
TRANSCRIPT OF MORNING PROCEEDINGS

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INDEPENDENT BROAD-BASED ANTI-CORRUPTION COMMISSION

MELBOURNE

FRIDAY, 13 MARCH 2020

(22nd day of examinations)

BEFORE THE HONOURABLE ROBERT REDLICH QC

Counsel Assisting: Mr Michael Tovey QC
Ms Amber Harris
Mr Tam McLaughlin

OPERATION SANDON INVESTIGATION

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

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

1 <GARY JAMES ROWE, recalled:

2 COMMISSIONER: Good morning, Mr Rowe?---Good morning.

3 Yes, Ms Harris.

4 MS HARRIS: Thank you, Mr Commissioner.

5 <EXAMINED BY MS HARRIS, continued:

6 Mr Rowe, I just want to take you back to something you said
7 yesterday in relation to Mr Woodman, and that related to
8 the C219. You indicated that you weren't happy with the
9 processes that were being undertaken, and I asked you what
10 processes were they and you said, "The enabling motions to
11 enable the council to or the minister to consider the
12 possibility of rezoning." Do you recall giving that
13 evidence?---I do.

14 What's your understanding of what input Mr Woodman had in
15 relation to the motion that Mr Aziz moved in February
16 2014?---I have no knowledge of that at all. I was on
17 annual leave in Queensland when it occurred. So who
18 provided it, wrote it and what was in it I don't know.
19 And you were never informed of that subsequently?---No. In
20 fact - no.

21 If we could pull up that motion, please. It's page 1268.

22 I understand it's exhibit 152, Commissioner. I appreciate
23 you weren't there on the day, Mr Rowe, but if I could just
24 ask you - you can see that it was introduced as a matter
25 of urgent business?---Yes.

26 Would that be unusual in your view for a motion of this
27 nature?---Urgent business and in closed council is
28 extremely unusual.

29 Perhaps if we could deal with them separately?---Yes.

1 So just in relation to the urgent motion - sorry, the urgent
2 business?---Yes.

3 Would it be unusual for a matter of this nature to be
4 introduced in urgent business?---Yes.

5 Do you know why it was done that way?---I can only surmise.
6 I don't know their reason for doing it.

7 Was an explanation given to you?---No. I possibly didn't give
8 them, with my reaction, much of an opportunity to respond
9 to me. I was a bit angry.

10 COMMISSIONER: That's because it wasn't their
11 bailiwick?---Well, that and the method in which it was
12 done. I just don't understand it.

13 You subsequently then read the document?---I actually haven't
14 because I moved on from that as far as the process that
15 took place.

16 MS HARRIS: And you mentioned that it was conducted also in
17 closed council. Is there any reason why this motion would
18 have been moved in closed council?---I can't think of a
19 good one.

20 Does it fit the criteria for a closed council?---The criteria
21 for closed council would be financial considerations of
22 council, privacy of an individual and there are a couple
23 of others, but none of - a planning matter can take weeks,
24 months, talked about in open council. It's a planning
25 matter. It's not somebody's life and death.

26 And subsequently when it came before council following this
27 date it was done in open council; that's right, isn't
28 it?---Yes.

29 So you don't know why it was conducted in closed council?---No.

1 Do you know - and it may be that you don't because you weren't
2 there, but were councillors given notice that this matter
3 was going to be brought up in urgent business?---No,
4 because that's what urgent business is.

5 So there's no prior warning of that?---No prior warning at all.
6 And no documentation that would enable councillors to inform
7 themselves of the matter?---None whatsoever.

8 Information available to IBAC is that this motion was brought
9 up without prior engagement with the planning officers.

10 Would that be unusual, not to engage planning officers in
11 a matter involving planning matters?---Extremely.

12 COMMISSIONER: Who were the other councillors present at that
13 time, Ms Harris?

14 MS HARRIS: On that 4 February 2014 present was Councillors
15 Ablett, Aziz, Crestani, Morland, Serey, Smith, Berkelmans,
16 Kaplan, Rosario.

17 COMMISSIONER: So an unusual process, no supporting
18 documentation. How did it come about that the motion was
19 carried without any dissent?---Commissioner, I can't speak
20 for others. I don't know what was said in the meeting.

21 I don't know how compelling it was, and I don't know what
22 conversations took place before the meeting.

23 But you said you just moved on from that, but this set in train
24 a process which was then followed, didn't it?---As I said
25 to you, I hadn't read that motion. I subsequently moved a
26 motion in open council that council request it proceed,
27 the process be implemented.

28 So that in fact further advanced the objective of the first
29 motion?---It would have. But it was done in a different

1 way.

2 But did you not take any time to understand what was said at
3 that meeting, why the motion had been brought, who said
4 what? You didn't do any of that?---No, I did not.

5 Is that because you were so angry?---Yes, and I could do it
6 better. I would do it the right way.

7 MS HARRIS: As I understand your position, Mr Rowe, it wasn't
8 that you had any issue with an application to rezone; it
9 was the way it was done?---That's correct.

10 Thank you. I have finished with that document. I don't intend
11 to take you through all the times it's been before
12 council, Mr Rowe. There's been several. Perhaps you can
13 take it from me that, in about four and a bit years that
14 it was before council prior to the minister's letter in
15 October 2018, it came before council 12 times. Does that
16 sound about right?---For various reasons.

17 And you indicated in your evidence yesterday that looking at
18 the process you considered the matter to be unfolding as
19 you would expect it to, that is unfolding in the way you
20 would expect a matter of this type to unfold; is that
21 right?---Absolutely.

22 Excuse my very crude summary of it, but that is to say that at
23 various points in time there was a review by council of
24 the PSP?---There's two PSPs involved.

25 Yes?---One was a business - it was a commercial business
26 overlay on that particular land that had been in review,
27 and the PSP in general for Cranbourne West, and the
28 developable land was happening at the same time.

29 And there was consultation with relevant stakeholders?---Yes.

1 Was it publicly exhibited at some point in time?---It would be
2 normal practice for the officers to communicate that, and
3 I would assume that they did.

4 And at various times there were reports coming back to council
5 from council officers to inform council of the progress
6 and making recommendations about the next steps?---Yes,
7 there was.

8 At what point in time then do you say that Mr Woodman
9 interfered with the process in a way you didn't agree
10 with?---Perhaps it was disingenuous of me to blame him
11 solely, but it was - and I had no direct knowledge of what
12 he was doing. It was perhaps more Ms Schutz who was
13 dealing in that type of thing.

14 What do you mean by "that type of thing"?---Well, she's the
15 lawyer.

16 What do you mean by "that type of thing"?---Giving advice to
17 Aziz or whoever, I'm assuming. That is an assumption.
18 It's not based on my factual knowledge.

19 All right. But what point in the process did you become
20 unhappy with how it was unfolding?---Late - later in -
21 after in - so what are we talking about? 2016. It would
22 be 2017, 2018, some of the things that were happening
23 didn't need to happen.

24 Okay. I just want to stop you there because I want to ask you
25 about those "things"?---Those things.

26 What are those things that were happening?---Well, not to do
27 with C219. It was behaviour of Wolfdene and Ms Schutz in
28 relation - and I can't for the life of me think of the
29 name of the estate, but it's in Clyde North, in Clyde, and

1 it's Pattersons Road, I recall Pattersons Road, because
2 that was the problematic - that had occurred. There was
3 some land that had been developed by the Clarkson family
4 and they had established Blue Hills Rise retirement
5 village, a shopping centre, had done the works under their
6 permit, and there was an obligation on them to complete
7 certain works to progress further.

8 I just want to stop you there. Does this have anything to do
9 with the C219?---No, it didn't. But this is where it
10 started - their actions were impacting on a whole lot
11 of - not the Clarkson family. The land on the other side
12 of the railway line was owned by Wolfdene.

13 And was this impacting on C219?---It was impacting on the mood
14 of council officers and how the council officers were
15 being disparaged, the way that certain people were being
16 spoken to. But that was impacting on C219.

17 How?---Because the officers were of the opinion that everything
18 was linked.

19 COMMISSIONER: Everything was what?---Everything was linked.
20 Like, Woodman, Schutz, Wolfdene was all linked to C219,
21 and it wasn't.

22 MS HARRIS: So what was the flow-on effect then for
23 C219?---Just the slowing down of things, the fact that
24 there were distractions that we didn't need to have.

25 Being the interactions - - -

26 COMMISSIONER: Mr Rowe, as I understand the politics of the
27 council, the council officers were opposed to the
28 rezoning, were they not?---Of 219?

29 Yes?---Not all of them, no.

1 The formal position of the planning section through their
2 reports was opposition to C219?---It was.
3 And that remained so throughout the entirety of the council
4 considering the rezoning, did it not?---I disagree with
5 that.
6 They changed their position, did they?---Well, certainly Peter
7 Fitchett, the director of planning, Kathryn Seirlis,
8 senior planner, and various other planners came to agree
9 with the reasons why it should at least be put out there
10 and allow the process to occur to see what the outcome
11 was.
12 What's the process that they should have - they say should have
13 been allowed - - -?---Well, firstly, you had to apply to
14 the minister, so that's one check and balance, for
15 permission to advertise. The officers took part willingly
16 in that advertising and display period. Once that was
17 completed a report came back to council and various other
18 enabling mechanisms took place to then refer that to the
19 minister. After that, the minister accepted a delegation
20 from the senior officers and myself. So it was Peter
21 Fitchett, Mike Tyler, myself, and Geoff Ablett was there
22 about something different. It was an all-encompassing
23 meeting with the minister. And the minister then agreed
24 after that process to establish a ministerially appointed
25 planning panel. So they are the sequential steps in a
26 rezoning. And the independent body, the planning panel,
27 met for a period of, I don't know, two to three weeks - it
28 might not have been that long; I didn't attend any of the
29 panel hearings - at which time they presented their report

1 and they were unanimously in favour of C219 proceeding,
2 abutting lands to be included in it and the area to become
3 residential. So it was more than - this is where I've not
4 understood why C219 was actually the biggest target on
5 this because it was done properly and it went through the
6 process and the independent panel supported it
7 unanimously, and they included abutting lands. So it's
8 not as if it was something out of the blue, and it's what
9 elected representatives do. As members of parliament or
10 councillors, you raise things that are going to be
11 beneficial to your community, and that was beneficial to
12 my community; not to have B-Doubles running through
13 streets past schools and, you know, potential toxic waste,
14 recycling going on on that land, because that land was
15 zoned at the highest level industrial land. So it would
16 have had a huge impact on my people.

17 You understand, Mr Rowe, we are not concerned one way or the
18 other with whether or not the rezoning was right or wrong.
19 We are concerned with the process that was followed. That
20 process you have just described, where did that sit
21 alongside the council's decision that it should be
22 rezoned?---It's what should have happened.

23 No, no, but I'm trying to understand the sequence. Where in
24 that process was it that council passed a motion that the
25 land should be rezoned?---After the panel hearing, I would
26 have thought. It would have been normal to say that the
27 council accepts the panel report and conveys it to the
28 minister, and then it's up to the minister to make a
29 ministerial decision as to whether he supports it or not.

1 You say "I would think". So you are not sure what the sequence
2 is? You are not sure what the sequence in fact was?---I'm
3 not sure of the question, Commissioner.
4 I'm trying to understand - you explained the process?---Yes.
5 I just want to see sequentially where did the decision by
6 council to approve rezoning, where did that fit in that
7 sequence?---Okay. It should have fitted - - -
8 I don't want your "should have"?---Sorry.
9 Do you know when it did?---There was a motion of council after
10 the panel where the council supported the panel.
11 So you believe it was afterwards?---That's where it - that
12 motion took place.
13 Yes?---Okay? And it took place where it should have taken
14 place. What happened when I was away I put aside, and
15 then the appropriate process took place and it resulted in
16 a panel and it went to the minister.
17 MS HARRIS: As I understand your evidence, you weren't
18 concerned with anything that Mr Woodman did in relation to
19 that process?---No, no, it was his behaviour in relation
20 to other projects.
21 Just so I understand what you are saying, his behaviour or
22 Ms Schutz's behaviour in relation to the other projects
23 you have described had an impact on how council officers
24 dealt with those people; is that right?---Yes.
25 And then did that slow down the C219 process? Did it have an
26 impact?---There are other things that perhaps slowed it
27 down as well. But, you know, it took the time it took in
28 the end. So I would have liked it to proceed faster.
29 Do you consider that the speed at which it progressed was

1 attributed in part to the behaviour of Mr Woodman or
2 Ms Schutz?---Not so much Mr Woodman. As I said, I may
3 have been a bit disingenuous.
4 Sure?---It was particularly the behaviour of Ms Schutz in
5 various meetings with, and attitude to, council officers.
6 Did you discuss with Mr Kenessey your concerns around the
7 behaviour of Ms Schutz?---Absolutely.
8 Did you suggest to him at any stage that they, being Ms Schutz
9 and Mr Woodman, should be removed from the C219
10 project?---I did.
11 When was that?---That was in - would have been after the panel
12 hearing.
13 So just to help you place it in time, the panel report was
14 dated 4 January '18?---So it would have been after - it
15 would have been after Mr Kenessey got back from his
16 holiday. Sorry, I'm smiling because it's - it's personal.
17 It's funny. Not to you, perhaps.
18 COMMISSIONER: You say absolutely you discussed that with
19 Mr Kenessey?---Yes.
20 What was Mr Kenessey's interest in the issue at all, as you
21 understood it?---Which issue, Commissioner?
22 Why were you discussing that with Mr Kenessey?---Because he was
23 Leightons, and Leightons needed to, in my opinion, act on
24 things that were impending - impeaching - "impeaching" is
25 perhaps the wrong word.
26 Impacting?---Impacting, that's the word, thank you. Impacting
27 on the operations of council's planning department in that
28 the morale of the people that were my people in the
29 planning department were being harassed in some ways by

1 some of the language, some of the behaviour, some of the
2 things in meetings, you know, baseless threats. It was
3 pretty bad.

4 And how did that impact, though, on the progress of
5 C219?---Well, because it was - Woodman was still seen as
6 an employee or consultant on C219.

7 Yes, and he was?---Well, yes, at that time because it was
8 suggested - you know, my suggestion was, "You need to do
9 something about this, because it's impacting on that. But
10 it's impacting on a wider area."

11 How was it impacting? I think that's what Ms Harris is trying
12 to explore with you?---Because of the way the officers
13 felt. Like, a happy workforce works better. And it was
14 probably - it was impacting on me in that I didn't like
15 it, the way - you don't speak to people that way that you
16 are trying to do business with.

17 I still don't follow how it was impacting - - -?---Because
18 they - sorry, Commissioner.

19 You explained the sequence that was followed in relation to
20 getting to the planning panel. I don't understand how the
21 way in which Ms Schutz or Mr Woodman were treating council
22 staff, who you have said were in support of the rezoning -
23 which I must say is contrary to my understanding thus far
24 from all the evidence I've heard. But, if council
25 officers were in support of it, how was Ms Schutz and
26 Mr Woodman's behaviour impacting on that sequence of
27 events?---The council officers were in support of the
28 process. So there's a difference to being in support of
29 allowing a process to proceed and being - ultimately

1 turning and being in favour at the end and supporting the
2 end actions.

3 So they were in support of the process?---Yes.

4 I'm sorry, I thought you were indicating earlier they were
5 supporting the rezoning?---No, and any planning officer
6 really doesn't come out and say, "Yes, I'm
7 100 per cent - yes, let's go for it. We're going to
8 rezone."

9 Hadn't Mr Tyler made clear that he was opposed to residential
10 rezoning of that area?---And that's not unusual.

11 Is that right, though?---Tyler, yes.

12 That's what he's told us?---Yes.

13 And that's what the evidence suggested. Was that your
14 understanding of his position?---Yes, and Tyler was the
15 CEO at the time.

16 Yes. I'm sorry, I misunderstood you then. So you are saying
17 the officers supported the process of having this question
18 escalated ultimately to the panel. How was Mr Woodman or
19 Ms Schutz's conduct interfering with that
20 process?---Because people were linking that with other
21 things that Woodman was doing - not Woodman, but let's
22 maybe call it people - - -

23 His team?---His people, his team. They were linking it to
24 that, and it was tarnishing and it was getting on my
25 nerve.

26 But, leaving your nerves and annoyance to one side, I still
27 don't follow how it actually impacted on the
28 sequence?---I can't say any more, Commissioner, other than
29 if somebody thinks there's a problem with some people

1 involved in whatever it might be, that they would be
2 reserved in what they were prepared to say and do in
3 relation to another matter where the similar group or same
4 group was involved.

5 Do you mean that council officers were reluctant or slower to
6 initiate the process because they saw that it was a
7 process if it was successful that would favour

8 Mr Woodman's interests?---No, I don't - no, I don't - - -

9 You're not going that far?---Yes, I don't go - - -

10 Sorry, so that's where I have difficulty. If you are not

11 suggesting that, then I don't understand the connection

12 between the way council officers were being treated by

13 Mr Woodman and the process that you say was being

14 followed?---If I was as belligerent as they were with the

15 officers I wouldn't have got the service nor the

16 friendship and cooperation that I got for the period of

17 time that I was there. I do not accept that with people

18 and I don't expect it to be done, and I would expect the

19 natural reaction of the officers to be, "Well, we've got

20 to triple-check everything that we do so that we can't be

21 held to" - not held to account because they couldn't hold

22 them to account, but "criticised by others about what

23 we're doing." And it just became - I can't really add any

24 more to it, Commissioner, I'm sorry. I hope I've - - -

25 I could understand your reasoning if Mr Woodman was opposed to

26 the process that was being implemented?---Well, perhaps we

27 could get to that because there are reasons there to.

28 I see.

29 MS HARRIS: Just to follow on then from the answers you were

1 giving the Commissioner, was it the case that because of
2 the treatment the council officers were getting they were
3 being more cautious with how they were assessing matters
4 they were putting in reports?---Yes, I would think - - -
5 And that therefore was taking longer than normal?---It was, but
6 there were other reasons why it was taking longer too.
7 So, yes.
8 And that's how you say it was impacting on the process?---It
9 was.
10 Along with how councillors were feeling about dealing with that
11 particular matter because of the treatment from
12 Ms Schutz?---Pretty much.
13 You indicated to the Commissioner moments ago there were other
14 matters as well. What did you mean by that?---Well, the
15 C219 - and I only became aware of this late last
16 year - the land - not the amendment, but the land
17 itself - do you mind if I - like, I'm mindful I don't want
18 to confuse the Commissioner or counsel with a lengthy
19 story, and it can be, as some would know, quite lengthy.
20 Perhaps I can shorten it and if you want to ask other
21 questions. The land that was owned by Leightons I have
22 subsequently found out was under contract to Wolfdene, but
23 the contracts were never executed and they were never
24 consummated.
25 Can I just stop you there and ask you when did you find that
26 out?---Sort of July maybe.
27 Of last year?---Yes.
28 COMMISSIONER: How did you find that out, Mr Rowe?---In talking
29 to Mr Kenessey.

1 We haven't heard that from him?---Okay. I can only tell you
2 what I have knowledge of. He informed me that at that
3 state that Woodman had wanted to buy the land off
4 Leightons. They had given him a contract. That contract
5 was never consummated. And what I thought was a
6 development partnership between Dacland and Leightons was
7 not in fact a development partnership. And I might just
8 add a codicil there, that Dacland becoming involved in the
9 development was a significant step forward in relation to
10 the quality of what they are seen in the industry. They
11 are exceptionally - an exceptional developer and would
12 have been very favourable with the minister. The end
13 result would have been just first class. Cut that off.
14 Then found that at that time that in fact Dacland had
15 purchased the land, and they had no arrangements at all
16 with Mr Woodman apart from whatever they may have had in
17 business wise elsewhere.

18 MS HARRIS: Can I just stop you there to ask you about that.

19 Dacland had purchased the land from Leightons?---Yes.

20 When was that?---It would have been last year some time. No,

21 it wasn't. I'm not really good on dates, but it

22 was - they attended the panel hearings. So it would have

23 been on foot then, but I was unaware - - -

24 In 2017?---Yes, yes.

25 Yes, sorry, I interrupted you?---I'm not sure where I was up

26 to.

27 Dacland had purchased the land?---Okay.

28 And they didn't have a contract with Wolfdene?---No, the

29 Wolfdene contract had been called at an end, it had never

1 been executed or consummated, and Leightons made decisions
2 that they made and the land was subsequently sold to
3 Dacland. That I believe - and this is my belief without
4 knowledge and not being a psychologist - that that caused
5 certain actions to occur on unrelated properties and
6 eventually brought around the H3 conflict between Aziz and
7 myself because of what Wolfdene or Mr Woodman and
8 Ms Schutz were actually doing, and I couldn't for the life
9 of me understand why they were doing it, except for
10 revenge.

11 COMMISSIONER: So this is in their conduct in relation to H3 -
12 - -?---H3 and against council on the other one in Clyde
13 North.

14 Yes. This is in response to Leightons not executing the
15 contract of sale with Woodmans?---Yes, particularly the
16 H3.

17 MS HARRIS: Was it suggested to you or was it told to you by
18 Mr Kenessey then that Mr Woodman or Wolfdene were unhappy
19 about the sale of the land to Dacland?---Subsequent, but
20 last year, yes, he confirmed that - as you would be. A
21 piece of land like that. It's a beautiful piece of land.
22 And the land that was purchased, that was entirely the subject
23 of the C219 application?---It was the largest portion of
24 C219.

25 And then the Kelly family land attaches to that?---The Kelly
26 family land.

27 You said it caused certain actions to occur on unrelated
28 properties, and then indicated there was a flow-on effect
29 that resulted in H3. Can you explain what you meant by

1 that?---H3 and what happened in relation to Hall Road,
2 there was no basis of fact in what they tried to do there.
3 That's when it became obvious to me that SCWRAG had been
4 corrupted. You know, they were bogus - they were making
5 bogus claims as to road safety. The road, unbeknownst to
6 them, or they didn't care, had become a declared main
7 road, which means the council no longer has responsibility
8 for construction and it passes to VicRoads.

9 I'll just stop you there because I will take you to H3 in due
10 course. But Mr Woodman, Watsons or in any form remained
11 involved with the C219 matter after Dacland purchased the
12 land; that's correct, isn't it?---Until the panel hearing.
13 After the panel hearing when it went to the 173 agreement
14 negotiations Megan Schutz was removed because of her
15 attitude, and you have to ask Tom as to the process or
16 whatever. I'm not a Leightons employee or - - -

17 You say she was removed. Who told you that?---Well, she was
18 actually removed from the process because of the
19 complaints that I had been receiving from the officers.

20 My question is who told you that?---Sorry, Mr Kenessey, and it
21 was evident she wasn't in there anymore, and Dacland
22 stepped in.

23 And what about Mr Woodman?---No.

24 Was he involved in the process after the panel hearing?---No.

25 COMMISSIONER: So that's early '18, is it?---Yes, yes.

26 So, as you would know, we have had the benefit of many
27 telephone phone calls between Mr Woodman and Ms Schutz
28 after that date for most of 2018 or for a large part of
29 it. No indication of any of that in any of those phone

1 calls, yet it's clear enough that they had no idea that
2 they were being listened to; do you follow? That they are
3 not discussions in which they would have thought there's
4 some reason to conceal from each other a discussion about
5 such matters?---I can only base on what occurred and what
6 was occurring.

7 Or what Mr Kenessey told you occurred?---Well, in that part.

8 But I know for a fact that Megan Schutz was removed from
9 the 173 agreement negotiations because of her behaviour,
10 because the officers had complained to me, and they
11 removed her.

12 But she played a very active part for most of '18 in relation
13 to C219?---Well, not with council.

14 Not to the formal process, you are saying?---Not with council.
15 Not with me.

16 You were not the council, Mr Rowe?---Sorry?

17 You were not the council. You were one
18 individual?---Absolutely.

19 And often in opposition to a group that would control the
20 outcome of motions at council. You weren't always in the
21 majority, were you, on council motions?---No. No. But in
22 relation to the - no, I wasn't.

23 MS HARRIS: So Mr Kenessey told you then, did he, that

24 Mr Woodman was not involved in the C219 following the
25 panel process?---He did not want him involved.

26 That's a different thing?---Well, he was taking steps and

27 I just took his word that it was occurring and it would
28 have occurred.

29 He told you, did he, that he was taking steps to have

1 Mr Woodman removed from the project?---He was seeking to
2 do that.

3 And what did he say about that?---Well, he just agreed with
4 what I had said. He didn't go into detail with me. But
5 he agreed with me that it was being harmful to the process
6 and the process was being slowed down.

7 And did he share with you how he intended to remove Mr Woodman
8 from the process?---No, Tom didn't share everything with
9 me in relation to Leightons' business and discussions,
10 except to say that that was his desire.

11 Did he confirm with you at any time that that had in fact
12 occurred, that Mr Woodman had been removed from the
13 project?---It was my - he didn't confirm it. It was my
14 impression.

15 From something he said?---No, it was more the lack of activity,
16 plus what eventually happened with H3. Like, they're all
17 pretty much like that and they never should have been.

18 You indicated yesterday that you were unaware that Mr Kenessey
19 was to receive an incentive payment if C219 had gone
20 through. Did it surprise you to hear that?---It did.

21 Is that something you thought given the nature of your
22 relationship he might have shared with you?---I never
23 discussed my salary with him and he never discussed his
24 salary with me. That was - as I said, I thought he was a
25 contractor all along, and the Commission has advised me or
26 inferred something totally different yesterday, that he
27 wasn't an employee.

28 And certainly didn't suggest in conversations with you that it
29 would be great to get this across the line because there

1 was something in it for him?---No.

2 In your conversations with Mr Kenessey in relation to C219 were
3 they usually in person?---No, we would have telephone
4 conversations because we couldn't always meet. He lived
5 in Kew and I was in Casey, and it doesn't suit me to run
6 around doing councillor's work, you know, at all times of
7 the day and night. It just - I'm otherwise engaged.

8 Given he was acting for an interested party in that
9 application, do you think it's appropriate that you were
10 having conversations with him about the progress of
11 C219?---Given that he was the instigator of the
12 application.

13 He was?---Well, he had instigated the application through be it
14 consultants or whatever; he was doing his job, and my job
15 was as a councillor.

16 Councillors' interactions with parties to planning permits are
17 governed by policy and procedure, aren't they?---There is
18 no policy or procedure in relation to that, as to who you
19 can and can't talk to.

20 What about how you communicate with interested parties? Is
21 that captured in a policy?---No, not that I'm aware of.

22 COMMISSIONER: Mr Aziz has given evidence in private
23 examination before he left Australia that the protocol
24 was, if a councillor was going to speak to an interested
25 party on a development about issues relating to that
26 development, that they should have a council officer
27 present for the purpose of those discussions?---I have
28 never seen a protocol in the councillor code of conduct
29 from 2012 through to the present date that says that. It

1 was never expressed to me by Tyler or anyone.

2 And you've not heard any suggestion to that effect until

3 now?---No, no.

4 How would you describe the nature of your relationship with

5 Mr Kenessey?---As I said yesterday, there's two

6 relationships. There's a business relationship and a

7 personal relationship.

8 So there was a friendship?---Absolutely. I don't deny that.

9 So there will always come a point of time, though, Mr Rowe,

10 where the question has to be asked of oneself: "Is the

11 nature of my relationship with a party who's a primary

12 interested party in a development which a council is

13 considering such that I would need to disqualify myself

14 from participation in council motions?" You hadn't

15 reached that point, you don't think?---I hadn't reached

16 that point because of the way that I conducted myself on a

17 professional basis with Mr Kenessey and the fact that

18 I raised many concerns with him and rejected many

19 approaches by him. Because there is a right way and

20 there's a wrong way.

21 It's clear from what you have already told us that you were

22 discussing with him strategies as to the way in which C219

23 should be progressed, things that he should do, you made

24 suggestions to him as to how he should deal with Woodman's

25 team and the problems they were causing?---I did because

26 he was what I believed to be the employer.

27 You think that's appropriate? That would not give rise to any

28 difficulties?---I don't. I could have gone perhaps to the

29 CEO or the acting CEO and had them do it. But my

1 modus operandi is you do it yourself, you get it sorted
2 and the staff can move on and do what they have to do
3 without impediment or fear or - perhaps.

4 And there was criticism made of Mr Woodman in part of his
5 strategy being to the extent that he thought that other
6 councillors were difficult or might be impediments to
7 progressing his strategies that he would speak to people
8 about how those councillors might be managed - - -?---Like
9 knocking me out.

10 That's a problem, though, isn't it? That when councillors are
11 dealing with a party that's got a primary role in a
12 development and they are discussing how that party should
13 try and deal with other councillors that you are meant to
14 be working with in a collaborative way?---Well, I thought
15 I was one of those councillors they were talking about.

16 You may well have been. But that's antithetical, isn't it, to
17 the fundamental notions of a council working
18 collaboratively and operating with honesty with each
19 other; that wasn't present here, was it?---Can I just add
20 or provide some clarity there. The process had reached a
21 point where it had its own life and it was moving on. So
22 it had gone through the ministerial process. It had gone
23 through the panel process, and independently the minister
24 had sent it to the panel. The panel had unanimously
25 supported it. So then it's almost automatic the next
26 steps. So, really, council's involvement was negligible
27 after that.

28 As I say, we are concerned here with processes?---Yes.

29 So everyone that's been sitting where you have been has said

1 consistently whenever criticism has been made of the
2 process, "I'm sure that nobody would have done anything
3 that they didn't believe was right," and that can't be an
4 answer to following processes that are improper and give
5 rise to suspicions about whether or not someone is acting
6 with the correct interests in mind. You understand that,
7 don't you?---I understand what you are saying. I don't
8 necessarily accept it's in my case. I was very - you
9 know, like, you question my friendship with Kenessey.

10 No, what I'm asking is this just so we are clear?---Yes.

11 What I'm asking you is this: is it not contrary to what one
12 would expect of councillors and the code of conduct that,
13 instead of the councillors working collaboratively and
14 honestly and openly with each other, there are councillors
15 who through intermediaries are working against each
16 other?---Can I answer that by I would think that the - or
17 I believe that almost unanimously in interviews with the
18 monitor that councillors expressed to her, as I did, how
19 much better council was after perhaps things occurred by
20 you going public in relation to your inquiry and certain
21 people not being present in council. I think the group of
22 councillors that were working at Casey have always been up
23 to scratch with the exception, and it wasn't a total
24 exception, of people like Sam Aziz and Geoff Ablett. We
25 did not know what has been alleged in the Commission.
26 That was a shock to all of us. But we realised that when
27 they were gone how much of an impediment they had been.

28 MS HARRIS: Mr Rowe, returning to your communications with

29 Mr Kenessey, when you were communicating with him in your

1 capacity as councillor did you record those

2 conversations?---No.

3 In any form?---No.

4 You didn't take notes?---No.

5 Did Mr Kenessey or in particular Leightons have any other

6 matters, applications before council in your time?---Not

7 to my knowledge.

8 If we could pull up page 4430 of the court book, please. Have

9 you seen this before, Mr Rowe?---I don't recall that

10 document.

11 I note that it's dated October '17, but it does indicate that

12 there's been prior versions. If we can just go down,

13 please, to 4431. If we just scroll down. You will see

14 there about the request for meetings. I will give you a

15 moment to read that?---Yes.

16 Are those recommendations news to you? Is this not something

17 that - - -

18 COMMISSIONER: They are protocols. It's part of the - it's

19 called a protocol?---As I said, I have not seen that

20 document previously.

21 MS HARRIS: And had no training in relation to council's

22 expectation of councillors' behaviour when meeting with

23 parties to applications?---I had no knowledge. I can't

24 say anything other than that.

25 COMMISSIONER: Mr Rowe, then you would accept that unwittingly

26 you were in your dealings with Mr Kenessey acting contrary

27 to that protocol?---Well, no, I think probably - no,

28 I wouldn't accept that, Commissioner, on the basis that

29 I may not have seen the document but all of my dealings

1 and discussions with Mr Kenessey were discussed by me with
2 the director, Peter Fitchett, council director Peter
3 Fitchett, who was in charge of this area. I also had
4 discussions with - I'm terrible on names; it will come to
5 me - with other senior officers.

6 So you had discussed with Mr Fitchett before going to
7 Mr Kenessey the fact that you were going to suggest to
8 Mr Kenessey he should try and get Woodman removed from the
9 role that he was playing?---I would have had that
10 discussion with either him or David - I should have
11 brought their names. I normally write down names so
12 I don't forget them. David - it will come. David, David,
13 David. Yes, I had discussions with senior officers.

14 So you are saying whatever you said to Kenessey you would have
15 run past officers before raising it with Kenessey; is that
16 what you are saying?---Particularly in relation to the
17 behaviour with staff, yes.

18 Assuming that you did so always, that is you cleared what you
19 were going to say to Mr Kenessey with council officers
20 before you went and spoke with Mr Kenessey, that still
21 wouldn't satisfy the protocol, would it?---Well, not
22 knowing that it existed it was not my - you know.

23 How does that come about, that someone - you are a senior
24 member of the council and had been on the council, apart
25 from a small period, for the best part of seven or eight
26 years. How does that come about that a protocol like this
27 has not come to your attention?---It was not brought to my
28 attention.

29 Why do you think that is?---Well, perhaps process of education.

1 I really - to me, it's a normal way of doing business that
2 when you have people in management roles, as we had in
3 council, that when I'm doing something or when I was a
4 member of parliament and I was parliamentary secretary to
5 transport I would speak to the minister and the
6 chief-of-staff about any interaction that I was going to
7 have with someone else. That's what I did in my time as a
8 councillor, and I don't consider it to be a problem
9 because they had raised with me, officers had raised with
10 me the behaviour in this particular case of Schutz. So
11 when the officer raises it with me and I speak to the
12 acting CEO or to Sheena Frost or any of the officers that
13 were taking senior roles I would have said to them and did
14 say to them in this particular case, "I'll have a word.
15 It can't continue. It's unfair on the staff." And did
16 I breach the spirit of what's written there? I don't
17 believe I did.

18 It's more than a spirit. The protocol contemplates for obvious
19 reasons that, if you are discussing an aspect of a
20 planning issue which is currently an issue with which the
21 council is seized, you won't be talking to one of the
22 parties to that planning issue without having a council
23 officer present. There must be at least two obvious
24 reasons for that. One is that you don't say something
25 which is incorrect to the party about what council is
26 doing, how council is thinking, what's proposed. But,
27 second, so that you have some independent person who can
28 support you, who can verify what was and wasn't said in
29 the conversation so that you don't have that party at some

1 later stage making a false claim that, "Councillor Rowe
2 told me this, that or the other," and you are not doing
3 what he said you would do. They are at least two reasons
4 immediately that one can think of for why that protocol is
5 there?---May I?

6 And, Mr Rowe, you weren't just talking to Mr Kenessey about the
7 way in which Mr Woodman or Ms Schutz dealt with staff; you
8 talked to him about a range of issues concerning C219,
9 didn't you?---It depends what you mean by "range of
10 issues". There were no issues when it had been to the
11 panel. There were issues in getting past - you know, you
12 are alleging things that I don't agree with and - - -

13 What is it that you don't agree with?---Because we were talking
14 about in relation to talking to Kenessey in relation to
15 the behaviour of one particular person; okay? You have
16 now introduced talking about other matters, and all of
17 those - any matter was discussed with senior - with Peter
18 Fitchett and others who were in that role to make sure
19 that it was okay; that I could convey a message. I never
20 made any commitments and never have made any commitments
21 in all my professional life that I was not authorised to
22 do.

23 Would you have been authorised to have a private meeting with
24 Mr Kenessey and say anything on behalf of the
25 council?---I never - wouldn't have committed anything on
26 behalf of council.

27 And no-one would have contemplated that you would do
28 that?---Well, apart from - - -

29 You're having private, friendly discussions with Mr Kenessey,

1 as I follow his evidence, on a very regular basis and he
2 was relying very heavily upon you not only as a source of
3 information but also for guidance as to how he should
4 develop his strategies?---When you say "source of
5 information", I'm not aware of what he said. So
6 I can't - because "source of information" seems to have
7 some inference - - -

8 I'm sure Ms Harris will come to some of that?---Right.

9 But I'm only making the point you weren't just talking to him
10 about the way Mr Woodman and Ms Schutz were dealing with
11 council staff?---No, no.

12 And are you seriously suggesting that every issue that you
13 discussed with him concerning C219 was an issue that you
14 had first cleared with a council officer before you talked
15 to him about it?---Unless it was an issue raised that
16 hadn't been raised previously. Because there were times
17 that I sought to speak with him because of discussions
18 I had had in relation to that matter and also, you know,
19 what was happening in relation to C219 - H3.

20 So I'm not questioning your intent, Mr Rowe. What I'm trying
21 to point out to you is that, like other councillors that
22 we have already heard about, this protocol was time
23 honoured in the breach; namely, that councillors
24 considered it entirely appropriate to have private
25 meetings with interested parties to development issues
26 without anyone being present to verify the content of
27 those discussions?---And had I seen this document and had
28 it been raised with me I would have honoured the document.
29 I was undertaking normal business practices which - and my

1 own code of behaviour to ensure that I kept council
2 officers informed at all times and never entered into any
3 conversations that were inappropriate.

4 Yes, Ms Harris.

5 MS HARRIS: You were discussing with Mr Kenessey the C219
6 matter prior to the panel hearing, weren't you?---Yes.

7 In meetings and in telephone conversations?---Yes.

8 And you say that you would consult with members of the planning
9 department before talking with Mr Kenessey; do
10 I understand that to be your position?---Yes.

11 Did the reverse occur? Did you go and report to those people
12 that you had spoken to Mr Kenessey and tell them the
13 content of - - -?---Yes.

14 Was some kind of recording made by them, do you know, of that
15 information?---I don't know what they did or what
16 executive notes they may have taken. I would have
17 expected that it would have been appropriate for them to
18 make some executive notes in relation to a discussion
19 where - on what we were talking about.

20 Did you ever meet with Mr Kenessey in the presence of a council
21 officer in relation to C219?---I'm not sure. Look, about
22 219, it would have again been Peter Fitchett. He was the
23 director. I'm not sure that - the officers never sought
24 to have a meeting with me and Kenessey or to have me
25 present when they were having individual discussions with
26 Kenessey.

27 When you would convey to council officers that you had met with
28 or had a conversation with Mr Kenessey about C219 did any
29 of them say to you, "Hang on, someone from our department

1 should be present"?---No.

2 You indicated in answers to the Commissioner's question that

3 you didn't commit to anything on behalf of council. But

4 it would be fair to say, wouldn't it, that Mr Kenessey

5 knew your position in relation to the rezoning from the

6 outset?---But we weren't - we were talking about

7 individual issues. My position with that land has been

8 public knowledge and knowledge since 1988. So, yes,

9 I supported that land from 1988 when I was a councillor at

10 Cranbourne, when I was a member of parliament from '92 to

11 2002, I supported that land as being residential.

12 And that was something you conveyed to Mr Kenessey?---Yes.

13 You indicated that in speaking with members of the planning

14 department you would sometimes convey messages from them

15 or the content of what you were discussing with them to

16 Mr Kenessey?---If we're talking about the - - -

17 C219?---Anything that I was - yes, I would.

18 Did Mr Kenessey ever ask you to convey anything back to the

19 members of the planning department?---I would always say

20 to Tom, "Pick up the phone" - - -

21 No, I just want a "yes" or "no" to that question?---No.

22 He never asked you to seek a particular outcome in relation to

23 a C219 matter?---He may have.

24 May have or did?---I cannot recall a particular matter that he

25 asked me to do. I'm not saying he didn't, but I don't

26 recall any particular matter because I know what my

27 response would have been.

28 And what would that have been?---"Pick up the phone".

29 What does that mean?---"Ring the officer yourself or go and

1 have a meeting. Sort out whatever problems you've got.
2 That's not my, you know, not where I go."
3 You indicated in evidence yesterday that Mr Kenessey sometimes
4 sought your advice around the C219 matter. Did you ever
5 seek his advice?---Advice? I don't believe I would have
6 sought his advice. I might have sought his opinion.
7 What did you seek his opinion on?---I said "might have".
8 Did you?---I might have asked him about process with the panel,
9 how does it work, what happens, because I had no
10 experience of those.
11 When you say "might have", is that something you did? Did you
12 seek Mr Kenessey's advice - - -?---Yes, on the panel, yes.
13 Yes.
14 Did you ever seek his advice on how to respond to criticism
15 about the rezoning?---No.
16 Or how to respond to questions about the rezoning?---If I was
17 unsure, if people had asked me a question and if I was
18 unsure, I would not proffer half-baked responses. I would
19 ask Kenessey. He was running the 219 on behalf of the
20 landowner.
21 And what's an example of an occasion when you did that?---Like,
22 it was so - I really can't recall because it was
23 insignificant to me. So it's not something that stuck in
24 my mind. And it's been, what, six years.
25 So there was nothing - no substantial issue in relation to C219
26 that you sought Mr Kenessey's opinion or advice
27 on?---Significant, no, I can't - - -
28 COMMISSIONER: Let's be realistic. How many times roughly do
29 you think you had a private discussion with Mr Kenessey

1 about council matters touching on C219 or the way in which
2 Leighton was approaching that issue? Just give us a
3 ballpark figure, Mr Rowe, about how many times you might
4 have sat down with him?---Sat down with - - -
5 Just talked to Kenessey in private about these issues?---Just
6 mates over a couple of beers?
7 Yes, whatever?---My doctor wouldn't like to hear. Look, it
8 would have - it became regular.
9 Yes. And that's the impression he left us with?---Yes.
10 So nobody is expecting you to remember what you said in each
11 conversation?---Yes.
12 So you can only talk in generalities, Mr Rowe?---Well,
13 I haven't seen him for or spoken to him since the last
14 time, which was nearly five months ago, and that was at
15 the Skinny Dog Hotel, and before that maybe monthly, yes.
16 And it started - your relationship with him started when you
17 returned from holidays back in 2014 and became aware of
18 this council resolution which Ms Harris has explored with
19 you, and you met, did you not, with him and the
20 Kellys?---That was the first meeting, first time I ever
21 met Mr Kenessey, or Tom.
22 Yes?---And at that meeting also Woodman was present and the
23 Kelly family. We did not fall in love with each other
24 immediately. He was somebody that wanted something and
25 I'm always wary of people that want something. You know,
26 friendships develop over time.
27 And there's the rub, really. Because Leightons and
28 Mr Kenessey, being Leightons' representative, plainly want
29 a particular outcome from this planning process, you had

1 to be careful, didn't you?---Absolutely.

2 MS HARRIS: Mr Kenessey, did you speak to the Leader newspaper
3 in 2015 about the rezoning?---Do you mean me?

4 Sorry, Mr Rowe?---Sorry, okay. The Leader newspaper in
5 relation to what?

6 The rezoning?---I speak to newspapers - well, less frequently
7 now, but it's always been my - if ever people have rung me
8 I've answered their questions.

9 The answer to my question?---I don't know. You are being
10 specific on a date and I couldn't - - -

11 Did you seek any advice from Mr Kenessey about what to say to
12 the Leader newspaper?---I don't recall that interaction.

13 If you can refresh my memory I would be happy to - - -

14 Could we pull up page 4632, please. I neglected to tender the
15 previous document, Commissioner, the protocol.

16 COMMISSIONER: Thank you. Is there a date on that particular
17 document?

18 MS HARRIS: I think it was 17 October '17. Yes, there we go.

19 COMMISSIONER: Do you know, Ms Harris, whether we have from the
20 council earlier versions of that protocol?

21 MS HARRIS: I can make those enquiries, Commissioner.

22 COMMISSIONER: Thank you. I see counsel is in the back of the
23 court. Perhaps you can make enquiries from Ms Foster at
24 some point.

25 MS HARRIS: It may be that we have them already, but I will
26 make those enquiries, Commissioner. 4632, please. You
27 will see, Mr Rowe, that this is an email from Mr Kenessey
28 to Mr Woodman and Ms Schutz dated 22 January 2015 asking
29 them if they have any comments in relation to the matters

1 below, and if we could scroll down, please.

2 COMMISSIONER: I'm sorry, I should have said the protocol will
3 be exhibit 175.

4 #EXHIBIT 175 - Protocol dated 17 October 2017.

5 MS HARRIS: Then we see an email from Mr Kenessey addressed to
6 you, and I'll give you a moment to read that. It's the
7 same date?---Yes.

8 COMMISSIONER: Is this an exhibit, Ms Harris?

9 MS HARRIS: No, Commissioner?---Okay.

10 Keep scrolling down, please?---More?

11 Yes, just keep going, thank you?---I don't know that I even
12 replied to that email.

13 I was going to say did you ever receive that email?---Look,
14 it's addressed to me, and very rarely do emails - despite
15 what people might claim, very rarely do they go missing
16 unless you've got something wrong with your computer. If
17 it was sent to me, but I do not recall responding to that.

18 Do you recall using those talking points in relation to
19 speaking with the Leader?---The top part would have been
20 something that I would have said, you know, basically
21 non-committal "this is what's happening".

22 When you say "the top part", is that the part that Mr Kenessey
23 refers to as the short version?---Well, yes.

24 Can we scroll back up, please. Back up. Keep going. Thank
25 you. Just stop there. So that's not something you
26 requested from Mr Kenessey?---No. Well, I don't
27 believe - no, because, like, if a newspaper was going to
28 interview me about that, that's exactly what I would have
29 said because that was the fact. But, you know, it's

1 addressed to me and I have no way of checking council
2 emails to determine - so I can't do that now because I'm
3 no longer a councillor.

4 But your best recollection is that you didn't ask for that to
5 be sent to you?---Anything is possible in that respect,
6 but it may have been in a conversation. He may have
7 decided after a conversation that he might formalise some
8 of the things we had talked about or I had said that - but
9 I don't even recall being interviewed by that newspaper in
10 this particular case. Politicians are never shy of a
11 photograph on a front page.

12 So when you say "might have", is that something you recall
13 having a conversation with Mr Kenessey about?---No,
14 I don't. It's not forefront of my - - -

15 I tender the document, Commissioner.

16 COMMISSIONER: Yes. That's an email from Kenessey to Rowe
17 dated 22 January 2015.

18 #EXHIBIT 176 - Email from Mr Kenessey to Mr Rowe dated
19 22 January 2015.

20 WITNESS: Are you able to do something - I don't know whether
21 it's technically possible because it's not the original
22 document, is it, is to hover over my name and whether or
23 not my email address would come up and tell me which email
24 address he sent it to?

25 MS HARRIS: That sounds very technical?---But I don't think
26 that will do it.

27 I'm not sure if that's possible?---No, it's not. If it is a
28 copy of a copy, yes. If it was the original entry - - -
29 Are you suggesting that that may have been sent to a personal

1 address?---It's possible.

2 Given it's a council - - -

3 COMMISSIONER: Sorry, but the issue here is not whether in fact
4 you received it and acted on it. It tells us something
5 about the nature of your relationship with Mr Kenessey,
6 doesn't it?---Possibly. I don't know what it tells you,
7 but, you know - - -

8 It's close enough for him at this point of time, less than a
9 year after you had first met, to feel that he can give you
10 advice about how he would like you to conduct yourself in
11 relation to an issue concerning C219?---I take offence at
12 the inference.

13 What do you take offence at, Mr Rowe?---Just the - if I had
14 been asking, and it's not unusual for me to ask people
15 before I give interviews, if I was to give interviews,
16 "Have I got my facts right?" So it's not unusual for that
17 to occur. There's nothing sinister to be drawn in
18 relation to a relationship and to think that by January
19 2015 Tom Kenessey and I were bosom buddies.

20 I'm not suggesting either of those things. I'm pointing out
21 that a representative of Leightons, the principal party
22 involved in the planning issue, is able to write an email
23 to you indicating what he suggests you should say to the
24 media that bears upon that development proposal?---The way
25 I've read that, it was in relation to a public day and
26 that may have been why they may have sought to speak to
27 me. I would suggest that in this particular case, and
28 I know, I believe for a fact, that there was information
29 put out by the council to the newspapers to publicly

1 advertise the fact that this was occurring. So, yes,
2 leave that as it may.

3 Yes, Ms Harris.

4 MS HARRIS: Were there other occasions where you would seek
5 written advice or words from Mr Kenessey as to how to
6 respond to something in relation to C219?---I don't know,
7 because it's not unusual to seek clarification, advice
8 from people. So, as to what I may have sought or asked,
9 I have no - nothing jumps to the front of mind.

10 COMMISSIONER: But there is plainly a fundamental distinction
11 between a councillor going to a council officer, for
12 example, and saying, "I'm going to be interviewed by the
13 media about this council issue. This is what I'm
14 contemplating saying. Can you verify that I'm right about
15 these facts" - that's a world apart from you going to a
16 party who is a principal proponent of a planning
17 submission to the council and asking them to tell you
18 whether or not particular facts are facts which they think
19 are correct?---It may have been that I told him what I was
20 going to say in the event that I was interviewed, and he's
21 sought to - anyway. He's done it. I accept he's sent the
22 letter. Who requested it or whether it was him wanting to
23 be proactive, I can't respond to that.

24 Can I just ask you, Mr Rowe, do you think it would be helpful
25 for the purposes of transparency and accountability if
26 there was some requirement on councillors if they were
27 going to engage with an interested party to an issue
28 that's before council that there's some record kept of the
29 fact that there's been that sort of interaction?---I think

1 it would be very good to have a register of that
2 interaction and - yes.

3 MS HARRIS: Just picking up on something you said about the
4 email address, Mr Rowe, was it common for you to use a
5 private email address - - -?---No.

6 When dealing - I have not finished the question yet?---Sorry.

7 When dealing with council matters?---No.

8 So what made you think that this might have gone to your
9 private address?---Only because it may have been - but
10 it's a weekday, and I might not have - because I didn't
11 use my - apart from emails coming in and going, I hardly
12 ever took my laptop with me. So if it had been a weekend
13 or something like that it may have been, but
14 that's - I don't even know that he had my private email
15 address.

16 Is that a practice that you are aware of, other councillors
17 using private email address for council
18 business?---I wouldn't do it. So it was silly of me to
19 be - to think it, but I thought of it because I may have
20 said to him if it had been a weekend, "Send it to me at
21 home."

22 But are you aware of other councillors using private email
23 addresses for council business?---I don't know what other
24 councillors do, to be honest.

25 So is that a "no"?---Yes, it is, sorry.

26 If we can go to page 4636, please.

27 COMMISSIONER: Are you moving to another subject?

28 MS HARRIS: No, same subject.

29 COMMISSIONER: When you do, let me know. I will give Mr Rowe a

1 bit of a break.

2 MS HARRIS: Perhaps after this matter, if that's a convenient
3 time, Commissioner.

4 COMMISSIONER: Convenient now?

5 MS HARRIS: After this matter, Commissioner.

6 COMMISSIONER: Yes, very good.

7 MS HARRIS: If we could just scroll down, please. Just stop
8 there. This is an email from Mr David Gibb to you and
9 Ms Stapledon. Were you ward partners?---We were, yes.
10 It's 4 July 2017, if we could just scroll down to give you a
11 chance to read that, please. If we just move it down a
12 bit more. If we can scroll back up, please. Just stop
13 there. You can see that you have emailed that to
14 Mr Kenessey?---Yes.

15 "Requesting some points for reply would be helpful,
16 particularly the perception that this is a windfall gain."
17 Why is it that you are seeking a response from
18 Mr Kenessey?---I was asking him in relation to - because
19 I had no knowledge of what the price that Leightons may or
20 may not have paid at some time in the past for the
21 property, nor what the differential was between that and
22 the proposed - not the proposed, the realisation of
23 the individual lots would be. So I was going to the
24 source and asking the source in this particular case,
25 "What is the windfall gain," effectively.

26 In Mr Gibb's email he raises an issue around, "Where are the
27 jobs going to come from if we have rezoning"?---Mm-hm.
28 That's something I assume that you would respond to as the ward
29 councillor; is that right?---Yes. No, not necessarily,

1 because that work was undertaken by - at the director of
2 planning's request and my request to him to have
3 discussions with - I think it's DELWP that's the
4 employment - department of employment people, and I was in
5 fact - in that part of that I had sought that there be an
6 audit undertaken of employment land in the south-east so
7 that we would have a better understanding and knowledge of
8 it. So I was asking in relation - in this particular case
9 the part in relation to windfall gain because I had no
10 knowledge of what it would be.

11 Sorry, I don't follow. I assume, though, Mr Gibb would be a
12 concerned resident; is that a fair assumption?---Yes.

13 He's writing to you as his council member about his concerns
14 about the rezoning; is that right?---He's writing - - -

15 You and Ms Stapledon?---Writing to Amanda and I.

16 And do you think that it's appropriate then to forward that on
17 to the developer in the matter for comment?---Perhaps what
18 I should have done was cut and paste it. But it was more
19 particularly about what was the windfall gain going to be,
20 because all the other information I would have got from
21 council officers.

22 So do I take that to mean that, no, it's actually in hindsight
23 not appropriate that you sent that email to
24 Mr Kenessey?---It's not appropriate - that I sent the
25 email is appropriate - that I left the details of the
26 constituent on there.

27 It goes a bit further than that, though, doesn't it, because
28 you are not just asking for what the differential is in
29 the price; you are asking for some points in reply, how to

1 reply to Mr Gibb?---Particularly the perception that this
2 is a windfall gain is - that's my email.
3 Yes?---And that's what I was asking. That's how I ask. "It
4 would be helpful, particularly the perception that this is
5 a windfall gain."
6 But you are not asking for figures. You are asking for what to
7 say back in reply to Mr Gibb, aren't you?---Well, I was
8 asking him - my intention, my email was, "What is the end
9 result effectively of the subdivision?" I had no
10 knowledge.
11 Are you saying that you weren't asking for how to respond to
12 Mr Gibb on that issue?---No, not on that part, no,
13 I was - - -
14 Notwithstanding it says, "Some points for reply would be
15 helpful, particularly the perception that this is a
16 windfall gain"?---Yes.
17 That suggests, doesn't it, that "any point in reply would be
18 helpful, but if you could focus your attention in relation
19 to the windfall gain that would be appreciated"?---If
20 I was looking to look for that, it would possibly say
21 that. But that's not what my intention was. I'm 67 years
22 of age. I have been a politician for - involved in
23 politics for a long period of time. If I can't respond to
24 the balance of that, I'm not doing my job. But as far as
25 what I don't know and what I didn't know in relation to
26 this particular project was who - what was the end result
27 of subdivision and selling of the blocks of land.
28 You would agree that you are not asking Mr Kenessey to confine
29 his response to - - -?---Oh - - -

1 Just let me finish the question, please?---Yes, sorry.
2 You are not asking Mr Kenessey to confine his response to
3 simply the windfall gain aspect of Mr Gibb's enquiry, are
4 you?---Perhaps I could have been a bit more - made a
5 longer email.
6 So is the answer to my question "no"?---Yes.
7 And you were expecting points in reply beyond addressing just
8 the windfall gain, weren't you?---No.
9 That's what you are asking for in the email, isn't it?---Well,
10 if you read it the way you are the answer is "yes".
11 I'm reading it the way you have written it?---Yes.
12 Can we scroll up, please - sorry, other way. We'll take you
13 through Mr Kenessey's response and give you a moment to
14 read it?---Yes. Yes. Yes. Yes.
15 Mr Kenessey's response goes well beyond addressing just the
16 windfall gain, doesn't it?---It does, and he's very - yes.
17 Did you use Mr Kenessey's response to - perhaps I will go back
18 a step. Did you respond to Mr Gibb?---I don't know.
19 So are you able to say then whether or not you used
20 Mr Kenessey's response in any way?---I don't know if
21 I responded, whether Amanda responded. Sometimes we would
22 do it separately. Sometimes one of us would respond.
23 Did you forward Mr Kenessey's response to
24 Ms Stapledon?---I don't believe I did. Does it show that
25 I did?
26 No, I'm asking you if you have a recollection of - -
27 -?---I don't believe I did.
28 And you are not able to say then - - -?---No, I don't really
29 like his response either.

1 You are not able to say then if Mr Gibb received a response in
2 relation to his enquiry?---I'm unable to.

3 Was this a case, Mr Rowe, that the lines between your role as
4 councillor and your friendship with Mr Kenessey blurred a
5 bit?---I felt like I was being lectured when I read that.

6 COMMISSIONER: I'm sorry, you didn't?---I felt like I was being
7 lectured by him. But - - -

8 It's really an example, though, Mr Rowe, how there is a risk
9 that a councillor can get captured by a principal player
10 in a planning issue. I'm not suggesting you were, but
11 it's the way in which Mr Kenessey is seeking to use you or
12 trying to use you?---Can I respond?

13 Yes, you can?---In this particular - any other subject other
14 than Cranbourne West and that part of my community that
15 might be right. I was the passionate one. This was
16 something that I had wanted to occur since 1988, that
17 Cranbourne West and particularly to the east of Evans Road
18 had become the victim as a community of poor planning
19 decisions, and so much so that the cost of houses in there
20 was diminished, people didn't even want to rent there,
21 they had a very low self-esteem as to what they were all
22 about. And that came about through a thing called a
23 charrette with some planning experts from Canada, and
24 Evans Road is known as the brown or grey canyon because
25 all of the properties face inwards. There are no
26 properties facing out. That was a planning fad. They
27 have suffered from that. And I really - so what I'm
28 saying to you, and probably saying too much, is I'm
29 passionate about Cranbourne West and Cranbourne in

1 particular. So what you were suggesting or saying
2 I understand totally. In relation to Cranbourne
3 West - - -

4 No-one is doubting your passion but, as we have already said
5 numerous times in these proceedings, so often with
6 planning issues there are arguments on both sides and, as
7 you know, that both at council level and at the planning
8 panel in fact the majority of submissions received were
9 actually opposed to the rezoning. I'm only pointing out
10 to you that, as with many, in fact most, planning issues
11 there are two sides to the argument. We are not
12 interested at all in questioning the merit of your
13 position, Mr Rowe. But the fact that you are passionate
14 simply creates the additional risk that if you can get
15 into a relationship with a councillor who feels very
16 passionate and that passion supports the developer's
17 ideal, then there's a risk?---If that developer had have
18 sought the relationship. But they never did seek my
19 involvement.

20 But it just evolved?---Friendships aside and - yes, I don't
21 even recall reading it, but you know what I'm saying about
22 being - - -

23 I do. I understand your position. But it's important that we
24 focus on not this particular issue but what lessons can be
25 learned from it?---Absolutely.

26 Yes. We will adjourn for 10 minutes.

27 (Short adjournment.)

28 MS HARRIS: Commissioner, I'm told that the email previously
29 tendered as exhibit 176 has actually already been

1 exhibited as exhibit 157.

2 COMMISSIONER: Sorry, that's the email from Mr Kenessey to
3 Mr Rowe of 22 January '15?

4 MS HARRIS: Yes.

5 COMMISSIONER: That's already an exhibit, is it?

6 MS HARRIS: 157 it should be, yes.

7 COMMISSIONER: I see.

8 MS HARRIS: My apologies.

9 COMMISSIONER: Very good. Then we haven't exhibited the email
10 chain between Mr Gibb to Mr Rowe of 4 July '17, will be
11 exhibit 177A; B is 5 July '17 from Mr Rowe to Mr Kenessey;
12 and C is 5 July '17 from Mr Kenessey to Mr Rowe.

13 #EXHIBIT 177A - Email between Mr Gibb to Mr Rowe dated 4 July
14 2017.

15 #EXHIBIT 177B - Email from Mr Rowe to Mr Kenessey dated 5 July
16 2017.

17 #EXHIBIT 177C - Email from Mr Kenessey to Mr Rowe dated 5 July
18 2017.

19 COMMISSIONER: It will be exhibit 176 now.

20 MS HARRIS: Thank you, Commissioner. Before we move away from
21 this, Mr Rowe, you would agree, wouldn't you, that looking
22 at this email chain there could be an inference drawn that
23 you seek instructions from Mr Kenessey?---Yes.

24 And that you take instructions from Mr Kenessey?---I don't.

25 But you could see how that inference could be drawn?---Yes.

26 I have finished with that document, thank you. Would Ms Schutz
27 or Mr Woodman have any reason to believe that you would
28 take instructions from Mr Kenessey?---None.

29 Or do what Mr Kenessey tells you to do?---No.

1 Could we play the call behind tab 123, please. It's exhibit
2 158A, Commissioner. If I can indicate this is a call
3 between Mr Woodman and Ms Schutz on 5 November 2018.

4 (Audio recording played to the Commission.)

5 MS HARRIS: Mr Rowe, I appreciate you are not a party to this
6 conversation, but, firstly, this is November 2018.

7 Clearly Mr Woodman and Ms Schutz are still involved in the
8 C219 matter; that's right, isn't it, from this
9 conversation?---It appears from that conversation.

10 And that's contrary to your - - -?---So when was - November
11 when, sorry?

12 2018?---Okay.

13 And that's contrary to your understanding as you expressed it
14 to the Commission earlier today?---Yes.

15 COMMISSIONER: Well, I'm not sure that it actually is. You
16 were only saying your understanding was Ms Schutz had been
17 taken out of the formal process?---173.

18 But you weren't suggesting that you had been told Mr Woodman
19 and Ms Schutz had been removed by Leightons from
20 continuing to play their role as consultant?---Yes,
21 I wasn't - - -

22 You weren't saying that, were you?---If they were being done as
23 consultants, I had no - - -

24 You didn't know?---No.

25 MS HARRIS: This is only three days before council considers or
26 revisits C219. What was happening with C219 at this point
27 in time?---I don't have the agenda. I'm unsure of what
28 the motion was in relation to that. It could have been a
29 number of things.

1 If I can indicate it was a status report from council officers
2 that was being noted by the council. Were you approached
3 to play a role in relation to C219 being reinvigorated, if
4 you like, after the minister indicated he was going to
5 defer his decision?---There was nothing I could have done
6 to - for the minister, and if it was a noting of the
7 progress, it's the noting of the progress, which is not
8 unusual, and I just don't understand the reason for that
9 conversation because if that's what it was I don't
10 understand it, why they're so concerned.

11 Did Mr Kenessey approach you around this time, that is around
12 5 November, about anything to do with C219 being back in
13 council or back before council?---Not to my recollection.

14 COMMISSIONER: What was the item on council's agenda,
15 Ms Harris?

16 MS HARRIS: Pardon me, sir. I would need to refer to other
17 notes, Commissioner.

18 COMMISSIONER: I think for Mr Rowe to be able to assist we
19 would need to jog his memory by drawing attention to what
20 the item was on the agenda.

21 MS HARRIS: Yes, Commissioner. Perhaps I will come back to
22 that, then. But, returning to the call, they indicate
23 that "Tom's going to get Gary to do whatever's necessary".
24 And then further down at line 11, "Gary's going to do
25 whatever Tom tells him to, and Tom hopefully is going to
26 do whatever you tell him to," referring to Ms Schutz. The
27 conversation would suggest, would it not, that Mr Woodman
28 saw you as someone who would do what Mr Kenessey told you
29 to do?---And I would think Mr Kenessey would tell you the

1 opposite.

2 But you would agree with me that that's what the conversation
3 suggests, regardless of the truth of it?---Yes.

4 Could you think of anything that would give Mr Woodman that
5 impression, that you would do what Mr Kenessey told you to
6 do?---I'm not privy to Kenessey's conversations with
7 Woodman. I can only rely on what Kenessey has told me
8 about their relationship. So I have no idea of why that
9 would be.

10 And, without refreshing your memory as to exactly what the
11 matters were before council, you are unable to say whether
12 Mr Kenessey gave you any direction or instruction about
13 the C219 in November 2018?---He wouldn't give me
14 instructions.

15 And, if he did, what would be your position on it?---He
16 wouldn't want to get it.

17 Sorry?---I would be very blunt and very concise, and he would
18 be told, "Long walk off a short pier."

19 I see. You have indicated earlier that in your perception
20 events that occurred with C219 were interlinked with what
21 became the H3 intersection application. How are they
22 linked?---I think because of - well, for a start they both
23 involved Wolfdene. More so H3 than Morison Road. That
24 was just - anyway, it was ridiculous. But H3 was in my
25 opinion - and that's all I can give you, is an opinion,
26 that not only was it saving Wolfdene significant money; it
27 created great discomfort for Dacland and therefore some
28 revenge or, you know, "I'm who I am. Don't mess with me,"
29 type message being sent. Not me.

1 No, I follow. Because Dacland had an interest obviously in H3
2 and Wolfdene did also; is that correct?---Do you want me
3 to elaborate to exactly what it was - like, how it all
4 fitted in?

5 Yes?---I'm mindful of time.

6 Just to stop you there, when you say, "How it all fitted in",
7 the connection between the two of them?---Well, why they
8 were both involved. H3 was a major intersection to be
9 constructed at the responsibility of developers to the
10 north and the south. The developer to the south who
11 started construction first was Wolfdene. Wolfdene had a
12 requirement on their planning permit that if they
13 developed section 3 of their subdivision first they had to
14 bear the cost of building the intersection. So Wolfdene
15 had continually applied to council for variance in
16 schedule so stage 3 would be left out until such time as
17 they were ready to break through or would want to go on to
18 Hall Road.

19 Is that a change of sequence?---Yes. So consequently they
20 never hit the trigger. Dacland had come to council to
21 request a similar response from council - a similar help
22 from council. I can't come up with the big words.

23 A similar change to the permit?---Yes, just the sequencing.

24 Sequencing, yes?---What had happened in the May/June was that
25 within the Dacland development was a school site and that
26 was for - not knowing, would be parcel 6. Parcel 6 would
27 generate the necessity for them to build H3 or half of H3,
28 and building half a road I don't get. But they would have
29 to build half an intersection. The education department

1 wanted release of the land, the title of that land. To
2 achieve that, we had to agree to do exactly the stuff that
3 council had done for every other developer and that is
4 re-sequence the land. But what it meant was the education
5 department didn't have to give back the money that they
6 had been given by the State Government during the year
7 because they hadn't spent it, that they were able to pay
8 for that block of land, achieve ownership of that block of
9 land and bring forward the construction of the school,
10 which was - you know, that was great. There was no reason
11 to get in the way of it. So council was going to look at
12 that favourably. The interference came because of by then
13 it was obvious that things had happened between the
14 parties who were acting for different people, and this was
15 a, "Don't mess with me" message. So the bogus road safety
16 issues were brought up and there was a concerted effort to
17 get enough votes to defeat what was normally just a normal
18 part of business of every day at council. Council
19 approves the re-sequencing to allow something to happen.
20 Dacland had offered to allow it to occur, they had offered
21 100 per cent cost of construct of H3 in cash into the
22 banks - well, in cash, into the council's coffers as
23 guarantee that it would be built. So there's no reason to
24 oppose it. So it was a mischievous action on behalf of
25 Ms Schutz and others in that particular case.

26 What role then do you say those creating mischief played in the
27 motion that was brought by Mr Aziz on 4 September
28 2018?---I can't in all knowledge say who it was because
29 I don't know. I had my suspicions and, you know, we don't

1 work on suspicions and that type of thing. All I know is
2 that when we were there and I was determined to defeat it
3 Councillor Aziz was on his feet giving his
4 evidence - evidence, giving his reasons and he appeared
5 distracted, and Councillor Flannery, who was sat next to
6 me and later on Peter Fitchett, the director, confirmed
7 it, but he said, "Sam's getting instructions." I said,
8 "What do you mean?" He said, "He's referring to his phone
9 and he's getting instructions on what to say because he
10 obviously doesn't know." Okay.

11 Just in relation to that, was that in relation to the motion he
12 was moving - - -?---Yes.

13 Or in relation to the arguments he was putting forward in
14 support?---The motion was on his phone as well, I believe.
15 But, again, I didn't see it so it's an "I believe".

16 And you believe that because you saw him read from his phone;
17 is that the situation?---Yes, yes.

18 Sorry, I interrupted you?---That's okay. So, yes, he was
19 definitely receiving instructions. When I got up to give
20 my rebuttal there were interjections because my knowledge
21 was right and the knowledge that he had was wrong, and the
22 knowledge that he was being provided with over the phone
23 was totally wrong. And he kept changing his story. And
24 then after the meeting Peter Fitchett, the director of
25 planning, who like - Sam stood up here talking, and
26 Peter's sat there. So he had knowledge and confirmed that
27 it occurred. So it was an act of - well, I was going to
28 say something, but I won't say the word. But it was not a
29 proper act - a proper motion to bring.

1 Did you consider it was an inappropriate motion?---Thank you.
2 Is that the situation?---Yes. Look, if it had have been
3 correct and had it been danger on that road, no doubting
4 it's an old road, it had been badly maintained, but, you
5 know, like one of the conditions on Wolfdene's permit was
6 that once an intersection further down the road had been
7 constructed Wolfdene was to close the temporary
8 intersection. The temporary intersection is where some of
9 the accidents were occurring. Council had asked them to
10 do that because this road had been open for six months or
11 more.
12 And were these some of the accidents that were referred to in
13 the Traffix report that was relied on?---That, but more
14 particularly Hall Road and - there we go again with a
15 name.
16 Evans Road?---Evans Road, thank you. Thank you. Hall Road and
17 Evans Road was the most - one of the most dangerous
18 intersections we have got, and council was in the process
19 of negotiating with VicRoads to bring some funding forward
20 to actually handle that because an intersection like that
21 with another - with a major Frankston-Cranbourne Road up
22 here and traffic lights, it's terrible.
23 So if we can just step through then what you have highlighted.
24 On 4 September '18 is when Mr Aziz moves the alternate
25 motion?---Yes.
26 And as I understand it that's the one you say he was reading
27 from a phone?---Yes, yes.
28 Did councillors have any prior knowledge that this alternate
29 motion was going to be moved?---I didn't, but I think

1 there's good reason why I didn't. But others did and
2 Councillors Aziz and Ablett were canvassing other
3 councillors for their vote.

4 Mr Ablett had a conflict in relation to this matter, didn't
5 he?---He did, but when the matter was called he declared
6 his conflict and then left the chamber. He had along with
7 Aziz been dealing with a couple of the other councillors
8 to convince them to vote because it was - - -

9 Who?---Who? Milla Gilic.

10 Yes?---And Rosie Crestani.

11 Did you hear those conversations?---No, but it was obvious to
12 me what was occurring, you know.

13 COMMISSIONER: How was it obvious, Mr Rowe?---It was before it
14 was to be called. You know, there had been conversations
15 previously in the councillors' room which didn't take
16 place when I walked in. Look, when I say it was obvious,
17 perhaps proof of evidence is not having heard it but, you
18 know, that was my conclusion into what I saw.

19 MS HARRIS: So your belief based on what you saw was that
20 Mr Ablett was trying to enlist Ms Gilic and Ms Crestani to
21 vote - - -?---Yes, and Councillor Aziz with both of them
22 as well.

23 To vote in favour of Mr Aziz's motion?---I'm assuming.

24 All right. Did they tell you that?---No, they didn't, but it's
25 the way they voted.

26 All right. Mr Aziz in that meeting refers to a letter from the
27 SCWRAG community group?---Mm-hm.

28 And a Traffix Group report. Were they provided to councillors
29 before the meeting?---No.

1 What about the legal advice that became a hot topic of debate
2 during that meeting?---No, never provided.

3 You indicated that you observed Mr Aziz read something from his
4 phone. The details of the recommendation that he
5 ultimately moved, was that something that was provided to
6 council officers prior to the meeting?---I don't believe
7 it was. I may be wrong on that because I wouldn't be
8 privy to his conversations with officers. But I don't
9 believe it was.

10 And you indicated there was a meeting prior to the council
11 meeting where you believe this matter was
12 discussed?---Before every council meeting there is a
13 pre-council meeting.

14 Yes?---And that's where councillors get to look at what's on
15 the agenda, or they have already looked at it, they are
16 supposed to read it, and we pull out items that we are
17 going to speak on.

18 Yes?---I did not - and bearing in mind it was my and Amanda's
19 ward, I did not pull out the H3 intersection because I had
20 had discussions with the officers; the officers were
21 happy; Dacland had put up - offered a cash guarantee; and
22 the officers were happy in the road safety, being the
23 Evans Road intersection; that the H3 intersection, to
24 delay it would not cause a problem; and if Dacland
25 defaulted we had their money so we could build it. So
26 there was no reason for me to bring it out and talk about
27 it and trumpet the advantages of it. So it was not
28 withdrawn by me, but it was withdrawn by Councillor Aziz.
29 So that means he gets first ability to speak on it and

1 present his case.

2 And that's what happened?---And that's what's happened.

3 Right. So, other than the debate that took place in the
4 chamber in relation to the H3 intersection issue, there
5 was no documentation that councillors could refer to to
6 determine the merits of what they were voting on; is that
7 correct?---That's correct.

8 And I think at one stage - correct me if I'm wrong - Mr Aziz is
9 asked to provide the advice or the details of who provided
10 the advice, and he refused?---He did.

11 And I think it was Mr Jackson - I'm sorry, Councillor Jackson
12 that indicated that, given he hadn't seen the advice and
13 he was only able to rely on a paraphrased version of the
14 advice, he didn't feel that he could vote on the matter.
15 Do you recall that happening?---Couldn't take into account
16 that legal advice.

17 And the merits of it?---Yes.

18 Obviously there was a vote and council - the council was
19 divided. Before I ask about that, what do you make of the
20 fact that councillors voted in favour of a matter that
21 they hadn't informed themselves of
22 properly?---Disappointed. But you can also understand the
23 argument and the desire not to be seen or take the risk of
24 voting against Councillor Aziz's motion in case there was
25 an accident and somebody got killed; that, you know, "You
26 voted for this to occur." I would think some might be
27 thinking that. That was the whole argument, was, "This is
28 dangerous. This H3 is going to fix all the problems of
29 Hall Road." In fact it hasn't, and it's not. You know,

1 half voted for and half voted against.

2 The councillors that voted in favour of the motion, Gilic,
3 Smith, Aziz and Crestani, did they ask any questions of
4 Mr Aziz when he was advancing arguments in
5 support?---Look, I don't believe they did. I was engaged
6 with my rebuttal and what was the next move. I'm just
7 trying to - I know Councillor Jackson spoke and said he
8 had to disregard the legal advice. He supported my
9 position. I don't think - possibly Crestani may have
10 because she's likely to jump in on something like that.
11 But I don't recall anybody giving a significant address.
12 She in fact seconded the motion, didn't she?---If that's what
13 it says.

14 Perhaps if you take it from me that she did?---Yes.

15 In your experience - digressing for a moment from the H3 - does
16 that happen often, that councillors would vote on
17 something without having all the information to make a
18 decision on the merits?---Councillors can be persuaded of
19 an alternate argument. Where it's been an unannounced
20 motion you tend to think, "Well, hang on a minute, we want
21 to get some more advice." When it's around a heartstrings
22 type presentation in relation to public safety they would
23 be swayed more because of that.

24 But this is a situation where Mr Aziz indicates he's relying on
25 a letter that he didn't provide?---Correct.

26 He's relying on a Traffix Group report that he didn't provide,
27 and he was relying on legal advice that he didn't provide;
28 that's right, isn't it?---It is.

29 And none of the councillors that voted in favour, as you

1 recall, requested those documents in the chamber?---No, it
2 was only Councillor Jackson and I as far as I know because
3 Tim being a lawyer is very good.

4 Would you agree then that it would be difficult to assess the
5 motion on its merits without seeing that
6 documentation?---I was disappointed that a very strong
7 position of the council officers, a secure position as far
8 as council as far as costs had been addressed, that others
9 would vote for it and it was lost on a casting vote.

10 And as a general proposition would you agree that if a
11 councillor is not appraised of all the information they
12 can't with their hand on their heart say they are acting
13 in the best interests of the people they are representing,
14 can they?---Probably not, no. You are right, yes.

15 It's not "probably", is it?---I agree. I agree.

16 And therefore not being true to their oath?---Yes.

17 COMMISSIONER: Mr Rowe, let's just see what lessons might be
18 derived from this. We have heard evidence that gives rise
19 to concerns about Mr Ablett and Mr Aziz's possible
20 integrity and that Mr Woodman considered them to be at his
21 beck and call in terms of getting motions put to council
22 and passed by council. What I want to focus on now,
23 though, is those councillors who aren't the subject of
24 such serious allegations but who finish up supporting the
25 processes that are initiated by Mr Aziz or Mr Ablett. Can
26 it all be explained, Mr Rowe, by a lack of preparedness, a
27 lack of knowledge and understanding by them of the
28 particular motions?---I think it can be - it was ambush in
29 as much as they would have been told, "We're going to move

1 an alternate motion based on road safety." That alternate
2 motion was not discussed in pre-council in that respect.
3 But how to overcome that and - I think you are asking me
4 in relation to their judgment and what they have done in
5 relation to that how do we fix it. Amanda Stapledon, who
6 was mayor at one stage, and we had had a rash of these
7 types of things occurring, and Amanda and I had a
8 discussion in relation to its basically got to stop, it
9 was creating friction, "How are we going to do it?" And
10 she brought in a no surprises rule. It wasn't written in
11 any manual, but it was agreed to by every councillor.
12 From that time on no councillor was to move a motion that
13 they hadn't provided to and provided information to the
14 officers for a start and then was able to be provided to
15 councillors. That continued - because it wasn't in the
16 code of conduct, it wasn't written in a manual, it
17 diminished in its effectiveness, but it was a good move on
18 her part. A no surprises rule should, I think, have - you
19 can't bring it in. If you try and do it through urgent
20 business, if you try and ambush somebody by pulling it out
21 and introducing an alternative motion in the chamber, it
22 should be disallowed or the matter withdrawn for future
23 consideration.

24 Yes?---Because it does, it needs to be controlled.

25 And you would advocate that as something that should be in
26 existence as part of a regime for structuring council
27 meetings?---Absolutely. It should be set - you know,
28 government take a - if it needs to be in legislation, that
29 they take the opportunity of the current legislation

1 before the parliament and put amendments in, and I'm sure
2 there's going to be plenty that they should do.

3 But you suggested here that there were a number of
4 circumstantial facts that you took into account to come to
5 the conclusion that there had been some preparation before
6 the motion was moved to have other councillors support the
7 motion?---Yes.

8 Discussion and pre-meeting discussion, your observations of
9 what actually happened in the meeting, all of which led
10 you to infer, as I read your evidence, that there had been
11 some careful preparation for how this motion should get
12 through?---Yes.

13 You said a few moments ago that as a consequence of a series of
14 matters Councillor Stapledon brought in this protocol, no
15 surprises. What are some of the other examples that led
16 to that being necessary?---Specific examples, I can't give
17 you any specific examples. It was happening. It was
18 happening probably with two, maybe - yes, probably two
19 councillors.

20 The same two councillors?---No. Different - there was
21 Councillor Aziz, and Councillor Crestani was known for
22 that, but hers would be generally around mosques and
23 things.

24 I'm sorry, generally about?---Mosques.

25 Yes?---Very topical. I was actually thinking, and I think
26 I may have done it once unintentionally. But it was
27 something that was happening too regularly. The officers
28 weren't being consulted. It wouldn't have been so bad if
29 the councillors had gone to the officers and had the

1 discussion and the officers were able to say in
2 pre-council, "Yes, we've looked at that and we've provided
3 them with the appropriate motion and we're happy for it to
4 be passed." That wasn't happening. So if all of that
5 occurs, which is the normal, where the officers put up a
6 report, if you have an issue with that report or you want
7 to question, you can go directly to the officers and have
8 your questions answered. If you are still not happy with
9 it and it comes to the pre-council meeting, you pull it
10 out and we have a discussion amongst all councillors and
11 the officers who are present. That works well and that's
12 how the City of Casey does operate. But there's nothing
13 to say that people can't undermine it by doing without
14 notice motions.

15 Yes. So one of our objectives must be to ensure that the
16 system to the best - to the extent that it can has a
17 regime that ensures that if there are councillors who are
18 guilty of breaches of integrity that there are sufficient
19 structures around the way in which council operate to make
20 it difficult for them to be able to implement their
21 strategies?---That's a point where friendships and
22 relationships get in the way between councillors.

23 And on that score with H3 - and Ms Harris may be able to take
24 you to some of the statistics - there were a number of
25 councillors participating in H3 decisions that had
26 conflicts of interest but who did not disqualify
27 themselves. Were you aware of that?---No.

28 Mr Kenessey has told us that you had told him that it was
29 likely you thought that Mr Ablett and Mr Aziz were

1 corrupt. That's his evidence that was something you
2 conveyed to him. Did you have a suspicion to that
3 effect?---I did.

4 Were there any systems in place within the council that gave
5 you the opportunity where a motion was being moved by
6 either of them and you thought that there might be such a
7 consideration underlying their motives for you to raise it
8 at council level?---I was confident in my officers that
9 I was able to raise those matters with the officers.
10 I never raised it with the CEO at the time, and we were
11 very, very fortunate to have Sally Curtain as an officer
12 at council, who I believe is very well known here. Sally
13 was part of the establishment of IBAC. And I often sought
14 her counsel on these matters. As to a formal process,
15 there wasn't a formal process in place. It's up to the
16 individual councillor to seek out the appropriate officer,
17 have a discussion and do whatever is needed to do to
18 address that through the various channels that there are.
19 But one thing I would say there was nothing to help. It
20 was left to an individual to undertake any action.

21 There was a code of - a panel system within the local
22 government legislation that enabled conduct of councillors
23 to be reviewed, but that depended upon proof of
24 misconduct?---Mm-hm.

25 What about those councillors that you were able to observe were
26 manipulated by Mr Ablett or Mr Aziz, unwittingly but
27 manipulated? Have you any thoughts about what sort of
28 structure can be in place to best protect councils from
29 that?---There needs to be I think a process of

1 confidentiality for those councillors because they would
2 be perhaps worried about retribution at other stages,
3 other times, people's personal reactions that they may
4 have against a councillor. So there needs to be
5 protection for that.

6 Do you mean so that they're able to make disclosures - -
7 -?---Yes.

8 In a confidential situation?---Yes. But not through perhaps
9 this organisation as such as the - - -

10 No, I'm looking at council level?---Council level, yes.

11 Definitely at council level. Probably handled by
12 governance, and made easy, you know, just to - it's hard
13 without sitting down and workshopping it. But certainly
14 the answer is yes. It needs a process within the local
15 councils to make it easy for one councillor not to
16 vindictively go after someone, and obviously that's got to
17 be managed - - -

18 Yes?---But to make it easy for councillors to go and say, "Hey,
19 I'm feeling pressured to make these decisions."

20 Yes. That's helpful, Mr Rowe.

21 MS HARRIS: Did any councillor indicate to you that they felt
22 pressure in making a decision around the H3 matter?---No,
23 they didn't. They didn't make anything known to me in
24 that respect. Councillor Flannery - immediately the
25 council meeting ended I actioned a rescission notice with
26 the support of Councillor Flannery and Councillor Jackson.
27 Just to be clear, was your concern in relation to the substance
28 of the motion or the process?---Both.

29 And the option available to you then was to lodge the

1 rescission motion?---Rescission motion.

2 You sought or council sought legal advice in relation to the

3 lawfulness of the motion of 4 September; is that

4 right?---I believe they did, yes.

5 We heard from Ms Serey that councillors can't seek legal

6 advice. Who would have asked for that legal advice to be

7 provided?---It would have - well, councillors can request

8 legal advice.

9 Can they?---They can. So that's a misstatement on his part.

10 But it would have been - it would have been our planning

11 department or people under Peter Fitchett's control or it

12 may have been governance. Governance may have been asked

13 by the department to have a look at it, you know, come up

14 with the answers.

15 Either way, there was legal advice provided in relation to that

16 4 September motion?---I believe, yes.

17 What was the basis then that you moved the rescission

18 motion?---In that it was wrong, factually wrong, factually

19 incorrect and, you know, it was an error. And the vote

20 was so close. You know, it was 4/4, and the chair -

21 because both Councillor Stapledon and Councillor Aziz were

22 out of the - had declared a conflict for various reasons.

23 Yes?---And I think there may have - or there would have had to

24 have been one other absence, and I'm not sure who that

25 might have been.

26 Ms Serey. Councillor Serey?---Okay. Councillor Serey. That's

27 right. The three of them declared, I think.

28 A conflict; correct. Then Councillor Smith took the

29 chair?---Yes.

1 Was that at the instigation of Mr Aziz?---Councillor Smith,
2 like myself, is a person of considerable experience but
3 not necessarily by age, but we are, and, you know, he's
4 been a councillor ever since the City of Casey was
5 founded. So he has been mayor.

6 He was deputy mayor at the time; is that right?---He was and,
7 yes, he's got the experience and he jumps in, takes the
8 chair.

9 So the vote on 4 September was carried on his casting
10 vote?---Yes.

11 Because he was chair at the time; is that correct?---Yes.

12 Getting back then to the rescission motion, that was moved by
13 you. You had concerns about the obligations imposed on
14 Dacland; is that correct?---Well, no. The process was to
15 do something that council would normally do to allow the
16 release of the title to be sold for a school site. But,
17 regardless of that, we do it for everybody where council
18 is protected and there's not risk.

19 So did you consider there was an injustice - - -?---Yes.

20 In terms of towards Dacland?---Yes. You can't treat developers
21 differently, you know, and if it had have been Stockland
22 or anybody it would have been the same thing. It was
23 wrong. It was just plain wrong.

24 And that was the gist of your argument to council?---Pretty
25 much, and then as their facts became not facts, you know,
26 what they were leading was incorrect and wrong, I argued
27 on the location of the accidents that really happened and,
28 yes, argued it on those grounds. You just can't - council
29 has got to treat everybody the same.

1 You indicated earlier that you thought that this was in
2 retaliation for acts in relation to C219?---Yes.
3 Is it your suggestion that Mr Woodman or Ms Schutz had some
4 involvement in the alternative motions moved by Mr Aziz?
5 Perhaps I will rephrase that. Is it your understanding
6 that one of them had or either of them had an involvement
7 in the motion?

8 COMMISSIONER: Do you mean now or at the time, Ms Harris?

9 MS HARRIS: At the time?---At the time I believed that it was
10 possibly Megan Schutz. Well, yes, I believed it was her
11 because who else would it be?

12 And did that belief stem from you understanding there being
13 some ill-will between Ms Schutz and Dacland?---No, no, no,
14 it was - whether there was in that respect, they may have
15 had. But it was the team, that team.

16 Team Woodman?---Yes.

17 All right. You moved the rescission motion. Mr Aziz provides
18 another alternate motion?---And it never proceeded.

19 Is that right?---It never proceeded. Yes, because the
20 timing - timing is everything. It went in - it had to be
21 lodged within a certain time of the end of the meeting,
22 signed by three councillors, and then the other
23 councillors are notified that there is a rescission notice
24 in. So he couldn't take any action on the night to upset
25 our rescission motion.

26 Yes?---What it did was allow the officers to go away, get their
27 ducks in a row and be well prepared for when it came back
28 to the next council meeting, because what it means is the
29 rescission motion would then come up for debate and if we

1 won the rescission motion in the council then their motion
2 would be rescinded and I would move the original motion.
3 We never got to that point. There were - my understanding
4 some negotiations took place and, you know, they reached
5 an agreement between Wolfdene and Dacland in relation to
6 the construction of H3, the provisions of the
7 culverts - and the provision of the culverts.
8 Was that the ultimate result, was it?---In the end, and they
9 got their - they put up their bond as well as taking on
10 the work and council was able to release the land for
11 title in the end.
12 That's in December 2018, following the meeting?---Yes, I think
13 it might have happened in January because it dragged for a
14 little bit because - I don't 100 per cent recall, but it
15 dragged on for a bit and, yes, in the end I think January
16 somewhere it may have been resolved or the end of
17 December.
18 If it assists your recollection, the rescission motion was on
19 18 September '18 and the matter was back before council on
20 16 October 2018 and then finally 18 December 2018?---Yes.
21 That's much better, thank you.
22 And your understanding then is it resolved between the parties,
23 did it?---Yes.
24 And ultimately council was able to pass a motion that reflected
25 that resolution?---Yes.
26 Returning to something you canvassed with the Commissioner
27 earlier, the involvement of the planning department in the
28 alternate motion that was put by Mr Aziz, did they have
29 any involvement at all?---No.

1 That would be contrary, wouldn't it, to the guidance or
2 guidelines given by council?---It's contrary to the spirit
3 of what had been agreed to by every councillor, and that
4 was the no surprises. But, as I said before, it was never
5 actually put into - you know, it was never legislated by
6 council to be in the code of conduct or - - -

7 It was in a document, wasn't it, in terms of a guide for
8 councillors to town planning that if there was an
9 alternate motion to be put ideally it should go through
10 council officers?---Yes.

11 So they could assess the legality and the appropriateness of
12 it?---Yes.

13 That document existed, didn't it? Perhaps I can show you.

14 Page 4418, please. Have you seen this document
15 before?---I think there's many of those.

16 Is there? And if we could go to 4426, please? If you just go
17 down?---That's the one you showed me before.

18 No, no, this is a different one?---Yes .

19 If we can look at the third paragraph in particular that's on
20 the screen; that if councillors wish to put a different
21 motion they are strongly advised to ask planning officers
22 to assist with drafting it?---Yes.

23 Were you aware of that suggestion by council?---That was
24 the - I'm not sure what was the date of that document, but
25 certainly it was what - it might have been around - that
26 might have come after - - -

27 COMMISSIONER: There may be a date if you go down the page,
28 please.

29 MS HARRIS: Could we go down, please?

1 COMMISSIONER: Down the page.

2 MS HARRIS: 8 November 2016?---Okay, that was after I was
3 defeated. So I wasn't a councillor at that date. But
4 that is expressing - that's a guide. It's not a - - -

5 COMMISSIONER: It's an aspiration?---Yes.

6 MS HARRIS: A suggestion, perhaps? A suggestion for best
7 practice, perhaps?---Yes, yes.

8 Was that followed, do you know? Obviously not by Mr Aziz on
9 this occasion?---Certainly not in that instance.

10 But generally speaking would that be something that councillors
11 would do, go back to the planning department and say, "I'm
12 putting together an alternate motion. Here's the wording
13 or can you suggest some wording"?---Yes, look, it's good
14 practice. It should be done. As I said before I think
15 perhaps I may have been at some time in the past guilty of
16 something like that because it was - and that's probably
17 why I supported what Amanda wanted as well, because it was
18 obvious that it doesn't work to do it that way.

19 In relation to these documents, whether they be briefings or
20 protocols, policies, is there some way that councillors
21 can access these documents?---They are all on-line,
22 I would think. Without having gone there myself, they
23 would be all on-line.

24 Are there reminders to councillors to familiarise themselves
25 with these particular documents?---No.

26 If a document changes or there's a new protocol, are
27 councillors informed?---I think the code of conduct,
28 obviously councillors have to agree to the code of
29 conduct. Where it's an absolutely - where it's a policy

1 that's been adopted by the council, you would expect that
2 the council would know about it. But, yes, it would be
3 put into a document for councillors to look at. But
4 there's not regular, "Have a look at this", or - like,
5 I get regular updates in different roles that I take
6 outside of council, you know, "This has changed. Have a
7 look at it." In professional development that I undertake
8 it's all part of it, you know, telling you that you should
9 do this is good practice, constantly review yourself on
10 changes that have come in, be it by legislation or
11 whatever.

12 Returning to the H3 matter, there was division in votes until
13 the December 2018 - until it came before council in
14 December 2018. In your view is the division in votes for
15 H3 an example of voting blocs?---I have given some thought
16 to what a voting bloc is. Is there a political voting
17 bloc, which is the thing that I'm more used to? No,
18 because the council is made up of Tim Jackson, ALP; Wayne
19 Smith, ALP; Sam Aziz, ex-ALP, jumped the ship and joined
20 the other side; Rosie Crestani, Rise up Australia; Susan,
21 Liberal. You know, it's a mixture. We have got a diverse
22 group of councillors with differing political beliefs.
23 So, no, there's not a political voting bloc.

24 And you didn't see then an alignment between political
25 factions, if you like?---No, well, Wayne Smith is a member
26 of the Labor Party and, you know, he cast the casting
27 vote. Tim is a member of the Labor Party and he voted
28 with me, and my politics are not a secret. So, you know,
29 I don't think politics is an issue. It's more

1 personality. You know, and it might be that I have voted
2 against somebody at some particular time so that person
3 isn't going to vote for me.

4 Did that exist at Casey, that kind of - - -?---No, this is just
5 an example.

6 Sorry, I missed what you said?---That was an illustrative
7 example. But it could happen.

8 Were there other examples of that happening?---Not to my - no,
9 not direct ones. You know, it could be based on - you
10 know, around issues of religion.

11 Did it seem to you that certain councillors aligned on certain
12 matters?---Sam and Rosie anti-mosques, and a couple of
13 others would support them. But, you know, my ward partner
14 would occasionally vote against me, but that was unusual
15 because we're different people - not unusual, rather;
16 we're different people. You know, no, look, I don't see
17 the voting blocs as being an issue in Casey.

18 What about in relation to planning matters in which John
19 Woodman was involved?

20 COMMISSIONER: Were there a group of councillors other than
21 Mr Aziz or Mr Ablett who tended to be a voting bloc or
22 unit in relation to planning issues in which
23 Woodman/Watsons/Wolfdene had an interest?---Well, people
24 would never know about Watsons because they worked for
25 council and did consulting work for council. But I don't
26 know in planning matters they would be - but your answer
27 is I don't believe that it was based on a Woodman vote
28 apart from some people, but not everybody. It
29 never - there was times - - -

1 MS HARRIS: Who are those people?---I'm just thinking. There
2 was your core.
3 Who are they?---Well, you would have - if Ablett had have been
4 there up until the time he started to declare a conflict
5 he would have been - was part of it. But then he declared
6 a conflict. Tim was head of the planning committee. He
7 would generally vote, but not because of Woodman, because
8 he was in the planning committee. He was with the
9 officers talking about the merits of it. I don't know
10 that there was anybody that was consistently there - like,
11 I voted - most planning matters that were recommended by
12 council officers I voted for. So it depends on the
13 recommendation of council. If it's recommended by the
14 officers and the councillors vote for it, can you call
15 that a bloc? If it's not recommended by council and
16 councillors vote for it, maybe.
17 What interest did Leightons have in the H3 matter?---None that
18 I'm aware of.
19 Did Mr Kenessey have any involvement in the H3 matter?---He
20 obviously knew Dacland. As to whether he passed on advice
21 or gave them advice - - -
22 Did he do any consulting work for Dacland, do you
23 know?---I don't know. I'm not aware of any, as to whether
24 he did or he didn't. Like, you told me in the Commission
25 yesterday that Tom was in fact a consultant now.
26 I thought he was a consultant all the time. So I don't
27 know.
28 You are not aware of any involvement - - -?---Directly with
29 Dacland, no.

1 Or with the H3 matter?---No, because that was purely between
2 Woldene and Dacland and us with wanting to release the
3 education site.

4 You made a comment earlier today about SCWRAG being used in the
5 H3 matter?---Yes.

6 What can you tell us about that?---Only that, you know, they
7 were - look, Ray has always been - would always contact me
8 about stuff he wanted done because it was my ward. He was
9 president of SCWRAG.

10 Is that in relation to C219?---No, no, no, that was in relation
11 to wanting road signs up and things like that. So he was
12 acting like a real community group.

13 Yes?---Or being a real community group.

14 I'm interested in what you said earlier that you realised
15 through the H3 process that SCWRAG had in fact been
16 corrupted. What did that mean?---The change in attitude
17 of Ray and his wife towards me. It had been quite
18 amicable and friendly and, as I said, he would ring me
19 about community issues like road signs or, you know, "The
20 sign isn't big enough that's pointing to the new shops,"
21 and I would do as I would do for any constituent and make
22 sure that that was looked after. I was verbally abused
23 the night of H3.

24 When you say "the night", was that 4 September?---Yes, when
25 Aziz was doing his thing.

26 Yes?---And it was mainly Ray's wife who got quite abusive, and
27 Ray passed some comments and I thought, "No, this is - the
28 information is wrong, what they believe. You know,
29 they're being used. Do they know they are being used?"

1 Possibly" - - -
2 Who did you think they were being used by?---Well, by Megan
3 Schutz and the team.
4 So it was on the basis of that conversation, was it, that you
5 believed SCWRAG had been corrupted?---In that respect,
6 yes. Yes, that they weren't - they had gone beyond being
7 a community group.
8 They were actively involved in the H3 intersection, were
9 they?---Absolutely. They made a submission. They
10 provided - they actually - Ray signed a letter on SCWRAG
11 letterhead to be used as evidence by Councillor Aziz.
12 I think it was used as evidence by him, and it may have
13 been circulated to other councillors as well.
14 Can we pull that up, please, page 4657? It's dated
15 13 September 2018?---Yes.
16 Is this the letter you are talking about?---Yes.
17 If we could scroll down, please?---Yes, that's the - - -
18 Was there something about that letter that caused you concerns
19 about the bona fides of the SCWRAG group?---It's not Ray
20 writing the letter. It's not his words.
21 That was - - -?---To me. I'm not a linguist, but from things
22 I had received before that's not his terminology.
23 It didn't sound like letters you had read previously from him;
24 is that right?---That's correct.
25 If we could just scroll up, please? No, the other way, sorry.
26 Continue to the next page. And keep going. You then
27 forward that letter to Mr Kenessey. Why is
28 that?---Because we had had discussions about the team, and
29 that was just another example of what they were doing.

1 Just so I follow you, you wanted Mr Kenessey to see that letter
2 for what purpose?---Just as an example. Just, you know,
3 this is what Woodman & Co are doing and it's unhelpful,
4 basically.

5 COMMISSIONER: No, sorry - - -?---That was the intent. It's
6 not expressed - - -

7 That was your purpose, was to have him see the letter - -

8 -?---To effectively reinforce - sorry, Commissioner,

9 I have cut you off.

10 Yes?---It was to reinforce what I felt about what was going on
11 in relation to the Woodman and Watson - - -

12 Did you later convey to Mr Kenessey that was the purpose in
13 sending him that letter?---Yes.

14 To demonstrate your concerns that maybe SCWRAG was being
15 misused?---SCWRAG, but the overall thing wasn't doing
16 anybody any good.

17 Had you made that view clear to Mr Kenessey?---I had.

18 MS HARRIS: I note the time, Commissioner. Is that an
19 appropriate time?

20 COMMISSIONER: Yes. What is your estimate, Ms Harris? It
21 might take the rest of the day?

22 MS HARRIS: The best part of the rest of the day, Commissioner.

23 COMMISSIONER: I think it might be convenient then to advise
24 the next witness that she won't be required today.

25 MS HARRIS: Yes.

26 COMMISSIONER: We will adjourn until 2.15. Have a good break,
27 Mr Rowe?---Thank you.

28 <(THE WITNESS WITHDREW)

29 LUNCHEON ADJOURNMENT