-one wishes to debate the motion at all?---Correct,

1           yes.

2   And it's unanimously agreed to?---Correct, correct. So it's  
3           really just an efficiency measure. But I do appreciate  
4           that community perception may be that there's some sense  
5           that there's some prearranged or caucusing of decisions  
6           before they are made. That's not the case. But  
7           I understand that impression and that's why we have made a  
8           number of changes in conjunction with the administrator  
9           around the governance associated with the council meetings  
10          already and there's more to come. But that was one of the  
11          quick wins that we identified that we could do and that  
12          was in place for last night's council meeting.

13   Maybe just so it's clear for the record, with the administrator  
14          appointed, you and the staff continue to work as  
15          usual?---Yes, under the Act that appointed her for the  
16          next up to 90 days prior to a panel of administrators  
17          being appointed, she has the full authority, functions and  
18          role of the council in herself and, yes, we are working  
19          very collaboratively with her and able to institute a  
20          whole range of improvements around the council  
21          decision-making process as a result of the relationship we  
22          have forged with her.

23   MS HARRIS: The pre-council meeting, if I can term it that way,  
24          does that constitute an assembly of  
25          councillors?---I believe so, yes.

26   And in your experience with other councils is that common for  
27          there to be pre-council meetings?---Yes.

28   That happened in other councils, did it?---It's quite common  
29          across the sector, as I say not for determining decisions

1 or for any debate or councillors trying to influence  
2 colleagues about what they ought decide when they get into  
3 the chamber but more just working through the logistics of  
4 the meeting and to ensure that it's run smoothly as a  
5 result.

6 In relation to the H3 did you meet with any of the interested  
7 parties to that application?---No.

8 Did anyone speak to you on behalf of an interested party to  
9 that application?---I don't recall that happening so  
10 I don't believe so, no. I don't recall that.

11 Did you have any discussions with Mr Ablett about the H3  
12 intersection?---He was mayor at the time and I recall  
13 having a conversation with him about - because it was  
14 pre-state election and we were in advocacy mode and  
15 I recall having a conversation with him to advocate to  
16 both the government and the opposition about duplication  
17 works on Hall Road. So not specifically about the  
18 intersection but certainly advocating for funding from the  
19 State to complete duplication of the section of that road  
20 which was part of the road safety proposition that was  
21 being put forward, part of the argument in relation to the  
22 timing of construction of that intersection as well. I do  
23 recall that. I don't recall any other conversations with  
24 him about the intersection matter per se.

25 COMMISSIONER: Were you aware as a result of attending council  
26 meetings in late '18 that Mr Woodman or interests  
27 connected with Mr Woodman had an interest in H3?---I to  
28 this day don't know Mr Woodman's association with  
29 Woldene. But I certainly appreciate that at least his

1 son is one of the directors of that firm - sorry, of that  
2 company, and that Wolfdene was one of the parties to that  
3 particular issue along with Dacland.

4 And you knew that in late '18?---Yes, yes.

5 MS HARRIS: In fact Mr Ablett declared a conflict of interest  
6 to you in relation to the H3 intersection, didn't  
7 he?---I don't recall that detail. He may well have.

8 Could we pull up page 4602, please? If we just scroll down.

9 COMMISSIONER: Just move a little more slowly if you want  
10 Mr Patterson to digest these?---That's fine,  
11 Mr Commissioner.

12 MS HARRIS: That's him declaring a conflict of interest to you  
13 in relation to the H3?---Yes.

14 And if we just scroll up, sorry, the other way, you then  
15 forwarded on to Ms de Kretser; is that correct?---Yes.

16 Is that the usual course, that if a conflict of interest is  
17 declared to you you then forward it on to Ms de Kretser  
18 for recording?---Well, this is my second day in the  
19 office, in the role. This was the first time I had  
20 received a declaration in this form from a councillor. So  
21 my query there was to ask her, my manager of governance,  
22 how these had been treated historically. I hadn't been  
23 briefed on that. As I say, there's a variation council to  
24 council as to how they are acknowledged. What normally  
25 happens for councillors who submit their conflicts of  
26 interest declarations by email is that they would submit  
27 those to me and copy her into those so that, as  
28 I mentioned earlier, she can then provide advice around  
29 the correct classification and definition of that

1 conflict.

2 And is it then Ms de Kretser that arranges for it to be kept on  
3 the register?---Yes, her team does.

4 Was that training or guidance ultimately provided to you in  
5 terms of how to respond to these declarations?---In  
6 relation to that specific request?

7 Where it says, "I look forward to advice as to the terms in  
8 which you suggest I acknowledge it in future"?---Yes,  
9 I imagine it would have been, yes.

10 That was provided to you?---I assume so, yes. I don't recall  
11 specifically but, yes, I imagine it was.

12 I tender that, Commissioner.

13 COMMISSIONER: This is the email from Ms de Kretser,  
14 19 September, and Mr Ablett's - - -

15 MS HARRIS: It's an email from Mr Ablett, sir.

16 COMMISSIONER: That's what you want tendered, is it, of  
17 18 September?

18 MS HARRIS: Yes, sir.

19 COMMISSIONER: That will be exhibit 145, email from Mr Ablett  
20 to Mr Patterson of 18 September 2018.

21 #EXHIBIT 145 - Email from Mr Ablett to Mr Patterson of  
22 18 September 2018

23 MS HARRIS: The matter of the H3 came back before council on  
24 16 October 2018; is that correct?---I don't recall a date,  
25 but I do recall it coming back to council, yes.

26 And again Mr Ablett declared a conflict of interest to you in  
27 relation to that matter?---Again, I can't recall that  
28 detail.

29 I can show that to you. Page 4606, please. If we can just

1 scroll down, please. Stop there, thank you.

2 COMMISSIONER: It will be exhibit 146.

3 #EXHIBIT 146 - Page 4606.

4 MS HARRIS: Does that refresh your memory?---As I say, I get  
5 hundreds of emails a day and dozens of declarations a  
6 year. So I don't recall it. But certainly I accept the  
7 evidence that's before me here, yes.

8 If the witness could be played the call behind tab 184, please.

9 (Audio recording played to the Commission.)

10 MS HARRIS: If you can just go back up to page 1, please, and  
11 just stop there. In relation to line 8 you refer to there  
12 being no update, "Haven't heard anything. It's still  
13 working its way through." What were you expecting an  
14 update about?---My recollection is that we were trying to  
15 mediate a settlement or an agreement between Dacland and  
16 Wolfdene. The organisation had made an offer to the two  
17 parties, to Dacland and to Wolfdene or Mr Woodman or one  
18 of his representatives, to actually appoint someone the  
19 council was prepared to pay for to mediate a settlement as  
20 to the various contributions to the construction of that  
21 intersection. I think that was mostly to do with, without  
22 going into too much detail, the construction of culverts  
23 at that intersection and also bonding of works related to  
24 that. So it was to try and facilitate an agreement  
25 between the two parties to enable an agreed shared  
26 position to come back to the council meeting later that  
27 year, and certainly Councillor Ablett and I recall  
28 Councillor Stapledon, who I think around that time had  
29 just become mayor, I don't know the exact date of that

1 phone call, were keen to see us playing an active role to  
2 facilitate an agreement between the two parties in  
3 relation to the H3 intersection. So that's the reference  
4 there.

5 And just so you can place it in time the call is on 26 November  
6 2018. Who were you expecting that update from?---My  
7 staff.

8 If we can scroll down further now, please, down to paragraph  
9 20. Just stop there, thank you. Where you refer to,  
10 "Hopefully you'll know by mid-week there should" something  
11 "shaping up," was it your view that it was coming to a  
12 head and there could be information provided to you at  
13 that time; is that correct?---As I say, that's repeating  
14 what I said previously. The intent was to strike an  
15 agreement between the two parties to enable us to come  
16 back to the December - I think it was the first meeting in  
17 December council meeting to have the council hopefully  
18 sign off on that, which is ultimately what happened. But  
19 the attempts to mediate, and we actually offered and  
20 suggested particular people who could carry out that role,  
21 were rejected by Mr Woodman. But inevitably Dacland and  
22 Woldene/Woodman reached an agreement in any case by the  
23 time it got to that December council meeting. That's what  
24 that's referencing there, is getting the two parties to  
25 come to agreement on their relative contributions to the  
26 construction of that intersection.

27 Given the fact that Mr Ablett had declared on two occasions to  
28 you a conflict of interest in relation to this matter and  
29 he was not the mayor, why was it appropriate for you to be

1 discussing this with him?---Well, he still remains a  
2 councillor and he's query is to querying progress with  
3 progression of an issue. He's not seeking to influence an  
4 outcome. He's just seeking an update, and that's a  
5 legitimate enquiry, I think, that councillors can make of  
6 me.

7 You didn't see his conflict of interest to prohibit any  
8 involvement in the matter?---If councillors seek to  
9 influence or be involved or to try and shape my opinion or  
10 any other staff member's opinion, I would reject that sort  
11 of advance. What is seemingly occurring here is an update  
12 on how we are progressing with getting towards an  
13 agreement on that particular matter, and I think that's  
14 still relevant to be talking to the councillor about  
15 despite the conflict.

16 And did he express to you why in particular he was seeking an  
17 update?---No.

18 Did you wonder why he was seeking an update?---As I say, just  
19 putting the broader context, councillors have lots of  
20 contact with lots of community members about lots of  
21 issues. So the world of the CEO in local government  
22 involves daily conversations with councillors about all  
23 sorts of matters. This is but one of those. So they ask  
24 consistently, quite often off the back of an approach from  
25 a community member, sometimes out of their own interest  
26 they have got their own items that they are following up.  
27 It's very usual and a daily occurrence for me to get  
28 requests from councillors and for my senior staff to do so  
29 as well seeking updates on particular issues.

1 And in relation to this was it your understanding that

2 Mr Ablett was asking on behalf of anyone?---I didn't get  
3 that impression, no.

4 Would that be an appropriate time, sir?

5 COMMISSIONER: Yes, certainly. What's your rough estimate,  
6 Ms Harris, about how much longer you will be?

7 MS HARRIS: I wouldn't think it would take the entire morning,  
8 sir, but certainly some part of the morning.

9 COMMISSIONER: Very good. Have a good night, Mr Patterson, and  
10 we will see you here at 10 am tomorrow morning?---Yes.  
11 Good. Thank you.

12 <(THE WITNESS WITHDREW)

13 ADJOURNED UNTIL THURSDAY, 5 MARCH 2020 AT 10.00 AM

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