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TRANSCRIPT OF AFTERNOON PROCEEDINGS

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INDEPENDENT BROAD-BASED ANTI-CORRUPTION COMMISSION

MELBOURNE

WEDNESDAY, 2 DECEMBER 2020

(39th day of examinations)

BEFORE THE HONOURABLE ROBERT REDLICH AM, 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

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

1 UPON RESUMING AT 1.51 PM: 01:51:34PM  
2 <PETER KEOGH, recalled: 01:51:34PM  
3 COMMISSIONER: Good afternoon. Are we ready to proceed, 01:51:34PM  
4 Mr Keogh?---Yes, I'm good to go. 01:51:39PM  
5 Very good. Yes, Ms Harris. 01:51:41PM  
6 <EXAMINED BY MS HARRIS, continued: 01:51:41PM  
7 Mr Keogh, just before lunch we had left that period of time 01:51:44PM  
8 post panels, so early 2018 or through 2018, if I could put 01:51:47PM  
9 it that way, but before any decision has been made by the 01:51:54PM  
10 minister. If I can indicate to you that in June 2018 01:51:57PM  
11 Ms Schutz communicates with Mr Staindl about - so this is 01:52:06PM  
12 I've indicated post panel decision - that 'the bureaucrats 01:52:13PM  
13 still haven't given up and are attempting to intervene and 01:52:17PM  
14 scupper the amendment.' She then made contact with Adrian 01:52:21PM  
15 Salmon on or around 16 June 2018 in DELWP. Do you know or 01:52:27PM  
16 have you had dealings with Mr Salmon?---Yes. 01:52:33PM  
17 Do you know him to be or was he in June 2018 the officer 01:52:36PM  
18 responsible for processing the planning panel approval, do 01:52:41PM  
19 you know?---I wouldn't know. It sounds right, yes. 01:52:48PM  
20 Did you have any interactions with Mr Salmon in relation to the 01:52:53PM  
21 rezoning matter?---No. 01:52:57PM  
22 I can show you this email if it would assist you, but he 01:53:04PM  
23 indicates to Ms Schutz that, 'The amendment is being 01:53:07PM  
24 assessed at the moment' - Commissioner, this is page 5036 01:53:09PM  
25 - 'there's a lot of discussion across this and other 01:53:14PM  
26 departments.' At that time, that is June 2018, was that 01:53:16PM  
27 your understanding, that there was post panels a lot of 01:53:22PM  
28 discussion across apartments - departments, I'm 01:53:25PM  
29 sorry?---I would have thought it only would have been the 01:53:30PM

1 MPA or the VPA and DELWP. I wouldn't have thought it 01:53:32PM  
2 would be any broader than that. 01:53:35PM  
3 You can't think of any other department that would be 01:53:37PM  
4 involved?---No. 01:53:41PM  
5 And you're not aware of any other department that was 01:53:41PM  
6 involved?---No. 01:53:44PM  
7 He indicates that they are intending to brief the minister, 01:53:46PM  
8 there's no timeframe yet due to the discussions, but he 01:53:55PM  
9 didn't expect any great delay. To the best of your 01:53:59PM  
10 knowledge did Mr Salmon or someone from DELWP brief the 01:54:05PM  
11 minister?---At some stage - at some stage, yes. I don't 01:54:09PM  
12 have any insight as to who that was or when that was. 01:54:20PM  
13 Were you part of those discussions or that briefing?---I think 01:54:24PM  
14 it would have been unlikely. 01:54:27PM  
15 Is that something that you would ordinarily be a part 01:54:30PM  
16 of?---It's something ordinarily I would avoid, yes. 01:54:34PM  
17 'Avoid', did you say?---Avoid, yes. 01:54:36PM  
18 The documents indicate that Mr Staindl made contact with you 01:54:38PM  
19 around 13 June 2018 for an update. If we could bring up, 01:54:48PM  
20 please, page 5033. This is his email to Ms Schutz. If we 01:54:53PM  
21 could just scroll down, please?---Yes. 01:55:09PM  
22 If I can indicate that below that Ms Schutz asks Staindl, 'How 01:55:18PM  
23 did you go last night briefing Mr Keogh on Cranbourne 01:55:23PM  
24 West? Does he know where it's at?' This is his response, 01:55:26PM  
25 that you didn't know where it was at?---Yes. 01:55:32PM  
26 And asked he follow up with Andrew Herrington, and Mr Staindl 01:55:35PM  
27 indicates that Mr Herrington has a good - sorry, Judith 01:55:41PM  
28 has a good relationship with Mr Herrington and he's going 01:55:45PM  
29 to ask her to do this. He thinks it's better coming from 01:55:48PM

1 her. What role did Mr Herrington hold in June 2018, or 01:55:53PM  
2 what position?---He was an adviser within the Minister for 01:55:58PM  
3 Planning's office. 01:56:04PM  
4 Was he a senior adviser or - - -?---Yes, he would have been a 01:56:04PM  
5 senior adviser; yes. 01:56:09PM  
6 And why is it you were directing Mr Staindl to him?---I suspect 01:56:11PM  
7 because I knew nothing of the detail of it and, you know, 01:56:18PM  
8 I suspect - you know, I infer from this that Staindl was 01:56:25PM  
9 after a, you know, 'Where's it up to. When might we 01:56:29PM  
10 expect something,' which I didn't know so I would have 01:56:34PM  
11 passed him on to an adviser. 01:56:37PM  
12 And is that something that you would expect Mr Herrington to 01:56:39PM  
13 have known at that point in time?---I'd expect 01:56:41PM  
14 Mr Herrington to manage that, yes. 01:56:44PM  
15 Would you expect him to know where the - or what the update was 01:56:48PM  
16 and where - - -?---I think at that point it would have 01:56:53PM  
17 been between Andrew and Tina Ngu, yes. So Tina was the 01:56:56PM  
18 planner with responsibility within the ministerial office, 01:57:02PM  
19 and she would have worked with Andrew on it. 01:57:07PM  
20 COMMISSIONER: Mr Keogh, how many planning advisers did the 01:57:10PM  
21 minister have?---Four or five, at various - yes. 01:57:15PM  
22 And are you able to say how far back a retinue of that order 01:57:28PM  
23 was in place with the Minister for Planning? I don't just 01:57:34PM  
24 mean with the present minister, but has that been the case 01:57:38PM  
25 for some time, that the Minister for Planning had such a 01:57:42PM  
26 large retinue of advisers?---It would depend on - I don't 01:57:45PM  
27 know about the previous government, but in our government 01:57:53PM  
28 you're given a staffing profile. So you'd be given, you 01:57:57PM  
29 know, two senior advisers, two advisers, and then it would 01:58:01PM

1 be up to the office to find people and then submit them 01:58:04PM  
2 for approval into the PPO. So we always - we always 01:58:08PM  
3 wanted, you know, qualified planners or lawyers in those 01:58:15PM  
4 roles, and that's how we did it. Other ministers create 01:58:19PM  
5 offices as their needs require. 01:58:27PM  
6 Right. So a minister having a considerable number of advisers 01:58:32PM  
7 then, including a chief adviser or chief of staff, that's 01:58:40PM  
8 not uncommon across the board with ministries?---No, no. 01:58:45PM  
9 Not just Planning?---Oh, no, no, no, that's right. In terms of 01:58:50PM  
10 the creation of private offices for ministers? 01:58:55PM  
11 Yes?---It's pretty unremarkable. You'd get - you know, 01:58:58PM  
12 depending on what portfolios you'd have, you know, you'd 01:59:03PM  
13 get an allocation from the Premier's private office. It 01:59:06PM  
14 was pretty much non-negotiable. You'd always try and 01:59:11PM  
15 argue it up. 01:59:15PM  
16 Yes. And historically can you give me any idea about when that 01:59:16PM  
17 started to become in vogue, that ministers could have this 01:59:26PM  
18 large panel of advisers and when they started to perform 01:59:29PM  
19 functions which previously the department working to the 01:59:36PM  
20 minister would have serviced?---Look, it's widely thought 01:59:41PM  
21 to have started with the Prime Ministership of Gough 01:59:48PM  
22 Whitlam where he found the bureaucracy to be unresponsive 01:59:53PM  
23 and on, you know, their accounts moribund, and along with 01:59:56PM  
24 allocating all portfolios between two ministers. That's 02:00:02PM  
25 commonly where it's thought to have started. Within the 02:00:06PM  
26 State, I think it's - from my observation it would have 02:00:09PM  
27 been pretty consistent through the Bracks/Brumby 02:00:15PM  
28 governments. I don't know about the Baillieu/Napthine 02:00:18PM  
29 governments. And certainly under the Andrews government 02:00:21PM

1 I think it's fairly consistent with what's gone before 02:00:25PM  
2 under Bracks and Brumby. 02:00:28PM  
3 Thank you. 02:00:30PM  
4 MS HARRIS: Mr Keogh, did your office or the minister's office 02:00:32PM  
5 provide updates to any other ministerial offices about 02:00:39PM  
6 planning matters generally, and not specifically C21, but 02:00:45PM  
7 is that an expectation that you would do that?---I mean, 02:00:50PM  
8 yes, there would be nothing stopping you doing that. 02:00:56PM  
9 People might have a particular interest in - often other 02:01:01PM  
10 ministers are involved in planning applications 02:01:05PM  
11 themselves, so engage with, you know, whether it be water 02:01:09PM  
12 or health or education. So there is always an interest 02:01:12PM  
13 from ministers' office in there, their bits of planning. 02:01:16PM  
14 It would be pretty unusual for another minister's office 02:01:20PM  
15 without a - I mean, something of - you know, if you've got 02:01:23PM  
16 a billion dollar building or, you know, like a really 02:01:28PM  
17 significant building other people might be interested in 02:01:31PM  
18 that in terms of - you know, the central economic 02:01:33PM  
19 ministers might have an interest in that. But I don't 02:01:37PM  
20 think there was much interest in other ministerial offices 02:01:41PM  
21 in this one. I might be wrong, but I don't recollect 02:01:47PM  
22 being engaged with anyone about it. 02:01:49PM  
23 So the expectation to brief would depend on whether that 02:01:51PM  
24 particular minister had any - or their office had an 02:01:54PM  
25 interest in the impact of the planning decisions; is that 02:01:58PM  
26 right?---Yes. 02:02:01PM  
27 Would you be expected to report up - for a better word, up to 02:02:04PM  
28 the Premier's office?---No. 02:02:10PM  
29 So not to give progress reports?---No, no. 02:02:11PM

1 What about when it was coming to a point of making a decision 02:02:14PM  
2 on a planning matter; would you be expected to inform the 02:02:19PM  
3 Premier's office at that point?---No. They're pretty 02:02:22PM  
4 clear that they're decisions for the Minister for Planning 02:02:26PM  
5 and they - I've never had a query like that. Well, sorry, 02:02:31PM  
6 I qualify. I mean, if it was a significant State 02:02:40PM  
7 transport infrastructure piece people are interested in 02:02:45PM  
8 the timing of those things. But just for, you know, a 02:02:47PM  
9 rezone or a building permit, I've never had a follow-up 02:02:52PM  
10 like that. 02:02:55PM  
11 Yes. Thank you. Commissioner, I tender that document on the 02:02:56PM  
12 screen, page 5033. 02:03:00PM  
13 COMMISSIONER: That will be exhibit 330. 02:03:10PM  
14 #EXHIBIT 330 - Email from Mr Staindl to Ms Schutz, page 5033. 02:03:13PM  
15 MS HARRIS: Thank you. Mr Keogh, there's an email from 02:03:14PM  
16 Mr Woodman to Tom Kenessey of Leightons indicating that 02:03:27PM  
17 they had been told by someone in the minister's office 02:03:35PM  
18 that their amendment would be approved or there would be a 02:03:39PM  
19 decision in relation to the amendment on 11 October 2018. 02:03:43PM  
20 Are you aware that that was ever a date forecast for the 02:03:49PM  
21 decision or for there to be a decision?---No. 02:03:53PM  
22 If I could pull that document up, please. It's 6090. I'll 02:04:00PM  
23 give you a chance to read that, Mr Keogh, before I direct 02:04:25PM  
24 you in particular to an aspect of it?---Right. Yes. 02:04:28PM  
25 You'll see there that Mr Woodman indicates that he was advised 02:05:12PM  
26 or he says 'we were advised' - this on the second line - 02:05:17PM  
27 on Wednesday 10 October by Ms Graley and the candidate for 02:05:21PM  
28 the seat of Cranbourne, Ms Richards, that they were 02:05:25PM  
29 advised by the minister's senior adviser that the 02:05:28PM

1 amendment would be approved on 11 October. I take it from 02:05:31PM  
2 your evidence - well, first of all, I take it from your 02:05:37PM  
3 evidence that that certainly wasn't you that passed on 02:05:42PM  
4 that information, if that information was indeed passed 02:05:45PM  
5 on?---That's right, yes. 02:05:47PM  
6 COMMISSIONER: Have you got any observation to make, Mr Keogh, 02:05:56PM  
7 about Mr Woodman's statement that 'the industrial land 02:06:00PM  
8 supply analysis has been around for three or four 02:06:09PM  
9 months'?---No, because I - I think the issue was the 02:06:19PM  
10 broader issue of land in the south-east and that balance 02:06:29PM  
11 between employment land and industrial land. So 02:06:32PM  
12 I don't - you know, ultimately that was what was asked to 02:06:38PM  
13 be done. I don't think that work had been done 02:06:41PM  
14 previously. The other thing, if I could, is that 02:06:45PM  
15 11 October seems late for a decision on it. I don't know 02:06:47PM  
16 who would have said that in the minister's office. We 02:06:51PM  
17 were certainly trying to have decisions made, you know, a 02:06:56PM  
18 month from caretaker. We didn't want to be making 02:07:00PM  
19 decisions in that last month. So, you know, 11 October 02:07:03PM  
20 seems late. And, you know, the minister had - you know, 02:07:06PM  
21 had struggled to land this decision. I doubt - I wouldn't 02:07:12PM  
22 have been as confident predicting he would make a decision 02:07:26PM  
23 of any sort by whenever. I thought - he's clearly 02:07:28PM  
24 struggling with the decision. So that seems a very strong 02:07:34PM  
25 prediction. 02:07:42PM  
26 Yes. But if you wouldn't mind just coming back to the land 02:07:43PM  
27 supply analysis. The minister, following the election and 02:07:48PM  
28 in the new year, made a final decision then refusing the 02:07:58PM  
29 rezoning and that decision, from memory, rested largely on 02:08:04PM



1 the result of this analysis, did it not?---I think that's 02:08:12PM  
2 right, yes. 02:08:23PM  
3 So I'm just interested to know from you how long had this 02:08:24PM  
4 industrial land supply analysis or review been under way 02:08:29PM  
5 as at 19 October?---I don't - so there was a formal review 02:08:34PM  
6 that I think had been commissioned to look at the broader 02:08:42PM  
7 employment land, and that was the instance of it being 02:08:45PM  
8 deferred. You know, there might have been some sort of 02:08:49PM  
9 smaller assessments within the area whether it was 02:08:51PM  
10 sufficient and what it could be used for, and I think 02:08:55PM  
11 there was a suggestion that the industrial land that was 02:08:58PM  
12 there wasn't particularly helpful for industry and would 02:09:01PM  
13 only have a low take-up. So I think the exercise that was 02:09:07PM  
14 being asked for as a part of the 7 October decision was 02:09:12PM  
15 for a broader analysis of industrial land in the 02:09:17PM  
16 south-east. So it asked to put it in a broader context 02:09:20PM  
17 rather than that specific context. True it is - well, 02:09:26PM  
18 I don't know, but I suspect, you know, there may well have 02:09:29PM  
19 been some assessment of the nature of the land and its 02:09:31PM  
20 adequacy and whether it was fit for purpose. But, as 02:09:35PM  
21 I say, the work that was subsequently done was broader 02:09:39PM  
22 than that. 02:09:42PM  
23 So your understanding is that there was then a more focused 02:09:47PM  
24 analysis on this particular area, was there, which led the 02:09:53PM  
25 minister to the ultimate decision?---I think there with 02:09:57PM  
26 a - there was analysis of this site in the micro that had 02:10:02PM  
27 been a part of the decision and a part of the 02:10:07PM  
28 conversation. But I think when the minister deferred it 02:10:10PM  
29 he asked for a broader piece of work to be done. So 02:10:12PM

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I think that reference to, you know, the land supply analysis being around for three or four months was the micro, but I don't think the macro had been done.

I see. Yes. Thank you.

MS HARRIS: Returning to the issue of the date of the decision, was there any conversation between you and the minister or amongst staff within the office that 11 October would be a likely date for a decision?---No, I wasn't a part of any of those discussions. I mean, you know, as I say, we were wanting to make all our decisions and, you know, wrap up - - -

If that had been a date nominated for a decision, as the chief of staff you would expect to know about that, wouldn't you?---Yes. And, as I say, we were trying to get everything done a month out from caretaker. So that's almost - it's a week and a half into that month. So it seems a bit late. I'd have thought, you know, his preference would have been to make it sooner rather than later.

And you in fact indicated that the decision to defer was made on 7 October; is that right?---That's right. That's my recollection, yes.

What led or prompted the decision to defer as opposed to a decision on the amendment?---So it's not my decision. It's Minister Wynne's decision. I don't think he was ever convinced by it. I mean, I think - you know, I think he was looking to be responsive to, you know, the aspirations of the people living out adjacent to an industrial zone, but at the same time he was struggling with, you know, the

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1           bureaucratic - the technical planning perspective which           02:12:17PM  
2           was to say, you know, the 20-minute neighbourhood having           02:12:20PM  
3           industrial zone next to employment land was a good thing.           02:12:24PM  
4           I think he wrestled with that for a number of months. You           02:12:27PM  
5           know, there were cogent arguments on each side. He had           02:12:33PM  
6           been out to look at it. I just don't think he could land           02:12:36PM  
7           it, and in the end asked for further work to be done.           02:12:39PM  
8   And the views that you've just expressed, were they views that           02:12:46PM  
9           the minister expressed to you?---Not in those - that's my           02:12:50PM  
10          summation, my observation. I mean, you know, I might have           02:12:55PM  
11          pieced that together. And that's partly my observation.           02:13:00PM  
12          I mean, he went back and forth with the department on           02:13:03PM  
13          options. It's one of those - I think it's one of those           02:13:07PM  
14          fifty-fifty, you know, decisions that, you know, he           02:13:15PM  
15          struggled with. The fact - I think he went out twice to           02:13:18PM  
16          look at it and, you know, couldn't land it and wasn't           02:13:22PM  
17          prepared to, you know, land it, you know, that close           02:13:25PM  
18          to - that close to the election and wanted more work done.           02:13:31PM  
19          He said at the outset when he approved the exhibition he           02:13:34PM  
20          asked for strategic work to be done on, you know, the           02:13:38PM  
21          industrial employment land, and I'm not sure that had ever           02:13:41PM  
22          been acquitted by the council.           02:13:45PM  
23   The email on the screen referred to Tom Kenessey. Did you have           02:13:49PM  
24          any dealings with Mr Kenessey?---No.           02:13:54PM  
25   Did you have any dealings or communications with anyone from           02:13:57PM  
26          Leightons?---No.           02:14:01PM  
27   Or from Dacland?---I know the name Dacland, but I don't have           02:14:03PM  
28          any recollection of dealing with anyone from Dacland.           02:14:31PM  
29   COMMISSIONER: The reference there to 'senior adviser', amongst           02:14:35PM

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your group of advisers was there a senior adviser?---We had a few senior advisers. I think Andrew was a senior adviser. Tina was a senior adviser. I think Alana had gone back to the department at that stage. I think Evan had gone to work for Urbis. So staff are leaving and getting on with their careers at this stage. So, no, I'm not sure who it refers to.

MS HARRIS: I tender that document, Commissioner.

COMMISSIONER: Yes. That will be exhibit 331, email from Mr Woodman to Mr Kenessey.

#EXHIBIT 331 - Email from Mr Woodman to Mr Kenessey, page 6090.

MS HARRIS: Mr Keogh, in October 2018 were you or was anyone from the minister's office to the best of your knowledge contacted by anyone from The Age newspaper?---Yes, it's pretty much a daily occurrence. We have a media adviser assigned to our office and, you know, they'd talk to the dailies pretty much every day.

You'd be aware that - - -

COMMISSIONER: Do they still do that, Mr Keogh, or has the written media ceased to hold the same importance?---There's certainly a lot fewer of them than there were. But they are pretty frequent flyers, Commissioner, yes.

MS HARRIS: You'd be aware of an article by The Age in late October 2018 commenting on the relationship between councillors and developers?---Yes.

And the rezoning?---Yes.

Was that brought to your attention or the possibility of that article brought to your attention before its

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1 publication?---Yes. 02:16:35PM

2 How did that come about? Can you tell us about that?---As 02:16:37PM

3 I say, Mr Millar would talk to our office at various 02:16:43PM

4 times. It would have been before the 28th. I think, you 02:16:54PM

5 know, he spoke to one of our advisers and said, 'Gee, this 02:16:58PM

6 is red hot' or, you know, he had been working on an 02:17:04PM

7 article and this was going to come out and, you know, blow 02:17:08PM

8 the lid off Casey. That's, you know - - - 02:17:11PM

9 Did he speak to you?---No. 02:17:18PM

10 How long before the article came out was contact made with your 02:17:20PM

11 office?---On this issue, I don't know. A week. A week, 02:17:24PM

12 two weeks. I'm not sure. There was a gap, but I don't 02:17:36PM

13 think it was a month or anything like that. 02:17:41PM

14 Do you know if the minister was made aware of the contact by 02:17:45PM

15 The Age newspaper?---At some - at some stage I think he 02:17:49PM

16 would have been, yes. 02:17:55PM

17 Did that come by you - - - 02:17:57PM

18 COMMISSIONER: You didn't talk to him about it, 02:18:00PM

19 Mr Keogh?---I would have at some stage. I would have at 02:18:06PM

20 some stage. I don't have a clear recollection of a 02:18:13PM

21 conversation. 02:18:19PM

22 But I just wanted to be clear about this. Is it your evidence 02:18:21PM

23 that it's your understanding that heading into caretaker 02:18:26PM

24 mode the minister had made no - had reached no resolution 02:18:33PM

25 of the question of whether there should be a rezoning; 02:18:42PM

26 that his only decision was that it should be deferred and 02:18:45PM

27 that he was still undecided?---That's - - - 02:18:51PM

28 Is that your understanding?---That's my understanding, yes. 02:18:54PM

29 MS HARRIS: But you'd be aware, Mr Keogh, of evidence that 02:19:02PM

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suggests that the enquiries being made by The Age had an impact on the decision to defer. What do you say about that?---I don't think that - as I say, I don't think the minister had ever got to a position where he was comfortable approving it. The strategic work hadn't been done and we needed to finish with planning and move into the election. He called it on 7 October.

Could we have on the screen, please, page 3307. This is exhibit 49, Commissioner. I can indicate, Mr Keogh, this is a memo from Mr Woodman and Ms Schutz to Michael O'Connell and Tom Kenessey in relation to the Cranbourne West rezoning dated 21 December 2018. I'll just give you a moment to read the first page or so, if we could scroll down, please?---Yes.

COMMISSIONER: I think you need to go down then below 'Strategy'?---Yes.

MS HARRIS: Mr Keogh, you'll see under 'Strategy' the reference that, 'They' - that is Schutz and Woodman - 'have been advised by the minister's office that unless we can refute the contents of the articles in relation to the amendment C219 the minister will have no alternative but to adopt the recommendation of the bureaucrats.' Was that the position within the office?---I'm still of the view the minister was never convinced of the strategic merit of it. But, look, clearly the allegations that were aired on 28 October, you know - because a big piece of the puzzle for me was that the local council was giving voice to the aspiration of the residents. You know, the suggestion that there had been corrupted - that they were putting

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1 that position corruptly would impact how you would look at 02:22:16PM  
2 it after the revelations of the 28th and indeed the 02:22:20PM  
3 evidence of the Commission. I think that's - I think 02:22:23PM  
4 that's - so I think it's - I think it's a piece of the 02:22:27PM  
5 puzzle, if you like, that, you know, because it was always 02:22:32PM  
6 premised - you had - on the one hand you had DELWP, the 02:22:37PM  
7 MPA, and I think Treasury had also bought into it through 02:22:43PM  
8 the VPA, I think they had all opposed the rezoning; on the 02:22:51PM  
9 other side you had the council, the local members, the 02:22:57PM  
10 voice of the community and the council. That was kind of 02:23:01PM  
11 a balance, the institutional balance, if you like. And 02:23:07PM  
12 the revelations on the 28th seemed to me you'd have to 02:23:10PM  
13 reset that in light of the revelations of the 28th and 02:23:16PM  
14 indeed the evidence before the Commission. 02:23:22PM

15 But my question - - - 02:23:25PM

16 COMMISSIONER: I'm sorry, appreciating your view about 02:23:28PM  
17 political expediency, Mr Keogh, but what you're being 02:23:31PM  
18 asked about here is whether or not the content of this 02:23:36PM  
19 letter reflects what was being discussed internally within 02:23:39PM  
20 the minister's office?---Oh, look, it was a topic of 02:23:43PM  
21 conversation. Like, it's pretty - the article on the 28th 02:23:47PM  
22 and its revelations were pretty breathtaking. I mean - as 02:23:55PM  
23 I say, I mean, I think - I don't disagree with 02:23:59PM  
24 the sentiment in the first sentence, but I would add that 02:24:02PM  
25 I still don't think the minister was convinced of it 02:24:06PM  
26 anyway. 02:24:09PM

27 Please proceed, Ms Harris. 02:24:24PM

28 MS HARRIS: So the answer to my question, yes, it was the case 02:24:26PM  
29 that the position of the minister's office was that, 02:24:28PM

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unless they could refute the contents of the article, the minister would have no alternative but to adopt the recommendation of the bureaucrats?---Broadly I think that's right.

COMMISSIONER: That can't be right, though, can it, as a matter of principle?---Well, only because it cast doubt on what we had learnt to that date. I mean, the council had adopted a position and put that to us. Was that the position of council or not? Like, it seems to me that's an important part of the equation. If we're acting on information or we're acting on a submission which is arrived at corruptly, are we to act on that corrupt position of the council that's been put to the minister's office?

Yes?---And that's why I - broadly I think the sentiment is probably right. But, again, I don't think the minister was convinced in any event.

Yes.

MS HARRIS: Is the sentiment of the second paragraph also broadly right, that the minister was concerned that if he did authorise the rezoning that there would be an accusation that the decision was based on donations rather than merit?---No, no. I'd resist that. You know, he would have made - you know, he would have made his decision. You know, his decision is his decision. But I think he would have had to have gone back to council and said, 'Is this your position?'

So concern about the linking of donations and the decision, that wasn't something that the minister ever expressed to

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1 you?---No. No. I mean, you know, the minister himself 02:26:32PM  
2 was always careful not to take donations from developers 02:26:38PM  
3 or builders or anyone. I mean, you know, if - I think it 02:26:41PM  
4 would have been - I don't think that would have been a 02:26:45PM  
5 live part of the decision-making process. 02:26:48PM  
6 The suggestion here isn't that the minister himself took 02:26:52PM  
7 donations but rather the donations made more broadly to 02:26:55PM  
8 the Labor Party. Was that something he discussed with 02:27:00PM  
9 you?---No. 02:27:02PM  
10 COMMISSIONER: Just remind me, Ms Harris, was The Age article 02:27:03PM  
11 focused on - at that point of time on donations made to 02:27:07PM  
12 the Labor Party or to the persons on the council who had 02:27:13PM  
13 participated in the decision-making process at council? 02:27:18PM  
14 MS HARRIS: Yes, it was in relation to council, the October 02:27:22PM  
15 2018 one, Commissioner. 02:27:25PM  
16 COMMISSIONER: Yes. So, unless The Age article was focused on 02:27:26PM  
17 something that would give rise to a public perception at 02:27:40PM  
18 State Government ministerial level about donations to the 02:27:44PM  
19 Labor Party, that second paragraph would be difficult to 02:27:47PM  
20 understand. 02:27:52PM  
21 MS HARRIS: If I can assist, Commissioner, there was a second 02:27:55PM  
22 Age article in November, 18 November 2018, which did touch 02:27:58PM  
23 on donations to State members, and then the date of this 02:28:02PM  
24 document is 21 December 2018. 02:28:07PM  
25 COMMISSIONER: Thank you. So were you familiar with that 02:28:11PM  
26 second article, Mr Keogh?---Not in any detail. I mean, 02:28:13PM  
27 I'm aware there were several articles. But by then we're 02:28:18PM  
28 well into the election campaign and, you know, have packed 02:28:23PM  
29 up the office and gone. And, you know, whether we come 02:28:27PM

1 back or not come back, there's - it's far from clear on 02:28:30PM  
2 7 November or even 28 October. 02:28:36PM  
3 Yes. 02:28:38PM  
4 MS HARRIS: Are you aware or if you have been following the 02:28:39PM  
5 evidence you're no doubt aware that there was a phone call 02:28:50PM  
6 played to Mr Staindl between himself and Mr Woodman dated 02:28:52PM  
7 4 March 2019 during which Mr Staindl relates back to 02:28:56PM  
8 Mr Woodman a conversation he apparently had with the 02:29:02PM  
9 Premier, and he, the Premier, had indicated to Mr Staindl 02:29:05PM  
10 that they had no choice but to shelve the decision once 02:29:09PM  
11 Millar was working on the story given how close to the 02:29:13PM  
12 election it was. Was that a position ever conveyed to 02:29:16PM  
13 you?---I'm unaware of any engagement from the Premier or 02:29:22PM  
14 his office in respect of this matter. 02:29:26PM  
15 Was it ever the position that was expressed to you, that this 02:29:32PM  
16 decision had to be shelved because of The Age article and 02:29:36PM  
17 how close to the election it was?---No. Well, no, it 02:29:41PM  
18 wasn't. But, as I say, we were trying to wrap up our 02:29:48PM  
19 decision making a month before caretaker and the call was 02:29:52PM  
20 made on 7 October. 02:29:57PM  
21 All right. Did you ever have direct dealings with 02:30:02PM  
22 Ms Schutz?---She had - there's probably - a couple of 02:30:12PM  
23 occasions come to mind. One was - and I've gone back and 02:30:17PM  
24 looked at emails she'd sent me - she wanted to come in and 02:30:23PM  
25 have a meeting about a technical planning matter. She had 02:30:26PM  
26 approached me and I think I passed the meeting off to one 02:30:30PM  
27 of the advisers, to Evan Granger, and the other occasion 02:30:34PM  
28 was at - I was at the Progressive Business round table 02:30:40PM  
29 where Ms Schutz had asked the minister about the 02:30:44PM

1 implementation of the panel decision. I think that was 02:30:51PM  
2 after 7 October. I think it was maybe 21 October. 02:30:54PM  
3 COMMISSIONER: When did it become clear to you, Mr Keogh, that 02:31:02PM  
4 the rezoning was going to be refused by the minister? 02:31:09PM  
5 When did you first know for certain that the minister was 02:31:15PM  
6 not going to approve the rezoning?---I don't know what day 02:31:19PM  
7 of the week 7 October was. 02:31:25PM  
8 I don't mean the deferment. I mean the final decision?---No, 02:31:31PM  
9 I - probably shortly before. I mean, the minister 02:31:43PM  
10 typically does his review of these things on the weekend. 02:31:47PM  
11 He does them on a Sunday afternoon. He brings a bag back 02:31:50PM  
12 on Monday morning and we go through the files. You know, 02:31:54PM  
13 as I say, I wouldn't have had a lot of hope for it in 02:32:01PM  
14 terms of the rezoning getting up. Just with the ambiguity 02:32:06PM  
15 around what the council position genuinely was, you know, 02:32:11PM  
16 the land use supply - - - 02:32:17PM  
17 You appreciate why I'm asking this, because Mr Staindl's 02:32:20PM  
18 evidence about what he was told by the Premier is quite 02:32:26PM  
19 definitive: it's not going to get approved. How long was 02:32:30PM  
20 it after - this is a conversation at the end of the year. 02:32:36PM  
21 It's months, isn't it, after that before the Minister for 02:32:42PM  
22 Planning actually announced his 02:32:47PM  
23 decision?---I think - well, it's months before - so he 02:32:50PM  
24 makes his decision and then it's announced, and I think it 02:32:52PM  
25 was the broader land supply issue, when that report had 02:32:56PM  
26 been completed it came up with whatever it came up from 02:32:59PM  
27 the department and the decision was made. 02:33:02PM  
28 I wouldn't - you know, I wouldn't have been aware of it 02:33:08PM  
29 particularly until, you know, he brought the bag back on 02:33:10PM

1 the Monday. 02:33:14PM

2 Yes. So, as you've indicated, whilst these decisions are under 02:33:16PM

3 the legislation one of the peculiar quirks of our 02:33:27PM

4 legislation, this is a decision that's reserved entirely 02:33:32PM

5 to the Minister for Planning under the legislation. Have 02:33:36PM

6 you got any examples of where, notwithstanding it's the 02:33:42PM

7 minister's decision, there's discussion at a cabinet level 02:33:48PM

8 about whether or not a particular decision should be 02:33:52PM

9 made?---The Minister for Planning would be outraged if 02:33:57PM

10 that was even put on the agenda. I mean, he's very clear 02:34:00PM

11 of his statutory duty and he guards it pretty preciously, 02:34:04PM

12 and he's very defensive of that role and I've heard him 02:34:08PM

13 explain it to people and push people away in that space. 02:34:19PM

14 So a cabinet discussion of it would be an anathema to his 02:34:23PM

15 approach to it. 02:34:30PM

16 But you have seen no sign, either in this case, in the case of 02:34:31PM

17 this rezoning, or in any other decision, of the minister 02:34:36PM

18 that would suggest that there might be circumstances in 02:34:39PM

19 which other government officers, ministers or cabinet, 02:34:43PM

20 would seek to place any pressure on the minister as to how 02:34:50PM

21 he should decide a planning issue?---I'd anticipate he 02:34:53PM

22 would react - - - 02:35:01PM

23 No, I understand - - -?---I mean, I don't go to cabinet. But, 02:35:05PM

24 so far as I read the man and understand and, you know, my 02:35:10PM

25 observation, he would guard that pretty preciously. The 02:35:16PM

26 only - the exception to it would be around where you've 02:35:19PM

27 got another part of government making a planning 02:35:22PM

28 application. But even then he's very clear about when he 02:35:25PM

29 will engage and when he won't engage. You know, we won't 02:35:31PM

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go to cabinet subcommittees where planning strategies are  
being discussed for, you know, an infrastructure project.  
We'll stay deliberately apart from that, and it's been the  
cause of frustration on more than one occasion. But he  
has consistently asserted the - I don't know, the - his  
independence in making those planning decisions.  
So you've made your position - so you've seen no sign of him in  
any way receiving any attempts to influence his decision  
by ministerial colleagues. So my remaining question is:  
in what circumstances might the Premier nonetheless  
presume to predict what his final decision was going to be  
months before he made it?---I don't know. I mean, how  
could I know that?  
You can't see how that could be?---Well, I think anyone looking  
at it would - after The Age and after evidence of this  
Commission, you'd have doubts about the position of Casey  
Council and, if Casey Council aren't seen to be supporting  
it, I - I'm speculating here. I - - -  
No, no, if I may say so, you've put I think more elegantly than  
anyone has before the legal proposition that if the  
initial decision was potentially corrupted then you  
couldn't expect another decision which rests upon the  
first to be made in support of the earlier decision. But  
I'm simply asking as a matter of government process you  
are unable to offer any explanation for how any thought by  
any other minister could arise before your minister has  
made his final decision?---That's right. I mean, they  
might have read the tea leaves and come to that  
conclusion. It might be something that's attributed to

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1           them that's not really theirs. It might be - you know, 02:38:04PM  
2           there's all sorts of possibilities there. 02:38:08PM  
3   Yes. Yes, Ms Harris. 02:38:10PM  
4   MS HARRIS: In relation to that decision, that final decision 02:38:13PM  
5           in April this year, other than the media release on 02:38:17PM  
6           6 April are there - or I should say other than what is 02:38:22PM  
7           contained in the media release of 6 April, are there any 02:38:28PM  
8           formal reasons for decision given?---So there'd be a 02:38:32PM  
9           ministerial brief which would provide the analysis and the 02:38:43PM  
10          information, and there would be a space in that 02:38:46PM  
11          ministerial brief on the front page for the minister to 02:38:52PM  
12          make a decision. Whether reasons for decision have been 02:38:54PM  
13          prepared and issued, that typically happens if an 02:39:01PM  
14          interested party makes a request for the minister to 02:39:04PM  
15          provide reasons for decisions, and they'd typically be 02:39:08PM  
16          drawn from the brief and whatever other matters were the 02:39:12PM  
17          reasons for decision. I don't think that's been prepared 02:39:16PM  
18          for this particular decision, but I'm not 100 per cent 02:39:20PM  
19          sure. 02:39:26PM  
20   And the ministerial brief, who does that get provided to?---So 02:39:26PM  
21          that comes up from the departmental officer, deputy 02:39:35PM  
22          secretary - executive director, deputy secretary, 02:39:38PM  
23          secretary. Then it comes into the minister's office. It 02:39:41PM  
24          would come in as a physical thing to the department 02:39:44PM  
25          liaison officer. They would typically give that to an 02:39:48PM  
26          adviser, who would read it, and whether they'd have a 02:39:52PM  
27          conversation with the minister, whether they'd put a 02:39:59PM  
28          written note on it and give it to the minister, the 02:40:02PM  
29          minister would then look at it, make a decision and return 02:40:04PM

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it back down that same chain of command.

I see. And so then the reasons for the decision are only provided at request of an interested party?---Well, yes, that's right. The only other thing I'd say is that the ministerial brief is available as well, and that typically contains, you know, relevant - that's where the analysis is, and that seems to satisfy most people.

Yes?---But, if you're embarking on litigation or something like that, you would formally ask for the minister to make - to supply reasons for decision.

I was asking earlier about Ms Schutz and your interactions with her. Did you have any interaction with her or communication with her about this rezoning matter?---I don't recollect any. I mean, I was present at the Progressive Business event. But, no, nothing beside that.

At that event did she specifically ask about that matter?---Yes, in effect. I think it was a pretty thinly veiled - when she sort of said, 'Look, there's been a panel decision. Why won't you implement the panel decision,' and at that point the probity auditor, the chair, the minister all reacted and the conversation was - and indeed Mr Staindl reacted, and it was shut down pretty quickly.

I take it from some of the evidence we've heard that was a negative reaction; would that be a fair assessment?---Yes, the minister was pretty outraged that someone put him in that position.

Mr Staindl's evidence was that following that function or that

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1 incident he couldn't go near the minister's office with 02:42:07PM  
2 any Watsons related matter; was that the 02:42:12PM  
3 situation?---I well understand him forming that view. 02:42:22PM  
4 Through conversations he had with you?---He'd offered an 02:42:26PM  
5 apology. He was trying to get an apology from Megan 02:42:34PM  
6 Schutz to the minister but there was no appetite and - 02:42:40PM  
7 and, look, as I say, you know, we're in the - at this 02:42:44PM  
8 stage we're in the last month of, you know, a term of 02:42:48PM  
9 office, you know, we've made our decision, we're moving 02:42:54PM  
10 into campaign mode. So by - you know, I think caretaker 02:43:01PM  
11 starts in that first week of November, the first few days 02:43:08PM  
12 of November. So by 21 October, 28 October, we've moved 02:43:13PM  
13 on, and what our future holds we're, you know, uncertain 02:43:21PM  
14 at that stage. 02:43:25PM  
15 In terms of there being no appetite for receiving an apology 02:43:25PM  
16 from Ms Schutz or on her behalf, was that something that 02:43:29PM  
17 you conveyed back to Mr Staindl?---Yes. 02:43:33PM  
18 Just returning to - I asked you earlier about whether you'd had 02:43:37PM  
19 any interaction with anyone from Dacland. Did you have a 02:43:44PM  
20 conversation at any stage with John Dwyer from 02:43:48PM  
21 Dacland?---I have no recollection of the name. 02:43:56PM  
22 Could we have on the screen, please, page 5323, and if we could 02:43:58PM  
23 just scroll down, please. Further, please. You'll see 02:44:14PM  
24 there that there's an email from Mr Dwyer dated 1 February 02:44:21PM  
25 2019 to a number of people regarding the C219, and if we 02:44:26PM  
26 just scroll down I'll give you a moment to read 02:44:33PM  
27 that?---Right. Right. 02:44:57PM  
28 Does that refresh your memory at all as to whether or not you 02:45:10PM  
29 had a conversation with Mr Dwyer?---Sadly, no. 02:45:14PM



1 Sorry, I missed that answer?---No, I don't recollect that 02:45:18PM  
2 conversation. 02:45:21PM  
3 Right. 02:45:21PM  
4 COMMISSIONER: Anything in it, Mr Keogh, that you think 02:45:28PM  
5 unlikely to have - or seemed to - is there anything there 02:45:32PM  
6 you can't imagine you would have said to Mr Dwyer?---No, 02:45:40PM  
7 that - no, that seems - yes, I don't recollect it but, you 02:45:54PM  
8 know. 02:46:08PM  
9 Yes. That seems to be consistent with I think your explanation 02:46:08PM  
10 that you're not in the business of seeking to alienate 02:46:14PM  
11 people from approaching you and raising their 02:46:19PM  
12 concerns?---Yes. 02:46:23PM  
13 And discussing them?---Sure. 02:46:23PM  
14 Whatever your private views about the merits of an 02:46:25PM  
15 issue?---Yes. That's right. 02:46:30PM  
16 MS HARRIS: And where it refers to, in the top paragraph, that 02:46:43PM  
17 you thought it was a good idea to continue the line of 02:46:46PM  
18 conversation in relation to the benefits of the use of 02:46:49PM  
19 land for a residential community, you don't take issue 02:46:53PM  
20 with the fact that you would have conveyed that to 02:46:58PM  
21 Mr Dwyer?---Look, I don't recollect it, but I may 02:47:02PM  
22 well - yes, I may well have, yes. Because it goes to the 02:47:07PM  
23 point that if you put all the skullduggery to one side, 02:47:11PM  
24 you know, the core problem is still there. You've got the 02:47:17PM  
25 aspirations of, you know, the folk living next to the 02:47:19PM  
26 industrial estate, and you've got, you know, the technical 02:47:23PM  
27 planning saying, you know, having employment land in close 02:47:27PM  
28 proximity to people's homes is a good thing, and 02:47:32PM  
29 I get - I get the planning niceties of the 20-minute 02:47:37PM

1 neighbourhood. But the lived reality - you know, they're 02:47:40PM  
2 aspirations. I mean, I think that's - that's - that's the 02:47:47PM  
3 conversation here, and, as I say, I think that's the bit 02:47:48PM  
4 the minister could never land. 02:47:52PM  
5 COMMISSIONER: Apropos your position, though, as the chief of 02:47:57PM  
6 staff and a pivotal adviser to the minister, do you see 02:48:00PM  
7 even from the little bit we've shown you today, Mr Keogh, 02:48:07PM  
8 and from what you've read - - -?---Yes. 02:48:11PM  
9 That, rightly or wrongly, there's a perception amongst a whole 02:48:13PM  
10 group of people, all of whom have got their own interests 02:48:18PM  
11 and objectives, that you are likely to be someone who 02:48:22PM  
12 could influence the outcome?---I think that would 02:48:27PM  
13 be - I think that would be a pretty common perception, 02:48:35PM  
14 yes. 02:48:37PM  
15 And, whether or not it's true, that's why there needs to be 02:48:37PM  
16 some level of transparency in the process of dealing with 02:48:45PM  
17 ministerial advisers, doesn't there?---I accept the broad 02:48:47PM  
18 principle. 02:48:56PM  
19 Yes. 02:48:57PM  
20 MS HARRIS: I tender the document, Commissioner. 02:48:58PM  
21 COMMISSIONER: Yes. What's the date of that, Ms Harris? 02:49:01PM  
22 MS HARRIS: 1 February 2019. 02:49:04PM  
23 COMMISSIONER: Thank you. That will be 332. 02:49:07PM  
24 #EXHIBIT 332 - Email from Mr John Dwyer of 01/02/19, page 5323. 02:49:09PM  
25 MS HARRIS: Following on from the question that the 02:49:14PM  
26 Commissioner just had, would the average citizen have the 02:49:16PM  
27 same access to you or the minister's office as a lobbyist 02:49:21PM  
28 or someone with the financial interest in a planning 02:49:27PM  
29 matter?---It depends. Look, you know, as I said earlier, 02:49:31PM

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sometimes, you know, people organise to ring the  
minister's office. We get, like, literally thousands of  
telephone calls in a few days. You know, some people  
employ lawyers. Some - like, there's a range of ways  
people seek to have access to the minister's office and  
influence planning decisions. You know, lobbyists  
typically know who I am, have my phone number or the phone  
number of the office. They can find us. They can say  
things that are relevant, succinct, without emotion. Yes,  
there's - so are they more likely to - but, you know,  
we've got serial frequent flyers who call the office  
regularly. It's a mixed bag.

What about people that couldn't afford to have a lobbyist or a  
lawyer or a planning - - -?---They - - -

Can they have access to you and your officers?---Look, to  
varying degrees. I mean, I accept - I accept the  
proposition that lobbyists are better able to pick up the  
telephone and talk to me than, you know, a member who's  
aggrieved by a development next door to them. But, you  
know, they'll send emails and do a range of other things.

You know - - -

So is the answer, yes, they have the same degree of access to  
you?

COMMISSIONER: I don't think Mr Keogh is saying that, is  
he?---I think it just depends. I mean, you know, I've had  
long conversations with people from community groups.  
I mean, look, they're more likely to get through and have  
a conversation with an adviser or myself than someone who  
doesn't know anything about the planning process or how

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1 decisions are made. I absolutely get that. Yes, I think 02:51:40PM  
2 that's right. 02:51:44PM

3 MS HARRIS: And the fact of the matter is that everybody should 02:51:45PM  
4 have equal access; that's right, isn't it?---I'm not sure 02:51:48PM  
5 if there's a hierarchy there or not. I mean, if a member 02:52:02PM  
6 of parliament wants to have a conversation, or a former 02:52:06PM  
7 member of parliament, you know, someone who is involved in 02:52:10PM  
8 a representative organisation, someone who speaks for 02:52:13PM  
9 other people, you know, does someone who has - is looking 02:52:15PM  
10 to invest a billion dollars have a greater right to ring 02:52:19PM  
11 up and have a conversation than someone who wants to build 02:52:25PM  
12 a pergola, they are difficult questions. 02:52:28PM

13 It's not a difficult question, though - - -?---Perhaps not for 02:52:37PM  
14 you. 02:52:40PM

15 That all people, regardless of their ability to engage somebody 02:52:40PM  
16 on their behalf, should have access to the same - the same 02:52:44PM  
17 access, I should say, as lobbyists or anybody else?---But 02:52:50PM  
18 we get community organisations knocking down the front 02:52:54PM  
19 door. You know, we are close to the Smith Street office 02:52:57PM  
20 pretty regularly - sorry, the Gertrude Street office 02:53:02PM  
21 pretty regularly. I mean, people find a way of making 02:53:05PM  
22 their views known. It's not contingent on money. 02:53:07PM  
23 Community activism, I mean, you know - I won't name the 02:53:10PM  
24 groups for fear of encouraging them, but, you know, 02:53:16PM  
25 they're (indistinct words) operators out there and if 02:53:23PM  
26 people want to engage in the political process they'll 02:53:25PM  
27 find a way. 02:53:27PM

28 COMMISSIONER: So when we think about where we started our 02:53:33PM  
29 conversation with you, Mr Keogh, and you described the 02:53:36PM

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quite extraordinary range of people that might be engaged  
in what we can loosely describe as a lobbying activity,  
it's significant, isn't it, that now probably for some 15  
to 20 years in Australia there's been an ongoing debate  
about the lack of accountability in relation to  
ministerial advisers. In New South Wales there have been  
a number of recent reports by the New South Wales  
counterpart to this Commission about the lack of  
accountability. We need to try and strive for a workable  
regime, one which doesn't open the floodgates to every  
single person requiring you to respond by an email or  
telephone call, but we need to strike a workable solution,  
don't we, that ensures that there isn't privileged access  
at the expense of others who want to also be able to  
communicate?---Yes, I think that's broadly - that's right.  
You know, I think there are levels of account- - look,  
I report to the minister. The minister - like, he's  
accountable for us and what we do and how we do it. You  
know, how you find - you know, we're there to help the  
decision maker. Do we help make better decisions by  
keeping people out of that political process? You know,  
how do we - how do we report the engagement in that  
political process?  
But part of the difficulty is what you told us almost at the  
commencement of your evidence about the very limited way  
in which you have any input in terms of the minister's  
decision-making process, that largely you would not pass  
on the information - - -?---Yes.

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the department. But, you know, the two arms, the minister  
and the executive, that are engaged in aspects of the  
decision-making process, if I've understood you correctly,  
you're not the conduit of most of that information to  
them?---And often I try and keep it away from him, you  
know, so that he can - look, the advisers will engage with  
people and, you know, in their analysis of the  
departmental advice if they note anything or if they think  
there's a discrepancy there around, you know, economic or  
social, environmental considerations they want to bring to  
the minister's attention, they'll put it on there.  
I mean, you know, and - you know, is the department - you  
know, does the department get that assessment of economic  
and social impact right all the time? I don't think  
they'd even claim that.  
Sure?---You know, they're of a particular group in the  
community with a particular prism, you know, how do we  
make all of these things transparent. I mean, I think  
it's a really worthy goal and happy to - as I say, there's  
nothing that particularly embarrasses me in any of this.  
But it's - I said it was difficult, and you said it  
wasn't. That wasn't a reason not to do it. But I think  
it is a hard thing to find a balance.  
Yes. I should have asked you: so your view of how a chief of  
staff and a senior adviser to the minister should operate  
and your practice of not in the main taking to the  
minister the information that you're receiving from  
lobbyists and engaging with the minister, is that  
view - are you able to say is your approach reflective of

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1           how other chiefs of staff operate, or is that just your           02:58:05PM  
2           view of the world?---I think it's probably our view of the           02:58:10PM  
3           world. But I think that's because we're involved in           02:58:13PM  
4           planning.           02:58:18PM  
5    Yes?---You know, which is highly litigious. You know, you're           02:58:20PM  
6           making - you know, you're making decisions not as a           02:58:25PM  
7           poli- - you're a politician making a decision, but they           02:58:28PM  
8           are not political decisions. They're decisions of the           02:58:31PM  
9           legislative framework. So I think we're a bit different           02:58:34PM  
10          to other officers in that regard.           02:58:37PM  
11    Yes?---And so, you know - so a system where I can have           02:58:41PM  
12          conversations with people and be broadly aware of what's           02:58:45PM  
13          going on, and then I can check with advisers, 'Have you           02:58:48PM  
14          thought about this? Have you thought about that,' I can           02:58:52PM  
15          poke and prod like that, without particularly involving           02:58:55PM  
16          myself as an advocate in the decision-making process. But           02:58:57PM  
17          I can test that things are being considered or thought           02:59:02PM  
18          about.           02:59:05PM  
19    Yes, Ms Harris.           02:59:08PM  
20    MS HARRIS: Mr Keogh, you said a few moments ago that you and           02:59:09PM  
21          those in your office are often contacted by lawyers or           02:59:13PM  
22          planning consultants, lobbyists, et cetera, to seek access           02:59:18PM  
23          in order to influence decisions?---Yes.           02:59:22PM  
24    Do I take it from that answer that you recognise that access is           02:59:25PM  
25          perceived to go hand in hand with the ability to influence           02:59:30PM  
26          decisions?---I'd really hope that anyone that looked at           02:59:33PM  
27          what we did and how we did would put, you know, greater           02:59:42PM  
28          emphasis on the process in that, you know, if you look at           02:59:45PM  
29          our planning decisions, you know, there's a couple of           02:59:51PM

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constants. You know, we will always - and we don't always get to do this because of timing or whatever, but the minister is always interested in what the council says, what the local member says, you know, what does the department say, what does the panel say, you've got those views as to the planning process and inputs into the legislative framework, and, you know, we don't really make decisions where they're kind of, you know, 4-0. You know, we - and one of the problems here with the Cranbourne one was it was kind of split evenly, you know.

My question was around the perception and whether you - -

-?---And I suppose - and I suppose I'm saying if people look at what we do that hopefully that would inform a more accurate perception. I mean, as I said earlier, you know, if you get a bad planning decision, you know, everyone's corrupt and - - -

COMMISSIONER: No, but Ms Harris's question is predicated on an almost inescapable conclusion from all of the evidence that if, as you've explained it, quite wrongly the perception was, 'If we get to Mr Keogh we have a way in to influencing the minister'?---Yes.

And we're really talking again about a fundamental of the human condition. People wouldn't be wasting their time talking to you if they didn't think it had the potential for an effect?---Yes, and, again, if they listened to what I said, I'd encourage them to participate in the processes. But I take your point, Commissioner.

MS HARRIS: And an understanding in the processes and how those processes impact on the ultimate decision requires a

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1 degree of transparency, doesn't it?---And a degree of 03:01:55PM  
2 sophistication. I mean, the planning scheme is complex, 03:01:58PM  
3 you know, for people to understand it, and the 03:02:03PM  
4 Commissioner asked me at the outset if I had any planning 03:02:08PM  
5 experience. I mean, it is a very, very complicated beast. 03:02:11PM  
6 It's unto itself, and for people trying to understand it 03:02:14PM  
7 it's very difficult. You know, there's concepts which are 03:02:21PM  
8 unto itself, and one of my colleagues - one of my 03:02:26PM  
9 colleagues said it was like algebra, you know, no-one 03:02:32PM  
10 understands it and everyone hates it, and, you know, 03:02:35PM  
11 that's a part of the perception of it as well. 03:02:39PM  
12 Mr Keogh, leaving that topic, did you have any involvement with 03:02:48PM  
13 Mr Wynne's election campaign?---Yes. 03:02:54PM  
14 And what was that involvement?---My task was to set up the 03:02:58PM  
15 early election booth, and I'd open that up at 8 o'clock 03:03:09PM  
16 and just make sure that that was properly staffed. 03:03:18PM  
17 I mean, I think in Richmond we had about, like, 45, 03:03:21PM  
18 50 per cent of people voted ahead of the actual election 03:03:27PM  
19 day . So that was my role. Obviously I took leave to do 03:03:29PM  
20 that and participated. So that was my main - my main 03:03:32PM  
21 function. 03:03:38PM  
22 As part of the election team or the campaign team do you become 03:03:39PM  
23 aware of who donates to the minister's campaign?---No. 03:03:45PM  
24 The electorate office and the ministerial office are quite 03:03:51PM  
25 separate things, and we wouldn't - you know, the 03:03:54PM  
26 minister's office doesn't get involved in the minutiae of 03:03:59PM  
27 the electorate office and campaigning. The campaign's run 03:04:04PM  
28 out of the electorate office, and all of that happens out 03:04:09PM  
29 of the campaign - I mean, I'm given a job to do, you know, 03:04:11PM

1 be here at 8 o'clock, make sure there's, you know, 03:04:15PM  
2 material to hand out, you know, whatever, whatever. But 03:04:19PM  
3 that's really the extent of my involvement. 03:04:22PM  
4 So, in terms of how the campaign's run or the funding and where 03:04:24PM  
5 it's spent, that has nothing to do with you and you're not 03:04:27PM  
6 privy to that information?---No. I mean, I might pick 03:04:30PM  
7 something up incidentally, but it's not part of my job. 03:04:34PM  
8 Yes. Commissioner, I don't think I have much longer with this 03:04:39PM  
9 witness, but I wonder if I could ask for a very brief 03:04:44PM  
10 adjournment at this stage. 03:04:47PM  
11 COMMISSIONER: Yes, certainly. We'll take a 10-minute break. 03:04:48PM  
12 MS HARRIS: Thank you. 03:04:53PM  
13 (Short adjournment.) 03:04:55PM  
14 COMMISSIONER: Are we ready to proceed? 03:26:12PM  
15 MS HARRIS: Yes, Commissioner. If I can indicate I won't be 03:26:16PM  
16 much longer with Mr Keogh. 03:26:19PM  
17 COMMISSIONER: Yes, Ms Harris. 03:26:21PM  
18 MS HARRIS: Mr Keogh, just returning to our discussion before 03:26:22PM  
19 the break about donations and campaigning, I understand 03:26:24PM  
20 what you're saying is that the campaign or the electorate 03:26:27PM  
21 office and the minister's office even around campaigning 03:26:33PM  
22 time are still kept very separate; did I understand that 03:26:36PM  
23 correctly?---They's a level of overlap, but in terms of 03:26:39PM  
24 they run the campaign and do the - they do that business. 03:26:46PM  
25 We do ministerial business. They do electorate office 03:26:51PM  
26 business. 03:26:54PM  
27 Does the Premier's office have any involvement in the campaigns 03:26:55PM  
28 of ministers?---No. 03:27:01PM  
29 Or do they offer any guidance or direction to ministers at 03:27:04PM

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campaign time in relation to donations?---No.  
When you indicated earlier that Mr Wynne doesn't ordinarily  
accept donations from planners - or property developers,  
I'm sorry - - -?---Has never.  
Is that his own initiative, not something that's been suggested  
to him or directed to him by the Premier's  
office?---I think that goes back - with Richard, Minister  
Wynne, it goes back to his involvement in local government  
back in the early 90s. It's just something he's never  
done.  
In your observation in your time in parliament, would it be  
unusual for the Premier's office to be involved in any  
electoral campaigns of ministers?---Yes. It's just not  
their role.  
All right. In terms of the role of the Premier's office or the  
Premier, what role does the Premier or the Premier's  
office play in the appointment of ministerial staff - or  
ministerial advisers, sorry?---The power of employment, as  
we said many hours ago now, is in the public  
administration, I think you said section 98.  
Yes?---So it's the Premier that's got power to appoint people.  
He, as I understand it, has delegated that to his chief of  
staff. So I'm then encouraged to go away and find people  
that have got the requisite skill set for Minister Wynne,  
you know, and then I'll put a CV up to the Premier's  
office to say, 'Here are my proposed appointments at these  
levels,' and they would write back and say, 'Yes, that  
seems to be in order. Please' - you know, well, they  
would then say, 'We'll prepare a letter of offer,' and

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send them a letter of offer.

Did a similar process occur for your appointment, do you know?---My appointment - I've had three contracts as Minister Wynne's chief of staff. So on which occasion? So when you first became his chief of staff in 2015 are you aware of whether there was a similar process, that recommendations were made to the Premier's chief of staff?---I suspect Minister Wynne - I don't - I'm supposing Minister Wynne would have communicated his preference to have me as his chief of staff and then he would have got some okay for that, and I think I was required to submit a CV and then they would have sent the paperwork out from there and would have entered into the contract.

You referred earlier to your contract of employment and the code of conduct that you say is gathering dust in a drawer somewhere?---It's a dust-free office.

Would you be able to check if you do indeed have that document and communicate that with the Commission?---Sure. Yes. I probably won't be able to get access today. It will probably be tomorrow.

Thank you. Just a final matter. I referred earlier to a conversation that Mr Staindl had with Mr Woodman where he's reporting back things he discussed with the Premier. Just so there's no confusion, Commissioner, I propose to play that call so it can be clearly understood what Mr Staindl's reporting of that conversation was. That's tab 178, exhibit 154. Can I just say before that's played, Mr Keogh, obviously you're not a party to this

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conversation, but it's the one I referred you to - -

-?---I understand.

(Audio recording played to the Commission.)

MS HARRIS: Mr Keogh, having had some time to reflect on what

I put to you earlier - and I'll just be clear that this is  
a reference to the decision to defer as opposed to the  
final decision to reject the amendment. Having had the  
opportunity to reflect on what I put to you earlier, are  
you able to offer an explanation as to why the Premier may  
have made those comments to Mr Staindl?---I have no idea.  
You know, that's Mr Staindl reporting on a conversation he  
says he had with the Premier to another person. You know,  
there's - I don't have much I can usefully add, I don't  
think.

Nothing that comes to mind to you that would explain that  
comment?

COMMISSIONER: Well, I'm sorry, I thought, Mr Keogh, you

proffered an explanation, namely the logic of if indeed  
the allegations were correct that the initial decision was  
corrupt or might have been corrupted that, whilst that  
remained a possibility, things couldn't go  
forward?---I think that's right. But, I mean, you know,  
in terms of speculating about the accuracy of the  
conversation and who said what to who, you know - - -

I think it's more about what - what you're being asked to focus  
on is can you offer any explanation for how the Premier  
would come to be in a position to be in effect talking  
about the decision of the minister?---Well, no, I don't  
have anything new to add I think.

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1 All right?---Your summary of my earlier comments was accurate, 03:37:10PM  
2 and I'd adopt that again. 03:37:14PM  
3 Yes. 03:37:15PM  
4 MS HARRIS: Can I just take you to line 10 just briefly. If we 03:37:16PM  
5 could scroll up, please. If we just pause it there. 03:37:21PM  
6 Towards the end of that line he says, 'And he said, "Yeah, 03:37:26PM  
7 we had no choice but to - to do that once Royce was 03:37:30PM  
8 working on that story in the - the critical final couple 03:37:34PM  
9 of weeks of the campaign.'" Can I just ask you this. The 03:37:37PM  
10 aspect of that statement that is true is that it was the 03:37:43PM  
11 final weeks of the campaign when the deferral was made, 03:37:45PM  
12 wasn't it?---No, it was 7 October; we go into caretaker, 03:37:49PM  
13 I don't know, 2 or 3 November; and the campaign would 03:37:55PM  
14 formally start - I mean, once the campaign start - the 03:37:59PM  
15 campaign would formally start probably two weeks into 03:38:04PM  
16 caretaker. So - - - 03:38:09PM  
17 It was critically close to the campaign period, wasn't 03:38:10PM  
18 it?---Yes, absolutely. And, as I said earlier, we were - 03:38:14PM  
19 you know, the minister was keen to complete his decision 03:38:17PM  
20 making by, you know, a month out from caretaker. 03:38:20PM  
21 But I'm just asking you in terms of this particular or the 03:38:23PM  
22 sentence that I read to you, it was the critical final 03:38:27PM  
23 couple of weeks; would you agree with that?---It's a month 03:38:35PM  
24 before caretaker. So I wouldn't agree with you it's a 03:38:39PM  
25 critical part of the campaign. It's clearing the decks 03:38:46PM  
26 for the campaign. 03:38:48PM  
27 All right. Would you agree with the aspect that certainly 03:38:50PM  
28 people in your office knew in advance that the article was 03:38:52PM  
29 coming, that Mr Millar was working on the story?---Yes, he 03:38:55PM

1 rang our office and there were conversations about it, my 03:38:59PM  
2 recollection is, a week or two weeks before it was 03:39:04PM  
3 ultimately published. 03:39:07PM  
4 And so really the aspect that you take issue with, as 03:39:09PM  
5 I understand it, is the suggestion that, 'We had no 03:39:14PM  
6 choice' - that is the government had no choice - 'but to 03:39:18PM  
7 shelve it' essentially?---Sorry, could you say that again? 03:39:21PM  
8 Where it says, 'Yeah, we had no choice but to', and if you 03:39:27PM  
9 refer earlier to Mr Staindl's comment that the decision 03:39:32PM  
10 was shelved, that's the aspect you take issue with as 03:39:36PM  
11 I understand?---Yes, yes. I would say the minister had 03:39:40PM  
12 struggled with the decision. He never got to a point 03:39:44PM  
13 where he was happy with the strategic work the council had 03:39:48PM  
14 done; the employment land; it was too late in the day; and 03:39:51PM  
15 he deferred decision and asked for more work to be done 03:39:56PM  
16 which would ultimately help, you know, the next Minister 03:40:01PM  
17 for Planning, which happened to be him, make a final 03:40:04PM  
18 determination. 03:40:07PM  
19 Was Mr Millar's contact with your office or the minister's 03:40:07PM  
20 office, I'm sorry, before or after 7 October 2018?---My 03:40:13PM  
21 recollection is it was after 7 October. 03:40:19PM  
22 And would there be a record of his conversations - - -?---No, 03:40:23PM  
23 no. 03:40:27PM  
24 That he had with any of your staff?---No. 03:40:27PM  
25 So no way to be able to confirm that?---No. 03:40:29PM  
26 Yes. Mr Commissioner, I don't have any further questions of 03:40:33PM  
27 Mr Keogh. 03:40:37PM  
28 COMMISSIONER: Thank you, Ms Harris. Just one matter in 03:40:39PM  
29 relation to the code of conduct, Mr Keogh. Do I take it 03:40:46PM

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from the fact that you have not had occasion to pull it out of the right-hand drawer of your desk and brush off the cobwebs for some time that you're not familiar with what process of enforceability there would be if it was thought a ministerial adviser had breached the code, who would be responsible for enforcing it?---My contract's necessarily with the Premier delegated to his chief of staff. So if I was in breach of the code then, you know, it would be a common law employment sanction under the contract.

I see. It wouldn't be one dealt with under the Public Administration Act or by VPS?---The VPS is for, other than us and judicial officers and a very limited number of people, all in the Federal jurisdiction, and we're still in that - well, we're in the common law jurisdiction of the - - -

We're in a bit of unchartered water here, aren't we?---It's a very narrow group of employees which aren't covered by the Federal system.

Yes, all right. Ms Harris, is there any reason why Mr Keogh shouldn't be discharged? I'm sorry, I'll ask Mr Smith in a moment if he's got any questions. Is there any reason why Mr Keogh shouldn't be discharged from his summons?

MS HARRIS: No, Commissioner.

COMMISSIONER: Very good. Mr Smith, have you got any questions for your client?

MR SMITH: No, Mr Commissioner. Thank you.

COMMISSIONER: Very good. Any questions you have, Mr Keogh? Anything I can explain or further elucidate to you?---No,

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Commissioner.

Good. I thank you for your attendance. I'll release you from the summons. Mr Keogh, if you have a wish to review your transcript or more particularly the video of your evidence please let the Commission know and they'll make - provide you with an opportunity of viewing your material. The investigation is still ongoing. I don't expect we'll finalise the investigation until some time in the new year. But, as I say, feel free to come to the Commission and view video, if you wish. Again, I thank you for your attendance and your cooperation?---Thank you.

Ms Harris, we're adjourned until 10 am tomorrow morning?

MS HARRIS: Yes, Commissioner.

COMMISSIONER: Who is the witness tomorrow?

MS HARRIS: Mr Leigh.

COMMISSIONER: That's Mr Staindl's former partner?

MS HARRIS: Yes, correct.

COMMISSIONER: And he was a lobbyist during the material time?

MS HARRIS: Yes, Commissioner.

COMMISSIONER: Thank you very much. Adjourn the hearing until 10 am tomorrow. Thank you.

<(THE WITNESS WITHDREW)

ADJOURNED UNTIL THURSDAY, 3 DECEMBER 2020

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