
TRANSCRIPT OF AFTERNOON PROCEEDINGS

WARNING - CONTAINS LAWFULLY INTERCEPTED INFORMATION AND INTERCEPTION WARRANT INFORMATION.

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

WARNING - CONTAINS PROTECTED INFORMATION.

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

INDEPENDENT BROAD-BASED ANTI-CORRUPTION COMMISSION

MELBOURNE

WEDNESDAY, 9 DECEMBER 2020

(42nd 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

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

1 UPON RESUMING AT 1.37 PM: 01:36:59PM

2 <ANDREW NEHME, recalled: 01:36:59PM

3 COMMISSIONER: Are we ready to proceed, Mr Nehme?---Yes, 01:36:59PM

4 Commissioner. 01:37:07PM

5 Very good. Yes, Mr Tovey. 01:37:08PM

6 <EXAMINED BY MR TOVEY, continued: 01:37:10PM

7 Thank you, Commissioner. Mr Nehme you gave evidence just 01:37:15PM

8 before lunch that when Mr Aziz handed over the cash as you 01:37:21PM

9 allege he came to your house and he told you that he had 01:37:31PM

10 withdrawn \$600,000 of which he was giving you \$230,000; is 01:37:41PM

11 that right?---He told me before that he was withdrawing 01:37:49PM

12 600,000. 01:37:55PM

13 How long before?---I'm not sure. I was aware of it. So I'm 01:37:57PM

14 not sure. 01:38:04PM

15 I mean, are we talking about a day before or a week 01:38:05PM

16 before?---No, it would be more. But again I'm not sure, 01:38:10PM

17 Mr Tovey. 01:38:12PM

18 Did he come to your house on your understanding on the day he 01:38:12PM

19 withdrew the 600,000?---I'm sorry, could you repeat that? 01:38:14PM

20 On your understanding did he come to you with the cash on the 01:38:17PM

21 day he said he'd taken it out of the bank?---I don't know 01:38:20PM

22 whether he took it out that day or not. 01:38:23PM

23 In fairness to you, I want you to be aware that there is a 01:38:26PM

24 significant amount of objective material, particularly 01:38:35PM

25 agreements between Woodman and Aziz, which strongly 01:38:42PM

26 suggests and indeed which has been confirmed in evidence 01:38:50PM

27 would indicate that the idea of saying that \$230,000 was 01:38:55PM

28 deducted from the 600 to pay you didn't arise until months 01:39:07PM

29 after you say you got the cash repaid to you. Now, does 01:39:12PM

1 that affect your recollection or your memory of any of 01:39:17PM
2 this?---No. 01:39:21PM
3 I just want to make it clear to you there is significant 01:39:22PM
4 objective evidence indicating that at the time you say you 01:39:26PM
5 are talking to Aziz about the \$230,000 coming from the 01:39:31PM
6 600, that idea hadn't even yet been hatched. Now, you 01:39:43PM
7 obviously are not deterred or diverted by that 01:39:48PM
8 information?---Mr Tovey, I can only go on what Mr Aziz 01:39:52PM
9 told me. So what occurred, I have no idea. I can only go 01:39:55PM
10 on what he's told me. 01:39:59PM
11 And so I want to suggest to you again that the - - - 01:40:00PM
12 COMMISSIONER: Mr Tovey, just to clarify. Is it possible that 01:40:04PM
13 your recollection is faulty and that Mr Aziz's reference 01:40:07PM
14 to the \$230,000 coming from the 600,000 is something that 01:40:14PM
15 he told you some time later and not at the time you say 01:40:19PM
16 you got money from him?---No, it was earlier. It was 01:40:23PM
17 earlier, Commissioner. But again - - - 01:40:29PM
18 Because, as Mr Tovey says, that's very difficult to reconcile 01:40:33PM
19 with the evidence as to when Mr Aziz and Mr Woodman first 01:40:37PM
20 discussed - - -?---I don't know the discussion of 01:40:41PM
21 Mr Woodman and Mr Aziz and it's none of my business. But 01:40:47PM
22 I know the discussion - I was always under the 01:40:53PM
23 understanding that the money came out of that 600. How it 01:40:55PM
24 came - I just wanted my money back. That's all I wanted. 01:40:59PM
25 MR TOVEY: You see, I wanted you to understand that in the end 01:41:05PM
26 Woodman and Aziz - initially Woodman and Aziz enter into 01:41:08PM
27 an arrangement for a loan of \$600,000, but it was months 01:41:14PM
28 later that Aziz had him change that to some \$370,000; all 01:41:23PM
29 right? Now, if that's the case, it's impossible that at 01:41:32PM

1 the time they were doing a 600,000 agreement he is working 01:41:38PM
2 with you on the basis that he's only got 370,000; do you 01:41:43PM
3 understand that? That's just logically impossible. That 01:41:47PM
4 doesn't change your recollection or your evidence?---No. 01:41:50PM
5 All right. If we could just then move on, one other matter in 01:41:54PM
6 respect of the evidence you've already given. You're 01:42:00PM
7 aware that your dealings with investigators when they came 01:42:09PM
8 to your place in the course of the execution of 01:42:13PM
9 the warrant, you're aware that they tape recorded what 01:42:21PM
10 occurred?---I wasn't aware, no. 01:42:25PM
11 And, look, I want to give you another opportunity. I'd suggest 01:42:30PM
12 that you told them that Aziz had been round to see you on 01:42:35PM
13 the day that the warrant had been served on him when they 01:42:42PM
14 first arrived, and that conversation was in fact tape 01:42:46PM
15 recorded?---My recollection was - - - 01:42:52PM
16 Just before you say anything, I'll just give you some more 01:42:54PM
17 information?---Sure. 01:42:57PM
18 You also sat down with an investigator and discussed with him 01:42:57PM
19 how distressed your wife had been while Aziz was around 01:43:04PM
20 there because of Aziz's body language and you discussed 01:43:07PM
21 with him other effects that it had on your family. Now, 01:43:10PM
22 does that cause you to change the evidence that you've 01:43:13PM
23 already given?---I can only go on what I recall, and 01:43:16PM
24 I recall in my mind and under oath that he came after. So 01:43:23PM
25 I do not recall that he came before. 01:43:33PM
26 COMMISSIONER: What about the suggestion that you told the 01:43:41PM
27 investigators that your wife was very distressed by 01:43:42PM
28 Mr Aziz's behaviour when he came round to see 01:43:46PM
29 you?---I don't deny that because she was distressed. But 01:43:53PM

1 again, Commissioner, I still in my mind, I still think 01:43:56PM
2 that was after the raid. 01:44:04PM
3 Yes. Yes, Mr Tovey. 01:44:06PM
4 MR TOVEY: All right. We have numerous documents relating to 01:44:11PM
5 that period in May of 2013 when you intervened on behalf 01:44:16PM
6 of the medical practice with somebody you knew in 01:44:23PM
7 Medibank. I assume there's really no - there's no issue 01:44:34PM
8 about any of this. Was it the case that in May of 2013 01:44:37PM
9 Mr Aziz told you that he had applied to Medibank for 01:44:46PM
10 preferred provider status for his wife's dental 01:44:51PM
11 practice?---That's correct. 01:44:55PM
12 Yes. And that he hadn't been able to get approval at that 01:44:56PM
13 stage?---I'm not sure if he hadn't been able to or hadn't 01:45:04PM
14 got, but assume he hadn't been able to at the time. 01:45:07PM
15 And you knew somebody who worked for Medibank?---Yes, I did. 01:45:11PM
16 And I think you in fact emailed that person, did you?---I can't 01:45:17PM
17 recall whether I emailed or called, one or the other. 01:45:22PM
18 I made contact with them. 01:45:26PM
19 And were there a number of contacts backwards and forwards 01:45:27PM
20 which ultimately led to the dental practice being given 01:45:32PM
21 preferred provider status?---As far as I'm aware I made 01:45:37PM
22 the call or the email, and as I said I can't recall which 01:45:44PM
23 one, to the individual who I then left him with Mr and 01:45:50PM
24 Mrs Aziz at the time to deal with and I don't know what 01:45:55PM
25 occurred after that. So, I wasn't involved. I just put 01:45:58PM
26 two parties together, that's all, which is very typically 01:46:01PM
27 what I tend to do. 01:46:05PM
28 And was Mr Aziz somewhat grateful for your intervention?---We 01:46:06PM
29 didn't discuss it afterwards. I don't know what happened. 01:46:16PM

1 It wasn't a high priority, it was just putting two people 01:46:20PM
2 together. It's just I don't know whether they got it or 01:46:24PM
3 not. 01:46:26PM
4 Did you think he was grateful for what you'd done?---It wasn't 01:46:27PM
5 discussed. I just put two people - - - 01:46:32PM
6 No, I'm not asking you whether you discussed it. I'm just 01:46:35PM
7 wondering whether you thought that?---I don't know, 01:46:38PM
8 Mr Tovey. The only way he could thank is discussing it. 01:46:41PM
9 It wasn't discussed. It was such an irrelevant help. 01:46:45PM
10 So from your point of view then, are you saying that what you 01:46:50PM
11 did, if all you did for him was the Medibank thing, that 01:46:54PM
12 alone wouldn't have aroused in you any expectation of 01:47:03PM
13 reciprocity or obligation on his behalf?---No. It was 01:47:08PM
14 putting two parties - - - 01:47:13PM
15 No, I'll just put it to you - - -?---Let me be clear, Mr Tovey. 01:47:16PM
16 It's not something that you could even ever have 01:47:18PM
17 thought?---Putting two parties together. I'm in the 01:47:22PM
18 business world. It's called a - it's putting two parties 01:47:24PM
19 together, which is not uncommon. I have a lot of friends 01:47:29PM
20 in the business world and it's not uncommon. He asked a 01:47:34PM
21 question, they had an issue, I made a call, put the 01:47:37PM
22 parties together, didn't - don't know - I didn't know 01:47:40PM
23 until this IBAC thing that it was even an issue, and 01:47:44PM
24 honestly didn't know whether they got it or not. It was 01:47:49PM
25 irrelevant. 01:47:52PM
26 Well, could you look, please, at exhibit 257, which is at court 01:47:53PM
27 book pages 6112 to 6115. Now, this is an email from you 01:47:58PM
28 to MAS@ActionKuwait.com. Who is MAS?---Sheikh Mubarak, as 01:48:23PM
29 it says, 'Dear Sheikh Mubarak'. 01:48:35PM

1 And then copies to Rawaf L Bourisli?---Yes. 01:48:39PM
2 Who was that?---He's an employee of the group. 01:48:49PM
3 And Rajat. Who is Rajat?---Rajat is an employee of the group. 01:48:55PM
4 All right. So that's an email that was sent on 5 July 01:49:03PM
5 2013?---Yes. 01:49:07PM
6 Sorry, 5 June 2013. Are you familiar with that 01:49:07PM
7 document?---Yes, I am. 01:49:14PM
8 So in the course of that document - - - 01:49:16PM
9 COMMISSIONER: Do you want him to go through the document on 01:49:24PM
10 the screen, Mr Tovey? 01:49:25PM
11 MR TOVEY: Perhaps I'll just ask the witness generally about 01:49:29PM
12 the issues that are raised. Would it be more convenient 01:49:33PM
13 for you, Mr Commissioner, if I went through the document? 01:49:37PM
14 Perhaps it would be. 01:49:40PM
15 COMMISSIONER: Just so that the cross-examination can be 01:49:41PM
16 understood. 01:49:45PM
17 MR TOVEY: Yes, thank you. So if you could just bring up as 01:49:46PM
18 much as you can of the first page of text. Thank you, if 01:49:53PM
19 you just stop it there. So it appears from there, looking 01:50:01PM
20 at the first paragraph, that 'In 2005 Action Realty 01:50:04PM
21 Australia, ARA, purchased a newly built 30-year leasehold 01:50:10PM
22 retail investment, the Casey Lifestyle Centre.' And that 01:50:17PM
23 was the case, of course?---Yes. 01:50:23PM
24 Is that true?---Sorry, Mr Tovey. Yes. 01:50:27PM
25 And at that stage was it the case that the initial lease had 01:50:31PM
26 been in 2003 and you had bought this interest from the 01:50:42PM
27 original lessee?---That's correct. 01:50:47PM
28 So that lease expired in 2033?---Thirty years, it was a 30-year 01:50:50PM
29 lease, yes. 01:51:02PM

1 And the lease related to the Casey Lifestyle Centre; is that 01:51:04PM
2 right?---That's correct, for the leasehold of the Casey 01:51:14PM
3 Lifestyle Centre. 01:51:19PM
4 All right. Then if we go down that first paragraph, you 01:51:19PM
5 indicate, 'We were always aware that there was a pending 01:51:25PM
6 issue in relation to whether land tax was applicable to 01:51:29PM
7 this asset.' Now, without getting into a complicated 01:51:35PM
8 discussion about how the Retail Tenancies Act impacts on 01:51:39PM
9 the obligation to pay land tax, was there a dispute 01:51:46PM
10 between you and the council as to the obligation of - when 01:51:49PM
11 I say 'you', your company as lessee, to pay land tax in 01:51:55PM
12 addition to the normal negotiated rent?---Yes. 01:52:02PM
13 All right. And that was an issue which obviously went back to, 01:52:07PM
14 what was it, basically to the beginning of the lease, was 01:52:18PM
15 it?---That's correct, yes. 01:52:21PM
16 So was it the position that various negotiations between the 01:52:21PM
17 council and yourselves and your lawyers took place over 01:52:31PM
18 the years to try and resolve that issue?---Yes, the 01:52:35PM
19 lawyers - I can't recall who the lawyers were at the time 01:52:40PM
20 for the council - were dealing with it. There were a lot 01:52:45PM
21 of back and forth communication and it was an issue at the 01:52:50PM
22 time. 01:52:57PM
23 Now, it was the case, was it not, if you would go over the page 01:53:06PM
24 to page 6113 of the court book and the second page of the 01:53:13PM
25 document. You included a paragraph starting, 'On review'; 01:53:19PM
26 do you see that paragraph there?---Yes. 01:53:25PM
27 And you indicate that, 'On review and strategy moving forward, 01:53:30PM
28 we decided to challenge the determination report via 01:53:35PM
29 mediation in July 2012.' And the determination report you 01:53:41PM

1 were talking about there was a report relating to the rent 01:53:51PM
2 payable?---The determination report was done by a 01:53:55PM
3 determining valuer from Ernst - - - 01:54:01PM
4 Yes?---In what is believed - - - 01:54:04PM
5 COMMISSIONER: Mr Nehme, is the strategy, was that correct that 01:54:06PM
6 the strategy behind challenging the determination report 01:54:11PM
7 via mediation was for the purpose of putting yourself in a 01:54:17PM
8 position where you could negotiate with the council to 01:54:20PM
9 either purchase the freehold or extend the term for a 01:54:24PM
10 further 10 years. Was that the underlying 01:54:28PM
11 strategy?---That was the strategy, yes. It was a 01:54:32PM
12 diminishing leasehold, Commissioner, which meant - - - 01:54:34PM
13 I just want to clarify that that was your strategy?---Yes. 01:54:37PM
14 And ultimately it worked, did it not?---At this point in time 01:54:40PM
15 it wasn't working. 01:54:45PM
16 No, but the strategy worked, because as a result of the 01:54:46PM
17 position you adopted you ultimately were able to purchase 01:54:51PM
18 the freehold?---Through a tender process, yes. 01:54:55PM
19 Yes. 01:54:58PM
20 MR TOVEY: Then if we move on you indicate, 'Our greatest 01:55:09PM
21 concern was the fact that we were in default of the lease 01:55:17PM
22 and the council was in a position to call up the lease.'; 01:55:20PM
23 is that right?---That's correct. 01:55:24PM
24 And in fact at a later stage the council did call up the lease, 01:55:25PM
25 did they not, or they purported to?---No, Mr Tovey, they 01:55:31PM
26 were calling up the bank guarantee. 01:55:37PM
27 So there's a difference, is there, between calling up the lease 01:55:38PM
28 and calling up the bank guarantee?---Yes, a bank guarantee 01:55:41PM
29 can be called up immediately and cashed in - - - 01:55:44PM

1 Yes?---Was my concern. 01:55:46PM

2 Whereas calling up the lease I take it is the extra step of 01:55:48PM

3 basically cancelling the lease; is that what you're 01:55:52PM

4 talking about?---Yes, but it takes - there's a process 01:55:54PM

5 involved. So the immediate concern for me was the bank 01:55:57PM

6 guarantee being called in. 01:55:59PM

7 Yes, and so that's something you ultimately contacted Mr Aziz 01:56:01PM

8 about when the council sought to do that?---We tried to 01:56:04PM

9 talk to council on several occasions and their lawyers and 01:56:07PM

10 our lawyers and we were getting nowhere. So at that point 01:56:13PM

11 in time I rang our ward member, which was him, and just 01:56:16PM

12 said, 'This is what's going on. We don't want this to 01:56:20PM

13 occur. There's a relationship here. We've been here X 01:56:24PM

14 years. Why can't we sit down and talk?' 01:56:29PM

15 All right. We'll get to that later on, look at the 01:56:32PM

16 correspondence relating to it. I take it you're aware of 01:56:35PM

17 the correspondence relating to that issue?---Which 01:56:38PM

18 correspondence are you talking about? 01:56:42PM

19 Relating to Mr Aziz's intervention on your behalf in respect of 01:56:43PM

20 the calling up of the guarantee?---I don't know what 01:56:49PM

21 extent he went to. I haven't - what extent he went to 01:56:52PM

22 internally. 01:56:59PM

23 We'll take it just piece by piece at this stage?---Sure. 01:56:59PM

24 In any event, ultimately the council were alleging that there 01:57:05PM

25 was a shortfall in rent; is that right?---That's correct. 01:57:14PM

26 And an agreement was reached to pay that off in 01:57:17PM

27 instalments?---That's correct. 01:57:23PM

28 All right. Now, that wasn't at this time in 2013, this is 01:57:24PM

29 further down the track that this occurs, a couple of 01:57:30PM

1 years; is that right?---Yes. 01:57:33PM

2 Even though, because of the land tax issue, there was still at 01:57:36PM

3 least a notional shortfall depending on how the land tax 01:57:41PM

4 issue was going to work out?---That's correct. 01:57:45PM

5 All right. If you look at the bottom paragraph of that page 01:57:50PM

6 then, you say this, 'Four weeks ago' - - - 01:57:56PM

7 COMMISSIONER: I just wonder before you do that, Mr Tovey. The 01:58:02PM

8 previous paragraph, 'Urbis conducted a valuation for 01:58:05PM

9 mortgage purposes,' was Urbis engaged by you?---That's 01:58:14PM

10 correct, Commissioner. 01:58:16PM

11 And their private evaluation to you as set out in the schedule 01:58:17PM

12 immediately below this paragraph, if you could go to it, 01:58:22PM

13 showed the valuation of the property at those two 01:58:28PM

14 times?---That's correct. 01:58:32PM

15 Yes. Yes, Mr Tovey. 01:58:41PM

16 MR TOVEY: Thank you, Mr Commissioner. So I now want to go 01:58:42PM

17 down to the last paragraph. So, this is June 2013 and you 01:58:49PM

18 say, 'Approximately four weeks ago I met with Mr Sam Aziz 01:58:58PM

19 who was the deputy mayor of the City of Casey. He advised 01:59:03PM

20 me last week that he moved a motion in council to seek his 01:59:09PM

21 fellow councillors to support the sale of the freehold of 01:59:16PM

22 the Casey Lifestyle Centre.' Was that the truth?---To my 01:59:20PM

23 recollection, yes. 01:59:29PM

24 Where did you meet Mr Aziz to obtain this 01:59:33PM

25 information?---I don't recall, Mr Tovey. That was a while 01:59:43PM

26 ago. 01:59:46PM

27 COMMISSIONER: Did he understand the strategy that we just 01:59:49PM

28 covered a moment ago? Had you made clear to him what your 01:59:51PM

29 strategy was?---No. 01:59:55PM

1 You'd concealed that from you, had you?---No, I said to 01:59:57PM
2 him - and I'm reluctant because it was a while ago - but 02:00:06PM
3 I remember saying to not just him, but other people in the 02:00:11PM
4 past, ideally we'd always like to buy the freehold as we 02:00:14PM
5 own the leasehold. 02:00:21PM
6 No, no. I'm sorry, let me be quite blunt?---Please. 02:00:22PM
7 You've acknowledged a strategy here in relation to the 02:00:25PM
8 determination and how you might use that to ultimately 02:00:28PM
9 acquire the freehold or otherwise get a long extension of 02:00:33PM
10 the lease, and then Mr Aziz tells you that he's moved a 02:00:38PM
11 motion to support the sale of the freehold. Are you 02:00:42PM
12 saying that the strategy that you were pursuing and 02:00:45PM
13 Mr Aziz's moving a motion within council to support the 02:00:51PM
14 sale of the freehold are entirely coincidental or did you 02:00:57PM
15 in some form or other convey to Mr Aziz that that was the 02:01:02PM
16 strategy that you were seeking; the object of the strategy 02:01:06PM
17 was to achieve if possible the sale of the freehold?---My 02:01:11PM
18 recollection is I would have said to Mr Aziz that we would 02:01:15PM
19 like to buy the freehold. 02:01:18PM
20 Yes, and what else was said in such discussions? I notice you 02:01:22PM
21 used the words, 'I would have said'. I don't want you to 02:01:31PM
22 reconstruct. I just want you to exhaust your memory, 02:01:34PM
23 whatever limitations - - -?---There's not a lot of memory 02:01:38PM
24 upstairs at the moment. 02:01:41PM
25 Whatever - - -?---Sorry, Commissioner, I'm trying to give you 02:01:42PM
26 all the information I can. But I also am obviously 02:01:46PM
27 cautious in giving you incorrect information that isn't 02:01:51PM
28 true. 02:01:53PM
29 Yes?---So, rather than - I'm very - this is very easy to 02:01:55PM

1 discuss because it's sitting here in front of us. I went 02:01:58PM
2 to our ward member, and I spoke to council for many years. 02:02:03PM
3 Owning a diminishing asset which is a leasehold is very 02:02:11PM
4 hard to finance. So, the pressure was on - - - 02:02:15PM
5 Again, Mr Nehme, I'm interested in whether your conversation or 02:02:20PM
6 conversations with Mr Aziz which led to him moving this 02:02:26PM
7 motion included conveying to him that your desired object 02:02:31PM
8 was to obtain the freehold?---That's correct. So, 02:02:38PM
9 absolutely. 02:02:44PM
10 Yes?---That was discussed, yes. Hence why I had the meeting 02:02:45PM
11 with him. 02:02:50PM
12 And did Mr Aziz tell you what he was prepared to do?---No. 02:02:51PM
13 This came as a surprise to you that he moved this motion, did 02:02:55PM
14 it?---No, sorry, are you saying at the time, Commissioner, 02:02:57PM
15 or later on? 02:03:00PM
16 No, did Mr Aziz tell you that in response to you telling him 02:03:01PM
17 what your objective was that he would move a motion to 02:03:05PM
18 have the council support the sale of the freehold?---Not 02:03:11PM
19 at the time when we met and discussed this. He came back 02:03:15PM
20 to me and told me his strategy to get council support and 02:03:18PM
21 I said, 'Well, that's something you've got to do 02:03:23PM
22 internally.' 02:03:26PM
23 Yes, but he told you that's what he would do?---Yes. 02:03:27PM
24 And, I'm sorry, just to complete the picture - - -?---Sure. 02:03:33PM
25 You've mentioned earlier today that he told you about his 02:03:37PM
26 position that he was concerned about a conflict of 02:03:43PM
27 interest. You mentioned that a number of times. At this 02:03:45PM
28 time when he is telling you that he will move this motion, 02:03:50PM
29 was the question of conflict of interest addressed at 02:03:56PM

1 all?---Not in my recollection, no. 02:03:59PM

2 Had the conflict of interest issue been raised before this 02:04:03PM

3 conversation?---I don't recall, Commissioner. I don't 02:04:08PM

4 recall. 02:04:15PM

5 Because if you recall, I don't want to be unfair to you, but 02:04:15PM

6 I think the substance of your evidence in answer to my 02:04:21PM

7 questions was that you couldn't tell me what it was that 02:04:24PM

8 Mr Aziz thought gave rise to the conflict?---Right. 02:04:29PM

9 Is that correct? You are not able to tell me why Mr Aziz 02:04:41PM

10 thought that he might be in a conflict of interest 02:04:46PM

11 position?---I don't know - I don't know the answer to that 02:04:49PM

12 to be honest, Commissioner, but that's his business. 02:05:01PM

13 No, no, it's your business too as a businessman, Mr Nehme. 02:05:03PM

14 Surely you would recognise that if you're a businessman 02:05:09PM

15 who's intent on ensuring that integrity is part of the way 02:05:12PM

16 in which you conduct your business, you would not want to 02:05:16PM

17 engage with a councillor in circumstances where they would 02:05:20PM

18 be in a conflict of interest in dealing with your 02:05:24PM

19 objective?---All I can do, Commissioner, is go to my ward 02:05:27PM

20 member, propose what we're looking to do, and then how 02:05:33PM

21 it's acted from there I can't control. 02:05:37PM

22 No, just try and grapple with my question, which was when 02:05:40PM

23 Mr Aziz talks to you about being in a conflict of 02:05:44PM

24 interest, did you concern yourself at all with what that 02:05:47PM

25 meant for you?---Under this circumstance or in general? 02:05:51PM

26 You can't tell me whether or not he raised this for the first 02:05:57PM

27 time before you had discussions or afterwards. But 02:06:01PM

28 whenever he raised it, you didn't treat it as a matter 02:06:06PM

29 that you needed to be concerned about; is that the 02:06:09PM

1 position?---At the time, yes. But, no, I didn't think it 02:06:12PM
2 was an issue. 02:06:18PM
3 Yes. So did you tell him that when he would raise the conflict 02:06:20PM
4 of interest, that you didn't understand why he was saying 02:06:25PM
5 there was a conflict?---No, because - no, Commissioner, 02:06:28PM
6 no. 02:06:33PM
7 All right. Yes, Mr Tovey. 02:06:33PM
8 MR TOVEY: So he tells you that he's moved a motion and from 02:06:43PM
9 what you've just said he's told you that he's going to 02:06:46PM
10 move a motion to seek to have his fellow councillors 02:06:49PM
11 support the sale of the lifestyle centre, which of course 02:06:54PM
12 is exactly what you wanted; you would agree with 02:06:58PM
13 that?---Yes. 02:07:03PM
14 Now, at the time that he - and he's done that at your request, 02:07:06PM
15 or that's the way you see it?---I didn't ask him to move a 02:07:10PM
16 motion. I just said clearly to him that we'd love to own, 02:07:13PM
17 as I've said to the council over many years, we would love 02:07:17PM
18 to own the freehold because owning the leasehold is a 02:07:20PM
19 diminishing asset. 02:07:24PM
20 Yes, and Mr Aziz says that he was aware of your strategy and 02:07:26PM
21 you have no reason to suggest that he wouldn't have 02:07:32PM
22 been?---It wasn't - it was a very - - - 02:07:34PM
23 He was aware not only of the fact that you wanted it, but why 02:07:38PM
24 you wanted it?---It was a very typical commercial reason 02:07:41PM
25 why. When a bank says to you, 'We don't want to refinance 02:07:43PM
26 this on the next occasion because it's a leasehold,' as a 02:07:48PM
27 commercial person you do your best to get the freehold 02:07:53PM
28 because that's what the banks want. 02:07:55PM
29 So if you couldn't refinance it you were in deep trouble, were 02:07:58PM

1 you?---No, we'd never be in deep trouble, not at all. 02:08:03PM
2 Talking about deep trouble, at this stage were you a friend of 02:08:07PM
3 Mr Aziz?---At this stage was early stages of friendship. 02:08:10PM
4 He knew who you worked for?---I assume so. 02:08:24PM
5 He knew you worked for - - -?---Sorry, Mr Tovey, I don't go 02:08:31PM
6 around branding who we are. He was aware of Action Realty 02:08:36PM
7 Australia because that was the lessee. 02:08:40PM
8 Was he aware of the Kuwait connection?---Possibly. Yes, 02:08:44PM
9 I think so. 02:08:49PM
10 Had you said anything to indicate to him that there was cash or 02:08:49PM
11 deep pockets available from Kuwait?---No. No, not at all. 02:08:52PM
12 Had you done anything to indicate to him that you were a 02:09:11PM
13 wealthy man?---No. 02:09:14PM
14 Ever? I mean, this is 2013, 2014, 2015, 2016. Is there any 02:09:20PM
15 reason why he would think you were anything other than an 02:09:28PM
16 employee of a property development company?---I don't 02:09:32PM
17 know, Mr Tovey. You'd have to ask Mr Aziz. I don't go 02:09:39PM
18 around branding a sign on my head saying who I am and what 02:09:45PM
19 I own. 02:09:48PM
20 You never discussed your wealth with him or your access to 02:09:48PM
21 money?---No. I don't discuss that with anyone. 02:09:52PM
22 Yet he came to you and simply asked you for \$230,000, did 02:09:54PM
23 he?---That was many years after. 02:09:58PM
24 It was only three years after this, I'd suggest?---Yes. 02:10:00PM
25 And had you told him something in the meantime to make him 02:10:06PM
26 think you were rich?---Not what I recall, no. Perception 02:10:11PM
27 is a wonderful thing, Mr Tovey. 02:10:18PM
28 Have you ever lent any other friend \$100,000?---Several. 02:10:20PM
29 Have you ever lent them a quarter of a million?---Not up to 02:10:25PM

1 there, but not far off. 02:10:31PM

2 Have you ever lent anybody who was a councillor or a public 02:10:33PM

3 official amounts of 50,000, 100,000?---No, no. Sorry, 02:10:36PM

4 apart from Mr Aziz, sorry? 02:10:47PM

5 Apart from Mr Aziz?---No, absolutely not. 02:10:49PM

6 Then you go on, 'In August of 2013' - sorry, if I could just go 02:10:52PM

7 back to the bottom of the page?---Yes. 02:11:03PM

8 So, 'The first stage is for his staff to prepare a report.' So 02:11:05PM

9 he's not just told you that he's moved this in council to 02:11:10PM

10 progress your request to him, but he's got staff preparing 02:11:14PM

11 a report supporting the sale. Perhaps we just take it a 02:11:19PM

12 step at a time. So he tells you the first stage so far as 02:11:33PM

13 he's concerned is for staff to prepare a report supporting 02:11:37PM

14 the sale; all right? How does he do that?---Verbally. 02:11:42PM

15 I probably would have asked him for the process, what's 02:11:52PM

16 involved, and he told me verbally. 02:11:54PM

17 And how did you expect him to get staff to support it? There 02:11:55PM

18 were two positions; either they might have found that it 02:11:58PM

19 was appropriate or inappropriate?---It's probably poor 02:12:01PM

20 wording on my part. This is an email to Sheikh who I'm 02:12:05PM

21 there to impress. 02:12:08PM

22 All right. Look, I don't want to be nitpicking. We'll just go 02:12:10PM

23 on. 'This then is presented to the full council to 02:12:13PM

24 comment and vote on.'

25 COMMISSIONER: Just pardon me a moment, Mr Tovey. What did you 02:12:20PM

26 mean by that last answer, that you're there to impress 02:12:23PM

27 Sheikh Mubarak? I thought you told me that you had a 02:12:27PM

28 trusting relationship?---Yes, we do. 02:12:31PM

29 So surely you would - part of that relationship depended upon 02:12:34PM

1 you reporting accurately what occurs?---Yes. 02:12:39PM

2 Not exaggerating, so that at some point of time the Sheikh 02:12:46PM

3 might ultimately come to the conclusion, 'I can't rely on 02:12:52PM

4 what you tell me.' So why did you add 'to 02:12:56PM

5 impress'?---'Impress' is probably a bad word. But he's 02:13:02PM

6 the person who pays my bills at the end of the day, 02:13:05PM

7 Commissioner, in very simple terms. 02:13:09PM

8 Yes?---I'm not out - when I say 'impress', I'm out to - he was 02:13:11PM

9 new to investing in Australia and I wanted him to continue 02:13:16PM

10 investing in Australia. 02:13:19PM

11 Yes. But may we take it that if you tell him something, you 02:13:20PM

12 are accurately reporting the situation to him?---To my 02:13:26PM

13 best ability, yes. 02:13:34PM

14 Yes. Yes, Mr Tovey. 02:13:38PM

15 MR TOVEY: 'He will pursue this in a timely manner as 02:13:45PM

16 I mentioned to him that the market review was in August 02:13:48PM

17 2013.' So it would appear that you have discussed some of 02:13:54PM

18 the background machinations which are going on in respect 02:13:59PM

19 of the lease?---Yes. 02:14:05PM

20 To give him an understanding, not just of what you want, but as 02:14:06PM

21 to why you want it; true?---Yes. 02:14:10PM

22 And indeed you've gone to the extent to describe 02:14:16PM

23 negotiations - sorry, to describe that a market review was 02:14:22PM

24 due at a specific time in August of 2013; true?---Yes. 02:14:28PM

25 I think at that time also, Mr Tovey, the pressure was on 02:14:34PM

26 also with the bank guarantee, et cetera, and obviously 02:14:38PM

27 land tax all sort of fell in together at the same time. 02:14:42PM

28 COMMISSIONER: Who was going to do the review, Mr Nehme? This 02:14:46PM

29 August review, who was to do that?---The determination 02:14:51PM

1 review, Commissioner? 02:14:54PM

2 No, the review that you here refer to that you mentioned to 02:14:56PM

3 Mr Aziz that the market review was in August 2013. Who 02:15:04PM

4 was doing that market review?---Possibly it would have 02:15:11PM

5 been Urbis. I don't know exactly, but they did all our 02:15:15PM

6 reviews at the time so they're independent reviews. 02:15:19PM

7 But the context in which you said that to him leads Mr Aziz to 02:15:27PM

8 say, 'Let's try and get this finalised before then.' So 02:15:32PM

9 what was it about this review that would lead Mr Aziz to 02:15:39PM

10 think it would be in your interests to get the sale or the 02:15:43PM

11 proposal to sell in place before that review occurs?---The 02:15:49PM

12 only thing that comes to mind, Commissioner, would be 02:15:59PM

13 I may have stated that it's a diminishing asset. It's 02:16:03PM

14 another period of diminishing value which would have been 02:16:07PM

15 a concern. I may have mentioned that; I don't know. 02:16:11PM

16 No, I think you're missing the purport of my question, which is 02:16:13PM

17 why did you think it valuable to tell Sheikh Mubarak that 02:16:17PM

18 you're going to pursue - or Mr Aziz has said, 'We will 02:16:25PM

19 pursue this in a timely manner,' as you had told Mr Aziz 02:16:29PM

20 that the market review was in August 2013 and so Aziz 02:16:34PM

21 responds, 'We'll try and get this done before then'? 02:16:40PM

22 What's the significance of that?---I'm not sure, 02:16:45PM

23 Commissioner. 02:16:50PM

24 You don't know why you drew attention to that now?---I'm sorry? 02:16:52PM

25 You don't know why you drew attention to that?---No, I don't. 02:16:56PM

26 Well, let me ask you another question. We see here the 02:17:06PM

27 valuations for the freehold of \$30 million in November - - 02:17:09PM

28 -?---The leasehold. 02:17:18PM

29 The leasehold, I'm sorry, yes. Did you have any reason to 02:17:19PM

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

think that at council level there may not be an
appreciation about the true worth of the freehold?---No.
No idea. I don't - no.
All right. Yes, Mr Tovey.
MR TOVEY: You said, 'It's been a fortunate situation as I have
been able to assist his wife who is a dentist and requires
support from a health insurance provider who I know their
CFO and he has kindly assisted them in growing their
business.' Did you tell the Sheikh that?---That's what
I wrote.
And was that the truth?---All I know is I put them on to the
CFO - - -
No, I'm just asking a simple question. Was that the truth when
you said that?---Which component? Which part, Mr Tovey?
'I have been able to assist his wife who is a dentist and
requires support from a health insurance provider who
I know their CFO and he has kindly assisted them in
growing their business.' So, what you've said there is he
and his wife or his wife required support and you've
helped them grow their business. Was that the truth as
you understood it at the time?---Just to be clear on that,
Mr Tovey, when I was asked about Medibank being a
provider, that was going to change their business because
people couldn't come in and claim their dentistry work.
So I put in there that it would assist them in their
business and allow them to grow their business because
it's a provider they don't have. So Medibank wasn't a
provider at the time in their dental surgery.
Yes, that's exactly what I'm asking you about. So what you're

02:17:23PM
02:17:27PM
02:17:35PM
02:17:39PM
02:17:45PM
02:17:49PM
02:17:54PM
02:18:00PM
02:18:05PM
02:18:14PM
02:18:15PM
02:18:22PM
02:18:22PM
02:18:25PM
02:18:29PM
02:18:33PM
02:18:36PM
02:18:41PM
02:18:47PM
02:18:52PM
02:18:57PM
02:18:59PM
02:19:04PM
02:19:07PM
02:19:13PM
02:19:16PM
02:19:20PM
02:19:24PM
02:19:26PM

1 saying to the Sheikh there is that you've assisted his 02:19:30PM
2 wife, who's the dentist, firstly that she required support 02:19:38PM
3 and secondly that you have assisted them in growing their 02:19:42PM
4 business. Now, was that the truth as you understood 02:19:49PM
5 it?---By introducing them to - - - 02:19:52PM
6 No, I'm simply - was that the truth? Were you telling the 02:19:56PM
7 truth as you understood it then to the Sheikh or were you 02:20:00PM
8 saying something that wasn't the truth?---No, that's the 02:20:07PM
9 truth. 02:20:09PM
10 All right. And then you went on to the extent of your 02:20:10PM
11 assistance, and the assistance you described was such as 02:20:16PM
12 to make Mr Aziz feel 'compelled to respond with a favour 02:20:19PM
13 to me so let's put him to the test.' Now, is that the 02:20:25PM
14 truth? Is that the way you saw it at the time?---As a 02:20:32PM
15 ward member - - - 02:20:37PM
16 No, no, it's a simple question. I just ask you to address it. 02:20:39PM
17 Was what you said there the truth or was it something 02:20:43PM
18 other than the truth that you were telling the 02:20:47PM
19 Sheikh?---I don't think it's the truth as far as Mr Aziz 02:20:50PM
20 feels compelled. That was probably embellished by me 02:20:53PM
21 because - - - 02:20:57PM
22 And so insofar as you told the Commissioner a moment ago that 02:20:58PM
23 you wouldn't exaggerate or mislead the Sheikh, what, for 02:21:01PM
24 reasons of personal aggrandisement, was it, that you 02:21:07PM
25 overstated the situation?---I don't know. I can't answer 02:21:10PM
26 that, Mr Tovey. 02:21:18PM
27 Because you told me specifically when I was asking you some 02:21:19PM
28 time ago before lunch, as I recall it, that there was no 02:21:24PM
29 sense of reciprocity attached to, so far as you were 02:21:29PM

1 concerned, attached to the work that you did for his wife, 02:21:37PM
2 and here you are saying exactly the opposite, are you not? 02:21:41PM
3 That's diametrically opposed to what you told me 02:21:46PM
4 earlier?---Well, I still don't believe it was that big a 02:21:51PM
5 situation in me introducing two people. Maybe I've 02:21:54PM
6 embellished it in here. 02:21:58PM
7 But you're not saying - look, what you're doing is you're 02:22:00PM
8 trumpeting Mr Aziz as somebody who's capable of being put 02:22:05PM
9 to the test because of his sense of obligation to you. 02:22:08PM
10 That's something you would not - - -?---No, that was not 02:22:11PM
11 my intention, putting him to the test as a ward councillor 02:22:15PM
12 and - - - 02:22:21PM
13 That's not what you say?---Sorry? 02:22:23PM
14 That's not what you say, is it?---What am I saying? 02:22:24PM
15 You're saying exactly the opposite. You're saying, 'I'm 02:22:30PM
16 putting him to the test because he owes me'?---No, that's 02:22:33PM
17 not correct. 02:22:37PM
18 That's the only logical way of reading that in context, isn't 02:22:38PM
19 it?---No, that wasn't the way - no, that's not the context 02:22:44PM
20 and that's not the way this was intended to be written. 02:22:45PM
21 I put two parties together and what happened after that 02:22:49PM
22 I don't know, I've learnt later on, but I probably 02:22:53PM
23 shouldn't have said in my email to Sheikh that Mr Aziz 02:22:58PM
24 feels compelled. That was from me, not from him. 02:23:03PM
25 I take it from what you're saying - - -?---But as far as a ward 02:23:06PM
26 member goes or a councillor or - - - 02:23:09PM
27 COMMISSIONER: Mr Tovey, let Mr Nehme finish, please. 02:23:12PM
28 MR TOVEY: Sorry?---It was probably - not probably. I will say 02:23:17PM
29 it's probably - I will say that it's poorly worded on my 02:23:20PM

1 part. 02:23:24PM

2 I take it from what you now say that you acknowledge that what 02:23:27PM

3 you are there saying to the Sheikh is that you have 02:23:30PM

4 engendered in Mr Aziz a sense of obligation by which he 02:23:33PM

5 feels compelled to respond with a favour. You acknowledge 02:23:38PM

6 now that that's what the clear understanding of the 02:23:44PM

7 document on its face is?---That's how you're reading it. 02:23:47PM

8 There's no other way of reading it, is there?---It was a poor 02:23:53PM

9 choice of words on my part, Mr Tovey. 02:23:58PM

10 COMMISSIONER: Mr Nehme, leaving the linguistics to one side, 02:24:02PM

11 when you wrote this to the Sheikh did you believe that 02:24:14PM

12 Mr Aziz felt he owed you a favour?---No. 02:24:21PM

13 So this was a lie to the Sheikh?---Not a lie, just a poor 02:24:25PM

14 choice of words. 02:24:30PM

15 Did you have any motive for embellishing Mr Aziz's role to the 02:24:32PM

16 Sheikh? Was your tenure, was your salary, was your future 02:24:41PM

17 in any sense in jeopardy at this time with Sheikh 02:24:48PM

18 Mubarak?---No, not that I can recall. 02:24:54PM

19 So can you think of any reason why you would make a fairly 02:24:55PM

20 serious comment that the deputy mayor would feel that he 02:25:00PM

21 owes you a favour?---Poor choice of words, Commissioner. 02:25:10PM

22 Now that you see those words, what do you think was the message 02:25:16PM

23 you were actually trying to convey to the 02:25:22PM

24 Sheikh?---Probably going back up to the paragraph before, 02:25:27PM

25 that our ward member or the deputy mayor I had met with 02:25:34PM

26 and gone through what our intentions or what our 02:25:38PM

27 preference would be and he was going to put it to the 02:25:42PM

28 council, and I probably should have stopped there. To 02:25:45PM

29 mention about assisting his wife in the dental surgery was 02:25:48PM

1 a poor choice from my point. There was no intention on 02:25:53PM
2 that apart from helping someone in their business. 02:25:58PM
3 No, and you'll recall your evidence to the Commission earlier 02:26:02PM
4 that you said there was nothing in this arrangement at all 02:26:05PM
5 over Medibank. You just picked up the phone and spoke to 02:26:09PM
6 an associate and that was the end of it, gave it no more 02:26:13PM
7 thought?---Correct. 02:26:16PM
8 Well, you plainly here seemed to have attached considerably 02:26:17PM
9 more significance to it. Was that untrue, was it, what 02:26:21PM
10 you were saying here to the Sheikh?---Not untrue. Not 02:26:24PM
11 untrue, Commissioner, as far as assisting them. The truth 02:26:30PM
12 was that and I probably shouldn't have - as I said, a poor 02:26:33PM
13 choice of words. 02:26:36PM
14 No, no, no, just so I can be clear. Was it untrue to suggest 02:26:37PM
15 to the Sheikh that the way you had assisted Mr Aziz in 02:26:41PM
16 relation to Medibank might have made Mr Aziz think he owed 02:26:48PM
17 you a favour; was that untrue?---That is untrue. 02:26:53PM
18 I probably shouldn't have put it in those words. 02:26:58PM
19 All right. And, finally, 'Let's put him to the test.' What 02:27:00PM
20 did you mean by that, Mr Nehme?---I don't recall. That 02:27:06PM
21 would have been a tongue in cheek, which is very typical 02:27:10PM
22 of me with the Sheikh. We put everyone to the test. 02:27:13PM
23 How would you put the deputy mayor to the test?---I don't know. 02:27:18PM
24 Don't know. Don't know. Would have been a tongue in 02:27:26PM
25 cheek comment. Again poor choice of words, Commissioner, 02:27:30PM
26 on my part. 02:27:33PM
27 But this is a private communication. You never thought this 02:27:35PM
28 would see the light of day, did you?---I had 02:27:40PM
29 nothing - nothing to hide, Commissioner, because 02:27:45PM

1 everything's on my system. 02:27:48PM

2 You mean you wrote this thinking it might become public?---No, 02:27:52PM

3 I don't think whether it does or doesn't. I write what 02:27:56PM

4 I write and, as I said, I go back and a poor choice of 02:28:00PM

5 words chosen by me. 02:28:04PM

6 All right. Yes, Mr Tovey. 02:28:05PM

7 MR TOVEY: I'm not sure I understand. So what are you saying? 02:28:12PM

8 Are you saying that at this time you didn't understand 02:28:14PM

9 that Mr Aziz felt some sense of obligation to perform for 02:28:17PM

10 you?---There was no obligation from Mr Aziz. 02:28:25PM

11 I'm not asking you what there was. I'm asking you what you 02:28:29PM

12 felt. At the time that you wrote this, did you feel that 02:28:32PM

13 there had been communicated to you any sense of obligation 02:28:37PM

14 communicated to you by Mr Aziz?---No. 02:28:42PM

15 So all this is just a total lie?---Poor choice of words. 02:28:45PM

16 Well, it's not just a choice of words. None of the things that 02:28:50PM

17 you say there are true, according to you?---They're a poor 02:28:54PM

18 choice of words so far as what we just discussed with the 02:28:59PM

19 Commissioner as far as Mr Aziz feeling compelled and 02:29:03PM

20 putting to the test. It's a poor choice of words on my 02:29:07PM

21 part. 02:29:12PM

22 I'm not asking about your ability to write English grammar. 02:29:12PM

23 I want to know whether in putting this forward it was a 02:29:17PM

24 lie. When you said that he felt compelled, you've just 02:29:20PM

25 told me you knew of nothing that made him feel compelled. 02:29:24PM

26 That had to be a lie. It's not something - - -?---It's a 02:29:28PM

27 poor choice of words. 02:29:32PM

28 It's not something that arises from poor phraseology, is 02:29:33PM

29 it?---I'm not that educated, Mr Tovey, and for the record, 02:29:36PM

1 and the media will love this, I failed my last year twice 02:29:40PM
2 if that helps you. I'm not that smart. 02:29:43PM
3 Well - - -?---If that's what it comes to to writing - - - 02:29:46PM
4 Look, I'm not asking about your level of - - -?---Poor choice 02:29:50PM
5 of words. 02:29:54PM
6 I'm asking you about assertions you make which are by your own 02:29:55PM
7 admission not the truth. You understand that. 02:29:58PM
8 Irrespective of your facility with draftsmanship, the 02:30:05PM
9 truth is still the truth, an assertion is still an 02:30:12PM
10 assertion, and you've admitted there are a number of 02:30:15PM
11 assertions there which are not true. Why did you do 02:30:18PM
12 that?---Poor choice of words. 02:30:21PM
13 Well, it can't be explained, I'd suggest to you, by a choice of 02:30:24PM
14 words?---I can't explain - give you an answer apart from a 02:30:29PM
15 poor choice of words. I don't think (indistinct) Sheikh 02:30:36PM
16 Mubarak, he will tell you my reporting was probably my 02:30:40PM
17 biggest weakness and my biggest letdown. 02:30:42PM
18 COMMISSIONER: I think we might move on, Mr Tovey. Could 02:30:45PM
19 I just ask you, Mr Nehme, apart from conveying to Mr Aziz 02:30:48PM
20 that the objective of your group or the Action Group 02:30:59PM
21 Australia was to try to acquire the freehold and that 02:31:04PM
22 Mr Aziz responded that he would, as indicated here, raise 02:31:13PM
23 a motion for the council to support looking at that, were 02:31:19PM
24 you working closely with Mr Aziz in relation to achieving 02:31:26PM
25 this object or was that just a passing observation that 02:31:29PM
26 you had with him? And I would just like you to think 02:31:34PM
27 carefully about your answer here. Were you at this time 02:31:38PM
28 working closely with Mr Aziz to achieve this 02:31:40PM
29 objective?---As our ward member I was working with him on 02:31:44PM

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

this. How close, I didn't - there were no reports or anything. It was verbal. And then he stated how he would look at it and consider it, and I then took that and that's when I wrote this. So not close to sit there and say we did numbers; we did nothing of that sort. I provided him no information. Just told him our intent and the fact - I remember talking vaguely about the valuation and the leasehold structure was just diminishing.

Did you ask him for his assistance?---As a ward member, I went to him as our ward member to see what I could do, to see what we could do, to see what the process was.

Yes, but did you ask him if he could assist you?---I would have gone to him, again from recollection, on the basis of him as being our ward member on behalf of the council. I'm a ratepayer.

Sorry, is that a yes to my question, that you did ask him how he could assist you?---No, I would have asked him how the council could assist.

Yes?---He's our ward member.

So at the end of this letter - I'm not sure if Mr Tovey was going to take you to this, but it just caught my attention. You say at the end of the letter, last paragraph, please. You say you feel 'we are now getting Casey back in line.' Is that correct? Was that your view at that time?---As in the shopping centre was known as Casey.

Yes. Was that your view at the time, that you were getting Casey back in line?---Yes, so that was in situation in

02:31:49PM
02:31:58PM
02:32:02PM
02:32:06PM
02:32:11PM
02:32:16PM
02:32:19PM
02:32:23PM
02:32:27PM
02:32:28PM
02:32:33PM
02:32:37PM
02:32:40PM
02:32:47PM
02:32:51PM
02:32:55PM
02:32:59PM
02:33:03PM
02:33:06PM
02:33:08PM
02:33:11PM
02:33:15PM
02:33:18PM
02:33:22PM
02:33:38PM
02:33:45PM
02:33:48PM
02:33:49PM
02:33:53PM

1 respect to the rent and the land tax. 02:33:57PM

2 Yes?---We'd made payments, we were getting back into the line, 02:34:01PM

3 and if you scroll back up it also refers to the tenants, 02:34:06PM

4 it's privileged information. During that time we had a 02:34:14PM

5 lot of issues with tenants and so we were getting Casey 02:34:18PM

6 back in line from a retail perspective from a tenancy 02:34:23PM

7 perspective. 02:34:26PM

8 Yes, and then would you look at the third sentence, 02:34:28PM

9 please?---Yes. 02:34:34PM

10 Was that true, that you were working closely with the deputy 02:34:37PM

11 mayor, Mr Aziz, on procuring a successful outcome to 02:34:40PM

12 purchase the freehold?---Again 'closely' is probably a 02:34:44PM

13 poor choice of words. I was working with the deputy 02:34:48PM

14 mayor, I probably should have said, as our ward member. 02:34:53PM

15 I can't say 'closely' because there was nothing - apart 02:34:55PM

16 from discussions had as our ward member, I can't say it 02:35:00PM

17 was 'closely'. Again a poor choice of words. 02:35:07PM

18 Was there anything to be gained by you by hyperbole, by you 02:35:09PM

19 exaggerating your expectations or hopes that Mr Aziz would 02:35:18PM

20 be able to procure a successful outcome? Did you have 02:35:25PM

21 something to gain by exaggerating the position to Sheikh 02:35:30PM

22 Mubarak?---Nothing to gain. 02:35:38PM

23 No?---Nothing to gain, Commissioner, no. 02:35:40PM

24 All right. Yes, Mr Tovey. 02:35:47PM

25 MR TOVEY: So you went on working with Mr Aziz as your ward 02:35:58PM

26 councillor and he'd report back to you, would he, what was 02:36:03PM

27 going on in council in respect of the issue of the sale of 02:36:06PM

28 the CLC?---Sorry? 02:36:12PM

29 Mr Aziz, while you were working with him as your ward 02:36:19PM

1 councillor, would report back to you on what was happening 02:36:25PM
2 in council in relation to the movement towards sale of 02:36:26PM
3 the CLC?---I'm trying to recall the discussions that were 02:36:32PM
4 had because it was a period of time. There would have 02:36:42PM
5 been discussions of updating me, yes. 02:36:48PM
6 You became aware, did you, that on 16 December 2014 there was a 02:36:59PM
7 council resolution passed progressing and indeed 02:37:09PM
8 supporting the sale of the lifestyle centre, and just 02:37:15PM
9 so - I notice you nodding. You remember that date in 02:37:20PM
10 2014?---I'm nodding because I'm listening to you. I don't 02:37:23PM
11 remember the date, no. 02:37:26PM
12 Just to help you focus, there was then talk of a notice of 02:37:27PM
13 rescission to recall and overrule that motion; do you 02:37:34PM
14 recall that?---No, I don't. 02:37:45PM
15 And there was at that time an issue arising as to whether or 02:37:47PM
16 not council should employ independent assessors to 02:37:54PM
17 determine whether or not the property should be sold. Do 02:38:02PM
18 you remember reports being obtained by the council 02:38:06PM
19 then?---No, I don't. 02:38:10PM
20 Were you told about reports being obtained by the council at 02:38:11PM
21 any stage?---I don't recall being told. I honestly can't 02:38:15PM
22 recall, but it may be in a discussion, that report, but 02:38:28PM
23 again I don't want confirm something that I'm not 02:38:32PM
24 110 per cent sure, Mr Tovey. 02:38:36PM
25 I'm just asking you from your recollection. We've heard from 02:38:37PM
26 Mr Aziz that there were three reports, two against, one in 02:38:40PM
27 favour. Now, what did you know about those 02:38:47PM
28 reports?---I didn't. 02:38:55PM
29 Did you know the existence of those reports?---No. 02:38:55PM

1 Did you liaise closely with Mr Aziz in respect of other issues 02:38:57PM
2 that you had, issues you had in respect of either the sale 02:39:01PM
3 of the centre or your ongoing lease problems?---I did 02:39:08PM
4 liaise with Mr Aziz and then he put me in touch with the 02:39:11PM
5 officers within, of which we had discussions with. 02:39:17PM
6 COMMISSIONER: So, Mr Nehme, we've had other examples in 02:39:33PM
7 matters unrelated to you where a person with a commercial 02:39:38PM
8 interest wished to see a particular objective achieved at 02:39:40PM
9 council and would need to deal with council officers, and 02:39:43PM
10 before that occurred Mr Aziz would speak to the council 02:39:50PM
11 officer and express strong views in support of the council 02:39:53PM
12 officer ultimately supporting that commercial interest of 02:39:59PM
13 a third party. Did Mr Aziz at any stage convey to you the 02:40:04PM
14 conversations that he had with council officers?---Not 02:40:10PM
15 that I recall, Commissioner, no. 02:40:15PM
16 I understand these are events of some time ago. But is your 02:40:17PM
17 position he may or may not have; you don't remember now if 02:40:26PM
18 he did?---I honestly don't remember. What I do recall is 02:40:29PM
19 the CEO and the head of planning we had several 02:40:35PM
20 discussions with, and I think he's the head of planning at 02:40:37PM
21 the time, Peter Gillieron, was involved in the mediation 02:40:42PM
22 of the land tax and the rent, et cetera. The CEO was 02:40:45PM
23 involved in the background, for example. But outside of 02:40:49PM
24 that I don't follow council meetings and it's not 02:40:54PM
25 something I make a habit of. 02:40:59PM
26 No, but might we assume that given your strategy and the 02:41:00PM
27 objective of being able to acquire this freehold, that if 02:41:08PM
28 you were working closely with Mr Aziz he would have told 02:41:12PM
29 you if there were initially two reports opposing the Casey 02:41:17PM

1 Council selling this land, he would have told you if 02:41:23PM
2 council officers were opposed to the sale of the land; is 02:41:26PM
3 that a reasonable assumption to make?---I don't recall him 02:41:31PM
4 telling me about the reports. No, I don't recall him 02:41:35PM
5 mentioning the reports to me. 02:41:41PM
6 So is your memory that from the time Mr Aziz successfully moved 02:41:45PM
7 the initial motion for council to consider selling the 02:41:53PM
8 freehold, that the scenario was uninterrupted, that that 02:41:58PM
9 was just progressing successfully to the point where the 02:42:06PM
10 land was offered for sale; is that your memory of the - - 02:42:10PM
11 -?---I don't know the process, Commissioner. 02:42:14PM
12 I'm not asking you about whether you know the process. I'm 02:42:17PM
13 asking you is your memory that from the time Mr Aziz moved 02:42:20PM
14 the first motion successfully to have the council consider 02:42:26PM
15 selling the freehold, that your memory is things 02:42:31PM
16 progressed smoothly to the point where that occurred, that 02:42:35PM
17 the freehold was offered for sale? Is that your state of 02:42:39PM
18 mind?---I don't know whether it's smooth or not or what 02:42:43PM
19 occurred, Commissioner. 02:42:54PM
20 You understand why these questions are being asked, because a 02:42:57PM
21 prominent hypothesis, Mr Nehme - - -?---I don't 02:43:04PM
22 understand, to be honest. So if you could explain I would 02:43:08PM
23 appreciate it. 02:43:11PM
24 There's a very likely scenario that Mr Aziz was reporting to 02:43:12PM
25 you on a regular basis as to how matters were proceeding 02:43:21PM
26 at council?---No. 02:43:23PM
27 No? All right. Yes, Mr Tovey. 02:43:25PM
28 MR TOVEY: Did you provide him information to put before 02:43:31PM
29 council officers at any stage?---Not that I'm aware of, 02:43:33PM

1 no. 02:43:37PM

2 Did you give him any reason to become aggressive with council 02:43:40PM

3 officers on your behalf? I'm talking now back in 02:43:45PM

4 2015?---We were - - - 02:43:55PM

5 2014?---Sorry? 02:43:59PM

6 In 2014 did you give him any reason to become aggressive with 02:44:00PM

7 council officers providing information on your 02:44:05PM

8 behalf?---I remember writing to Mr Aziz about the way we 02:44:09PM

9 were being treated by council in relation to land tax and 02:44:14PM

10 the lawyers and everyone else. Again as our ward member 02:44:19PM

11 I wrote to him, and we were being treated pretty badly, so 02:44:23PM

12 I made him aware of that. 02:44:27PM

13 And did he go in to bat on your behalf?---I don't know how he 02:44:31PM

14 conducted himself after that. I left it with him and then 02:44:36PM

15 we kept talking to council. 02:44:39PM

16 Did he report back to you about what he'd done or - - 02:44:41PM

17 -?---I don't recall, Mr Tovey. 02:44:47PM

18 Were you meeting with him during 2015 and 2016?---I'm sure we 02:44:50PM

19 were meeting, but - - - 02:45:00PM

20 How regularly?---I don't know. I can't recall. 02:45:01PM

21 Were you meeting once a week, once a month, once a year?---I'd 02:45:05PM

22 be guessing. I don't want to guess, Mr Tovey. 02:45:16PM

23 What's your best estimate?---I'm not prepared to guess because 02:45:18PM

24 I'm sure I'll be wrong. 02:45:22PM

25 So it could have been either 50 times a year - could it have 02:45:24PM

26 been once a week?---It wasn't a lot. It wasn't many 02:45:28PM

27 occasions. 02:45:31PM

28 So what are we talking about when you say 'not many'?---It 02:45:32PM

29 might be five, six times. I'm absolutely guessing. 02:45:42PM

1 Over that period of three years?---Over the three years or are 02:45:46PM
2 you saying 2015/2016? 02:45:50PM
3 Sorry, 2015/2016?---Three, four times, possibly. 02:45:53PM
4 All right?---Sorry. To be blunt, I'm throwing a number out. 02:46:00PM
5 I'm guessing. But certainly not a lot of times. 02:46:10PM
6 All right?---I'd like to be careful. I'm guessing. 02:46:14PM
7 You gave him the money in 2016 in circumstances where you had 02:46:32PM
8 only met him two or three times over a period of two 02:46:44PM
9 years. What was it about the attraction of Mr Aziz that 02:46:50PM
10 required you at that particular point in time to dig 02:46:59PM
11 around to find money to lend him?---Can I go back a step, 02:47:03PM
12 Mr Tovey? You said when I met. So are you talking about 02:47:07PM
13 talking on the phone to him as well or face-to-face 02:47:10PM
14 meetings? 02:47:13PM
15 No, you spoke on the phone, did you? How often did you speak 02:47:13PM
16 on the phone?---We probably spoke on the phone more than 02:47:17PM
17 we spoke face-to-face. 02:47:21PM
18 How regularly would you speak on the phone?---Again not 02:47:22PM
19 regularly, but probably about the same as meeting 02:47:26PM
20 face-to-face. 02:47:28PM
21 All right. So over the period of two years you'd met him two 02:47:29PM
22 to three times, you'd spoken to him on the phone two to 02:47:36PM
23 three times - - -?---No - - - 02:47:40PM
24 At the end of that period of two years you decide to lend him 02:47:41PM
25 \$230,000. What was it that attracted you to him to the 02:47:45PM
26 extent to which you felt the need to scratch around to 02:47:52PM
27 find \$230,000 to give him?---Do you want to expand further 02:47:57PM
28 on your question, Mr Tovey, because - - - 02:48:05PM
29 No, it's a simple question. You had very little communication 02:48:08PM

1 with him - - -?---No, I - - - 02:48:11PM
2 You say that was mostly on a business basis. What was 02:48:13PM
3 it?---I didn't say on a business basis - - - 02:48:17PM
4 What was it that led you to - - -?---Mr Tovey, just go back a 02:48:19PM
5 step. I didn't say on a business basis. You asked me how 02:48:23PM
6 many times - - - 02:48:26PM
7 Well, I'll ask you - - -?---And I said very clearly I don't 02:48:27PM
8 recall exactly. 02:48:30PM
9 COMMISSIONER: Mr Tovey - - - 02:48:31PM
10 MR TOVEY: Yes, so the two or three meetings that you had in 02:48:33PM
11 2015 and 2016 - - -?---Go back again. I said I cannot 02:48:41PM
12 categorically tell you exactly how many meetings. I was 02:48:45PM
13 guessing. Please don't hold me to two or three meetings. 02:48:50PM
14 So it was four meetings or five meetings?---It may be more; 02:48:53PM
15 I don't know. I don't keep record of meetings and phone 02:48:57PM
16 calls and - - - 02:49:00PM
17 Did you discuss business at those meetings?---I'm sure we would 02:49:01PM
18 have. 02:49:06PM
19 Yes. Did you discuss the progress of the council towards 02:49:07PM
20 selling the CLC property at those meetings?---To my 02:49:16PM
21 recollection I'm sure we would have discussed it to 02:49:24PM
22 see - - - 02:49:27PM
23 And over the phone?---Either/or. I don't know exactly. 02:49:27PM
24 I'm not suggesting there was anything with that?---No, neither 02:49:30PM
25 am I, but it's - - - 02:49:33PM
26 What else did you discuss other than that?---I've got no idea, 02:49:35PM
27 Mr Tovey. No idea. 02:49:38PM
28 Well, you had no interest in one another's families. Did you 02:49:39PM
29 have any other mutual interests which drew you together 02:49:47PM

1 and which you discussed?---We would have discussed a 02:49:50PM
2 number of things. We would have discussed - we were 02:49:51PM
3 looking at building a hotel in the City of Casey, we were 02:49:54PM
4 looking at a whole number of things, and general 02:49:57PM
5 discussion what's going on within the City of Casey, which 02:49:59PM
6 is no different to what a developer does in talking to 02:50:02PM
7 what's going on within the municipality. It's not 02:50:05PM
8 unusual. 02:50:09PM
9 Insofar as you remember topics of conversation, they're topics 02:50:09PM
10 which centred around what was going on in the City of 02:50:13PM
11 Casey?---And more. I don't know. I honestly 02:50:17PM
12 don't - can't recall exact conversations, Mr Tovey. 02:50:21PM
13 And you're talking to him about business interests that you 02:50:25PM
14 have in the City of Casey as well as the CLC or that you 02:50:27PM
15 might have or about the business environment in the City 02:50:32PM
16 of Casey. Were those the things that you spoke 02:50:38PM
17 about?---I can't recall exactly what we spoke about. It 02:50:41PM
18 would have been a number of things. But - - - 02:50:45PM
19 All right. In those circumstances what drew you to give him 02:50:46PM
20 \$230,000?---A man in distress. A friend in distress. 02:50:51PM
21 Why you? From what you are explaining to us, you saw him 02:50:58PM
22 rarely. Your conversation - - -?---That's incorrect. 02:51:06PM
23 Your conversation - - -?---That's incorrect, Mr Tovey. Correct 02:51:12PM
24 yourself. I made it very clear, Commissioner, I could not 02:51:14PM
25 tell you exactly on how many occasions I met with him 02:51:17PM
26 because I'd be lying if - I don't know. I don't count. 02:51:20PM
27 So whether it was phone calls or whether it was 02:51:24PM
28 face-to-face, do you want me to make up a number? I'll 02:51:27PM
29 give you any number you want, but I wouldn't be telling 02:51:31PM

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

you the truth.

This is Mr Aziz who you reported to the Sheikh as somebody on whom you were going to be relying, who you are putting to the test. Are you saying, having told the Sheikh you're going to put him to the test, you have no recollection, you had hardly - - -?---(Indistinct) again, Mr Tovey.

What contacts you had after that?---(Indistinct).

Just let me finish the question. Having told the Sheikh that you were going to put him to the test, are you saying you have no recollection of the contacts you had after that or what they were about or when?---You're asking me for what was discussed. I can't tell you honestly what was in our discussion. One, it was a long time ago. Two, if you want me - in business in general, we discussed all that. We discussed a lot of stuff.

COMMISSIONER: And I think you said in one of your answers, Mr Nehme, that again I think there was an element of reconstruction by you, but you would have talked to Mr Aziz during these conversations, whether face-to-face or over the telephone, about how the issue of selling the freehold was progressing?---I'm sure that would have been brought up. That was part of our talk, our business talk.

Yes?---Now, I couldn't go to anyone else within council, Commissioner, to find out what was going on.

According to Mr Aziz you were the one person he couldn't talk to because he was in a conflict of interest position and needed to distance himself from you and your company. That's not what he did, is it?---Because I can't recall the exact discussions, I can't comment, Commissioner.

02:51:33PM
02:51:38PM
02:51:44PM
02:51:48PM
02:51:51PM
02:51:54PM
02:51:57PM
02:52:01PM
02:52:04PM
02:52:08PM
02:52:09PM
02:52:10PM
02:52:14PM
02:52:20PM
02:52:23PM
02:52:30PM
02:52:32PM
02:52:35PM
02:52:38PM
02:52:42PM
02:52:51PM
02:52:54PM
02:52:57PM
02:53:01PM
02:53:04PM
02:53:09PM
02:53:16PM
02:53:18PM
02:53:26PM

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

I don't know what he did.
No, Mr Nehme, I'm just picking up your point that he was your - whether you'd describe him as your ward councillor or the deputy mayor, he was the go-to person for you in terms of, from your perspective, understanding what was happening at council and he gave you the opportunity to put forward your view as to the way forward; is that not a fair view of your relationship over 2015/16?---He's the only person I could go to and then from then on it was put to people within council. So it wasn't just him as my go-to.

Yes, Mr Tovey.

MR TOVEY: If we can move along. Following the vote of December 2014 in favour of the sale, that was the second vote, there was - and we've heard evidence about this - a move by two councillors, Councillors Serey and Morland, to seek revocation of that resolution. When I say 'revocation', I think the correct word is rescission of that resolution. Is it something which was raised with you?---No, I wasn't aware.

COMMISSIONER: Mr Tovey, could you just remind me was the original motion that was passed made in chambers or was it - I've forgotten the terminology when the council met in private.

MR TOVEY: Private session. At this stage, Mr Commissioner, we don't have the records. I suspect we might at some stage.

COMMISSIONER: I see.

MR TOVEY: So it would appear that the first resolution from the correspondence we've already seen with Sheikh Mubarak

02:53:34PM
02:53:35PM
02:53:40PM
02:53:42PM
02:53:47PM
02:53:50PM
02:53:56PM
02:54:03PM
02:54:18PM
02:54:23PM
02:54:30PM
02:54:32PM
02:54:41PM
02:54:49PM
02:54:54PM
02:55:02PM
02:55:10PM
02:55:19PM
02:55:21PM
02:55:27PM
02:55:32PM
02:55:33PM
02:55:44PM
02:55:47PM
02:55:48PM
02:55:55PM
02:55:59PM
02:56:00PM
02:56:09PM

1 was on the week before 5 June 2013. The next resolution 02:56:12PM
2 was in December of 2014 and it's that resolution I'm now 02:56:21PM
3 pursuing. 02:56:28PM
4 COMMISSIONER: Yes. 02:56:29PM
5 MR TOVEY: Let me just put this in context for you. So what 02:56:39PM
6 occurred was that following that December of 2014 meeting, 02:56:44PM
7 at the time council I assume is resuming in January 2015. 02:56:53PM
8 There is a little bit of communication with and between 02:57:01PM
9 councillors relating to a proposal to rescind, a proposal 02:57:10PM
10 to rescind by Serey and Morland. Okay, so you understand 02:57:19PM
11 that? Now, you don't remember any of this?---Not aware of 02:57:26PM
12 it, no. 02:57:31PM
13 Were you in touch with Mr Aziz - - -?---That wasn't discussed. 02:57:31PM
14 In late 2014/early 2015?---I don't recall that being discussed. 02:57:37PM
15 No. Were you in touch with Mr Aziz during this time?---I've 02:57:41PM
16 always been in touch with Mr Aziz, as I've said. I just 02:57:47PM
17 can't tell you on how many different occasions. 02:57:51PM
18 All right. Mr Aziz then responded and this, Mr Commissioner, 02:57:53PM
19 is pages 6116-7, which is exhibit 258. Sorry, 6135-7. So 02:57:59PM
20 I'm now reading from page 6137. Aziz responded telling 02:58:15PM
21 him that the notice to rescind was based on a highly 02:58:25PM
22 flawed consultant's report. Did you ever discuss with 02:58:31PM
23 Mr Aziz any consultant's report?---Not what I recall, no. 02:58:38PM
24 Were you aware of the existence of any consultant's 02:58:44PM
25 report?---No. 02:58:48PM
26 Relating to whether or not - first of all, relating to the 02:58:48PM
27 value of the CLC and whether or not it should be 02:58:57PM
28 sold?---Sorry, just repeat that last bit again? 02:59:01PM
29 Were you aware of any consultant's report relating to the value 02:59:04PM

1 of the CLC or whether it should be sold? This is a 02:59:09PM
2 consultant's report being obtained by council for the 02:59:12PM
3 purposes of determining whether to sell?---No. 02:59:15PM
4 Then later on that day - so what happened was that Mick 02:59:26PM
5 Morland, one of the councillors, was insisting on getting 02:59:31PM
6 a consultant's report; okay? And this was going to cost 02:59:36PM
7 20,000, 10 to \$20,000. Then Mr Aziz became very 02:59:41PM
8 vociferous in opposition to that saying the money couldn't 02:59:50PM
9 be justified. Is that something you ever discussed with 02:59:54PM
10 Mr Aziz?---No. 02:59:56PM
11 He went on to assert that the mayor was acting without 02:59:58PM
12 authority; not something you discussed with Mr Aziz? Did 03:00:02PM
13 you ever discuss with Mr Aziz trying to - I'm sorry, 03:00:10PM
14 Commissioner, you're muted. 03:00:14PM
15 COMMISSIONER: Mr Nehme, I just want to be clear when you say 03:00:18PM
16 'no', do you mean it was not discussed or 'I have no 03:00:22PM
17 recollection. It could have been, but I have no 03:00:26PM
18 recollection if it was'?---I have no recollection. No 03:00:30PM
19 recollection, sorry, Commissioner. 03:00:32PM
20 I think it's important that you draw that distinction?---Sure, 03:00:34PM
21 sorry. 03:00:38PM
22 Because if you say 'no', you're on the face of it rather 03:00:39PM
23 suggesting you have a memory and, 'no, it wasn't,' do you 03:00:42PM
24 follow?---I'm pretty sure it's a no, but (indistinct) 03:00:45PM
25 I have no recollection. 03:00:49PM
26 Very good. Yes?---Sorry. 03:00:50PM
27 MR TOVEY: Mr Aziz was threatening to bring an urgent motion on 03:00:56PM
28 in camera which was going to deal with one of the council 03:01:04PM
29 officers who apparently was opposing the sale. Is that 03:01:10PM

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

something that he ever discussed with you?---No. Not to
my recollection, no. Sorry, Mr Tovey, this is all within
council?
Yes, I'm not suggesting this was written to you. This is what
was going on in January of 2015 which related to your
objectives; you understand?---Sure.
Then again in January 2015 there was - and perhaps this could
be brought up as part of that exhibit, page 6135. I'm
sorry, Mr Commissioner, I previously identified that as
exhibit 258. It's exhibit 261. I misnoted that. So
what's apparent from this document, if I can just help you
focus, that Sally Curtain, a council officer, has been
approached by Councillor Aziz bringing to her attention
certain concerns. And so here we are in January, early
January of 2015, he's brought to her a concern about staff
conduct in respect of a letter of demand sent to Action
Realty for non-payment of rent arrears. Now, that's
something that you did raise with Mr Aziz?---Yes, I did.
And did he report back to you what he'd done about that?---No,
he didn't. To my recollection he didn't. Didn't tell me
what he did or what he was going to. I just made him
aware of it as our ward member to say that the conduct was
appalling.
I'm asking you this, bearing in mind that in your
correspondence with the Sheikh you were going to 'put him
to the test'. That's what you said?---And I repeat - - -
How could you put him to the test in circumstances where he
didn't respond to you over matters that you'd raised with
him?---I repeat again, Mr Tovey, poor choice of words.

03:01:15PM
03:01:19PM
03:01:24PM
03:01:24PM
03:01:27PM
03:01:34PM
03:01:36PM
03:01:49PM
03:02:21PM
03:02:23PM
03:02:35PM
03:02:38PM
03:02:41PM
03:02:49PM
03:02:54PM
03:03:07PM
03:03:15PM
03:03:19PM
03:03:23PM
03:03:29PM
03:03:34PM
03:03:37PM
03:03:42PM
03:03:45PM
03:03:56PM
03:04:00PM
03:04:06PM
03:04:08PM
03:04:13PM

1 I've said that on several occasions now and you don't seem 03:04:18PM
2 to be listening. 03:04:21PM
3 If one assumes it means something, what you were indicating to 03:04:22PM
4 the Sheikh was - unless what you said was just totally 03:04:29PM
5 fanciful - what you were communicating to the Sheikh was 03:04:34PM
6 that, 'Aziz has agreed to pursue our aims and we'll see 03:04:37PM
7 what happens when he reports back to see whether he lives 03:04:43PM
8 up to our hopes.' You can't recall him ever reporting 03:04:46PM
9 back to you about any matter?---No, there were matters he 03:04:54PM
10 did, but I can't recall (indistinct) in relation to 03:04:59PM
11 council and what occurred in council. I don't recall him 03:05:06PM
12 talking to me about those matters of what occurred within. 03:05:09PM
13 Well, what matters do you recall him getting back to you about 03:05:12PM
14 and reporting to you?---I wrote to him on the conduct and 03:05:16PM
15 I don't know whether it was in writing or verbal of him 03:05:23PM
16 saying that he was dealing with it. 03:05:28PM
17 COMMISSIONER: Mr Nehme, if the operator could just take you 03:05:35PM
18 down the page under paragraph - after the three points, 03:05:38PM
19 keep going, please, to this italicised - if we just stop 03:05:45PM
20 there. Do you see there where the officer reports a 03:05:51PM
21 series of interactions between you and council officers 03:05:55PM
22 which reflect your ongoing concern about a variety of 03:06:01PM
23 issues?---Yes. 03:06:05PM
24 And it's in that very context that Mr Aziz is then taking up 03:06:14PM
25 with the council officer, Sally Curtain, the conduct of 03:06:21PM
26 the officers and the way these issues are being handled. 03:06:26PM
27 Now, do you say that you had no communications with 03:06:30PM
28 Mr Aziz about your concerns in this area that would have 03:06:35PM
29 led Mr Aziz to taking up these points?---I just said 03:06:40PM

1 earlier I wrote to Mr Aziz, from memory, complaining about 03:06:44PM
2 the conduct of the council. 03:06:49PM
3 About these matters here, the subject of - - -?---About the 03:06:51PM
4 conduct of the bank guarantee being called and the 03:06:56PM
5 outstanding lease being called. The conduct was appalling 03:07:04PM
6 and our lawyers were involved as well. 03:07:07PM
7 Yes. 03:07:09PM
8 MR TOVEY: And did he report back to you on what occurred?---He 03:07:12PM
9 just said he was taking it up with the council and I can't 03:07:15PM
10 recall what happened after that, Mr Tovey. I've never 03:07:19PM
11 seen this email. It's the first time. 03:07:25PM
12 Did Mr Aziz to your knowledge have any reason or any obligation 03:07:33PM
13 to you to make him go in to fight exceptionally hard on 03:07:42PM
14 these issues contrary to the interests of the council but 03:07:49PM
15 in favour of your interests?---You'd have to ask him that, 03:07:52PM
16 Mr Tovey. I don't know. As I said, he's our ward member. 03:07:57PM
17 I went to him with a complaint. 03:08:01PM
18 COMMISSIONER: Is the letter or rather the email from Mr Aziz 03:08:04PM
19 to Ms Curtain of 14 January 2015, is that in evidence, 03:08:10PM
20 Mr Tovey? 03:08:18PM
21 MR TOVEY: That email is part of exhibit 261. 03:08:23PM
22 COMMISSIONER: Yes. It might be we give Mr Nehme an 03:08:27PM
23 opportunity to read that. We might have a break. It's 03:08:31PM
24 already been a long afternoon. We might have a break for 03:08:34PM
25 10 minutes and we'll resume at 3.15. 03:08:37PM
26 MR TOVEY: Thank you. 03:08:43PM
27 WITNESS: Thank you. 03:08:43PM
28 (Short adjournment.) 03:08:44PM
29 COMMISSIONER: Yes, Mr Tovey. 03:20:25PM

1 MR TOVEY: Thank you, Commissioner. Was there anything at this 03:20:26PM
2 time by way of communication with Aziz which would have 03:20:34PM
3 led you to understand why he was of the view that the 03:20:41PM
4 independent reports were fatally flawed and that the 03:20:51PM
5 officers of the council were trying to baffle you with 03:20:54PM
6 science?---Sorry? 03:20:58PM
7 Was there anything that was discussed between you which would 03:21:02PM
8 allow you to understand whether - was he communicating 03:21:06PM
9 those things to you?---Not that I recall, no. No. 03:21:10PM
10 Was there anything said by him to you which would suggest why 03:21:15PM
11 he would take a view adverse to independent reports and 03:21:24PM
12 officers but in your favour?---No. 03:21:31PM
13 Okay. I just now want to take you to exhibit 260, page 6164. 03:21:38PM
14 COMMISSIONER: Mr Tovey, before you do that. The letter of 03:21:51PM
15 14 January 2015, Mr Nehme, which Mr Aziz wrote to council 03:21:55PM
16 officer Curtain, he raises a whole lot of questions with 03:22:02PM
17 her about the money being spent on the consultancy. He 03:22:09PM
18 asks on what authority were the mayor and the CEO acting 03:22:14PM
19 in commissioning the consultancy, but then he says, 03:22:19PM
20 'Fourthly, I've just become aware this afternoon, after 03:22:23PM
21 I sent my email, of some extremely disturbing information 03:22:26PM
22 about this matter. Please be advised that I will now be 03:22:30PM
23 moving urgent business in camera in relation to alleged 03:22:33PM
24 officer conduct and will circulate written evidence in 03:22:38PM
25 support of this motion. I'll be asking the mayor to clear 03:22:42PM
26 the chamber, except for the CEO and yourself.' 03:22:46PM
27 Presumably, Mr Nehme, that's the conduct about which you 03:22:51PM
28 complained?---No idea what he was referring to, 03:22:55PM
29 Commissioner. 03:23:02PM

1 Yes. Are you saying that - - -?---Sorry, Commissioner, does it 03:23:03PM
2 state my complaint? 03:23:08PM
3 No, it doesn't. It doesn't. It just says 'the information 03:23:10PM
4 concerning the alleged officer conduct'. I think it's 03:23:14PM
5 clear - - -?---I'm not an officer. 03:23:18PM
6 No. 03:23:20PM
7 MR TOVEY: Could I just intervene, Commissioner? 03:23:22PM
8 COMMISSIONER: Yes. 03:23:23PM
9 MR TOVEY: I was about to take the witness to the letter - - - 03:23:24PM
10 COMMISSIONER: Very good. 03:23:27PM
11 MR TOVEY: Which prompted all this. So it might save some time 03:23:27PM
12 if we just go straight there. 03:23:32PM
13 COMMISSIONER: Yes. But the document I was referring to is 03:23:34PM
14 already an exhibit, is it not, Mr Tovey? 03:23:37PM
15 MR TOVEY: Yes, that's so. That's exhibit - sorry, the one you 03:23:39PM
16 were referring back to then, yes, is already an exhibit, 03:23:44PM
17 which is exhibit 261. 03:23:48PM
18 COMMISSIONER: Thank you. 03:23:50PM
19 MR TOVEY: We're now going to exhibit 260, page 6164. So 03:23:50PM
20 that's a document which is an email from you to Mr Aziz on 03:24:00PM
21 15 January; all right? So this is what has generated, it 03:24:07PM
22 would seem, this flurry of activity and threats, and it 03:24:13PM
23 says, 'Dear Councillor Aziz, I write to you as my ward 03:24:19PM
24 member to express my concern at the way I'm being accused 03:24:23PM
25 by the council officers and now the council appointed 03:24:28PM
26 lawyers of not paying rent,' et cetera, et cetera. Just 03:24:33PM
27 scroll down, please. Then you refer to a letter of demand 03:24:42PM
28 which you've attached and you say rent has been paid. You 03:24:51PM
29 then go on to say there was a letter of demand sent, but 03:25:01PM

1 it went to the wrong address. Is that what you sent to 03:25:05PM
2 him?---Yes. 03:25:09PM
3 Other than what you say there, there is no background as to the 03:25:11PM
4 circumstances in which all these things had occurred; 03:25:26PM
5 would you agree with that?---There was an attached letter 03:25:31PM
6 of demand from Maddocks Lawyers. 03:25:34PM
7 Yes?---And their spreadsheet, as I said in the second 03:25:36PM
8 paragraph. 03:25:40PM
9 Yes. Did Mr Aziz ring you and say, 'Look, what's this 03:25:40PM
10 about'?---I don't recall. I remember just writing this to 03:25:46PM
11 him. Because again our concern, Mr Tovey, was, you know, 03:25:49PM
12 the calling of a bank guarantee, the threat of that, and 03:25:56PM
13 because we only owned the leasehold it was important that 03:26:00PM
14 this got resolved. 03:26:03PM
15 Yes?---Hence why our lawyers and Maddocks Lawyers, who I assume 03:26:05PM
16 were the council lawyers, got involved. It was quite a 03:26:12PM
17 serious matter. 03:26:15PM
18 So you wouldn't be surprised if you had given Mr Aziz some sort 03:26:16PM
19 of background briefing before sending a letter - before 03:26:21PM
20 you sent the letter?---I'm sure I would have spoken to him 03:26:26PM
21 and told him the situation or I may have written to him, 03:26:31PM
22 I'm not sure. But I would have given him some brief 03:26:35PM
23 background on what had occurred and then I put it in 03:26:38PM
24 writing. 03:26:41PM
25 Was there anything which you - I mean, did you encourage him to 03:26:50PM
26 threaten to have an urgent meeting of council to deal with 03:26:56PM
27 the council officer involved in this?---Absolutely not. 03:27:07PM
28 Does that seem to you to be a bit over the top?---I don't 03:27:13PM
29 understand councils and councillors and how they all work. 03:27:20PM

1 I don't know. But I know if I was treated badly within my 03:27:24PM
2 business, and we were, I took it to the person as our ward 03:27:29PM
3 member, hence this email. How they dealt with it I don't 03:27:33PM
4 know, Mr Tovey. 03:27:37PM
5 Mr Aziz reported back to you, did he, or don't you know whether 03:27:44PM
6 he did or he didn't?---I don't recall. I don't recall. 03:27:49PM
7 It must be the case, must it not, having received the 03:27:55PM
8 information, the detailed information he did from Sally 03:28:00PM
9 Curtain which we've already seen, as a matter of common 03:28:04PM
10 sense that must have been reported back to you and 03:28:07PM
11 discussed?---I've only just seen that email today, 03:28:09PM
12 Mr Tovey, from Sally Curtain. I wasn't privy to that. 03:28:14PM
13 Whether that was the case or not, that wasn't an email to you. 03:28:19PM
14 All I'm putting to you is that he is being given by Sally 03:28:23PM
15 Curtain a whole series of responses to your complaint. He 03:28:30PM
16 must have communicated that to you, you would 03:28:36PM
17 agree?---I don't recall. I don't recall exactly what he 03:28:42PM
18 said. 03:28:47PM
19 There is no email on his council server that we've been able to 03:28:49PM
20 find which responds to you. Does that suggest to you that 03:28:54PM
21 there must have been a meeting between you or a phone call 03:28:58PM
22 whereby he responded?---There would have been a meeting in 03:29:02PM
23 general what was going on, but I don't recall when and 03:29:09PM
24 what was totally discussed. But could we see that email? 03:29:13PM
25 Could we see the email? 03:29:23PM
26 Sorry, what email? No, I said there is no email responding to 03:29:25PM
27 you providing - - -?---I thought you said there was an 03:29:30PM
28 email; apologies. 03:29:34PM
29 No, there is no email responding to you. That's why 03:29:36PM

1 I'm suggesting there must have been a meeting?---So again 03:29:39PM
2 I didn't know who to write to, and the lawyers were 03:29:42PM
3 dealing with it, and I wrote to our ward member. That's 03:29:44PM
4 my point of contact. 03:29:49PM
5 Yes. So you thought Mr Aziz might be able to achieve for you 03:29:52PM
6 something that your own lawyers hadn't been able to 03:29:57PM
7 achieve?---No, lawyers were involved. However, between 03:30:00PM
8 the lawyers, Maddocks were just insisting, 'Call the bank 03:30:04PM
9 guarantee,' and the lawyers are saying, 'Take them to the 03:30:10PM
10 end.' So there was no consideration or commercial 03:30:15PM
11 consideration to this. It was appalling. And I still 03:30:19PM
12 believe, Mr Tovey, that - I still believe there was a 03:30:23PM
13 hidden agenda from council. They would have loved to get 03:30:27PM
14 this site back. Some idiot's gone and paid \$29 million 03:30:29PM
15 for buildings. It would be a great asset for the council 03:30:34PM
16 to get that. 03:30:38PM
17 I'm sorry, I'm not quite with you. When you say it was - - 03:30:41PM
18 -?---Their actions, Maddocks and the council's actions, 03:30:46PM
19 towards us were appalling. And there was no commercial 03:30:49PM
20 sensibility, which is where I struggle, why I took it on. 03:30:55PM
21 But I just want to understand. Your view was, looking at 03:31:02PM
22 things objectively commercially and in terms of how best 03:31:04PM
23 to realise a benefit, it was in the council's interest to 03:31:09PM
24 rescind and take over the property?---Well, let me add to 03:31:16PM
25 that, Mr Tovey. My understanding is the council inherited 03:31:20PM
26 what was a football oval was gifted to them by a deceased 03:31:25PM
27 estate. So gold. 03:31:30PM
28 Yes. And it was, from your point of view, in the council's 03:31:33PM
29 commercial interest to hold on to it until the lease 03:31:44PM

1 became worthless and thereby find themselves in possession 03:31:47PM
2 of a very valuable piece of real estate which had 03:31:52PM
3 been - which now had a shopping centre on it?---Sure. 03:31:55PM
4 COMMISSIONER: And that's what the first two reports which the 03:32:02PM
5 council had both said, isn't it? Presumably you were 03:32:05PM
6 aware from your conversations with Mr Aziz that the 03:32:12PM
7 council's advice from under those reports and the council 03:32:18PM
8 officers' advice was, 'Don't sell'?---I don't recall 03:32:21PM
9 Mr Aziz saying that. But - I don't recall him saying 03:32:26PM
10 that, Commissioner. 03:32:32PM
11 Yes, Mr Tovey. 03:32:47PM
12 MR TOVEY: Thank you. You see, this issue continued on, I'd 03:32:48PM
13 suggest, and could you look at page 6160, which is exhibit 03:32:54PM
14 264. If you just read that at your leisure?---Go further 03:33:02PM
15 down? Thank you. Yes. 03:33:59PM
16 So by this time the situation seems to have deteriorated; is 03:34:22PM
17 that right?---Yes. What was the date? Can you go back up 03:34:28PM
18 to the date? 03:34:32PM
19 In March. So that's 18 March of 2015?---Yes. 03:34:33PM
20 The previous one was in January. All right. So now the 03:34:38PM
21 argument is festering?---Yes. 03:34:44PM
22 Council are now not making any provision to accommodate you in 03:34:46PM
23 respect of the arrears and are calling up the guarantee; 03:34:57PM
24 is that right?---That's correct. 03:35:06PM
25 And you saw the next step after that - so when we're talking 03:35:07PM
26 about the guarantee, can you tell me what that was? There 03:35:14PM
27 was a bank guarantee lodged, was there?---A bank guarantee 03:35:16PM
28 which - don't hold me to this, but if I'm correct is 03:35:20PM
29 either six or 12 months, I think it was six months, rental 03:35:25PM

1 kept in a trust account or as a bank guarantee, sorry. 03:35:30PM
2 As a bank guarantee?---As part of the - - - 03:35:35PM
3 Was that something which was part of each renewal of the lease 03:35:37PM
4 as it rolled along?---It was part of the lease from day 03:35:42PM
5 one. 03:35:45PM
6 I see. Of course you didn't renew it, did you? All you did - 03:35:46PM
7 the only thing that changed was the rental according to 03:35:49PM
8 the way in which it was - - -?---It's just a rolling - - - 03:35:52PM
9 Assessed or negotiated each rental review period; is that - - 03:35:57PM
10 -?---A rolling bank guarantee. So the rental discussions 03:35:59PM
11 were a separate discussion, which then rolled into the 03:36:02PM
12 land tax discussion, and then became one big 03:36:06PM
13 consolidation. 03:36:10PM
14 So it would be fair, would it not, to expect that during this 03:36:11PM
15 period of time these are negotiations which could have 03:36:18PM
16 done significant damage to the interests of your 03:36:23PM
17 principals?---Absolutely. And the other issue, Mr Tovey, 03:36:27PM
18 was it was a default under our bank covenants, which is a 03:36:32PM
19 big concern. 03:36:40PM
20 That's something I was going to take you to. But, in any 03:36:41PM
21 event, you wouldn't have been able to maintain your 03:36:45PM
22 borrowings with your current bank if this had 03:36:47PM
23 occurred?---You would assume that's an issue, but that 03:36:54PM
24 didn't - we didn't get to that stage. 03:36:57PM
25 You didn't get to that stage?---And if it did occur to that 03:36:59PM
26 stage I can confidently say that we would have found 03:37:02PM
27 another solution through Sheikh. 03:37:06PM
28 So if you look at that it would appear that you've had a chance 03:37:10PM
29 to go through it; rent negotiations with the lawyers are 03:37:18PM

1 still continuing, you'd agree with that?---Yes. 03:37:23PM

2 But you indicate that you had that night been advised that the 03:37:26PM

3 bank guarantee was being called up and that a loan default 03:37:36PM

4 might be triggered; is that right?---That's correct. 03:37:41PM

5 You referred to the need to have the call up of the guarantee 03:37:44PM

6 reversed otherwise there would be a negative result within 03:37:55PM

7 a week?---Yes. Sorry, Mr Tovey, I don't know whether it 03:38:03PM

8 was within a week or when. But, as I said, a bank 03:38:12PM

9 guarantee can be called up immediately and can be 03:38:16PM

10 exchanged immediately. So it's not something you want to 03:38:20PM

11 occur in any commercial situation. 03:38:24PM

12 And that email seems to be predicated on the basis that Mr Aziz 03:38:27PM

13 already has significant prior background knowledge about 03:38:37PM

14 the issues, and that's not something I take it you don't 03:38:41PM

15 dispute?---I think it goes back to the previous email, the 03:38:47PM

16 complaint that I put forward, and it's a follow-up from 03:38:49PM

17 that, as nothing really was occurring. We were making 03:38:52PM

18 payments still to the back rent, but nothing was 03:38:56PM

19 occurring. And that was between the lawyers . 03:39:01PM

20 All right. Thank you, Mr Commissioner, I was going to move on 03:39:09PM

21 from that document. I now want to take you to 6 September 03:39:13PM

22 2016. On 6 September 2016 there was a special council 03:39:22PM

23 meeting which dealt with the sale of the Casey Lifestyle 03:39:38PM

24 Centre. Are you aware of that?---Sorry, September? 03:39:51PM

25 6 September. This was the final authorisation of the 03:39:54PM

26 sale?---Am I aware of it? I trust what you're saying. 03:40:00PM

27 Okay. Look, if we could just go first of all - - -?---Sorry, 03:40:05PM

28 Mr Tovey, can I just go back a step. That's for the sale, 03:40:11PM

29 just to be clear? 03:40:16PM

1 This is what led to the authorisation of the sale in September 03:40:17PM
2 2015?---I thought you said - - - 03:40:23PM
3 I'll take you to the - I think it might be easier to do it by 03:40:28PM
4 reference to the notice and agenda of that meeting. Could 03:40:31PM
5 we look at, please, 3135? This is exhibit 265, 03:40:34PM
6 Commissioner. 03:40:55PM
7 COMMISSIONER: Thank you. 03:40:56PM
8 MR TOVEY: So you'll see at the opening page it's the minutes 03:41:02PM
9 of the meeting of 6 September - sorry, it's a notice and 03:41:07PM
10 agenda of a special council meeting of 6 September. And 03:41:11PM
11 then if you go to the council officers' report, which is 03:41:19PM
12 at page 3137, you'll see that the purpose of that report 03:41:24PM
13 is to provide the councillors with background before it 03:41:37PM
14 comes before the - before it comes before council that 03:41:41PM
15 evening. And then you go through that. You'll see that 03:41:46PM
16 it involves, first of all, the sale of land at 03:41:58PM
17 430-440 Princes Highway. That was the CLC land, and 03:42:06PM
18 that's correct?---Correct. 03:42:11PM
19 And then there's the 1-9 Regency Drive (PTA Narre Warren). So 03:42:15PM
20 that's the Regency land which you also ended up acquiring; 03:42:26PM
21 is that right?---That's correct. 03:42:30PM
22 PTA, do you know what that is likely to - - -?---Percy Trewin 03:42:34PM
23 Annexe. So the council's - - - 03:42:39PM
24 Okay. I just wanted to know. So Percy Trewin, that was the 03:42:42PM
25 name of the place?---Yes (indistinct). 03:42:48PM
26 Then it indicated in the next paragraph that the CLC property 03:42:51PM
27 comprises 4.372 hectares; that it was leased out by the 03:43:01PM
28 council on a 30-year lease in 2003; and that that lease 03:43:08PM
29 was assigned to Action Realty Australia Pty Ltd and 03:43:16PM

1 expired on 21 August of 2033, and that accords obviously 03:43:22PM
2 with your recollection?---That's correct. 03:43:28PM
3 Then it went on to describe how much the PTA land or the 03:43:31PM
4 Regency Drive land, and then it referred to a process for 03:43:38PM
5 potential disposal. First of all, marketing agencies were 03:43:46PM
6 appointed to conduct a two-phase process. The first phase 03:43:57PM
7 was the registration of capabilities, ROC; the second 03:44:05PM
8 phase was expressions of interest, EOI. Now, you became 03:44:11PM
9 the preferred bidder. So I assume you went through both 03:44:17PM
10 those processes?---We went through a process. We were 03:44:22PM
11 sent an IM by Jones Lang LaSalle, an information 03:44:31PM
12 memorandum. 03:44:33PM
13 Yes?---I'm just on my notes here. So if you're happy for me to 03:44:34PM
14 read off these what I jotted down, registration closed for 03:44:38PM
15 the registrations of interest, and then an expression of 03:44:41PM
16 interest closed I've got on 20 June. So the EOI closed on 03:44:46PM
17 16 May. But I'm a bit confused on here of - this is a 03:44:52PM
18 September report of 16. 03:44:59PM
19 Yes?---Whether I've got my dates incorrect, Mr Tovey, but the 03:45:01PM
20 IM was sent to me on 27 April 2016. 03:45:09PM
21 So that's an information memorandum?---From Jones Lang LaSalle. 03:45:12PM
22 Yes, and what does that say? So you got that on when?---I was 03:45:18PM
23 advised that there's an IM on 27 April and that 03:45:23PM
24 registrations would close on 16 May 2016. So it's to 03:45:26PM
25 register your interest. 03:45:31PM
26 Yes?---In the sale of both parcels of land. 03:45:33PM
27 Yes?---And then the expressions of interest closed at 3 pm on 03:45:36PM
28 20 June 16. 03:45:40PM
29 Yes. All right. So, first of all, you were notified of 03:45:41PM

1 the need to - of the process, I take it. Then you 03:45:50PM
2 registered your interest. So you put in a registration of 03:45:55PM
3 capabilities. And then you are advised that you got 03:46:00PM
4 through stage 1 and you are able to put in an expression 03:46:05PM
5 of interest; is that the way in which it worked?---My 03:46:10PM
6 dealings with all that, just to be clear, Mr Tovey, is 03:46:13PM
7 with Stuart Taylor from Jones Lang LaSalle, who was the 03:46:16PM
8 managing agent on behalf council. So I dealt direct with 03:46:19PM
9 him, and we went through the respective process. 03:46:23PM
10 So you were advised that you were - sorry, you were advised, 03:46:27PM
11 were you, that you got through phase 1 and you were 03:46:36PM
12 invited to put in an expression of interest?---That's 03:46:39PM
13 correct. 03:46:42PM
14 And were you advised - I suppose you didn't need to be advised 03:46:43PM
15 that that was because you had been shortlisted after the 03:46:50PM
16 RAC - after the ROC process?---I recall (indistinct) 03:46:54PM
17 advice, though. It was quite a thorough process. 03:47:00PM
18 Okay. So then the officer reports, 'Submissions were evaluated 03:47:03PM
19 and recommended, made to council with respect to a 03:47:10PM
20 preferred proponent. It is noted that the offers 03:47:13PM
21 presented' - sorry, Mr Tovey, where are you reading? 03:47:18PM
22 This is 'the marketing agents', if you can see there, 'were 03:47:22PM
23 able to generate' - - -?---Yes, sorry. 03:47:27PM
24 Just above the bottom of the page, 'Strong interest in the 03:47:29PM
25 properties. All submissions' blah, blah, blah. 'It is 03:47:32PM
26 noted that the offers presented by the preferred proponent 03:47:37PM
27 were the highest offers for CLC and PTA and exceeded 03:47:41PM
28 "market value"'?---How silly are we. 03:47:50PM
29 At that stage - sorry, at some stage were you informed that you 03:47:58PM

1 were the preferred proponent?---We were informed by Jones 03:48:05PM
2 Lang LaSalle. 03:48:14PM
3 Yes, when was that?---I don't have an exact date, but I know 03:48:14PM
4 there was an exchange of contracts in mid-July. So 03:48:25PM
5 slightly prior to that. So the EOIs closed on 20 June at 03:48:29PM
6 3 pm. 03:48:39PM
7 Yes?---We exchanged contracts in mid-July. 03:48:39PM
8 Yes?---2016. So I can't recall exactly the date, but I can say 03:48:42PM
9 I guess an assumption we would have got it - advised weeks 03:48:50PM
10 before that and contracts were produced. 03:48:56PM
11 All right. Now, the properties - then if we can just go on. 03:48:59PM
12 The property - then the officers' report notes, 'At its 03:49:09PM
13 meeting on 19 July 2016 closed council resolved in 03:49:15PM
14 response to item 14.3' that Action Realty 03:49:21PM
15 Australia - sorry, 'That the council confirm Action Realty 03:49:34PM
16 Australia as the preferred proponent.' Now, did you know 03:49:38PM
17 before that meeting that you were the preferred 03:49:44PM
18 proponent?---Can I just clarify. Is this meeting 03:49:47PM
19 in - this is being written in September? 03:49:53PM
20 This is being written in September giving the history. 03:49:55PM
21 COMMISSIONER: Mr Nehme, after the closed council resolution in 03:49:58PM
22 mid-July in which your company is selected as the 03:50:01PM
23 preferred purchaser - - -?---Right. 03:50:06PM
24 There's then an obligation under the Act to circulate in public 03:50:09PM
25 the proposal to sell the land, and the public have an 03:50:14PM
26 opportunity to make submissions, and if at the end of that 03:50:19PM
27 period no submissions are received to the contrary then 03:50:23PM
28 the council can confirm this proposal?---And how long is 03:50:27PM
29 that period for? 03:50:33PM

1 That took you to the mid-September council meeting that 03:50:34PM
2 Mr Tovey commenced this line of examination on?---That 03:50:39PM
3 seems to go against my - what I got off the JLL 03:50:42PM
4 expressions of interest IM and the exchange of contracts 03:50:49PM
5 when they occurred. So I've got conflicting information. 03:50:52PM
6 Council had to have the contract of sale and be satisfied as to 03:50:56PM
7 the terms of that before you could be selected as the 03:51:03PM
8 preferred proponent?---Sorry, Commissioner, so mid-July 03:51:06PM
9 exchange of contracts. 03:51:10PM
10 Yes?---Are you saying the contract - sorry, the council - just 03:51:11PM
11 to be clear, the council needed those contracts to then 03:51:15PM
12 advertise; is that correct? 03:51:18PM
13 I think to pass the resolution that they did?---Okay. So that 03:51:20PM
14 does line up with my dates here. 03:51:25PM
15 Yes?---Sorry, Mr Tovey. 03:51:29PM
16 MR TOVEY: And so the Commissioner has explained to you the 03:51:33PM
17 process from then on. So what happens is the proposed 03:51:37PM
18 sale was advertised. Now, according to the note in this 03:51:42PM
19 report on page 2 - are we over on page 2? So what's 03:51:49PM
20 happened is that you'll see under subparagraph 3 there 03:52:11PM
21 that the proposal at that stage is that should the council 03:52:17PM
22 not receive any submissions as a result of the public 03:52:25PM
23 notice that the CEO be delegated to execute the contract 03:52:28PM
24 of sale. So it would seem that the probability is there 03:52:33PM
25 was an unexecuted contract of sale available to the 03:52:39PM
26 council before this point, but it then says - it goes on 03:52:47PM
27 to say, if you look just below that, 'Signed contracts 03:52:55PM
28 were submitted by Action Realty Australia on 3 August 03:52:59PM
29 2016.' Now, does that accord with - - -?---I've got 03:53:04PM

1 mid-July. But I'll take that on board. I don't have 03:53:11PM
2 exact dates, to be honest. I've said mid-July for 03:53:17PM
3 exchange of contracts. 03:53:21PM
4 Yes. I'm not suggesting that this information should take any 03:53:23PM
5 precedence over your information. Do you have any way of 03:53:31PM
6 confirming whether or not that was the case by any record 03:53:37PM
7 that you now have?---I can speak to our lawyers, Michael 03:53:41PM
8 Gough. 03:53:50PM
9 In any event - - -?---I'd have records somewhere of 03:53:50PM
10 signed - - - 03:53:53PM
11 If it is something that you can - it seems a little bit of a 03:53:54PM
12 conundrum. If it is something that you're able to sort 03:53:57PM
13 out overnight, I'd be grateful if you would?---Yes. 03:54:01PM
14 And then you see a couple of paragraphs further down that the 03:54:04PM
15 notice of intention to sell land was advertised on 03:54:13PM
16 5 August of 2016. So we know that contracts were 03:54:20PM
17 ultimately executed, I think, some time in September, but 03:54:38PM
18 I'll get to that. Do you have - during this period of 03:54:48PM
19 time - - -?---They were executed in September? 03:54:52PM
20 Sorry, in September?---The contracts were? 03:54:54PM
21 Well, the final contracts couldn't be executed until the 03:54:57PM
22 council had passed this resolution on 6 September?---I was 03:55:04PM
23 mixing that up with when we exchanged from our end, when 03:55:09PM
24 we sent the contracts back. 03:55:12PM
25 Up until 6 September it would appear for part of the time at 03:55:13PM
26 least it was - this process - sorry, it would appear that 03:55:24PM
27 there had been a process going on whereby you were a 03:55:32PM
28 preferred bidder, that council was meeting to consider the 03:55:36PM
29 position of the preferred bids, and then there was a 03:55:43PM

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

period of exhibition of the - sorry, a period of notice
whereby there was public notice of the fact that you had
been preferred bidder et cetera. Did you have any
discussions with Mr Aziz about your position or what was
going on or in any way at all relating to the sale of the
CLC during that period of time?---I do remember a
discussion that was clearly had with him where he made it
clear to me that due to probity the councillors were
advised if any discussions are had, and he made this very
clear to me, then the process would stop.

Yes?---I made it clear to him that, 'I don't need to talk to
you in this manner. I'm dealing with Jones Lang LaSalle.
We've got our own advice as far as where we set the
values.' But just to be clear, Mr Tovey - - -
He has a conversation with you at a time when you're dealing
with Jones Lang LaSalle?---Jones Lang LaSalle.

What stage of the process was that where he could not get
involved?---It was before - I don't know exactly when, but
it was in the very, very early stages. I can't pinpoint
exactly when.

So this is in the early stages?---Of the IM coming out and
Jones Lang LaSalle being appointed.

Yes?---So, from my point of view, it was even more important to
stay away.

Did you say anything to him at all at that stage? Did you tell
him that you were interested or you weren't
interested?---I don't recall telling him. But just keep
in mind, Mr Tovey, we were the leasehold owners. Whether
I told him, I don't recall telling him, but our interest

03:55:47PM
03:55:53PM
03:55:55PM
03:55:59PM
03:56:04PM
03:56:10PM
03:56:14PM
03:56:17PM
03:56:21PM
03:56:25PM
03:56:30PM
03:56:33PM
03:56:37PM
03:56:42PM
03:56:46PM
03:56:53PM
03:56:59PM
03:57:02PM
03:57:06PM
03:57:10PM
03:57:11PM
03:57:16PM
03:57:19PM
03:57:23PM
03:57:25PM
03:57:31PM
03:57:35PM
03:57:39PM
03:57:43PM

1 as a group on Casey where we owned the leasehold - - - 03:57:46PM
2 Yes, but did you tell him that you were interested in dealing 03:57:52PM
3 with Jones Lang LaSalle?---I beg your pardon? 03:57:57PM
4 Did you tell him you were interested in dealing with Jones Lang 03:58:00PM
5 LaSalle or making an offer in respect of the property that 03:58:03PM
6 was up for sale? You must have, otherwise there wouldn't 03:58:07PM
7 have been any conversation with him?---I probably would 03:58:10PM
8 have. I'm sure I would have. But it would have been on 03:58:12PM
9 the basis that of course we've got interest. I just can't 03:58:15PM
10 provide exact details. But I'm pretty sure I would have 03:58:19PM
11 had that discussion that we're talking to Jones Lang 03:58:23PM
12 LaSalle. 03:58:25PM
13 Given the background - your background with Mr Aziz and his 03:58:26PM
14 knowledge of your ambitions, it's not possible that you 03:58:30PM
15 wouldn't have had that conversation?---I'm pretty sure 03:58:34PM
16 I would have had the discussion, Mr Tovey. 03:58:37PM
17 Yes. Mr Commissioner, I'm now wanting to move on to another 03:58:39PM
18 document. Would this be an appropriate time? 03:58:43PM
19 COMMISSIONER: What's your expected timeframe now, Mr Tovey? 03:58:52PM
20 MR TOVEY: This has gone considerably longer than I have 03:58:57PM
21 anticipated. It will conclude tomorrow. But how long it 03:59:00PM
22 will take I don't know. I suspect it will take at least 03:59:03PM
23 most of - it will take most of the day. 03:59:07PM
24 COMMISSIONER: Yes. 03:59:11PM
25 MS BORG: Commissioner, I have a 9.30 directions hearing, and 03:59:11PM
26 I'm trying to make sure I'm on at 9.30. 03:59:15PM
27 COMMISSIONER: Yes. 03:59:19PM
28 MS BORG: Is it possible to start at 10.30 or maybe give me 03:59:20PM
29 some leeway if I'm not available exactly at 10 o'clock? 03:59:24PM

1 COMMISSIONER: Ms Borg, could your instructor sit in until you 03:59:29PM
2 arrive? 03:59:32PM
3 MS BORG: He could. I'm just cognisant, if I have an 03:59:33PM
4 objection - not that I will have an objection - that I be 03:59:40PM
5 available to make that. But I will do my absolute best to 03:59:42PM
6 finish in that first half hour. But if I'm going to be 03:59:47PM
7 only five minutes late could my instructor just indicate 03:59:52PM
8 to the Commissioner that I will only be five minutes away 03:59:55PM
9 or something like that? I will do the appearance from 03:59:58PM
10 another room so I won't have to travel anywhere. 03:59:59PM
11 COMMISSIONER: Yes, very good. 04:00:03PM
12 MS BORG: Thank you. 04:00:04PM
13 COMMISSIONER: Mr Nehme, we'll adjourn your hearing until 04:00:06PM
14 tomorrow morning at 10 am. 04:00:10PM
15 <(THE WITNESS WITHDREW) 04:00:13PM
16 ADJOURNED UNTIL THURSDAY, 10 DECEMBER 2020 04:00:15PM
17
18
19
20
21
22
23
24
25
26
27
28
29