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INDEPENDENT BROAD-BASED ANTI-CORRUPTION COMMISSION

MELBOURNE

MONDAY, 14 DECEMBER 2020

(44th day of examinations)

BEFORE THE HONOURABLE ROBERT REDLICH AM, QC,

AND DEPUTY COMMISSIONER DAVID WOLF

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 COMMISSIONER: Good morning, everyone. Good morning, 10:02:33AM
2 Dr Rowley. Ms Harris, would you like to commence with an 10:02:35AM
3 opening, please, in relation to the public forum. 10:02:41AM
4 MS HARRIS: Good morning, Commissioner. Thank you. 10:02:45AM
5 Commissioner, last week the Commission concluded the 10:02:47AM
6 Operation Sandon coercive public examinations conducted 10:02:49AM
7 under Part 6 of the IBAC Act. These hearings provided a 10:02:54AM
8 clear demonstration of why it matters that IBAC 10:02:57AM
9 investigates, exposes and prevents public sector 10:03:00AM
10 corruption in Victoria. We will now commence the final 10:03:04AM
11 phase of the public hearings which will be conducted as a 10:03:08AM
12 discussion forum with five witnesses who have expertise in 10:03:12AM
13 the thematic and strategic issues exposed by Operation 10:03:16AM
14 Sandon. 10:03:21AM
15 An important focus of IBAC's work is to identify 10:03:22AM
16 how corrupt conduct can be prevented. IBAC's education 10:03:25AM
17 and prevention functions are enshrined in the IBAC Act. 10:03:30AM
18 Pursuant to these functions IBAC may examine systems and 10:03:34AM
19 practices within the public sector, consult with, make 10:03:38AM
20 recommendations and otherwise assist the public sector to 10:03:42AM
21 increase its capacity to prevent corruption. 10:03:45AM
22 Operation Sandon is investigating the conduct of 10:03:49AM
23 public officers involved in planning and property 10:03:52AM
24 development decision making, with a focus on a number of 10:03:54AM
25 former councillors from the City of Casey. However, it 10:03:58AM
26 would be improvident to focus solely on the conduct of the 10:04:02AM
27 individuals in this particular case. Indeed, IBAC has a 10:04:06AM
28 responsibility to consider how these corruption 10:04:10AM
29 vulnerabilities can be mitigated (indistinct) more 10:04:13AM
broadly.

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To assist this work in relation to Operation Sandon, five specialist witnesses will appear over the next two days to offer their expert perspectives on a number of issues. It is expected the Commission will hear a number of differing views and opinions. The views they express will not be definitive but will inform IBAC's understanding of the broader strategic issues as IBAC considers opportunities for reform.

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The broad themes to be canvassed are the Victorian planning process, including ministerial discretion and the role councillors play in that process; the potential impact of donations and lobbyists on transparency in decision making by public officers with a particular focus on planning matters, council governance and the role of CEOs in ensuring that councillors act with integrity.

As a result of Operation Sandon it is apparent that corruption risks and vulnerability may be present in these areas. It is intended that by exploring these vulnerabilities and risks and discussing strategies to address them, IBAC will make recommendations to prevent corrupt conduct associated with planning decisions in particular.

In relation to planning, Operation Sandon raised a number of concerns about the exercise of discretion in the Victorian planning process, including the extent to which councillors are involved in the decision-making process for planning matters which are set by the individual councils and the role of ministerial

1 discretion. The Commission will discuss these and other 10:05:51AM
2 issues with Dr Stephen Rowley, Professor Roberta Ryan and 10:05:57AM
3 Mr Philip Shanahan, including the appropriateness of 10:06:01AM
4 councillors determining planning matters. 10:06:04AM

5 In relation to donations, Operation Sandon has 10:06:08AM
6 exposed the influence donations can have on elected 10:06:11AM
7 decision makers. This influence has been observed as both 10:06:16AM
8 direct and indirect and ranged from a subtle incentive to 10:06:19AM
9 show favour to deliberate attempts to leverage support. 10:06:23AM
10 The Commission will explore the issue of how donations can 10:06:28AM
11 be used to influence decision making and whether this 10:06:31AM
12 influence can be tempered with experts Dr Yee-Fui Ng and 10:06:34AM
13 Dr Cameron Murray. 10:06:38AM

14 In relation to lobbyists, the role of lobbyists 10:06:41AM
15 and their influence on decision making, both at state and 10:06:44AM
16 government levels, has been highlighted in Operation 10:06:48AM
17 Sandon, most notably in the planning matter known as C219 10:06:53AM
18 amendment or the Cranbourne West rezoning. Issues to be 10:06:59AM
19 explored with Dr Murray and Dr Ng include risks associated 10:07:03AM
20 with lobbying activity, the adequacy of the lobbyists' 10:07:07AM
21 code of conduct and register, the level of transparency 10:07:11AM
22 surrounding the interactions of lobbyists with elected and 10:07:14AM
23 unelected public officials, how lobbying could be better 10:07:16AM
24 regulated to increase accountability and transparency. 10:07:20AM

25 In relation to council governance, Operation 10:07:26AM
26 Sandon brought into focus the complexities and 10:07:29AM
27 vulnerabilities that exist in the relationship between 10:07:32AM
28 councillors and CEOs, in particular the limited options 10:07:35AM
29 open to a CEO to address integrity issues involving 10:07:38AM

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councillors. Issues to be explored with Professor Roberta Ryan and Mr Philip Shanahan include the demarcation in roles of councillors and the CEO, the role councillors play in the appointment and termination of the CEO, and vulnerabilities and benefits of this relationship as created by the legislation.

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Lastly, IBAC invited questions from the public and community stakeholders about ways to improve relevant legislation, policies, systems and practices to prevent corruption risks exposed during Operation Sandon. This process has recognised the interest of the community in transparency and integrity in Victoria's planning system and other areas of decision making at local and State Government levels. IBAC thanks those who submitted questions and relevant questions will be put to our experts.

The experts will appear voluntarily and as such they will not give sworn evidence, but rather will provide their views on various issues on which they have expertise, whether it be through academic research or practical experience. Questions will be asked by IBAC's Commissioner, Deputy Commissioner David Wolf and myself and Tam McLaughlin as Counsel Assisting. This component of the hearing is not intended to be exhaustive, but will provide an opportunity to explore the various strategic issues contemplating other research analysis and consultation being undertaken by IBAC regarding future focused opportunities for reform to prevent corruption risks.

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I now invite Dr Stephen Rowley to join the discussion and if I can indicate to the Commission Mr McLaughlin will assist the Commission in facilitating this discussion.

COMMISSIONER: Thank you, Ms Harris. As you noted, Deputy Commissioner Wolf will participate with Counsel Assisting in asking the witness questions, and I'm grateful for Deputy Commissioner Wolf's assistance. He brings to this particular part of the Part 6 examinations his particular area of expertise and I look forward to his participation.

Yes, Mr McLaughlin.

<DR STEPHEN ROWLEY:

MR McLAUGHLIN: Thank you, Commissioner. Good morning, Mr Rowley?---Good morning.

Now, Mr Rowley, thank you for appearing today. And, firstly, I'd just like to take you through your background, both academic and employment. You currently hold the position of adjunct senior lecturer, department of architecture at Monash University; is that correct?---Yes, just recently commenced at Monash, yes.

And prior to that academic role what other academic roles did you have?---So previously I was at RMIT for about eight years, so I've been teaching and researching at RMIT part-time.

And that teaching and research at RMIT related to planning matters and the matters that are here under consideration?---Yes, so I particularly taught in what gets called statutory planning. My interest I guess is in the design of the planning system and, yes, taught

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particularly in those more practice-focused and regulatory style aspects of the system and wrote a book while I was at RMIT focusing on that, so I've written a book about the Victorian planning system as well.

Thank you. And I notice your title is Dr Rowley, so I assume that indicates you've conducted postdoctoral or rather postgraduate studies in this area?---I've done a PhD. It wasn't as directly tied to the planning sort of system side of things. It was planning related, but it had more of a cultural focus.

Okay. Thank you. And aside from those academic qualifications and employment, you've also worked extensively in the planning industry both at local and state levels; is that correct?---Yes, so I've worked as a planner for a bit over 20 years all in Victoria, about 15 years sort of probably cumulatively in local government predominantly as what gets called a statutory planner, so doing planning application assessment. I dabbled a little bit in the strategic planning, so the policy focus, policy development side. Since 2014 I've been working as an independent planning consultant and I guess in both my practice and research I've always been particularly interested in the way that planning policy gets implemented in regulatory systems. So, you know, that's always been a particular focus of mine in both the sort of academic work and in the practice work I've done. I should just say part of that practice work also included about 18 months in State Government at the - it no longer exists under this title, but it was the Department of

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1 Planning and Community Development at the time, 10:13:10AM
2 essentially the planning department in their planning 10:13:12AM
3 systems reform team, so I had exposure to that sort of 10:13:14AM
4 system design component professionally at that time as 10:13:17AM
5 well. 10:13:20AM
6 Thank you. So I guess that description neatly comes to the 10:13:21AM
7 matters that you have spoken about or written about in 10:13:29AM
8 your written submissions. If I could seek to tender those 10:13:33AM
9 written submissions, Commissioner, of Dr Stephen Rowley. 10:13:39AM
10 COMMISSIONER: Yes. Mr McLaughlin, are they on the IBAC 10:13:43AM
11 website? 10:13:46AM
12 MR McLAUGHLIN: I believe they will be published on the IBAC 10:13:47AM
13 website today. 10:13:50AM
14 COMMISSIONER: Thank you very much. Yes. We'll mark 10:13:51AM
15 Dr Rowley's written submission exhibit 1. 10:13:55AM
16 #PUBLIC FORUM EXHIBIT 1 - Written submission of Dr Stephen 10:14:02AM
17 Rowley. 10:14:03AM
18 MR McLAUGHLIN: Thank you, Commissioner. Now, there are a 10:14:03AM
19 number of subject matters which you cover in your written 10:14:06AM
20 submissions, Dr Rowley, and if we could firstly take you 10:14:10AM
21 to your assessment of the overall planning system and your 10:14:13AM
22 characterisation of it as high footprint, low impact. 10:14:20AM
23 Now, this description relates also to your discussion of 10:14:28AM
24 the balance between efficiency and efficacy within the 10:14:30AM
25 system; namely, the efficacy of the system in achieving 10:14:35AM
26 the planning policy goals that the system needs to achieve 10:14:38AM
27 versus the efficiency of that system as in the resources 10:14:42AM
28 that individuals need put in to achieve the goals that 10:14:46AM
29 they wish. Given what we have seen in light of the City 10:14:52AM

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of Casey, do you have anything - or if I could ask you to
add further to that discussion in terms of that balance
between efficacy and efficiency?--Yes. So, I mean, the
framing about efficacy and efficiency was something that
was a way of talking about things that had probably
evolved in response to discussion about planning reform
and industry, basically through the time I've been
practising since the introduction of the current planning
system, which is about when I started practising in the
early 2000s or late 90s/early 2000s. There's been a large
focus in sort of planning system reform on sort of red
tape reduction, reducing regulatory burden, which is fair
enough, and I suppose I had been thinking in terms of,
well, we just need to make sure that we don't just slim
down the system, we need to make sure it's achieving
policy goals and that the cost it bears on the community
through its existence and through regulatory burden is
justified by the policy outcomes that have been achieved,
and I suppose what the matters you're looking at have made
me reflect on is it's important, well, perhaps we need to
be making sure we're thinking about the efficiency of the
system in terms of regulatory burden, the efficacy of the
system in terms of achieving policy outcomes and I guess
the integrity of the system and making sure that it's as
transparent and clear and free from corruption and
improper influences as it could be, because
I think - I suppose the publicity about this matter has
made me reflect on the fact that we have probably taken
that for granted a bit in Victoria.

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1 So, you mention there what could essentially be a third pillar 10:16:34AM
2 in designing any particular planning process which is an 10:16:39AM
3 integrity pillar there. Is that what you mean to say, 10:16:45AM
4 that there is perhaps a separate thing that can be added 10:16:47AM
5 to that efficacy and efficiency?---Yes, I think key being 10:16:49AM
6 efficiency, efficacy and integrity is the three sort of 10:16:54AM
7 fundamental pillars of how you think about system design 10:16:59AM
8 is probably a really good way to think about it. 10:17:02AM
9 You also make a point about complexity as well and that that 10:17:04AM
10 goes to that efficiency point in that you also note that 10:17:11AM
11 complexity isn't necessarily a bad thing, nor does it 10:17:15AM
12 necessarily mean that you're increasing the corruption 10:17:21AM
13 risks; is that correct?---Yes, I mean I think it 10:17:24AM
14 was - I was sort of asked the question of whether 10:17:29AM
15 complexity represents a corruption risk and I suppose 10:17:31AM
16 I would say, well, a lot of complexity comes from checks 10:17:35AM
17 and balances and a lot of complexity comes because you 10:17:39AM
18 don't have, for example, a single decision making point. 10:17:43AM
19 A system where you just walk into council and one person 10:17:46AM
20 makes the decision is in a process way very simple, but it 10:17:49AM
21 potentially creates a single failure point from an 10:17:54AM
22 integrity perspective. So, as you add checks and 10:17:57AM
23 balances, the complexity of the system increases. So 10:18:00AM
24 I was I suppose - I'm a little cautious of framing that 10:18:03AM
25 sees complexity per se as an integrity risk. Where 10:18:09AM
26 I think there is some validity in that is if the 10:18:11AM
27 system - and it's probably also not so much the system but 10:18:16AM
28 the policy framework; you know, the expressions of what 10:18:19AM
29 you're trying to achieve. If they're so complex and 10:18:22AM

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arcane that they can't be simply understood or if they're self-contradictory, for example, or confusing or ambiguous, then that aspect of complexity, I guess that lack of clarity, that certainly creates a corruption and integrity risk. So, I think clarity is a really important word in terms of what you're trying to achieve, both from the system but also from the actual expressions of policy. The clearer your policy can be, both in terms of the justification for it and the conclusions you've reached about what you're trying to achieve, then the less risk there is that individual decisions made against that policy are going to be dubious because hopefully your policy is clear enough that when a decision gets made that is out of the ordinary, it will really stick out a lot more. If the system is so impenetrable and arcane and if your policy expression can't be readily understood, it's much easier for things to go through that are perhaps questionable and have gone through for the wrong reasons, I suppose.

Thank you. I guess that then flows into another point that your submissions raised which focuses on the scope for discretion and so that where you have policy guidelines as opposed to black letter law rules, that gives a large amount of scope to a decision maker, whether that decision maker is at council, an officer, a councillor or at ministerial level, and that I think your direct quote was that the unresolved nature of planning guidance creates a situation where discretion is too unbounded. Can you elaborate on that?---Yes, so this gets complex, but

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there's probably a theoretical world in which your perfect
planning control is completely resolved in terms of policy
outcomes. It has been, you know, in this theoretical
world your policy is being reduced to black letter law
that says exactly what is and isn't acceptable and in that
world there's not much of an integrity risk because you're
just following those rules. The reality is that, well,
that does become complex, to go to your previous question.
You start to write very, very complex laws because you're
trying to think of every situation and it doesn't allow -
you know, developers would argue it doesn't allow for
innovation, it creates poor outcomes when you've got
unexpected situations. So the reality is you build
discretion into the system. So I don't think you can then
get rid of the discretion. The idea is that you should
then have policy that gives you pretty clear guidance
about the general way that discretion should be exercised.

The next part of it then is that in thinking
about how that discretion is exercised, have you got
enough I suppose clarity in terms of when it's going to be
exercised, how it's going to be exercised, and in the
Victorian scenario I've argued - and this has been an
argument I've made (indistinct) in an integrity sense, but
more just in a policy efficacy stance. The Victorian
system has been framed on an assumption that you will have
quite a large scope of discretion. There was a real
suspicion of black letter law rules when they introduced
the controls, the current form of controls in the 90s and
2000s, and that had all sorts of complex reasons and there

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was a view that decisions should be very strategically led
and that decision makers should be making policies based
on a whole lot of strategic work and that's fine in
principle. The danger is if that strategic work isn't
very clear and you end up making decisions that are made
against a whole lot of sort of, I guess, motherhood
statements or very broad statements of vision, because
then you get that situation where there's a lack of
clarity about the kind of decision that should normally be
expected in a particular case and that means then if you
do have a corrupt actor in the system it's very hard to
call them out and say that that decision is not within the
realm of what it should be because the policy hasn't been
resolved with the level of clarity that will put those
clear guide rails around where the discretion should
normally be landing.

So I take it from that you're saying that, without that clear
lack of guidance, the risk of corruption lies in people
not actually being able to identify a bad decision as such
because those tram tracks, as you say, are so wide that
any decision could be accommodated within it?---I think
that's right and I think it's partly the guidance might be
too vague. The other scenario I worry about which I do
think we've seen in Victoria, and I refer in my
submissions to lessons that came out of issues they had in
New South Wales. In that case they had instruments that
were being routinely varied and when I saw that in the New
South Wales instance that made me think of Victoria
because we'll often have situations where we'll have, for

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1 example, discretion height controls and everyone gets very 10:23:43AM
2 used to the idea that they'll quite routinely be varied. 10:23:46AM
3 I think once you've got a normalisation of an expectation 10:23:49AM
4 and it can be for completely legitimate reasons, 'Oh, the 10:23:53AM
5 eight storey height control, that's normally going to end 10:23:59AM
6 up being about 10 or 12.' If there becomes this 10:24:02AM
7 expectation of that level of flexibility in the system 10:24:04AM
8 that the lines you've drawn aren't really the lines, the 10:24:06AM
9 lines are somewhere beyond, well, then the legitimate 10:24:09AM
10 variance provides cover for the illegitimate variance, 10:24:14AM
11 I suppose, in that kind of system. 10:24:18AM
12 And so is that then a matter of - I think your submissions note 10:24:20AM
13 that that's writing those policy guidance documents more 10:24:25AM
14 clearly and more focused on giving specific guidance about 10:24:31AM
15 what is and isn't allowed. So, to take your example of a 10:24:38AM
16 height, if we say five storeys, then we mean five storeys; 10:24:41AM
17 is that correct?---Yes, and I think this sometimes - 10:24:46AM
18 there's a real important distinction I want to pull out 10:24:49AM
19 here because I think in a lot of the planning reform 10:24:51AM
20 discussion in Victoria, because the amount of discretion 10:24:54AM
21 in the Victorian system has been controversial for a long 10:24:56AM
22 time and I think in a lot of the reform discussion there's 10:24:59AM
23 sometimes a discussion about certainty, and I've already 10:25:02AM
24 used the word clarity, which is the word I prefer to use, 10:25:08AM
25 and the reason that is is that certainty implies that you 10:25:10AM
26 are probably going to write down black letter laws, height 10:25:13AM
27 variations that can't ever be varied, and that does have 10:25:17AM
28 problems for the reasons I've already alluded to. But to 10:25:20AM
29 me what I think we need more of is clarity about what the 10:25:23AM

1 expected outcome is. So you may still have the 10:25:26AM
2 discretion, you may still have the ability to vary for 10:25:28AM
3 example the height control, but I do think Victorian 10:25:31AM
4 practice has gotten a bit loose in terms of our rigour 10:25:34AM
5 about when we vary from guidance in planning controls. As 10:25:38AM
6 I said, I think they might be too routinely varied. 10:25:42AM
7 I have talked in my submission about the kind of 10:25:45AM
8 principles about how you write policy, but you need a lot 10:25:48AM
9 of clarity, not necessarily black letter law, but clarity 10:25:51AM
10 about what the expected outcome should be in a particular 10:25:55AM
11 planning decision making sense, and then you need a real 10:25:58AM
12 rigour about the way that variations from that norm that's 10:26:01AM
13 been laid out are justified, so that it's not just 10:26:06AM
14 routinely justified, it's not justified in the 10:26:12AM
15 typical - it's not varied in the typical circumstance, 10:26:15AM
16 that when someone varies from it they can identify really 10:26:18AM
17 clear specific contextual reasons for that variation. So, 10:26:21AM
18 yes, it's getting the policy to be clearer and the norms 10:26:24AM
19 about how decisions are made against that policy to be 10:26:27AM
20 stronger in terms of following the policy unless there's a 10:26:32AM
21 very clear case to vary it. 10:26:36AM
22 COMMISSIONER: Could I just ask, Dr Rowley, apropos your last 10:26:41AM
23 answer and the need to understand why there's been a 10:26:45AM
24 variation or a departure from what appears to be applying 10:26:50AM
25 policy, does that mean we should look at the decision 10:26:57AM
26 maker providing reasons for why that departure has 10:27:01AM
27 occurred?---Yes. To be honest, I feel generally we're 10:27:03AM
28 pretty good at that in Victoria. Local government 10:27:11AM
29 decision makers - well, you'll normally have a clear 10:27:14AM

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report and recommendation to a local government decision
maker, so officers will prepare a report. I think from a
governance perspective the model that exists at local
government where you have a publicly available report and
then councillors vote on it is a good model. It's true
that the councillors aren't sort of strictly required to
give reasons for variations from reports, particularly if
they approve something. They will have to come up with
grounds of refusal if they refuse something against a
recommendation. VCAT universally as a matter of practice
gives reasons, essentially, and at ministerial decision
making level I think that could be improved. I think
there's scope for the practices that go around ministerial
decision making to be much more transparent and I've said
that in my comments, but generally I think in Victoria
there usually are reasons given, a couple of cases I've
identified where there aren't, but, yes, there clearly
should be. That would be a scope for improvement, yes.

Mr McLaughlin, were you going to take Dr Rowley to the
framework through which the planning process has to work
for the purpose of an amendment to the PSP, to the
planning scheme?

MR McLAUGHLIN: Yes, Commissioner.

COMMISSIONER: Very good.

MR McLAUGHLIN: So, as the Commissioner has just noted, we were
talking about height limits, which is obviously probably a
very localised policy guidance, but when we move to the
more strategic planning level such as the precinct
structure plans or amendments to those precinct structure

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1 plans, the level of guidance there and the discretions 10:29:02AM
2 that are exercised within that process, your submissions 10:29:08AM
3 neatly summarise that those commence with a responsible 10:29:12AM
4 authority, whether that be a council or the minister or a 10:29:15AM
5 particular government body in some instances?---A planning 10:29:20AM
6 authority in this case. 10:29:24AM
7 Planning. So, the discretion that lies there in that 10:29:27AM
8 initiation phase I think is certainly one of those issues 10:29:30AM
9 that has clearly been raised within the investigation that 10:29:34AM
10 we've had to date. Your submissions note, I think, that 10:29:40AM
11 third parties are often involved and routinely involved in 10:29:44AM
12 the initiation of such amendments. Is that part of that 10:29:48AM
13 guidance and discretion that seems to be lacking from the 10:29:53AM
14 framework but routinely accepted?---So when you say third 10:29:56AM
15 parties in this context, you mean for example proponents 10:30:01AM
16 of a particular development - - - 10:30:04AM
17 Yes?---Who are wanting to get the scheme changed to facilitate 10:30:05AM
18 that, yes. Sorry, I'm not sure what the question - was 10:30:08AM
19 the question just that - sorry. Perhaps if you repeat the 10:30:14AM
20 question. 10:30:19AM
21 It may have been unclear. I did take you through the process 10:30:20AM
22 and then perhaps just lob it up there. I guess more what 10:30:22AM
23 I'm taking you to is the discretion that's exercised by 10:30:25AM
24 the initiator to put forward an amendment to a precinct 10:30:30AM
25 structure plan might not actually be something that has 10:30:36AM
26 come from the initiator as such, that there might be 10:30:41AM
27 another third party who has a legitimate commercial 10:30:44AM
28 interest or an interest that they wish to advance and that 10:30:48AM
29 therefore the discretion sits within the council?---Yes, 10:30:54AM

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I mean, this is a very tricky space because what you've got is a process that is essentially a form of legislating, right? It is subordinate legislation and the lawyers in the room will probably tell me I'm getting my terms mixed up, but planning schemes are subordinate legislation, they are statute. So when you're changing the scheme, you're doing a form of, you know, legislating, rule writing, statute setting, whatever sort of words you want to put around it. So that has a particular set of governance implications that goes with it. The reality is, and I think this is what your question is going to, the reality is that also because planning schemes are so localised, you might be doing some sort of legislation writing or subordinate legislation writing that really has the purpose of facilitating only one particular development. A planning scheme amendment might relate extremely directly in an extremely one-on-one way to a particular proposal, to the extent that you can have a planning scheme amendment that just essentially approves a set of documents that approves a proposal, and that does make it tricky because the kind of governance assumptions that you'd normally have around legislation and writing statute are a little bit different from the way you'd normally approach the assessment of a development against rules, and the situation of an amendment that relates very much to one specific development proposal really blurs two different kinds of governance proposals together and I think that's both the cause of a bit of community angst about the process and I think it is probably the cause of

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some of these integrity concerns, because the process is sort of trying to do two slightly different things. You take it for granted in the development approval you have a particular developer or applicant coming in and asking you to approve something against the framework. In a planning scheme amendment framework, you know, it seems a bit - it can seem a bit strange from a pure sort of governance perspective to have someone essentially asking to rewrite the planning scheme as a private proponent. And some of the assumptions that often seem odd to people about the way the amendment process works relate to the fact that it is essentially a process of rule setting and legislation setting and so therefore some of the assumptions about sort of lack of appeal rights that go with that and essentially how much the power is vested in democratic decision makers and essentially unbounded, the fact that it's really vested with them with very little recourse comes from the fact that it's essentially a form of legislative - and again I don't know exactly what word a lawyer would put around that in terms of changing subordinate legislation, statute writing, yes.

And that then I guess comes to I guess part of that transparency aspect of when people are seeking amendments to planning schemes. Your submissions note, and here obviously the Commission has spent a lot of time looking at a particular amendment to the Cranbourne West planning scheme, amendment C219, and the processes that that went through, namely from council through to a planning panel and then through to the minister. Your submissions note

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that the transparency that occurs at those early phases,
namely the council and a planning panel, are actually
quite good, but that once it reaches the ministerial level
that that transparency drops back. Could you perhaps
elaborate on what you see as the issues around
transparency at that point in the amendment?---I'd perhaps
like to - I'd perhaps step that back a little bit in terms
of comments about planning scheme amendments. I think
there are a couple of points in my written submissions
where I'm talking about some different kind of like
governance modes, including making planning permit
assessments might have been somewhere - some of those
points I might have been thinking more of those kind of
processes. But I think it's certainly true that, you
know, at a local council level I think I've already said
I think the model that happens in both the scheme
amendment process and the planning permit assessment
process of a recommendation going to councillors and being
voted on in a governance sense is quite good. I think the
planning panels process of having an advisory panel of
experts I think in principal - and I've made some specific
comments about ways the governance of that might be
improved - but I think broadly that's a very sound
process. So, you know, I think that's certainly a
strength of the process and I think if you start from the
assumption that this is a process of legislating, it is
hard to come up with a process that involves panels in
another way other than the kind of advisory role that they
have in the process.

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The issues I was making about ministerial decision making and State Government level decision making - and I suppose this is the reason I was walking that back - I want to be really clear I'm not casting aspersions on people at the department, for example, who are helping with assessing those amendments or ministers over the years who've made those decisions. But the kind of things that do worry me a little bit in that space are that the decision making of the minister is not always as transparent as occurs at other levels in terms of the sort of clarity around the officer recommendation report that goes to the minister. Ministerially initiated amendments in particular, so that's different from the example you've put to me, I know, but ministerial amendments can sort of appear out of nowhere with very little knowledge and that raises concerns about the clarity of the decision making and the transparency of the decision making. And I think the other thing that is a challenge at the ministerial stage of the amendment process is theoretically every amendment in the state is going through the planning minister. Now, that's a bottleneck of such sort of stupefying proportions that the reality is that the minister can't possibly apply real scrutiny to every single amendment that happens in the state. That then means obviously the minister has got a department to help, you know, assess those amendments and provide assessment of those amendments, but it does mean that a lot is then riding on the appropriateness of the scrutiny that happens at that level. Yes, I think that's probably - unless

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1 there was something you wanted to draw out from that. 10:38:00AM

2 Well, I guess part of the transparency that occurs at the 10:38:03AM

3 council level and also even the planning panel levels is 10:38:06AM

4 that there is public notice periods and that there's an 10:38:13AM

5 ability for submissions to be made, and I think you 10:38:17AM

6 highlight that as - again not necessarily saying anything 10:38:19AM

7 about the quality of the decisions that are made - but 10:38:23AM

8 that it removes the public having a right of access in 10:38:26AM

9 terms of decisions once they go into the departmental and 10:38:31AM

10 ministerial space?---Yes. I mean, it depends a little bit 10:38:35AM

11 on the amendments. So, for example, a lot of amendments, 10:38:40AM

12 the answer to that would be, well, it's been through a 10:38:42AM

13 public process at the council. People have had their 10:38:45AM

14 chance to make submissions to the panel, so that is the 10:38:47AM

15 chance for public involvement. So if a panel has been 10:38:54AM

16 through that process of starting with the council and 10:38:58AM

17 going through a planning panel, I think it's fair enough 10:39:00AM

18 to say at the ministerial level you don't need to redo 10:39:03AM

19 that work. The whole point is that the public 10:39:06AM

20 consultation has happened through the early stages of the 10:39:07AM

21 process. But in the case of ministerial amendments 10:39:10AM

22 I think there are concerns that those can appear sort of 10:39:15AM

23 out of nowhere without consultation. Again, it's really 10:39:18AM

24 tricky. So, 20 part 4 is one of the main parts of the Act 10:39:21AM

25 that allows the minister to make changes to the planning 10:39:28AM

26 scheme. I do think there are parts of - there's a 10:39:31AM

27 practice note that supports how that's supposed to 10:39:34AM

28 be - how decisions are supposed to be made. There's not 10:39:37AM

29 much in the legislation at all that puts legislative 10:39:40AM

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boundaries around how that power is used. So I think some
of the things that are in the practice notes about
reporting probably should actually be legislated, but the
tricky thing about 20 part 4 and the ministerial powers is
I do also struggle to contemplate a situation where the
minister can't make a decision, because you can't - it's
difficult for me to contemplate a scenario where there's a
problem in the planning scheme that nobody can sort out.
So I feel you need at the end some sort of failsafe power
for the minister to be able to come in and kind of like
make an intervention and make changes, but as soon as you
have that kind of unbounded power vested in one person
there's an obvious integrity challenge. I sense probably
out of these investigations and other things that happened
over the years that there are some people who are uneasy
about the power of both councillors and the minister in
the planning process. I'm much more of the mind that
I don't necessarily oppose those powers being
democratically vested and, for reasons I've just hinted
at, I don't necessarily have a problem with the minister's
power in particular being quite powerful and quite
theoretically unbounded, but you then have to recognise
that there is a massive integrity risk that goes with that
and so you then have to have very strong legislation
protocols and norms at various different levels around how
that decision making is exercised. So, you know, whenever
you have something like that in the system, you have to
recognise that that is a potential weakness of the system
and put the systems around that to provide appropriate

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scrutiny.

Thank you. If I could move on to a related point in which you commented that elected officials should determine rezoning decisions because, as you've said earlier, they are ultimately a form of subordinate legislation or legislating the planning scheme within Victoria. I guess the corollary of that that you identified is the windfall gains that are made by individuals or corporations from such decisions, even though they're legislative decisions, and I guess then the corruption risks that such windfall gains present. What practical steps do you think could be added to that process to try and address that windfall gain issue?---So, I mean, there are a couple of things. You know, your integrity problem is that you've got decision makers with very unbound powers with the ability to create a huge increase in value and, you know, that just inevitably creates a weak point. I suppose there are a few things. There's been more discussion recently about value capture. I think you might have other witnesses who are more expert in this who you're planning to talk to. But, you know, I think that is a good avenue to look at in terms of value capture. I think there are other policy reasons that are sort of outside the scope of this enquiry to look at that as well. Traditionally Victoria has not looked at value capture because the philosophical underpinning has been if someone has an increase in value under the zone because of a zoning change and you capture that value and return it to the state, the flipside of that is if you reduce someone's land value through zoning,

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for example you impose a height control or something that
didn't previously exist, you should compensate them.
There has been a feeling that the two should go together.
That's perhaps arguable, but that's always been the
feeling, and because we don't compensate people when we
lower their value by introducing zoning controls, we don't
capture value when there is uplift. So that's been a
philosophical objection. Sorry, I'm just going back to
your question. I think you're talking about what
mechanisms you can put around the risks created by that
windfall value increase, weren't you?
Yes, and one of those was something like an approach - a
betterment approach is one way that, you know, certainly
other witnesses that we're going to hear from, expert
witnesses such as Cameron Murray, advocate that betterment
approach?---It's helpful. It's not a magic bullet and I'm
sure those advocating for it aren't saying it's a magic
bullet, because ultimately it's just reducing the level of
windfall gain. It's not necessarily reducing the windfall
gain. So I think it's actually more of an answer in other
policy space, that it's a way for the State to extract
some value that can be put to other policy outcomes. So
I'm actually a little bit more attracted to that idea.
You know, it gets talked about in terms of affordable
housing contributions and other kinds of social goods, so
I'm actually a bit more attracted to it for other reasons
than integrity reasons. But if we just talked about why
the development industry might oppose that, I think it's
illuminating, because one of the reasons I could imagine

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the development industry might say you shouldn't be able to do that is because they'd say they need the windfall gains to offset all the developments that have not come off or all the things they haven't been able to pursue and they point to the reality that there's a speculative element to this kind of property development gain and that the windfall gains are needed in terms of just in terms of their overall revenue flow because in other cases they end up not making money on rezonings that don't come through, for example. And I guess that's where you go back, and I take this back to your question, you go back to the question of clarity; you reduce the odds on any given gamble, if you like, by increasing clarity. That reduces the level of windfall gains because there's more clarity around what the outcome is expected to be in the first place. The more your policy framework gives people a clear expectation of what will happen, the less you create some windfall gains when there's suddenly an outcome that dramatically changes people's development expectations, if that makes sense. So, a big part of it is just increasing the policy clarity and then increasing the governance transparency around those decisions that create those windfall gains.

In terms of a governance approach, I note your submissions don't support creating an appeal process for amendments or the creation of planning schemes. You support it in relation to particular approvals under an already existing scheme, but not in relation to any of those steps around an amendment or the creation of a scheme?---Yes, so you'd

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1 like me to speak to the reasons why? 10:46:55AM

2 Yes?---I always just get stuck on the fundamental sort of 10:46:58AM

3 governance democracy question, which is if you - well, if 10:47:02AM

4 I take a step back. There's always criticism of the fact 10:47:07AM

5 that councils have an ultimate veto right of amendments. 10:47:10AM

6 There's a lot of criticism of that from the development 10:47:14AM

7 sector and understandably. It's pretty frustrating if 10:47:17AM

8 councils just start arbitrarily saying no to particular 10:47:19AM

9 rezonings that might have merit. So, there's always been 10:47:22AM

10 a lot of pressure for some sort of review mechanism. 10:47:25AM

11 We're very used to a very broad extent of appeal rights in 10:47:29AM

12 the development approval space with VCAT in this state, so 10:47:32AM

13 I think philosophically there's always been a view, well, 10:47:35AM

14 why doesn't VCAT or another similar body, why doesn't 10:47:38AM

15 planning panels have more of a decision making role. And, 10:47:43AM

16 you know, I can see that logic and then there are 10:47:45AM

17 integrity reasons that have come up in the current matters 10:47:48AM

18 that might point to that as well. 10:47:51AM

19 The problem is if you can appeal a decision to 10:47:52AM

20 rezone or if you can appeal a decision not to change the 10:47:55AM

21 statute, change the underlying planning statute, if you 10:48:04AM

22 can appeal that decision there is never certainty. There 10:48:08AM

23 is never a development that is prohibited. There is no 10:48:11AM

24 ability to create a planning framework that puts anything 10:48:14AM

25 off the table because you can always make an application 10:48:17AM

26 to change the planning statute to make that a 10:48:20AM

27 discretionary outcome and then you can appeal that to 10:48:23AM

28 whatever this planning appeals body was for amendments. 10:48:28AM

29 So, there then becomes no boundary to what might 10:48:32AM

1 be pursued and then if you put yourself in the role of 10:48:37AM
2 what that body ultimately is, so if we said it was VCAT, 10:48:40AM
3 for example, which I guess is the closest we have to a 10:48:44AM
4 body that might sit in that space now. If VCAT - I mean, 10:48:49AM
5 VCAT is a tribunal, so it's not a court, but if in sort of 10:48:52AM
6 common language we think of it as a court, if you 10:48:55AM
7 essentially had a court-like body making decisions to 10:48:58AM
8 overthrow decisions not to pursue amendments, then 10:49:01AM
9 suddenly you've got a court-like body legislating and that 10:49:05AM
10 just gets you into a really fundamental sort of separation 10:49:08AM
11 of powers issue that to me I just can't get past that 10:49:11AM
12 fundamental objection. While there might be some 10:49:17AM
13 pragmatic reasons it might be a good thing, I just can't 10:49:19AM
14 get myself to a space where in a democratic society we 10:49:22AM
15 have tribunals/courts, whatever the nature of that body 10:49:27AM
16 being, making those legislation type decisions. 10:49:31AM

17 And the final thing I'd just note in that space 10:49:36AM
18 is who's to say that body doesn't then become your 10:49:38AM
19 corruption weak point. You're just vesting in a different 10:49:43AM
20 person. The same pressures will still exist at that 10:49:48AM
21 level. If there are corruption concerns at the councillor 10:49:54AM
22 level in the current system, it's because of the pressures 10:50:01AM
23 that exist at that level and, you know, there may be other 10:50:08AM
24 things about how councillors are remunerated and things 10:50:10AM
25 like that, right, but you can't just say that's a problem 10:50:13AM
26 inherent to councillors and just displace the problem to a 10:50:17AM
27 different level in the process. It may be if you had some 10:50:21AM
28 other kind of body you'd have the same - particularly over 10:50:24AM
29 time - you might have the same problems crop up at some 10:50:27AM

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other level or in some other place.

So that's why I would much rather a focus on integrity that avoids saying, for example, if this is the conclusion, 'Oh, we seem to have a problem with councillor level. Let's take powers out of councillors' hands.' I think it's much better to look at what is it about that councillor role that is missing? What is it that is contributing to that risk? What are the mechanisms that aren't providing the scrutiny and accountability that there needs to be at that level? Because if we just move it to a different point, you just create a different pressure point.

And so that certainly dovetails neatly with your submissions in relation to planning panels, you refer to both the processes that exist in New South Wales and other jurisdictions as well as certain councils here in Victoria, and also sit within the planning scheme amendment process. So, in terms of having panels, expert panels, how do you see that as addressing corruption risks, if at all?---Sure, and we should just be really careful about the terminology because planning panels in Victoria means a really specific thing. So there's the planning panels in the current system which is an advisory body that has a status in the scheme amendment process and they've given advice - they give a report in cases where there's been submissions to an amendment that then informs the process. But, as I understand it, you're asking a little bit more broadly about various different mechanisms that are used in jurisdictions, and sometimes here, to use

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expert panels in a planning decision-making process; is that right? And are you thinking potentially in the planning permit process or in development approvals as well? I want to be sure I'm talking to right sort of examples.

I guess if we can start with the institution of planning panels within that low level process. I don't say low level, but I mean those individual development decisions that are made about particular applications under an existing scheme, yes, but we would also like to address the panel issue, as you say, the specific issue around the planning panel as it exists here in Victoria for amendments to schemes. But if you could first start at the lower level?---So, if we start with planning panels at a development approval level, for me it seems like a solution to a slightly different problem. To me planning panels are a solution to a problem of poor decision making, rather than necessarily lack of integrity, and I just say that because again there's nothing about a planning panel that necessarily ensures you more integrity just because they're expert decision makers. I mean, you can do things in the governance to hopefully increase that scrutiny, but, for example, it's not hard to imagine a situation where the appointment controls of panels becomes your point of mischief, for example. I mean, you know, if you took power off local councils and said, 'Well' - and this is the way it often gets framed - 'for these really important, say, state significant projects it's too important to be left to local council so we'll put

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planning panels in charge of these particular development approvals.' That is the perfect method for a mischievous planning minister to essentially run the process off the rails by saying, 'I'll just appoint, you know, a couple of planning commissioners,' or whatever you end up calling them, who are, you know, of a very predictable persuasion, and this may not be corrupt at all, it might just be, you know, a particular railroading in the process, but it becomes a method that you could imagine mischief occurring; perhaps those panel members are corrupt. There's nothing magic about a planning panel, I would have thought, that makes it theoretically less prone to a lack of integrity than elected decision makers. And if there are reasons why they are less likely to be corrupt or less likely to have integrity problems, those reasons are the things you should be focusing on. Is it because they are, for example, better remunerated and therefore have less tendency to want to take money on the side or whatever it is.

Planning panels to me seem to be a response to an issue of lack of expertise at council level and councillors making, for want of a better way of putting it, stupid decisions for populist reasons. I'm kind of relaxed about that, that problem, not because I don't think it's a problem when councillors make poor decisions, but because I kind of just accept that as kind of the price of living in a democracy, that councillors might make populist decisions just as planning ministers might make populist decisions for populist reasons. That to me

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seems a different problem and I feel like planning panels are trying to solve that problem of poor decision making. I don't know that they're necessarily an integrity solution, which is my personal view.

You're probably sensing from my answers I kind of have a philosophical belief in this idea of democratically vested decision making and am fairly relaxed about the idea of decisions being vested in democratic decision makers, even if it sometimes leads to poor decisions, and I just think it's just important to put clarity of processes around that to make sure that that doesn't then become an integrity risk.

And in terms of the more specific role that we've seen that the planning panel take with some of the amendments that the Commission has seen, both the amendment to the Cranbourne West PSP but also in relation to earlier decisions in the City of Casey with regard to those sorts of amendments, how do you see that step in the amendment, the PSP amendment process? How does the planning panel I guess address integrity risks within that system?---So, I want to be really clear in terms of how I frame my answer to this and the reason I want to be clear about that is (a) not to be commenting about the specific matter, but also to just more generally say I don't do a lot of day-to-day work with planning panels. So, I wouldn't want any of my answers to be talking about the actual day-to-day performance of how Planning Panels Victoria, the current body, is doing its job. So I want to make that really clear.

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I guess my observation, though, if I just look at it from a global sort of systems perspective, would be if you start from the set of assumptions I've been outlying about the way democratic decision making should occur, then I think the broad structural framework in the process of having planning panels provide an advisory comment that then gets tendered in a reasonably public and clear way to the ultimate planning elected decision maker, being the minister, I think that's a reasonably strong process and you can point to examples. I probably don't in this forum want to start citing specific examples, but you can point to examples where the existence of a planning panels report with a clear recommendation helped to provide clarity around ministerial decision making in a way that was good for integrity. So I think that's fundamentally really sound.

I think the vulnerability, and again I'm not commenting on the specific performance of planning panels, I'm just saying if you look at what in a systemic and structural way seems to be vulnerability, is I would like the governance arrangements of Planning Panels Victoria to look more like VCAT's do because VCAT is essentially run through the Department of Justice and has the kind of protections you associate with courts where there is a lot of security of tenure for the members and all of those sort of governancy arrangements that you associate with court systems. I worry that the structure of Planning Panels where it essentially sits with the planning department as sort of an adjunct to the planning

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department, you don't necessarily have security of tenure,
you have a lot of sessional members. I think all of those
things represent challenges from a governance perspective.
The other thing which I posed as a question and
definitely not as an observation, but I think would be a
really interesting question to ask, you know, the people
involved at Planning Panels is whether they feel they have
the resourcing to do their job as effectively as it could
be done, because similar to the comment I made about
the minister, the minister is a bottleneck in the system,
and that creates - any system where you have a huge amount
of volume going through sort of one office creates a risk,
I think, and I just make that observation of Planning
Panels as well, if you're relying on Planning Panels as
being one of - and I mean Planning Panels Victoria, our
body - if you are relying on Planning Panels Victoria as
being one of your checks against dodgy decisions making
their way through the process, and clearly it is. If
you've got a dodgy decision at council that was made for
corrupt reasons, one of the biggest checks and balances in
the process is, well, hang on, you can buy off councillors
if you like, but that decision is going to get passed up
to Planning Panels who are going to give an independent
set of recommendations that may well shoot the whole thing
down. So that reduces your incentive, at least in theory,
to go and buy off councillors or whatever corrupt process
might be happening at that level.
So, if you're relying on them as an integrity
perspective they become really important and I guess the

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question becomes, you know, are they stretched too thin, are things getting missed, and I wouldn't venture an opinion on that because again I don't deal with them enough on a day-to-day basis, but that would be I think the question that needs to be asked about that level of the process.

COMMISSIONER: Dr Rowley, could I just remind you - I'm not sure if you're aware of the history of the Cranbourne West amendment. The council decision was in contradistinction to the view of the council officers, who said it wasn't strategically justified. The council decision was contrary to the view of the Melbourne Metropolitan Planning Authority and it was contrary to the view of the relevant departmental staff. Then it went before a panel that for particular evidentiary reasons supported the council's decision. Then the matter went to the minister and the minister said, 'No, on the basis of the Melbourne industrial and commercial land use plan, no approval.' So does that tell you anything about the role of the panel in this sort of setting?---I want to be very careful because I don't feel I have enough - you know, I haven't dug into the decision to be sort of second-guessing the decision making of the panel, so I want to be really clear of not going down that road, I suppose. I guess I'd make a couple of observations about the process you've just outlined. The first is there's a sense in which in a strange way it shows the system working, in that there were some clear governance flags in that you had a planning officer report at the local government level to

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compare things to and say it wasn't in accordance with that. So I think that's an example of why I'm speaking positively about those governance arrangements at local level. I think that's a positive.

At the panel level - I'll pose this as a question because I don't feel I can draw enough conclusions about how that panel went about its business, because I just haven't worked through that material thoroughly enough to second-guess anyone's decisions on this. But the question it raised in my mind is whether enough weight was given to the various authorities and whether there was too much deference to some of the evidence that was led before the panel. That's a question that's raised in my mind. But, again, I wouldn't want to go too far down that road.

I think the last thing that is really important out of that timeline you've outlined, though, is the strategic work being done helping to illuminate the minister's final answer and it just shows that integrity and quality of policy work really go together in that perhaps if that industrial land use work had been more resolved at an early stage in the process there would have been clearer red flags that, oh, these arguments about industrial land supply versus residential land supply might be more clearly resolved and, you know, perhaps informed by that the panel might have made a very different decision because the strategic work existed and was clearer. So, it goes to that point about the strategic work being well resolved is going to help to be a guard against, you know, outcomes that are either poor

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quality outcomes in terms of the quality of the decision making or in some way lack integrity.

Could I use slightly different language that I think we find in parts of your submission, that if there's greater clarity around the policy, the policy then provides greater guidance and less room for some of the differences of opinion that have emerged in this case?---Absolutely, and I'll step right back from the Casey example and just say, you know, in planning decision making in my day-to-day work and, you know, I tend to do my work in front of VCAT rather than Planning Panels usually, but the core frustration I think that many practitioners have with the Victorian planning system is you can get five different practitioners in a room acting for different sides of a case, probably all acting in professional good faith most of the time, all arguing for different positions reasonably plausibly against the policy framework and that's what I mean by the lack of clarity, lack of resolution and, you know, the contradictory nature sometimes of policy work creating integrity risks. In this case, you know, it might have been that the clarity around industrial land supply wasn't there, but you could point in other cases to, you know, other pieces of policy work that were either missing or not well resolved enough or kind of like fudged the important issues, that meant when decisions were made against that policy framework there was too much scope for things to run off the rails.

DEPUTY COMMISSIONER: Perhaps if I could just jump in there, Dr Rowley, and ask about the local government space and

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particularly setting that policy framework and the
guidance which is the responsibility of the council
itself. So therefore you've got an elected cohort that
may not have the capability in that area, so they're
reliant on advice from within, and I think as we just went
through that timeline of the Casey example, the officers
who applied the policy have then had their recommendation
decided in an alternative. So I'm interested in, firstly,
how do you get a good policy setting framework if you
don't have capability within the policy setters, and then
when you have your agreed policy it's not actually applied
in the decision making?---Yes, so, sorry, you're asking
about the fact that because this is an amendment process
and it was actually the process of setting the policy; is
that what you mean?
Yes, and more broadly the policy framework more generally in
the local government space. I mean, it is the
responsibility of the elected council to set that policy
framework and then the application of it?---Yes.
I suppose, though, we're never starting from scratch in a
policy sense. So, for example, councils are setting
policy but they're setting policy in the sense that
they're trying to write planning statute that ultimately
has to go through an amendment process and has to get
signed off by the minister. So that's the first thing;
they're not just setting policy in an unconstrained way.
But the other thing is the reality is there is
always - you know, State Government policy is always
pre-existing policy work in practice that acts as a

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1 starting point. But you're right. Well, I say you're 11:07:43AM
2 right; I'm imposing a supposition there. But I guess 11:07:47AM
3 there is a sense there that what I'm describing is a 11:07:52AM
4 situation with a better resolved policy framework that 11:07:55AM
5 you've got to somehow get to first, you've got to develop 11:07:58AM
6 the policy and there's an element of bootstrapping there, 11:08:01AM
7 probably, where you've got to start developing better 11:08:04AM
8 policy framework. I think the State Government is in a 11:08:07AM
9 good position to lead that in terms of providing that 11:08:09AM
10 broad framework, and essentially, again without getting 11:08:13AM
11 too far into the details of the Casey matter, as 11:08:15AM
12 I understand it that sort of happened, right? The State 11:08:17AM
13 Government, as part of working through this process, you 11:08:20AM
14 know, did that industrial land strategy work that helped 11:08:23AM
15 to provide some illumination around this and that then 11:08:27AM
16 presumably set a clearer framework within which the 11:08:31AM
17 specific council's work could be judged and assessed and 11:08:39AM
18 the kind of questions that ended up having to get resolved 11:08:47AM
19 at panel in the Casey case of how much industrial land 11:08:49AM
20 supply there was you'd hope would be a lot clearer now. 11:08:53AM
21 I haven't looked at the industrial land use work, but you 11:08:57AM
22 assume would be taking place in a situation with a lot 11:09:00AM
23 more clarity around it if it happened today, I hope, 11:09:03AM
24 I assume. 11:09:05AM
25 I'll get on to that broader planning scheme issue in a second, 11:09:09AM
26 but I just want to touch on going back to the councils 11:09:16AM
27 then. So it's been suggested that a solution to some of 11:09:18AM
28 the issues, particularly in development approvals, that 11:09:20AM
29 the body that determine the scheme, so the councillors 11:09:25AM

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that determine the scheme, the policy, they are not part
of the decision making within that scheme, so there's a
separation from it, and you sort of talked about it before
whether it's addressing integrity issues or bad decisions.
I think you can argue either way on that, but I'm
interested in firstly your view on whether that's
something that's feasible and, secondly, whether if you
can expand on a local level, a council level, if that then
creates a further integrity risk?---Sorry, just to make
sure I'm understanding, you're talking about a model where
you have an elected official driven policy setting, but
the decision making against that policy is much more of an
officer level thing or an expert technocratic kind of
exercise; is that right?
Correct?---It's conceptually extremely attractive and there
would be a lot of, you know, planning theorists who said,
you know, that should be how it should work and people who
are, for example, critical of VCAT's role, for example,
will often say VCAT shouldn't be overriding local
decisions once policy is set either as well, for sort of
similar reasons. It's another way of playing out the same
argument. I guess it's tricky in practice to reconcile
with the way the Victorian system works. It's partly
about the assumptions about how policy is written, in that
our policy is not resolved enough that you could then just
turn it over, I think, to technocratic decision makers to
make decisions against the rules, because there's not
enough clarity. Yes, we should be trying to increase the
clarity, but you've got to move things in practice an

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1 awful lot for us to get to the point where the policy 11:11:14AM
2 settings are so clear that everyone can just sort of 11:11:18AM
3 follow them and, you know, feel comfortable that everyone 11:11:21AM
4 is just implementing - you know, the theoretical model is 11:11:28AM
5 the councillors as representatives of the people set a 11:11:33AM
6 policy direction in consultation with the community 11:11:37AM
7 through a sort of deliberative and consultative process. 11:11:39AM
8 We don't live in a world where that policy gets resolved 11:11:45AM
9 with enough clarity that everyone can just go away and 11:11:48AM
10 implement it and we tend to say that there are still a lot 11:11:50AM
11 of decisions that are consequential enough they should go 11:11:54AM
12 before councillors. And you'll again probably sense from 11:11:57AM
13 my earlier answers that I'm actually comfortable with a 11:12:00AM
14 process where we say these decisions are important, it's 11:12:05AM
15 actually okay to have a democratic input into the 11:12:07AM
16 decision. 11:12:10AM

17 I will say it is still the case that 95 per cent 11:12:11AM
18 or more - you know, that's a figure off the top of my 11:12:15AM
19 head, don't quote that - but a very large proportion of 11:12:18AM
20 decisions in practice are done under the delegation, so a 11:12:20AM
21 lot of the day-to-day running of the system is happening 11:12:23AM
22 basically at sort of officer level. 11:12:30AM

23 I think maybe the last thing I'll say on that, 11:12:34AM
24 and it goes back to that planning panel question of 11:12:36AM
25 whether you should have a planning panel involved in these 11:12:38AM
26 sort of things, because that would be one model of 11:12:40AM
27 implementing that split, and I suppose there's an 11:12:43AM
28 assumption when people talk about this idea of a planning 11:12:47AM
29 panel of expert decision makers instead of councillors 11:12:50AM

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making decisions once you've set the overarching policy,
there's an assumption that it's the big important matters
that go up to Planning Panels, presumably, because they're
the important ones, and it's the inverse of the assumption
that exists in Victoria, which I'm actually comfortable
with under our system where we say if the decision is
really important it should go to an elected decision
maker, because a particular decision in a particular
council area is a consequential thing that will
dramatically affect that particular suburb or that
particular community and therefore should be decided by
the community representatives, and I'm actually sort of
again comfortable with that role of elected officials in
the process, philosophically. I just think you've got to
get the right decision-making processes around it. I'm
conscious maybe I didn't answer the question. Did I? Did
I address that point fully for you?
Yes, just the last point around, you know, if there was a shift
and the majority work continued to be done under
delegation, but those that reach a particular threshold
are addressed by a panel without being broadened or create
a new integrity risk, and I think you sort of answered
that before when you talked about shifting the
problem?---Yes. I mean I think it just goes to the fact
that I don't necessarily trust the panel's going to be,
you know, from an integrity perspective so unimpeachable
that you can just sort of trust that that's not going to
be a point of vulnerability and I think - I mean, this is
slightly out of the integrity space, but I think it is

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worth throwing in there. I'm not sure that planners have got such an unimpeachable record of fantastic decision making that we as an industry, and I'm speaking in the broader sense, should be saying to the community, 'Just trust us to make the decisions. We can put the elected decision makers aside.' As a planner I think we as decision makers should have some humility to say we should still be accountable, accountable to the people through elected officials. I'm sort of comfortable with that and I think that has an integrity component in itself, the fact that planners remain accountable to the community through elected decision makers. We tend to take for granted the aspects of the system we already have, but I think that stops decision makers from becoming too disconnected and too unaccountable to the community in a whole set of ways that we take for granted now.

We'll explore the panel and the integrity systems around those with other experts. But I want to move on now to something of interest to me, particularly in this case around the precinct structure plans. You mentioned that they have a localised content to them so they're quite important to the municipality which they affect, but they have a broader impact and it's part of a bigger jigsaw puzzle. So I'm really interested in the Victorian Planning Authority's role in that, particularly in this case where I think it was originally their precinct structure plan and under the legislation were required to be consulted about any change to it, but it didn't seem to me to be able to have meaningful input to it. Do you have

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any comments around that?---Yes, and I will caution again
by saying I haven't done that much of my work in growth
areas. So, you know, I'm not really commenting that much
on the day to day of how the relations between councils
and the VPA work. I'm just not going to be the best
person to comment on that. But I think there is a
question here about where the level of ownership was and
I suppose if I was looking into that decision-making
process and whether the right things are given the right
weight, one of the questions I'd be asking is whether
enough weight is given to the thoughts of the VPA on the
PSP. It is sort of an oddity that the VPA are involved in
the preparation of the PSP, but over time, you know, the
council and the minister and then, you know, assisting the
minister the department, you know, that being DELWP, the
Department of Environment, Land, Water and Planning, end
up becoming the actual kind of custodians of the planning
scheme, of which the PSP is functionally a part, down the
track. So, I think there's a question to be asked of all
the parties involved in growth area planning of just how
the relationships between the VPA and councils and DELWP
work in the long run. Again, I wouldn't want to comment
on how those are actually playing out in practice, but
I think it's an interesting question.

One of the other issues that we're interested in as well is the
influence of external parties on the decision maker, and
particularly community groups, and whether they are
bona fide community groups. I wonder if you've looked
into that and have any thoughts on the influence that

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1 those groups might have?---Yes, and we sort of skated over 11:18:02AM
2 the question of sort of public consultation and 11:18:05AM
3 submissions and community involvement reasonably briefly 11:18:09AM
4 earlier and I suppose I would just say I tend to come at 11:18:12AM
5 this through a process of viewing community groups as 11:18:16AM
6 bound up with those processes allowing community 11:18:20AM
7 submission and involvement. I should say I do 11:18:24AM
8 professional work for a couple of community groups and, 11:18:27AM
9 you know, in that role I see them as groups that help 11:18:31AM
10 provide scrutiny of the process that will, you know, 11:18:35AM
11 frankly pester and annoy decision makers and help hold 11:18:42AM
12 them accountable, and decision makers often find that 11:18:46AM
13 really irritating. I've been on the receiving end of that 11:18:50AM
14 for a lot of community groups when I was a planning 11:18:51AM
15 decision maker at government. So, I broadly see community 11:18:52AM
16 groups as part of - integrity framework is not the right 11:18:55AM
17 word - but part of the integrity landscape, if you like, 11:19:01AM
18 in terms of providing scrutiny across the process. 11:19:03AM

19 Now, this is one I mentioned before. I've done 11:19:07AM
20 most of my work in the inner city, not in growth areas. 11:19:11AM
21 In the inner city you have very established communities, 11:19:15AM
22 very established network of community groups, and in my 11:19:19AM
23 practice, again working generally in established urban 11:19:21AM
24 areas, to my knowledge the issue of mischievous or false 11:19:25AM
25 or fake, you know, the so-called astroturfed community 11:19:30AM
26 group, in those kind of settings isn't really a practice, 11:19:34AM
27 isn't really something I've been aware of as being a 11:19:38AM
28 concern. I can appreciate that in a emerging community 11:19:41AM
29 there's more vulnerability to that. If you don't have 11:19:46AM

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those existing community networks, if you don't have existing community groups who are deep-rooted in their community who will (a) be recognised by all parties involved as having longstanding and therefore being legitimate and (b) frankly they'll police the space. If you have an established community group for an area that's existed, you know, in an inner city neighbourhood for a long time and somebody comes out of the woodwork claiming to represent thousands of people advocating for a particular planning outcome, people smell a rat pretty quickly. But I can certainly see that in a growth area context there might be more concern about mischievous use of community groups that weren't legitimate to try and influence a process and I suppose the very fact that there is this term 'astroturfing' to refer to the idea of sort of fake community groups suggests it must be enough of a thing that people have recognised and coined a term for it. I guess I just, though, just return to that starting point, which is overall I'd see the involvement of community groups as a net positive for accountability and integrity and transparency.

One of the issues at a more local level, so local government particularly where they have different frameworks for calling matters in, so the council level where, you know, a matter might be under delegation normally, different councils have different settings where that threshold might be met to have it brought before council for a council decision, then again you have the opportunity for particular elements to reach that threshold; does that

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make sense?---Yes, and I know - so just to sort of clarify that point, there isn't a set of criteria about which decisions get delegated to officers and which decisions get made by councillors, and that varies from council to council and I think that probably to people who observe the system sometimes seems a bit strange. The only thing I'd say about that is it is really important to understand we talk about it as a call-in power, and I know that reflects the practice that most things are being delegated and only a few things are being decided by councillors, as I said before. But in practice it's a surrender power. The power to make that decision is vested formally with the council and it's a power they're choosing not to exercise over most applications and they're delegating it down to officers. So, while we think of it as a call-in power, the actual practice is that they're letting go of 95 per cent of the cases rather than calling in five per cent, if that is the split. So, I guess I'd just say it's perhaps a little bit easier to defend the fact that there are so many different rules about it if you understand it as council exercising their option not to make every decision. You perhaps can be philosophically a bit more relaxed about the fact that there's widely varying approaches around what councillors do and do not decide to see.

That said, I can recognise there are pragmatic difficulties with, for example, the idea that over a set number of objections you'll have a different decision maker. You know, people play games with that process all

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the time and I can understand why people are uneasy with aspects of that, that delegation arrangement. Terrific. And my last question then is the extension of that. So a matter does come in before the council and, as you've mentioned before, there's an officer's report, there's a debate maybe, and a decision-making process to go through so you can determine - and you can see who votes for and against the particular application. That's taking into account a councillor that might have a conflict of interest and is removed from the process and doesn't actually have the opportunity to vote. What I'm interested there is around you mentioned before about there's some transparency in that process but what there isn't is any reason behind the decision, particularly where the councillors vote against the officers' recommendation. It is recorded as a vote but there's no reasons behind that. And then effectively if the party who is affected by that adversely, by that decision adversely, they take the opportunity to then have it reviewed by VCAT, you effectively have the council defending the decision of the councillors which was in contrast to their own internal recommendation. So I find that a really interesting dynamic?---It is. I'll just clarify. So firstly we're now talking about development applications. It's a bit different from amendments. And the other thing I'd say is, if there is an officer recommendation to approve something and the councillors refuse it, they do have to give reasons because they have to issue a notice of refusal; it has to include grounds of

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refusal. That said, those reasons can and often are a bit sketchy, and there's not a full officer report that leads up to that decision because there will be an officer report that explains an approval and there will be a brief document that gives some brief reasons. So that's as far as the reasons go. In the inverse scenario if officers have recommended approval and the councillors decide to approve it, then there are no reasons in that case. To be honest, until you raised it with me, it's not something I really thought about a lot. But it probably would be good practice if councillors were required to give some reasons for overturning an officer decision. I suspect it would play out similar to the way refusals do, right, which is the reality is what happens at local government is if the councillors are thinking they are going to refuse something, someone will reach out to the administration saying, 'Can you assist us in preparing grounds for refusal?' So the officers will probably say, 'What are your concerns?' They'll say, 'We're concerned about car parking' or whatever. And so the officers will probably assist the councillors in putting together reasons that are in sort of some sort of planning language. And I can imagine if you required them for an approval you would just get some similar exercises. As to the administration defending officer - defending councillor decisions where it's an overturn of the officer recommendation, it's an interesting dynamic; it's true. It generates a lot of work for consultants like me who end up being the people - so they'll essentially usually

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outsource it, right, and the council will essentially hire
a planning professional to be an advocate for that
decision and they'll hire a planner to argue that case.
And the advocates who do that work, and I am - I do that
kind of work, will say, well, we're there to provide the
best communication we can of the community decision, of
the decision made on behalf of the community by the
elected officials and represent that decision as best as
we can. And it's a little bit of an odd dynamic
but - I don't know, maybe I'm more used to it than
I should be. Again, I will just say I think the reason
why I'm comfortable with that from an integrity
perspective is the clarity that all steps around what's
involved in terms of the fact that it's really clear that
the officers made a recommendation and council has made
another decision and that, for example, the advocate who's
at VCAT is making - is acting in a very specific mode of
practice because at VCAT, you know, and I'm sure it's in
other jurisdictions, there's a very clear distinction
between appearing as an expert witness where you really
are sitting there and putting your hand on your heart
saying, 'This is absolutely how I feel about this
application,' and appearing as an advocate and in the case
of a councillor overturn you might be there as an advocate
saying, 'Well, this is my best representation of the case
that was met - my best representation of the decision made
on behalf of the community by the community's elected
representatives,' and that's a very specific mode of
presentation that you're doing in front of the tribunal.

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1 MR McLAUGHLIN: Thank you, Dr Rowley. I have no more 11:28:49AM
2 particular issues to raise with you and I note the time, 11:28:54AM
3 Commissioner. So, unless either the Commissioner or 11:28:59AM
4 Deputy Commissioner Wolf had any further questions, thank 11:29:01AM
5 you very much for your appearance today and for your 11:29:05AM
6 illuminating answers. 11:29:09AM
7 WITNESS: Thank you. 11:29:11AM
8 COMMISSIONER: Dr Rowley, the issue of clarifying policy so 11:29:13AM
9 that discretion which you say need to remain within the 11:29:21AM
10 planning system can have less scope for resulting in 11:29:25AM
11 unusual or difficult to explain decisions, have you 11:29:32AM
12 anywhere in your work considered the methods that might be 11:29:37AM
13 employed to bring that greater clarity to the policy? For 11:29:44AM
14 example, one of the suggestions made to the Commission has 11:29:47AM
15 been, whatever the planning policy is, it needs to 11:29:52AM
16 identify all of the relevant planning documents which must 11:29:58AM
17 be taken into account in order to determine policy, and 11:30:03AM
18 too often there are relevant planning documents which 11:30:09AM
19 aren't included in the policy and yet then become sources 11:30:12AM
20 for argument when there is an issue about what decision 11:30:18AM
21 should be made?---Yes, that's interesting. So I'll start 11:30:21AM
22 with the first part of your question, but if I forget to 11:30:28AM
23 come back to that point can you bring me back to it, that 11:30:30AM
24 last point? In terms of have I written - like, I've 11:30:33AM
25 written a lot about this. There's a lot of discussion in 11:30:38AM
26 my book about the clarity around policy language. I think 11:30:40AM
27 pages - I was just trying to find - I think it's at pages 11:30:44AM
28 8 and 9 of the written answers I have given I have given 11:30:44AM
29 some really broad principles. But, yes, I've tried to 11:30:49AM

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write a lot and I guess it's been a big part of my writing about the system over the years, my advocacy about the system is to talk about how to better express policy and do it with more clarity, and I guess I'd just broadly say it's about being much clearer about what the typical outcomes expected are in policy rather than expressing sort of high level principles. So I talk about resolving or going from sort of top to bottom in policy, going, 'Here is the high level objective, here's what it looks like in practice' and drilling down with much more clarity. So I've talked about that at a lot of length, and I can't really get into here. Sorry, your point about policy documents is an interesting one because I think, you know, I try to put myself in the hands of someone from like the planning systems area of the department, sort of, you know, the area that manages the system. And they'd probably say and I think probably rightly that the system is sort of supposed to do that now in that you really as a planning decision maker shouldn't be taking into account documents that aren't clearly referred to in the planning framework, in the actual statute. And I think when decision makers are taking into account things that are not raised in a clear way in planning statute that would actually be a pretty clear avenue to challenge that decision. So, for example, if it was a decision that was appealable to VCAT and the decision maker seemed to have been taking into account policy documents that weren't clearly raised in the planning scheme, I would absolutely at VCAT be saying, 'They were turning their minds to

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improper aspects.' So there are sort of conventions in the way the scheme is written that are supposed to - and they talk about incorporated and then reference or background documents, there are documents of different levels of status in terms of the way they're brought into the planning scheme. So you'd like to think that the planning framework is already doing that to some extent. But it definitely breaks down and you would probably say that the elected and non-professional decision makers are going to be more likely to start relying on things that are outside the realm of sort of endorsed policy documents.

So, Dr Rowley, I do want to express the Commission's appreciation for you giving so freely of your time. We've been much assisted by your written submission and your oral evidence, and it's greatly appreciated. Thank you?---Thank you.

Mr McLaughlin, when are we resuming? What time?

MR McLAUGHLIN: We're resuming at midday, Commissioner, with Mr Cameron Murray.

COMMISSIONER: Thank you very much. We'll adjourn until midday. Thank you, Dr Rowley.

<(THE WITNESS WITHDREW)

(Short adjournment.)

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1 COMMISSIONER: Good afternoon, everyone, Dr Murray. 12:03:17PM

2 DR MURRAY: Good afternoon. 12:03:20PM

3 COMMISSIONER: Pleased to have you with us. 12:03:22PM

4 DR MURRAY: Thank you. 12:03:24PM

5 COMMISSIONER: Ms Harris will be Counsel Assisting, will ask 12:03:27PM

6 you questions. I'll be assisted also by Deputy 12:03:29PM

7 Commissioner Wolf, who will also ask you questions. Thank 12:03:34PM

8 you very much for your attendance. Yes, Ms Harris. 12:03:36PM

9 <DR CAMERON MURRAY: 12:03:43PM

10 MS HARRIS: Thank you, Commissioner. Good morning, Dr Murray. 12:03:43PM

11 Just by way of background, Dr Murray, you're a 12:03:47PM

12 postdoctoral research associate, is that right?---Correct, 12:03:50PM

13 in the Henry Halloran Trust at the University of Sydney. 12:03:55PM

14 And how long have you held that position?---A little over a 12:03:58PM

15 year. 12:04:00PM

16 And what are your areas of specialty?---Urban planning, housing 12:04:00PM

17 and corruption. 12:04:06PM

18 In terms of your previous experience you were a course 12:04:07PM

19 coordinator and lecturer in economics at the University of 12:04:13PM

20 Queensland; is that right?---Correct. I worked there for 12:04:18PM

21 a number of years as a casual lecturer teaching a number 12:04:22PM

22 of economics courses, yes. 12:04:27PM

23 And also you've worked for property developers and as an 12:04:28PM

24 economics consultant?---Correct. 12:04:33PM

25 And roughly what timeframe was that?---2004 to 6 I worked for a 12:04:35PM

26 couple of developers in Queensland and I've been an 12:04:43PM

27 economics consultant working independently from about 2016 12:04:46PM

28 until 2019 while I was also teaching at the University of 12:04:50PM

29 Queensland. 12:04:56PM

1 Thank you. Is it correct to say that you've also given 12:04:56PM
2 previous submissions to commissions of inquiry, first of 12:05:01PM
3 all in relation to Operation Eclipse in May 12:05:05PM
4 2019?---Correct. 12:05:09PM
5 Could you tell us briefly what topics your submissions 12:05:10PM
6 covered?---I think that submission would have had a lot in 12:05:15PM
7 common with other submissions I've made and it would have 12:05:23PM
8 been a warning about transparency as a cure to many of the 12:05:25PM
9 corruption issues being faced and a warning that many of 12:05:29PM
10 the policies around banning donations or disclosing 12:05:33PM
11 ministerial diaries might not have large effects on 12:05:38PM
12 political decisions. So it was a submission to help 12:05:42PM
13 rethink what the policy options might be to reduce 12:05:46PM
14 corruption, especially in planning and property 12:05:49PM
15 development. 12:05:52PM
16 COMMISSIONER: That was an inquiry by the New South Wales ICAC; 12:05:54PM
17 is that correct?---I believe so. I can't recall all of 12:05:59PM
18 the details off the top of my head. 12:06:03PM
19 Yes. 12:06:05PM
20 MS HARRIS: And also previously you gave a submission to the 12:06:07PM
21 Queensland CCC, is that right, in relation to - - 12:06:10PM
22 -?---Correct, the Operation Belcarra in relation to 12:06:16PM
23 behaviour in Ipswich Council and other councils in 12:06:19PM
24 Queensland, including the Gold Coast and Logan, and that 12:06:23PM
25 was about again the influence of lobbyists and donations 12:06:26PM
26 in planning decisions and approvals at the council level. 12:06:30PM
27 Thank you. And just finally you've co-authored a book, 'Game 12:06:34PM
28 of mates: How favours bleed the nation'; is that 12:06:39PM
29 right?---Yes, that's right, with Professor Paul Frijters 12:06:45PM

1 who is now at the London School of Economics, and that 12:06:48PM
2 book is an accessible look at the research we did for 12:06:52PM
3 about four years during my PhD on political favouritism in 12:06:55PM
4 Australia across many different economic sectors from 12:06:57PM
5 mining to superannuation and especially in property 12:06:59PM
6 development. 12:07:03PM
7 Thank you. Do I take it then that was the topic of your 12:07:03PM
8 doctorate?---Correct. The main subject matter of my PhD 12:07:08PM
9 research was political favouritism and how to get it and 12:07:13PM
10 how much it costs and testing various policies that might 12:07:17PM
11 work. So I, for example, wrote a computer game that 12:07:21PM
12 allowed players to participate and favour their mates at a 12:07:25PM
13 cost to others and I could test different policy 12:07:30PM
14 interventions. 12:07:34PM
15 Thank you. And now you've produced a submission for IBAC for 12:07:35PM
16 this matter. I tender that submission, Commissioner. 12:07:41PM
17 COMMISSIONER: I'll make these submissions the public forum 12:07:57PM
18 exhibits and that will be public forum exhibit 2. 12:07:59PM
19 #PUBLIC FORUM EXHIBIT 2 - Written submission of Dr Cameron 12:07:59PM
20 Murray. 12:08:06PM
21 MS HARRIS: Thank you, Commissioner. 12:08:06PM
22 COMMISSIONER: Thank you, Ms Harris. 12:08:07PM
23 MS HARRIS: Just broadly, that submission covers the themes of 12:08:09PM
24 lobbyists, donations and the role of councillors in 12:08:11PM
25 planning decisions. If we could focus first of all on a 12:08:16PM
26 summary of your position in relation to 12:08:19PM
27 lobbyists?---M-hmm. 12:08:24PM
28 Have I captured it appropriately by saying that your position 12:08:24PM
29 is that lobbyists bring limited value to planning 12:08:27PM

1 matters?---Correct. 12:08:32PM

2 That essentially their value is their political 12:08:33PM

3 connections?---Correct. 12:08:37PM

4 That increased transparency or disclosure in terms of the 12:08:37PM

5 process can be circumvented or used as a tool by lobbyists 12:08:44PM

6 to promote their skills?---Correct. 12:08:48PM

7 And one way of mitigating corruption risk associated with 12:08:51PM

8 lobbying activity is to have timeframes or cooling off 12:08:55PM

9 periods before individuals from certain backgrounds can 12:08:59PM

10 become lobbyists. Have I captured that 12:09:03PM

11 appropriately?---That's a good summary and there's 12:09:07PM

12 probably some subtle details we'll cover soon enough. 12:09:09PM

13 Hopefully we can flesh those out. So then in relation to 12:09:14PM

14 lobbyists, in your view do lobbyists ever have a 12:09:18PM

15 legitimate role to play in advocating positions to 12:09:24PM

16 decision makers?---Yes, that's a tricky question of what 12:09:27PM

17 you mean by 'legitimate' and let me clarify my view here 12:09:33PM

18 is that providing information to decision makers from 12:09:38PM

19 different industry groups and sectors about technical and 12:09:44PM

20 material matters is a good part of democracy and decision 12:09:49PM

21 making. But if that were the actual function of most 12:09:55PM

22 lobbyists that we see, then the people who are lobbyists 12:09:58PM

23 would be a different set of people, and what we see on the 12:10:03PM

24 lobbyist registers is that we see professional career 12:10:07PM

25 politicians rather than, for example, planners and 12:10:10PM

26 engineers and other experts who could provide information. 12:10:14PM

27 So then the question - the puzzle of that is if they are 12:10:19PM

28 information providers, why did you choose a career 12:10:24PM

29 politician to provide expertise or advice about planning, 12:10:27PM

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and why do you need to, for example, overpay to have this expensive former politician or bureaucrat or whoever it is, rather than pay any old engineer or planner from the street to do that lobbying? So I think there is a legitimate role for information provision, but what we actually see in lobbying is not that; it's more about using the reputation of those lobbyists to nurture relationships, and that of course makes it difficult for objective political decisions to be made.

What do you see then as the role of a lobbyist?---Do you mean how do I see - what lobbyists do, how do I conceptualise what they currently do or how do I see what a legitimate role would be?

Let's start with what they currently do and then move to what you see as the legitimate role they could do?---Yes. So, I guess the best way to understand lobbying is as something that people who don't already have a good reputation amongst key political decision makers, they need a way to build that reputation and that trust to get that access, and lobbyists are essentially paid to vouch for those people. They essentially share their reputation with their clients and they vouch for them, when those clients get meetings or are looked after, that they will do the right thing for whoever helps them along the way, because there's a long-run game of reciprocity involved of trading favours and for an outsider who's not well socially or politically connected you need to enter that game somehow and the best way is to have someone vouch for you and say, 'This person is a good person. They'll look

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1 after you,' and it establishes that sort of two-way 12:12:44PM
2 loyalty bargain in many ways. So that's how 12:12:49PM
3 I conceptualise it. It works both ways and I think that's 12:12:53PM
4 important. It's not just that politicians are somehow 12:12:57PM
5 sweet-talked by lobbyists, but it's a two-way street. The 12:13:02PM
6 lobbyist can also represent that this client, for example, 12:13:06PM
7 if you rezone their land, they will make sure that every 12:13:10PM
8 time they publicise their new development in the media 12:13:15PM
9 they will say how great this council was or this minister 12:13:18PM
10 was for doing that. So, it's a two-way street. So that's 12:13:21PM
11 how I see the role of lobbyists currently. 12:13:27PM

12 You indicate in your submission that you don't consider that 12:13:29PM
13 lobbyists have a legitimate role to play in planning 12:13:36PM
14 matters. Can you elaborate on that?---Yes. Well, I think 12:13:40PM
15 one of the big problems in planning is that there are many 12:13:44PM
16 decisions involving a lot of discretion in the various 12:13:51PM
17 processes and if we can minimise the degree to which those 12:13:54PM
18 decisions are socially motivated - and when I say 12:14:01PM
19 'socially' I mean personal networks of those key decision 12:14:06PM
20 makers rather than for the interests of the community, the 12:14:09PM
21 council area or what have you - the better. So when I say 12:14:12PM
22 that we should minimise or that there's no legitimate 12:14:16PM
23 role, the logic behind that is we want to separate as much 12:14:21PM
24 as we can the decisions about planning from the social 12:14:29PM
25 structures of those people making the decisions. In my 12:14:34PM
26 conception of lobbying it's very much a social tool for 12:14:41PM
27 establishing those relationships. 12:14:46PM

28 COMMISSIONER: Can I just ask you, Dr Murray, coming back to 12:14:50PM
29 your definition of lobbyists, namely you are working on 12:14:56PM

1 the premise the lobbyist doesn't come to the task with the 12:15:01PM
2 expertise to be able to provide useful information to the 12:15:07PM
3 person they are lobbying, so let's take a concrete 12:15:12PM
4 example?---M-hmm. 12:15:17PM

5 In the planning area, what about a town planner who has 12:15:18PM
6 expertise in planning and who also holds him or herself 12:15:21PM
7 out as a lobbyist? What do you say are the rules that 12:15:25PM
8 should apply in the case of such a person?---Well, that 12:15:31PM
9 does happen because the planning profession is quite 12:15:37PM
10 intimately involved with, for example, council politics 12:15:42PM
11 day to day. Can you just maybe clarify what you mean by 12:15:45PM
12 the rules around that? You're saying that if they are a 12:15:50PM
13 technical expert, then it is legitimate and therefore we 12:15:53PM
14 should - we can forget about their sort of social 12:15:57PM
15 standing? 12:16:04PM

16 No, no, I'm just wanting to get clarification from 12:16:04PM
17 you?---M-hmm. 12:16:09PM

18 If it's a lobbyist who has no useful information to proffer to 12:16:09PM
19 the person being lobbied that would assist the decision 12:16:16PM
20 maker in making an informed decision on relevant facts - - 12:16:21PM
21 -?---M-hmm. 12:16:25PM

22 Then you would say, I take it, the lobbyist has got no role to 12:16:25PM
23 play in that context. What is your suggestion where the 12:16:31PM
24 person has a dual role: is a lobbyist but at the same time 12:16:36PM
25 is someone possessed with the relevant information to 12:16:43PM
26 assist?---Yes, well, I think the trick there is to 12:16:45PM
27 formalise the way that information is provided, 12:16:52PM
28 potentially. For example, you know, if a council needs 12:16:55PM
29 expertise to help make a planning decision, it's not 12:16:59PM

1 obvious why those lobbyists who seek meetings should be 12:17:02PM
2 the source of that expertise rather than the information 12:17:06PM
3 being sought by the council and sort of maybe put open to 12:17:10PM
4 tender, 'Planners, please make submissions and propose 12:17:15PM
5 what you think might be a good option.' So I think if you 12:17:21PM
6 entrenched methods for accessing technical information, 12:17:23PM
7 then, you know, once they're established then you could 12:17:28PM
8 say it's not clear what these additional lobbyists who are 12:17:32PM
9 approaching councillors or ministers, what extra value 12:17:36PM
10 they add. So that would be my answer. 12:17:39PM
11 Yes, which I take it means therefore that if a person is 12:17:41PM
12 discharging a role as a lobbyist in the sense you've 12:17:48PM
13 described - - -?---M-hmm. 12:17:55PM
14 Then regardless of whether they have expertise in the matter 12:17:56PM
15 about which there is lobbying, they shouldn't be allowed 12:18:02PM
16 to lobby?---Well, they can participate in any open process 12:18:07PM
17 of information provision, but the idea of giving them 12:18:12PM
18 special privileges, it's not clear what advantages that 12:18:15PM
19 would give to a decision maker to make a decision. 12:18:25PM
20 Yes, thank you?---That's my - yes. 12:18:28PM
21 Yes. Yes, Ms Harris. 12:18:30PM
22 MS HARRIS: So if your view then is the value that lobbyists 12:18:32PM
23 bring is essentially their connection, their political 12:18:36PM
24 connection, what do you see then as the corruption risks 12:18:40PM
25 with that relationship?---I guess I might see this a 12:18:44PM
26 little bit differently from yourselves or other witnesses, 12:18:55PM
27 but with my economist hat on I see when you say 12:18:59PM
28 'corruption risk', I see it a little bit differently. 12:19:07PM
29 I would say it's the favouritism risk because you can 12:19:10PM

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certainly favour people who have established relationships through lobbying without contravening any rules, and the public might say it's corrupt, but the law might say it's perfectly fine behaviour. So I guess the obvious risk there is that councils and ministers and departments have to make decisions, and nobody is fully across the technical information and there is human bias to want to look after our mates or those people who are telling us regularly that those decisions we make are great. So, they're reinforcing, 'Well, I have to rezone somewhere. Where should I do it? The technical advice is ambiguous. If I rezone my mate, at least I know they will support me in the future.' So, it might not be the best thing for society, but when you have those decisions that need to be made under uncertainty, you end up entrenching a bias in the decision-making process through the establishment of those relationships that lobbyists participate in. So that's how I see it. Then obviously the cost is that you are rezoning somebody's land and you're, for example, giving away value from the public or you're rezoning land that requires more expensive infrastructure than somewhere else and hence you're reducing the amount of spending you can do on others in the community. So that's how I see it.

What then could be implemented in your view in relation to lobbying activity in planning matters that could reduce the risk?---Yes, look, it's very tricky. One of the policies I do like are cooling-off periods for staff in relevant departments and councillors before they can

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participate in lobbyist activities. The trick with those types of rules are that lobbying activities must be defined somehow. Lobbying is a social process that doesn't have to be undertaken by a consultant lobbyist. It can also be undertaken and is often undertaken by industry groups and it's often undertaken by in-house staff at large developers or various companies with interests. And so the question for the effectiveness of those rules, the cooling-off periods, is how do you define lobbying more broadly? Are you unable to participate in any paid activity in the relevant state in the relevant industry for a period of time? So I guess my view is if you're going to look to curtail lobbying with cooling-off periods so that, for example, a retired councillor or senior staff at a planning department has to wait four years before they can lobby, then the idea with that is during that cooling-off period the relevant people involved with decision making have changed and so your social status is less influential after four years when you actually then go to lobby. So, that's how you sort of minimise it. But it's very difficult in practice and I know in Queensland there are many examples, which is where I'm from, of staff just rotating in and out, not of consultant lobbyists, but of industry groups or inside particular companies.

So what do you think that the cooling-off periods should apply to?---Look, if you're going to go this route to regulate lobbying in this way, it would have to include industry groups, companies involved in that industry and consultant

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1 lobbyists. I think you must attempt to do it broadly or 12:23:26PM
2 it just becomes a sort of tick box exercise without real 12:23:32PM
3 practical effect. So I think that's how you would do it. 12:23:39PM
4 Consultant lobbyists, companies who participate in those 12:23:44PM
5 industries where you previously were involved in 12:23:48PM
6 regulating them, and industry groups, those types of 12:23:51PM
7 things. 12:23:57PM
8 You've mentioned a cooling-off period of four years?---M-hmm. 12:23:57PM
9 Is that the time period you consider to be optimal? What's the 12:24:03PM
10 magic in four years?---Look, the magic in my view is that 12:24:09PM
11 I think if you wanted to be effective you would like to 12:24:15PM
12 have at least a political cycle occur to give a chance of 12:24:17PM
13 more new faces in key decision-making positions between 12:24:24PM
14 when you leave and when you're able to lobby. And the 12:24:27PM
15 whole idea - I mean, longer is better, obviously, but you 12:24:31PM
16 can't exclude people indefinitely from their communities 12:24:34PM
17 and their industries where they've made their living in 12:24:37PM
18 the past. But I think four years is sufficient to get at 12:24:41PM
19 least a political cycle in most states, an electoral 12:24:45PM
20 cycle. 12:24:51PM
21 And to impact on the personal connection or the (indistinct) 12:24:52PM
22 that you've referred to earlier?---Yes, correct. I think 12:24:55PM
23 the function of a cooling-off period is - if it was the 12:24:58PM
24 same people making decisions five years later, you know, 12:25:02PM
25 it wouldn't have such a huge effect. But the very fact 12:25:05PM
26 that, you know, politics is dynamic means that that 12:25:08PM
27 waiting comes at a cost to the potential future lobbyist 12:25:12PM
28 whose connections are all retiring or whatever the case 12:25:17PM
29 may be. 12:25:19PM

1 What do other jurisdictions do in relation to cooling-off 12:25:21PM
2 periods?---I'm only very familiar with Queensland where we 12:25:27PM
3 have a three year period for consultant lobbyists, as in 12:25:29PM
4 senior bureaucrats and ministers or parliamentarians can't 12:25:35PM
5 be consultant lobbyists for three years. But consultant 12:25:39PM
6 lobbyists is sort of a small part of the influence game, 12:25:44PM
7 in my view. It's very effective, especially for an 12:25:47PM
8 outsider looking to get those introductions. But as a 12:25:50PM
9 general matter of political favouritism and swaying how 12:25:53PM
10 planning and rezoning happens, the industry groups are 12:25:58PM
11 very big and the large companies who play those games 12:26:02PM
12 themselves, and so you've seen these types of rules 12:26:06PM
13 circumvented by being an in-house lobbyist, whatever the 12:26:10PM
14 title of that job might be, rather than a consultant 12:26:16PM
15 lobbyist. 12:26:19PM
16 COMMISSIONER: Dr Murray, the cooling-off period, though, is 12:26:22PM
17 fine where the lobbyist is seeking to lobby those that 12:26:29PM
18 were part of the organisation to which that lobbyist 12:26:33PM
19 previously belonged. But a large portion of the lobbying 12:26:38PM
20 industry takes place where the lobbyist is not going to 12:26:44PM
21 someone from the organisation they previously were 12:26:48PM
22 employed by?---Yes. 12:26:51PM
23 But nonetheless have significant levels of contact and 12:26:53PM
24 association with the people they are lobbying. How do you 12:26:58PM
25 address that?---Yes, that's a tricky one, because if you 12:27:02PM
26 were well connected and became a consultant lobbyist, but 12:27:09PM
27 had never worked in a government department or a council, 12:27:15PM
28 then you wouldn't obviously fall under any cooling-off 12:27:18PM
29 period type of regulation. So I guess my answer to that 12:27:24PM

1 is possibly part of the larger point I would make today in 12:27:30PM
2 that regulating people's social life is relatively likely 12:27:35PM
3 to be an ineffective way of getting decisions that seem 12:27:50PM
4 corrupt to be made differently. So if you can think 12:27:53PM
5 about, you know, the way I put it is why lobby these 12:27:57PM
6 councillors? I don't get lobbied. What's special about 12:28:04PM
7 them? Well, they have a lot of power when they make 12:28:07PM
8 planning decisions and that power has a private value and 12:28:11PM
9 so as long as that exists, people are going to socially 12:28:13PM
10 organise to get favoured in those decisions. And so, you 12:28:19PM
11 know, I don't think there is a highly effective system to 12:28:25PM
12 regulate all lobbying and capture all these edge cases. 12:28:30PM
13 I think you could - I think it's completely reasonable to 12:28:35PM
14 have no rules on lobbying or donations and have very 12:28:41PM
15 strict rules on how decisions get made. And so even if 12:28:45PM
16 you wanted to favour somebody, you wouldn't be able to; 12:28:48PM
17 the mechanisms for making that decision would be difficult 12:28:53PM
18 to gain by the people involved . Does that make sense or 12:28:57PM
19 have I - - - 12:29:03PM
20 Yes?---So I think, yes, there are always going to be 12:29:03PM
21 well-connected people who are able to help move the hand 12:29:07PM
22 of government. The question is why is that hand so easily 12:29:12PM
23 moved? Why do we let so much discretion happen in these 12:29:17PM
24 day-to-day decisions that provide the incentive to start 12:29:20PM
25 lobbying? So that's where I think possibly the more 12:29:27PM
26 effective approach to tackling, especially in planning and 12:29:31PM
27 zoning political favouritism, would be. 12:29:36PM
28 DEPUTY COMMISSIONER: And to a degree, Dr Murray, you've sort 12:29:41PM
29 of answered my question. But I was pretty interested in 12:29:44PM

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defining what a lobbyist is, who that might capture, you know, the broad class of people that might capture, which is really challenging, particularly when you talk about this introducer role as opposed to providing expert information, and by way of introducer I mean, you know, providing an entity or a person that privileged access to a decision maker. That's the way it seems to me?---That's right.

But drawing back on what you just said then it's less important to define the lobbyist and their activities if there are structures around the decision maker and how a decision is made?---That's correct. I guess the main thing is whatever rule you put into place you've got the most creative social species in the world that has evolved to be social and form groups and find loyalties. It will be circumvented in some way. So you might, for example, capture those lobbyists and then you might find that industry groups evolve into some other type of role that fills that social niche, but can't specifically be defined to be captured by the lobbyists. That's right; it's very difficult. So my personal view is that especially in planning rezoning the trick to tackling this ongoing problem of political favouritism and seeking to shift the hand of government is to take away the honey pot, is what I call it; so make it less valuable to be favoured. So even if you did lobby successfully and even if the council were swayed and the planning minister and they all said, 'Great, we're going to rezone your land,' the pay-off would be instead of \$100 million, you know, a few million

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dollars. And we can do that by charging for the additional property rights which we might talk about later.

I think that's a nice lead into the topic which I think is really important about what drives the behaviours in the first place and makes it attractive for decision makers to be influenced and influenced quite, you know, strongly in some respects?---Yes.

So talk about that windfall and the driver of people to actually access that windfall through their efforts. So I'm really interested in what your thoughts are around how to mitigate that?---Right. Yes, so this is - you know, I'll give you a quick background. So between 2005 or 6 when I worked for property developers and probably 2016 I was puzzling over this, how do you take away the incentive. And what I realised is that there are actually jurisdictions who charge for the additional property rights that you get when your land is rezoned. So if I can sort of give you my conceptual view of it. The easiest way is to think three dimensionally. You own agricultural land. You have a right to this layer. And it gets rezoned for mid-rise buildings and a new town centre, then you're given all these air rights that the community used to own, and you're given them for free. And you could create a separate property title for those and you could sell that. And I think that's the trick to understanding the incentive, is that the planning system gives away property rights that have a very high market value and they do it for free through this discretionary

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planning and evolving planning system and rezoning. And
so you can imagine - so I've done calculations that
estimate each year the value of those additional property
rights given away through rezoning in Victoria are over
\$3 billion. So if Victoria had the ACT system where they
charge you 75 per cent of the value of the rights you gain
from rezoning you would raise over \$3 billion a year, and
that 3 billion would be a transfer from those favoured
landowners who got rezoned to the community through the
tax system. And so the question there is, well, while you
have a \$3 billion per year honey pot that is given
away - the recipients are chosen by councils and ministers
through, you know, what are very discretionary decisions,
you are going to see people organise as best they can to
get favoured or, you know, influence in whatever small way
they can to nurture that subconscious bias in decision
makers for them to get a cut. So I've explained in the
past if the government was giving away 3 billion per year
of land, of surplus land, for free everyone would say,
'There's no way you can tackle corruption in this giant
give-away until you start charging for that land and
putting it out to public tender or, you know, auctioning
off those sites. As long as you keep giving it away
there's going to be this huge incentive for corruption and
to curry favour with decision makers.' So I see it in
exactly the same way, that the planning system is a
mechanism by which \$3 billion is given to landowners. But
we don't have to do it that way. If we sold those rights
instead then the gain from getting that favour would be

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1 very low. The value of my property, rather than going 12:35:42PM
2 from 10 to 100 million, would be 10 million; but if I want 12:35:46PM
3 to do that housing subdivision I have to go and pay 12:35:50PM
4 90 million for it, just as if I had bought the land after 12:35:54PM
5 it was rezoned. So that's where I see the big effective 12:35:57PM
6 rule changes to be. And then with my economic hat on 12:36:03PM
7 I would say, 'It doesn't even matter if politicians favour 12:36:08PM
8 their mates anymore because they're not getting any 12:36:13PM
9 freebie.' I mean, they might get a little bit at the 12:36:20PM
10 margin, but we've essentially solved most of the economic 12:36:23PM
11 cost of it. And that's my sort of - I have a different 12:36:26PM
12 view on things with my economics background. But if 12:36:31PM
13 there's no economic cost then, you know, we shouldn't be 12:36:34PM
14 too focused on it. So it's been proposed by some minor 12:36:39PM
15 parties. So the system was in the ACT since the 70s, they 12:36:45PM
16 charged 75 per cent. And in New South Wales it was in 12:36:50PM
17 Sydney from 1969 to 1974. They only charged 30 per cent 12:36:52PM
18 of the additional value from rezoning from rural uses to 12:36:57PM
19 urban uses. That only lasted a political cycle. And of 12:37:00PM
20 course what you'll do is transfer those lobbying efforts 12:37:06PM
21 to the next election to reverse that decision because 12:37:10PM
22 you've taken away all that power, all that discretionary 12:37:14PM
23 power from councils, ministers and many other layers of 12:37:17PM
24 politics. 12:37:23PM
25 C MMISSIONER: Dr Murray, what was the argument that was 12:37:26PM
26 accepted for removing that legislative arrangement?---In 12:37:28PM
27 Sydney, I believe it was just a little bit of a high 12:37:36PM
28 pressure lobbying effort from wealthy landowners on the 12:37:39PM
29 fringes whose land value had fallen by 30 per cent. A 12:37:42PM

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little bit like the mineral resources rent tax when it was proposed, that would have transferred billions from mining companies to the public. The political activism of that sector skyrocketed. If I recall correctly, the government that introduced it had to then promise to remove it by the time the election came around. And the argument that comes up, you know, as a warning is what happens is it becomes optimal for landowners to delay making planning applications or seeking rezoning for that electoral cycle because if you commit to it during that three years while you're lobbying to change the government you have to pay. But if you can wait three years you've got this chance of not having to pay and getting 100 per cent of your value. So you do find that there's a temporary suppression of development activity while the industry - they all coordinate on the waiting option because it's obviously in their individual and joint interests to do so. So that will be the basis of a lobbying campaign in a political backlash. But I think, you know, that can be counteracted as well. You can have time limited - you can increase developer charges over time and say, 'Well, you know, the longer you wait, what if it doesn't change? Then you have to pay these higher charges. Just get on with it.' And the government can also participate themselves in housing development during that period if they're worried about, you know, reduced construction or slowing of new housing.

MS HARRIS: Dr Murray, you mention at page 5 of your submission that one of the ways of reducing effectiveness of lobbyists is to - sorry, essentially price the decision

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1 out of their hands as we've just discussed?---Yes. 12:39:46PM

2 But also you say tie the hands of councillors?---M-hmm. 12:39:49PM

3 Can you explain what you mean by that?---Yes. So, well, as 12:39:52PM

4 I understand it in Victoria the rezonings require State 12:39:59PM

5 approvals from the council. But in Queensland they do but 12:40:02PM

6 they are essentially council driven. The question is can 12:40:05PM

7 you tie the hands of a council to a process that takes 12:40:12PM

8 away their own decision making power. So one of the ideas 12:40:18PM

9 there is to have a jury system make decisions on rezoning, 12:40:21PM

10 especially large-scale planning reforms. So the 12:40:24PM

11 councillors might be involved in proposing things, but 12:40:29PM

12 then you have to pass it through the citizen jury that can 12:40:31PM

13 veto these obvious favourable zoning decisions that happen 12:40:37PM

14 to pop up from time to time in council plans. And so 12:40:45PM

15 that's just one mechanism to tie the hands of councillors. 12:40:49PM

16 And then once you entrench that mechanism as a requirement 12:40:53PM

17 of a revision of a plan then for a council to circumvent 12:40:56PM

18 that process it requires them to do a corrupt act or 12:41:04PM

19 contravene some rule to circumvent that process that they 12:41:07PM

20 have committed to. So that's one example of how you can 12:41:10PM

21 tie the hands of decision makers to a process that has 12:41:14PM

22 independent oversight from a group that cannot be known in 12:41:18PM

23 advance and be lobbied themselves. 12:41:23PM

24 And where would they draw that jury from?---Look, you'd have 12:41:25PM

25 to - the implementation would require a little bit of 12:41:31PM

26 trial and error by some councils initially, but you can 12:41:34PM

27 certainly just open it to all residents who have lived in 12:41:37PM

28 that council area for longer than a set period and who are 12:41:39PM

29 above a certain age and have a selection process a lot 12:41:43PM

1 like a court jury where you can be filtered by your own 12:41:46PM
2 personal biases. I think once you have that type of 12:41:52PM
3 process the process doesn't have to be that perfect 12:41:59PM
4 because it becomes so difficult to stack that sort of jury 12:42:02PM
5 or shift that decision making. But obviously you would 12:42:08PM
6 want to have a council to put their hand up to try it a 12:42:10PM
7 few times. 12:42:14PM
8 DEPUTY COMMISSIONER: If I just jump in, we have had examples 12:42:19PM
9 in Victoria of that taking place and there are 12:42:21PM
10 complexities with doing it regularly because it sort of 12:42:24PM
11 defeats the purpose of the democratic process where you 12:42:27PM
12 elect people to make decisions. So picking the threshold 12:42:29PM
13 for that to occur is one question of course?---Yes. 12:42:32PM
14 And then what is the role then of the council or the 12:42:34PM
15 councillors in that democratic process? Do they have a 12:42:37PM
16 role?---Yes, well, I think what you do is you do have a 12:42:40PM
17 high threshold and you think - you know, the trick with 12:42:44PM
18 planning is you don't want to revise your plans too often 12:42:47PM
19 because the question would be, 'Why are you doing this so 12:42:50PM
20 often? What was wrong with the last one? Is this just 12:42:53PM
21 another avenue for changing a decision or changing a 12:42:56PM
22 zoning for somebody who's too impatient to wait for the 12:43:00PM
23 next process?' But, yes, if you have a trigger and it's 12:43:04PM
24 once every five years then there's a lot of intermediate 12:43:07PM
25 decisions and there's a lot of directing infrastructure to 12:43:10PM
26 promote development of different areas. And so I think 12:43:13PM
27 you use it more as like a Senate, like a second house of 12:43:18PM
28 parliament that in these large decisions, you know, when 12:43:24PM
29 you rezone the whole council area or implement a new 12:43:27PM

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planning scheme then you have this oversight of some form
because a lot of the time, even though the State is
required to have that oversight in many ways, a lot of the
time it's, you know, not as independent as you would hope
and some of those obvious favours slip through because the
State also has the same mates as the council. So that's
how I would see it working. And, you know, if it's not
frequent but for those large important decisions I think
people start liking the process if they see something bad
vetoed in favour of something good, it would only have to
happen once or twice.

MS HARRIS: Returning to the topic of lobbyists, you've

distinguished between in-house lobbyists and consultant
lobbyists?---M-hmm.

Is it your understanding that the code of conduct that applies
to lobbyists applies equally to those two different types
of lobbyists?---I couldn't tell you about any Victorian
codes, but I know in Queensland it's for - consultant
lobbyists are the only ones that fall under the Integrity
Commission's rules - well, the last time I looked, which
was probably three years ago.

But is it your view that it would certainly be desirable for
any code of conduct to capture all forms of
lobbying?---Well, that's tricky. It's very tricky because
it becomes a very grey area where that boundary is, the
edge case. The in-house lobbyist might be a town planner
and they might be called chief planning officer or
whatever the case may be for Stockland, Lendlease, you
know, one of those big companies that has large

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1 administrative and corporate workforces or even large 12:45:19PM
2 private developers. So, you know, it's not obvious would 12:45:22PM
3 you capture all staff of companies in that industry and 12:45:29PM
4 would anybody who speaks to a minister be obliged to 12:45:33PM
5 comply with the rule? I see, yes, it's very tricky to 12:45:36PM
6 draw that line and I'm not sure I can help you too much on 12:45:42PM
7 that. 12:45:48PM

8 COMMISSIONER: But Dr Murray - - -?---Pardon me? 12:45:50PM

9 If we treat the definition of a lobbyist is to be determined by 12:45:57PM
10 reference to the activity they perform rather than their 12:46:02PM
11 status do we not overcome that problem?---Look, I don't 12:46:06PM
12 think so because - let me put it differently. I might be 12:46:14PM
13 a planner and I might be an in-house staff at a property 12:46:27PM
14 developer and I might have meetings with a planning 12:46:31PM
15 minister or a councillor about a plan. But the very fact 12:46:33PM
16 that I do is a social signal because it's not - it's a bit 12:46:37PM
17 like dating. It's not what you say, it's what you do and 12:46:48PM
18 how you behave. It's the context that creates the signal 12:46:51PM
19 of whether this person is going to be loyal or whether 12:46:55PM
20 they seem like they're having the effect of a lobbyist. 12:47:02PM
21 So there's a name for that in the social psychology called 12:47:07PM
22 covert signalling. So you'd never say specifically why 12:47:10PM
23 you're there. You always talk around the edges. But as a 12:47:14PM
24 package how you present it provides a signal of something 12:47:18PM
25 that you never said explicitly. It's a little bit how 12:47:21PM
26 like a mafia would talk, you know, in some kind of coded 12:47:25PM
27 language. Or it's a little bit like dating. You never 12:47:31PM
28 say something explicitly. So I think once you acknowledge 12:47:33PM
29 that that's a large part of this loyalty building and 12:47:37PM

1 those meetings and those relationships then I think that 12:47:43PM
2 line is a very grey one and very difficult to pin down. 12:47:46PM
3 So that's my view on that. 12:47:51PM
4 MS HARRIS: It seems then to make the issue of transparency 12:47:54PM
5 somewhat clouded, and you express a view in your paper 12:47:59PM
6 that transparency alone can legitimise certain activity 12:48:03PM
7 that would otherwise be perceived as corrupt. Can you 12:48:09PM
8 explain what you mean by that?---Yes, okay. So the 12:48:13PM
9 hypothetical would be you require all members of 12:48:19PM
10 parliament to publish their diaries and who they have met 12:48:24PM
11 with every week. You oblige them to be quite specific and 12:48:27PM
12 provide a lot of information. The question is what does 12:48:32PM
13 that additional transparency - what purpose does it serve, 12:48:35PM
14 because everybody knows that members of parliament meet 12:48:41PM
15 with representatives of different industries in their 12:48:44PM
16 communities. So it shouldn't be a surprise that those 12:48:48PM
17 people are on the lobbyists register or that they are in 12:48:52PM
18 the disclosure of the calendar or the diary records. So 12:48:55PM
19 what you might end up doing inadvertently is creating some 12:48:59PM
20 marketing material for lobbyists who can say, 'Here are 12:49:05PM
21 the minister's diaries. I get two meetings a month with 12:49:09PM
22 this minister. I must be the most effective lobbyist.' 12:49:12PM
23 And the minister can turn around and say, 'I'm the 12:49:16PM
24 minister of planning. I have to meet with representatives 12:49:20PM
25 of planners. That's my job.' And so what you have turned 12:49:22PM
26 is something that should be frowned upon into something 12:49:26PM
27 somebody can stand up and proudly say, 'I complied with 12:49:30PM
28 all the rules. Look, it's right there in my diary. What 12:49:33PM
29 do you want me to do?' So you add that air of legitimacy. 12:49:37PM

1 I think donations are the same. If you have the view of 12:49:41PM
2 donations as bribes, well, why would you let them donate 12:49:44PM
3 at all? Why would you have any donations? What's the 12:49:48PM
4 point in telling people about bribes? You are essentially 12:49:50PM
5 legalising bribes as long as you declare them as 12:49:54PM
6 donations. So you need to be a little bit careful what 12:49:58PM
7 you wish for. And, you know, there's even talk of 12:49:59PM
8 some - in some experts of political favouritism that the 12:50:06PM
9 best way to combat, for example, donations is not 12:50:10PM
10 transparency but anonymity. So you can only donate to 12:50:14PM
11 candidates through a central clearinghouse that pools your 12:50:19PM
12 donations with others and dripfeeds it into the political 12:50:22PM
13 party or the campaign in random dollar amounts so that you 12:50:25PM
14 can tell somebody, 'Yes, I'm going to support your 12:50:29PM
15 campaign,' but you can't prove it to them. So that 12:50:32PM
16 donation of that signal to them that 'I'm loyal to you, 12:50:35PM
17 look, I'm donating to your campaign,' you can't make that 12:50:40PM
18 - you can't generate that signal reliably because you 12:50:43PM
19 can't prove that you've donated. Now, obviously in 12:50:46PM
20 practice you can always do that because we have banking 12:50:49PM
21 records and I can prove that I donated to the 12:50:51PM
22 clearinghouse. But that's the sort of logic that you need 12:50:55PM
23 to have in mind when you're thinking about what outcome am 12:51:02PM
24 I seeking to achieve with additional transparency. Will 12:51:05PM
25 it actually change the decision at the end of the day or 12:51:09PM
26 will you just observe it in much better real-time - with 12:51:12PM
27 real-time disclosure and be able to observe the behaviour 12:51:18PM
28 better. 12:51:22PM
29 I might be, for example, a side effect I suppose of greater 12:51:23PM

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transparency is what you describe as the marketing value
of the lobbyist. Is there not still some value in the
public being able to know who had access to decision
makers and who might have influenced a decision?---I'm not
sure is the answer to that because you've got to
understand that there isn't really - how do I put it?
When ministers meet with people from industry or they meet
with lobbyists, you know, they're doing their job in many
ways and they feel good about it. They typically don't
think, 'Oh, this is the wrong thing I'm doing here. Oh,
it's bad.' They're like, 'Yep, this is the right thing,
you know. Got to rezone housing developers. Why would
you rezone anybody else? It's the obvious thing to do.'
And they feel good about it and it makes sense to them and
they're convinced that what's in the interests of their
mates is in the interests of the community. So in many
ways, you know, the whole idea of the public being aware
is that the key decision makers, politicians, whoever they
are, will be sensitive to being seen in some way. But
I don't think that mechanism exists because we've
seen - I'm not 100 per cent across all the evidence in
this case, but it's common to see councillors stand up in
hearings and say, 'I've got to do my job for the community
so I voted on that, even though I know those people very
well. And maybe I've got a perceived conflict, but
I don't care because I've got to do what's good for
the community,' because that's what they kind of believe.
It's not a long-running sort of plan of a comic book
villain. It's just that's what they feel is effective

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politics. To be more clear, when I ran my computer experiments on students from the university and I paid them real money, the students who formed a little alliance with their mates and favoured each other and doing so stole real money from others in the game, they were happier at the end, they felt good about themselves, they said, 'The way I played was the right way to do it. If I didn't do it, someone else would have.' And then they basically stole \$40 off other people in one hour, and they felt great. So you've got to think about this at large. The mechanism of embarrassing politicians into behaving well I don't think can be relied upon because they will stand up proudly and say, 'I'm doing the best for my community. You can see I've met with all the relevant people.' So is there value? Is transparency better than nothing? I'm not sure. Is the effort to do so getting you anything or will those same decisions be made? Will those same well-connected developers get the planning decision and we see it or we don't see it? For me that \$3 billion cost, that give-away, is the issue. So I hope that's somewhat clear about my views on that.

You touched on earlier donations and in your paper you indicate that the function of donations needs to be understood to know how to regulate them?---M-hmm.

In your view what is the function of donations?---Yes, so the quick summary is they are signals also and the way we call them - the reason the signal works to convey my loyalty is because I'm burning money. That's what it's called in the signalling literature. 'I burn money. I do something

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that's really expensive for no personal gain to show that's what I'm willing to do.' So it's another ticket in this entry to this social club. It's another way to show your loyalty. And when I looked at, for example, the donations over the last 10 or 12 years in Australia the puzzle was this. Sixty per cent of donations came from donors who donated to both sides of politics equally. So 60 per cent of all the donations come from these donors who just give to both parties. Now, that's a pretty bad way to bribe someone, to give your opposition party just as good a leg up in the next election as you. So that's kind of weird. The other thing is that people generally donate to the electoral favourites. So if you're already the favourite this donation is not helping you win an election. So what is it doing? It's not going into your personal account. So the signal - it's all about burning money to prove that you want to participate, that you're not going to, for example, do in a politician who might give you a favour that's a little bit questionable in terms of complying with the law. So that's just one of the methods. When I studied rezoning decisions in Queensland I looked at six large rezoning decisions from the statutory authority at the time, the ULDA, and I looked at all landowners inside and outside that line drawn on a map and I thought, 'Can we predict who got that rezoning by their political donations? Surely if I'm a donor when it comes to draw a line of who's getting this really big planning payoff I should be on the inside of that.' But it didn't predict at all. The donations

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didn't predict. In fact the only thing it predicted was the social network of the landowner, because I scraped all the corporate records of the landowners and the biographies of politicians and the lobbyists register and all those sorts of things and then I could predict that, 'If you're very well connected, 75 per cent chance that your land gets inside this rezoning decision rather than just outside.' So, yes, donations seem to be one way to enter that social network. And if we also look at the records we can see the largest donors at least in the 2010 to 2015 period were Chinese property developers. The question is, well, they are not really getting a lot of favours. The most favoured developers are the established local ones who have a revolving door at the council and the planning department and all that. Why is it that the largest donors aren't the most favoured? That's because they are trying to enter into this club. They are trying to gain loyalty and form those relationships. So they have to burn the most money to prove that they are part of the team in many ways. So that's how I conceptualise donations.

In light then of the research you just referred to what are your views on prohibitions in relation to donations from property developers?---Yes, again I think it's very tricky to draw the line, draw the boundary on any types of prohibitions. I certainly am a fan of public funding and sort of you could have a requirement you can only donate to the political process through the Electoral Commission and they will distribute equally to everybody running a

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campaign. You could do all those sorts of large-scale changes to donations in general. I think the catch with singling out one particular type of industry is that you end up again with this boundary problem. I know in Queensland recently there was some reporting in the ABC of skirting the new laws banning developer donations because they were all told to donate to, you know, some other industry group, and that industry group will look after their money. So they could still prove the insiders knew that a donation to that industry group was a signal, but to outsiders it was just a puzzling bit of money floating around these various industry groups and think tanks, yes. So is it correct then that your view is that the way you neutralise this is to have the clearinghouse model?---Look, I think it's not worth - the thing I've said before when I said it in Queensland was if your ambition is to have a planning system as corrupt as New South Wales then you can ban political donations from property developers. But New South Wales is still renowned for corruption and favouritism in the planning scheme. So I think you either address donations as a whole, as a system, as a way of participating in politics, or you just let them donate and make it transparent if you want to observe it. But, to reiterate, the thing with transparency is I had enough information to write a book about all this favouritism and yet it's just the way business is done in many ways. So that's my reiterating that warning that you can legitimise things. So, yes, that would be my best proposal and, you know, I think the

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clearinghouse is ideal; transparency is okay. But neither
is going to change the decisions at the end of the day
because donations are one of many ways to signal loyalty
and get access to social networks.
What are your views then on a fully publicly funded
model?---Yes, certainly that's a good option. I guess my
personal view is I don't see any problem with people
donating to politics if it's funneled to everybody. So if
you become a minor candidate then you get a cut. If it
was a contested election and lots of companies want to put
a lot of money into it then all of the people contesting
it in the minor parties get their proportional share
however it is divvied up. So it can promote political
competition in many ways. So you can certainly add public
funding to that, but I don't see a reason to ban all
donations. And I guess the reason for saying that is
because not all spending that wins elections comes from
the campaign. You can be an industry group that takes out
ads for your favoured candidate if you like or you can
promote them in other ways. Any time you extend the law
to cover something, you might call political advertising,
you know, you might say you can't engage in that because
that would be an implicit donation, you just keep shifting
along the types of activities that perform the same
function but can't be captured. So, yes, clearinghouse;
public funding, good; transparency, okay.
In Victoria we have different regulations at local, State and
then obviously the Federal level in terms of donation caps
and disclosure thresholds. What is your view on what

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issues might present when you've got three different regimes?---Yes, look, it's very tricky, isn't it, especially when you have political parties that operate at all three levels and the advertising of one implicitly or the promotion of one implicitly benefits the other level. One of the problems of course, and I think Queensland considered it a few years ago, was different disclosure thresholds at different levels; 10,000 for Federal, 1,000 for this. So I guess my view would be zero is a good number. If you want to do disclosure then zero is a good number for all levels. But again I think you - what's the best way to put it?

Can I clarify what you mean by that. Do you mean that any donation should be disclosed?---Yes. If you're going to do it, you don't want to - you don't just want people splitting up donations. You might run three or four different companies and donate through them. You might have a trust and you might donate through that. That historically was an issue when I was looking at donation records, is you can come up with a Pty Ltd company or a trust or a this and you can donate through all these different forms anyway. So if you want to properly observe donations you need to also clean up and say, 'You have to report as an individual all donations.' There's none of this hiding behind other structures, and make it zero. So someone at a company has to put their hand up. You might end up with a company secretary in a lot of ways being the largest donor. But, you know, these are the problems with disclosure in our sort of system. One thing

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I've often proposed is we should have all corporate records freely available on the ASIC database so that it also solves this transparency issue of donations. If you have companies donating, 'Well, who's the company? Who are the main shareholders? Who are the executives? How can I check their records? How can I check their investor updates to ASIC? I want to get evidence when they get favoured.' That's very difficult. You are still able to - the ability to hide donations almost comes from there in many ways, if you want to. And in many cases people don't want to. So that's also worth keeping in mind, because they want to be seen. They want to be seen. That's the point of the donation.

Given that, what are your views then on donation caps?---I don't think it will work effectively in general, no, simply because, you know, if you cap donations at - most donations are small each year. So to cap it at a number it's just going to be relatively ineffective, I think. How small would you want to cap it? At 10,000? Most donations are under 10,000. Cap it at 50,000? You are capturing still almost all donations under that cap anyway. It's only a few - if I recall off the top of my head the Pharmacy Guild is one of the biggest donors and they are only about 120,000 a year. So donations are relatively small anyway. So I don't think it's such a big deal. And I think if you had a clearinghouse at the - if you had to donate to the Electoral Commission and they distributed to candidates in elections, you know, that would solve all that anyway.

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1 What about controls over donations made through third party 01:07:32PM
2 entities? Do they need to be strengthened in your 01:07:36PM
3 view?---Look, I feel like we're a little bit - we're 01:07:39PM
4 chasing the rabbit around through its burrow and we're 01:07:45PM
5 never going to catch it. You can certainly regulate that 01:07:48PM
6 and you'll find a bunch of other fifth party entities or, 01:07:51PM
7 you know, you'll find that certain industry groups pop up 01:07:58PM
8 and they won't call them donations but they will supply 01:08:03PM
9 resources that have the effect of what you would have 01:08:07PM
10 spent donations on, for example. So I'm very wary of just 01:08:09PM
11 adding and adding, especially if it's voluntary disclosure 01:08:16PM
12 and you are not regularly cracking down and doing 01:08:20PM
13 investigations and making an example of people, I'm very 01:08:23PM
14 wary of additional voluntary disclosure requirements and 01:08:27PM
15 additional limits on third party donations, unless you're 01:08:32PM
16 willing to go out there and forensically account for every 01:08:36PM
17 dollar every election for every party to enforce it. So, 01:08:41PM
18 yes, I don't see a huge amount of value for that in terms 01:08:46PM
19 of getting different planning decisions at the end of the 01:08:49PM
20 day. 01:08:52PM
21 Do you have a view on real-time donation disclosure?---You can 01:08:55PM
22 certainly do it. Again we did that in Queensland and 01:09:01PM
23 I could have told you who the donors were before they 01:09:04PM
24 donated because it's pretty much the same people every 01:09:07PM
25 year anyway, en bulk. So it's not clear to me what new 01:09:10PM
26 information that provides or what mechanism having that 01:09:16PM
27 information today provides. So, yes, maybe you get some 01:09:19PM
28 media articles. They could have equally been written on 01:09:23PM
29 last year's donations anyway. This is relying on the sort 01:09:26PM

1 of embarrassment mechanism and the politician having to 01:09:31PM
2 respond to scrutiny which I don't think is effective. So 01:09:33PM
3 I'm not sure what you get from it. Like, fine, do it. 01:09:37PM
4 Don't expect different decisions is how I would put my 01:09:47PM
5 view. 01:09:50PM
6 But, just to be clear, are you suggesting that there's no value 01:09:50PM
7 in disclosure or no value in real-time disclosure or 01:09:54PM
8 both?---For real-time disclosure, almost none. Disclosure 01:09:59PM
9 in general, I'm not sure what the net benefit is because 01:10:04PM
10 of the potential for it to legitimise donations and 01:10:10PM
11 provide that public signal that 'I'm willing to be a 01:10:15PM
12 player and I'm willing to be seen donating to you.' So on 01:10:19PM
13 that it's not clear to me that there's a large net benefit 01:10:23PM
14 at all. 01:10:27PM
15 DEPUTY COMMISSIONER: Just from my perspective there's always 01:10:32PM
16 an argument that real-time disclosure allows the voters to 01:10:35PM
17 understand who's supporting which candidates. So the 01:10:38PM
18 casting of the vote is more informed and if that's a 01:10:43PM
19 benefit then there might be some driver behind 01:10:46PM
20 that?---Yes, it's possible. It would be interesting to 01:10:49PM
21 look at how many website views the Queensland real-time 01:10:53PM
22 donations website actually gets. I'm going to guess very 01:10:56PM
23 few, like, less than a hundred a week. So in terms of 01:11:02PM
24 that feedback mechanism I'm not - I wouldn't rely on it to 01:11:07PM
25 change an election. You would have to have - you know, 01:11:13PM
26 the donation itself is not going to change it. But if 01:11:22PM
27 that was the catalyst for some other large event or if 01:11:25PM
28 that enabled you to observe or triggered an investigation, 01:11:35PM
29 for example, then I can see the value. But it's not 01:11:39PM

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obvious how or why that would occur.

And one of the other contentious arguments, and we've covered it off to a degree, is that without caps the largest donor, the deepest pockets will effectively influence the elected class, whether that be local, state, and then conversely you could say that the more regulation you put around it it creates what's a pretty well-evolved industry working around - workarounds and avenues to defeat a regulatory scheme. So which is the better way?---So you're basically saying we are putting some sand in the gears of this money buying favours, so it's got to be a good thing. I'm generally a fan of that approach, putting some sand in the gears, which is a cooling-off period is a part of that; right. But I'm just not sure. The puzzle with donations is they are just not that big. So for example a big donor might donate \$150,000 over one or two election cycles to a council. A retired councillor might get \$350,000 in their own bank account in one year working in the industry after they have left council. So you've got to think about the orders of magnitude. You've got 150,000 to a campaign and in most cases one you were likely to win anyway that's in your political campaign account over six years, and then you've got 350 grand in your own bank account in one year when you leave politics. So I think, you know, the fact that donations can be effective when they're small actually makes it a somewhat competitive way to offer entry. You know, you could almost see it as banning donations closes a door to the club of people who get favoured. But wouldn't it be

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1 better if it was a more competitive club with more doors 01:13:54PM
2 open so, you know, as things go by new people can enter, 01:13:57PM
3 which again brings us back to the Chinese property 01:14:02PM
4 developers being the largest donors. They are competing 01:14:05PM
5 for political favours. So they are actually taking 01:14:08PM
6 political favours from other people in many ways. Is that 01:14:12PM
7 better or not? I'm not sure. 01:14:16PM
8 MS HARRIS: So then how effective do you consider the current 01:14:21PM
9 controls or regulations around donation capping and 01:14:25PM
10 disclosure thresholds are at reducing corruption 01:14:29PM
11 risk?---Look, I don't think - if you had a situation where 01:14:35PM
12 there was no disclosure of donations, no limits on 01:14:39PM
13 donations and no lobbyists register or code of conduct for 01:14:42PM
14 lobbyists I think the decisions would be almost the same, 01:14:47PM
15 the political decisions. The same people who got rezoned 01:14:52PM
16 would be rezoned. The people who didn't wouldn't. In 01:14:55PM
17 many cases the same tax changes would happen. There's 01:14:59PM
18 just not a lot of effect on that. So, for example, just 01:15:10PM
19 to bring it back, when I did my computer experiment I made 01:15:16PM
20 everybody take a picture of themselves on an iPad, because 01:15:20PM
21 they used to be a cartoon, and I thought, 'No-one is going 01:15:23PM
22 to risk a fight in the elevator because someone stole 20 01:15:27PM
23 or \$40 off them.' This is that feedback of journalists 01:15:30PM
24 observing you and being heckled and the political pressure 01:15:34PM
25 from the public. And what happened was that alliances 01:15:38PM
26 formed faster when you could see the identity of the other 01:15:42PM
27 person in the game because you could go, 'That guy's in my 01:15:46PM
28 class. I know if I give him a favour he won't let an 01:15:49PM
29 outsider into the game. He'll reciprocate with me and not 01:15:54PM

1 with somebody else.' So you ended up with this really 01:15:58PM
2 rapid formation of alliances. So the question with 01:16:01PM
3 transparency is it doesn't matter that other people can 01:16:06PM
4 see that, and it certainly didn't when I did my computer 01:16:09PM
5 experiment. The others were just banging the desk and 01:16:12PM
6 swearing, and people didn't care. They're like, 'Yeah, 01:16:16PM
7 whatever. I'm stealing money off you. You're sitting 01:16:18PM
8 across the room. Bad luck. This is how the game's 01:16:21PM
9 played. You should have been better at it.' So if you 01:16:24PM
10 think about the system in general of lobbyists and 01:16:27PM
11 donations we're almost implementing that observational 01:16:30PM
12 treatment of my experiment. We can bang the desk and 01:16:33PM
13 complain that we can see it, but at the end of the day 01:16:37PM
14 those decisions are basically the same. The question is 01:16:40PM
15 we want to see the decisions, we want to tie people's 01:16:46PM
16 hands to decisions that don't steal so much money from 01:16:50PM
17 the rest of us. So to reiterate again that's my view, 01:16:54PM
18 that regulating social behaviour of any description 01:16:58PM
19 is - you're going to be chasing your tail every few years 01:17:04PM
20 with another investigation like this and another 01:17:06PM
21 recommendation and, you know, reclassifying a type of 01:17:09PM
22 lobbyist to bring them into the fold. But I think if you 01:17:13PM
23 just stopped giving away 3 billion a year and charged for 01:17:17PM
24 it it wouldn't matter. That's my view. It wouldn't 01:17:21PM
25 matter who donated because the cost to society would be so 01:17:26PM
26 low. 01:17:30PM
27 So as I understand it then the answer in your view is the 01:17:32PM
28 betterment tax and the jury system in terms of decision 01:17:36PM
29 making that no - at council level, I should say?---Yes. 01:17:38PM

1 But no amendment to lobbying laws or donation laws will reduce 01:17:43PM
2 corruption risks; have I got that right?---Effectively. 01:17:49PM
3 Effectively. If you're still giving away 3 billion 01:17:53PM
4 through the discretion of council decisions then 01:17:55PM
5 somebody's going to organise in some way. And we're very 01:17:59PM
6 creative at doing so. And I think, you know, you don't 01:18:03PM
7 want to focus your energy here until you have fixed this 01:18:09PM
8 and then you can come over here, in many ways. So that's 01:18:13PM
9 my view. To share an anecdote at the investigation in 01:18:16PM
10 Queensland a few years ago a developer in the public 01:18:24PM
11 hearing said, 'Yeah, I support banning developer 01:18:26PM
12 donations,' and everyone was puzzled, and he said, 01:18:31PM
13 'I don't need to donate anymore. Everyone knows who I am. 01:18:34PM
14 I just don't want any more competition from the new guys.' 01:18:37PM
15 Well, he didn't say all that. I'm paraphrasing. To be 01:18:41PM
16 clear, he didn't say he doesn't want competition from 01:18:45PM
17 the new guys, but it was a puzzle why this person who 01:18:48PM
18 apparently benefits from all these donations, all these 01:18:51PM
19 games was happy to ban developer donations and supportive 01:18:55PM
20 of that rule. So I think, you know, that's a clear signal 01:18:57PM
21 to me to be wary of this as a solution if there's plenty 01:19:02PM
22 of players in the game who are quite comfortable with this 01:19:05PM
23 rule change. An effective rule change is going to upset 01:19:09PM
24 so many powerful developers there will be full page ads on 01:19:15PM
25 the Australian and the Fin Review, open-up leaflets saying 01:19:19PM
26 how bad this thing is if it is an effective change. So 01:19:24PM
27 that's how - that's my sort of cynical political hat. You 01:19:28PM
28 know, these small tweaks to lobbyists and donations, the 01:19:35PM
29 industry can be comfortable with that. And in many ways 01:19:41PM

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another sort of message I want to leave you with is that
the more complicated these rules, the more difficult they
are to comply with, the more they filter out the
competition from the small player. So in economics and
public economics we have the idea of regulatory capture.
One of the ideas is that complicated rules are not
universally despised by business; they are loved by
established large businesses because it filters out new
competitors. And I think changing or tweaking donations
disclosure, tweaking lobbyists, who complies, a lot of
that is creating a barrier to entry and entrenching the
people who have previously been favoured to be the only
ones available to get favoured again in the future. So
I guess that's a general warning I wanted to have on the
record.

R turning to the topic of public funding, do you know of any
good models in relation to public funding in other
jurisdictions?---No. To be honest, I'm not an expert on
global public funding mechanisms. But I think you could
definitely borrow - it wouldn't be difficult to find who's
implemented that and the problems they had initially and
simply learn from their approach. But again, yes, I think
the exclusive public funding isn't going to curtail money
being spent on political activity by the same interests to
offset costs of those activities for the party that suits
them, or the individuals that suit them. Often it's both
parties. So it's useful and it's especially good to
promote political competition, because minor parties and
independents who are running against this get some

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1 additional funding to give them a chance. But as far as 01:22:01PM
2 the mechanics of the social game I think it doesn't 01:22:05PM
3 disrupt that. 01:22:11PM
4 Just finally, Dr Murray, there was a question from the public, 01:22:13PM
5 perhaps you've answered this to some degree already, but 01:22:22PM
6 the fact that there's no caps on donations at local 01:22:24PM
7 government level in Victoria in your view does this 01:22:28PM
8 present a particular risk that that councillor might be 01:22:31PM
9 influenced by a significant donations or that there might 01:22:34PM
10 be a perception that that councillor is influenced by a 01:22:39PM
11 significant donation?---Yes, I 100 per cent think there 01:22:43PM
12 will be a perception of that. I 100 per cent think they 01:22:45PM
13 will be influenced by it. I also think they will be 01:22:49PM
14 influenced by a small donation and representations by that 01:22:52PM
15 individual at industry breakfasts, at private events, all 01:22:54PM
16 those other ways that you make representations and nurture 01:22:58PM
17 that relationship. So you can reduce the donation amount, 01:23:02PM
18 but the donation under the cap might still be very 01:23:06PM
19 effective as a way to burn money, open doors, make 01:23:09PM
20 representations and signal your loyalties. 01:23:15PM
21 Does it matter in your view that any donation of \$500 or above 01:23:27PM
22 needs to be disclosed? Does that change your answer at 01:23:32PM
23 all?---You're saying the fact that large donations are 01:23:34PM
24 visible but small ones aren't? 01:23:41PM
25 Yes?---You can tell people if you have donated less than \$500 01:23:43PM
26 if you want, if you think that's helpful to, 'I donate to 01:23:48PM
27 this guy. I'm a good guy. I'm part of a gang.' You can 01:23:53PM
28 certainly voluntarily disclose anything you like if you 01:23:57PM
29 think that's a benefit. A lot of the - the willingness to 01:24:00PM

1 disclose and not disclose, there's a lot of variations in 01:24:05PM
2 donors. Some don't want the scrutiny, they're a little 01:24:12PM
3 bit more private, even though they want their insiders to 01:24:17PM
4 definitely know they got the donation. And some 01:24:20PM
5 definitely want the insiders and the general public 01:24:23PM
6 to - they want it on the record. So on that \$500 01:24:26PM
7 disclosure threshold, look, maybe that's a good number 01:24:29PM
8 because donating less than 500, who's in that game? 01:24:33PM
9 I don't know. Certainly it doesn't seem quite enough to 01:24:39PM
10 be a signal that you're burning money, that you're playing 01:24:43PM
11 this political favouritism game. Do you have a - are 01:24:47PM
12 there other donation caps you would consider? I'm not 01:24:53PM
13 sure what a good number would be. It's not obvious to me 01:24:56PM
14 what picking this number achieves in terms of, 'We rezoned 01:25:03PM
15 this land, and we didn't rezone it because they only 01:25:08PM
16 donated 25,000 instead of 50,000.' That's just again 01:25:12PM
17 going to be a very tough argument to say that slightly 01:25:15PM
18 smaller donation resulted in a tangible difference in a 01:25:19PM
19 decision. 01:25:23PM
20 Yes. Thank you, Dr Murray. I don't have any other questions 01:25:25PM
21 of Dr Murray, unless the Deputy Commissioner or 01:25:28PM
22 Commissioner do? 01:25:31PM
23 COMMISSIONER: I have one question. Dr Murray, assuming that 01:25:34PM
24 the abolition of any form of lobbying is not politically 01:25:40PM
25 acceptable to the government of the day, so that the 01:25:44PM
26 alternative is regulating to the best of one's ability the 01:25:50PM
27 (indistinct) of lobbyists, how do we address the question 01:26:00PM
28 of the interposition of staff between the lobbyist and the 01:26:03PM
29 decision maker? Have you got any comment to make about 01:26:08PM

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the role of a lobbyist with, say, council staff, with a ministerial adviser? How is that to be regulated?---That has come up many times, particularly in understanding how a cooling-off period would work in practice, how far down the chain it goes, because a lot of ministerial staff do act as consultant planners or they do work in the industry and then they come back in. That's a problem in all regulation. It's a problem at every State regulator, it's a problem at ASIC, it's a problem at APRA, this revolving door of staff. It's not clear to me. So one of the ideas that I have been considering to tackle this sort of thing is to require key staff to be hired from outside the jurisdiction. So, for example, if you have a head of a planning department who has power to - has some power to veto political directions or, you know, has some power to sway things, you would try and source them from a pool, for example, that might be an international body of professional planners and, you know, you advertise to them, 'We're seeking someone for a short period of time to head up this department,' and that provides you that independent voice within those groups to counteract whatever sort of comes up through that local revolving door. Again, it's very difficult to entrench that sort of process, and of course we want our politicians to make decisions at the end of the day, and so they will use power they have to override that. So I don't have a good solution to the revolving door, particularly in ministerial staff, except perhaps adding them into the qualifying group of a cooling-off period. So you either

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1 work in politics or you work here; you can't just revolve 01:28:28PM
2 in and out. So that's my only thought on that. 01:28:31PM
3 I take it from what you've said that by implication the 01:28:35PM
4 lobbyists' activities got to be regulated, whether they 01:28:41PM
5 are dealing directly with the decision maker or with a 01:28:45PM
6 member of staff of the decision maker?---Yes, well, again 01:28:50PM
7 if you're trying to regulate sort of social organisation 01:28:56PM
8 then you have to consider that, yes, politicians outsource 01:29:02PM
9 these types of meetings to staff, and if you're disclosing 01:29:07PM
10 calendar records and diaries then those staff meetings 01:29:12PM
11 should be amongst that. But I guess I don't - as a 01:29:17PM
12 general view you're going to just - there will be another 01:29:25PM
13 layer formed that will fit outside that new rule and 01:29:30PM
14 that's where people will rotate in and out and will 01:29:33PM
15 creatively name this new group and that's - it will work 01:29:38PM
16 temporarily, is what I'm trying to say, and just be aware 01:29:45PM
17 that people will creatively come up with ways to hire 01:29:50PM
18 staff or consultant staff that avoid those types of 01:29:53PM
19 things. So it's, I guess, another warning, yes. 01:29:56PM
20 Well, Dr Murray, thank you very much for your participation in 01:30:00PM
21 today's hearing. It's greatly appreciated that you 01:30:08PM
22 volunteered your time, and you've given us very 01:30:13PM
23 interesting thoughts to deal with. So on behalf of the 01:30:18PM
24 Commission I thank you greatly for your 01:30:21PM
25 participation?---I appreciate you having me. Thank you. 01:30:24PM
26 Thank you very much. What time are we resuming, Ms Harris? 01:30:27PM
27 MS HARRIS: 2.30, Commissioner. 01:30:33PM
28 COMMISSIONER: Very good. 01:30:42PM
29 MS HARRIS: Professor Ryan. 01:30:43PM

1 COMMISSIONER: We will adjourn then until 2.30. Thank you
2 again, Dr Murray.

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4 LUNCHEON ADJOURNMENT

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