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TRANSCRIPT OF AFTERNOON PROCEEDINGS

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INDEPENDENT BROAD-BASED ANTI-CORRUPTION COMMISSION

MELBOURNE

MONDAY, 2 DECEMBER 2019

(9th day of examinations)

BEFORE THE HONOURABLE ROBERT REDLICH QC

Counsel Assisting: Mr Michael Tovey QC  
Ms Amber Harris

OPERATION SANDON INVESTIGATION

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

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

1 UPON RESUMING AT 2.12 PM:

2 COMMISSIONER: I apologise for the delay. Yes, Mr Tovey.

3 <GEOFFREY NORMAN ABLETT, recalled:

4 MR TOVEY: Mr Commissioner, could we have up, please, page  
5 1269, which is I think the first page of the agenda for  
6 the 1 April meeting in respect of the C219. Now, do you  
7 see that document in front of you? Do you see that first  
8 page?---Yes, sir.

9 And is that a document the form of which is familiar to  
10 you?---Yes.

11 And so what would happen was before each council meeting you  
12 would receive from the council officers an agenda; is that  
13 right?---Yes.

14 And you would use that agenda to inform yourself as to the  
15 issues that were to be the subject of consideration at the  
16 council meeting?---Yes.

17 At that stage you were mayor?---2014, yes.

18 And was it the case that you would read through these so you  
19 fully understood what was coming up and what had to be  
20 voted on?---Yes.

21 All right. Could you go, please, to page 1277? You'll see  
22 item 2 on the agenda. Council had met and you'll see,  
23 "Councillors received a request from landowners, Leighton  
24 Property Holdings, and the abutting owner to consider a  
25 proposal to amend the planning scheme to allow residential  
26 development of the land. Officers have met with Leightons  
27 and representatives from Watsons and Schutz Consulting on  
28 a number of occasions to better understand the request.  
29 These discussions have confirmed that the landowners are

1 seeking council's in principle support to prepare the full  
2 amendment documentation." Is that right? Is what I've  
3 read to you correct?---Yes.

4 So, having read that, you knew that Megan Schutz and Watsons  
5 were behind the proposal to have the land declared  
6 residential?---Yes, that's what it says, yes.

7 And you've already told the Commissioner that at that stage you  
8 were aware that Watsons was in fact Mr Woodman?---Yes.

9 If Watsons were behind the proposal, clearly they had a  
10 financial interest in it?---Yes.

11 Could you go, please, to - sorry. I will tender three  
12 documents, Mr Chairman, at the end of this line of  
13 examination.

14 COMMISSIONER: Yes.

15 MR TOVEY: So that was a document which was before you before  
16 the meeting and which you considered?---Yes.

17 I now want to go to page 1287. 1287 is a document which was  
18 attached to the agenda and that's a document signed by  
19 John Woodman which has been redacted for some reason in  
20 this copy, but I'm told it indicates that, "On behalf of  
21 the Kelly family," even though that doesn't seem to fill  
22 the whole space, but in any event at least, "On behalf of  
23 the Kelly family, we request council rezone the land to  
24 permit residential development. Enclosed is a copy of  
25 correspondence forwarded to your office by our neighbours  
26 Leighton Properties Pty Ltd inclusive of the strategic  
27 justification supporting the request. Should you wish to  
28 discuss this matter further please do not hesitate"  
29 et cetera. Signed John Woodman on behalf of Watsons;

1 right?---Yes.

2 And that's provided to you as part of the preparation for the  
3 council meeting?---Yes.

4 And that's a document which you considered?---Yes, my - - -

5 All right. So as of 1 April it is self-evidently the case that  
6 you knew that Watsons and John Woodman had a financial  
7 interest in the C219 amendment; true?---Not financial, but  
8 seeing the word "Watsons" I should have got out of the  
9 meeting, so I apologise for that.

10 I don't want your apologies, sir. You've just told me in the  
11 course of the questions I have asked you that you  
12 understood these documents, the ones you've just been  
13 taken to, to indicate that Watsons and Woodman had a  
14 financial interest. You've told me that. Do you want to  
15 change that?---No.

16 Okay. So you knew - - -?---I shouldn't have been at that  
17 meeting.

18 And from what you've told me - and tell me if I'm wrong - you  
19 would have realised that you had an absolute conflict of  
20 interest at that stage? You must have realised that at  
21 that stage, at the stage you read these  
22 documents?---I must have missed that bit because if  
23 I would have picked it up I would have got out, so I'm  
24 sorry. But I admit you're right. I should have been out  
25 of the room.

26 And the reason you weren't out of the room was because you were  
27 receiving financial incentives from Mr Woodman and  
28 Mr Watson?---No.

29 You were on the take, getting cash - - -?---No, I was not on

1 the take. I never took money to make decisions.  
2 You were on the take, getting cash in false names?---No.  
3 And you were - - -?---No, I deny that.  
4 I suggest to you you had a sham arrangement in respect of a  
5 third agreement - in respect of a third interest in a  
6 horse designed simply to - - -?---No.  
7 To justify the payment of money to you?---Your suggestion is  
8 wrong, sir. I didn't - - -  
9 And I suggest to you that you were getting payments both  
10 immediately before and immediately after the initial  
11 vote - - -?---No.  
12 On the rezoning of the Cranbourne West land?---No, my vote has  
13 never been bought, sir. The horses were a separate  
14 entity. I didn't read that agenda well enough and  
15 I apologise to everyone, I should not have been at that  
16 meeting. But the horses had nothing to do with voting and  
17 I've never been paid anything for a vote and I wouldn't  
18 take anything for a vote, and I admit I shouldn't have  
19 been at that meeting. I should have read the agenda more  
20 closely and read that properly.  
21 You see, where we are now is that you admit there were  
22 discussions with Mr Woodman before the 3 February 2014  
23 vote about the rezoning, that you had provided to you and  
24 read the agenda which makes it clear that he has a  
25 financial interest before the next vote on 1 April, and  
26 you know, do you not, Mr Ablett, that you in fact were  
27 acting corruptly by attending that meeting?---No, I didn't  
28 understand he had a financial influence at that one, but  
29 this one I should have picked up on. But never have the

1 horses been connected with a decision. No-one ever  
2 influences my decision.

3 What about the cash payments?---They were - weren't they for  
4 the credit card?

5 No, there were two others, don't you remember? The \$10,000  
6 which were disguised payments in cash to your account when  
7 you were just about out of money? How do you  
8 explain that?---They weren't for votes. Didn't we discuss  
9 that they would have been for the horses?

10 Well, that's what you suggest, but - - -?---That's what I'm  
11 saying. I'm not suggesting it.

12 Then you told me that all horse payments were by cheque. So  
13 why would you have - - -?---As long as they went into a  
14 bank account they were transparent.

15 Transparent?---Well, you could see in a bank account where  
16 money went.

17 Look, you're not a fool, are you? Excuse me, I'll take that  
18 back. If you see a payment of cash going into a bank  
19 account in a false name, are you suggesting that is  
20 transparent?---I didn't even see the false name. I saw  
21 the money going into the account.

22 I've shown you the vouchers?---I know you have, but that's sort  
23 of suggesting I got cash. If he put cash in a bank  
24 account that anyone can look up, then that's okay because  
25 people can see it. There was no cash given to me  
26 directly.

27 COMMISSIONER: Is there another document that you were going to  
28 advert to, Mr Tovey, in this group? You said there were  
29 three.

1 MR TOVEY: No, those were the documents - - -

2 COMMISSIONER: Sorry?

3 MR TOVEY: Those were the documents.

4 COMMISSIONER: I'll mark those exhibit 90A, council meeting  
5 minutes of 1 April 2014, and B letter of Watsons to the  
6 CEO of the Casey Council dated 11 February 2014.

7 #EXHIBIT 90A - Council meeting minutes of 1 April 2014.

8 #EXHIBIT 90B - Letter of Watsons to the CEO of the Casey  
9 Council dated 11 February 2014.

10 COMMISSIONER: Mr Ablett, before lunch you were clear in your  
11 evidence that you didn't know as of 1 April when you  
12 chaired the meeting at which the officer's report was  
13 considered and approved rezoning approximately 200  
14 hectares of land within Cranbourne West as to be moved  
15 from industrial or employment land to residential land,  
16 that you didn't know that Mr Woodman or Watsons lay behind  
17 any aspect of that proposal?---Any financial benefit, sir.

18 And that evidence was wrong, wasn't it? The evidence you gave  
19 before lunch was incorrect?---Sir, I didn't realise he was  
20 getting a financial benefit and at that meeting that  
21 I just got shown, as soon as I saw the name Watsons  
22 I should have got out of the room.

23 Yes, but that means the evidence you gave earlier was  
24 incorrect?---I wasn't aware of him - if I saw his name  
25 I should have got out of the room.

26 And you don't doubt you saw his name?---And I should have got  
27 out of the room, yes.

28 So you voted on a motion knowing that Mr Woodman had an  
29 interest in that proposal?---Yes, and I shouldn't have.

1           Maybe I didn't read the agenda well enough, sir.

2   Do you really think that's the explanation, that you didn't

3           read the agenda, you didn't - - -?---There's no other

4           reason, sir. I would not do a favour for him in council.

5   Would you do it for him outside the meeting room? Would you

6           have promoted the objective he was wanting to pursue in

7           relation to - - -?---No - - -

8   Just bear with me?---Sorry.

9   Would you have promoted what he wanted outside the hearing room

10          with other councillors?---No, I gave him lip service when

11          he spoke to me about it and it went in one ear and out the

12          other and I thought, "I'm not going to get involved," and

13          unfortunately I haven't read agendas well enough and

14          I should have been out of the room, sir.

15   Now that you've seen that, you did chair that meeting?---Yes.

16   And in terms of significance it was one of the most important

17          meetings that the council had concerning the rezoning

18          issue of C219, wasn't it?---Yes.

19   Having seen that, do you think that maybe some of the earlier

20          evidence you gave about not appreciating that Mr Woodman

21          had an interest in C219 might also be incorrect?---No,

22          sir, I didn't know.

23   No, I'm just wondering whether or not your error here causes

24          you to rethink what you've said about some of the earlier

25          meetings?---I didn't realise he was involved in Cranbourne

26          West for some time, but reading the two meetings I've

27          seen, if I'd seen Watsons - and I should have - I should

28          have got out of the room.

29   But it also means - we've got to look at the ramifications of

1 what you're just acknowledging. It also means that in the  
2 discussion that you told us this morning you had  
3 personally with Mr Watson and Ms Schutz about C219, and  
4 you recall - - -?---Yes, I did.

5 Just bear with me. And you recall that discussion. So then on  
6 1 April it must have also dawned on you, "Heavens, I've  
7 been in private with Mr Woodman and his consultant and  
8 I now realise I shouldn't have been having that discussion  
9 either"?---I didn't think there was any harm in having a  
10 discussion, but I shouldn't have been in the meeting, sir.

11 Yes, Mr Tovey.

12 MR TOVEY: Mr Ablett, you first declared a conflict of interest  
13 in respect of Watsons' matters on 17 March 2015. This  
14 isn't in the chart, Mr Chairman, but it came to light over  
15 the weekend when we were given additional material by the  
16 council.

17 COMMISSIONER: Yes.

18 MR TOVEY: So, in the meantime you presided over and voted on  
19 motions furthering the C219 matter not only on 1 April,  
20 but on 17 June 2014, 19 August 2014 and 16 September 2014.  
21 That's what the council records and minutes show. On  
22 those occasions I suggest it must have been apparent to  
23 you that Watsons were one of the proponents of the  
24 proposal to rezone?---As I stated earlier, the penny  
25 dropped late and that's when I started declaring a  
26 conflict of interest as soon as I realised that he had a  
27 real financial interest. Then I started the conflicts,  
28 but I did not deliberately stay in those meetings that  
29 I shouldn't have been in.

1 By 16 September 2014 there have been five occasions at least  
2 when the matter has come before council. You voted in  
3 favour every time. On each occasion there has been an  
4 agenda prepared, which must have made it clear that  
5 Watsons were the proponent, as you've already seen on  
6 1 April. You cannot seriously suggest, can you, that you  
7 got through to the fifth meeting, to the fifth council  
8 meeting where this matter was discussed without it  
9 registering that Watsons were involved? That's not  
10 possible, is it?---I didn't think they had a financial  
11 benefit and that's when the penny dropped with me.

12 COMMISSIONER: What was the date, Mr Tovey, of the first  
13 declaration of a conflict?

14 MR TOVEY: The date of the first declaration of a conflict is  
15 17 March 2015.

16 COMMISSIONER: 15?

17 MR TOVEY: Yes.

18 COMMISSIONER: So that follows Mr Ablett being interviewed by  
19 the Ombudsman on 6 November 2014.

20 MR TOVEY: Yes.

21 COMMISSIONER: Are you conscious of that, Mr Ablett, that you  
22 first made a declaration of your conflict of interest  
23 after you had been interviewed by the Ombudsman?---No,  
24 I wasn't conscious of that, sir.

25 MR TOVEY: I'll come back to this, but by 17 March 2015 when  
26 you came to declare a conflict you were aware then of the  
27 financial involvement of Watsons?---Yes, sir.

28 And you were fully aware that they were the proponents or one  
29 of the proponents of the scheme on behalf of the

1 Kellys?---One of. I still believed that Leightons were  
2 the main people.  
3 Yes, but you knew they were acting for the Kellys?---Not for a  
4 while.  
5 It had been part of the council agenda and minutes?---I mustn't  
6 have read them clearly enough.  
7 Did you ever know that?---Down the line I knew Kellys were  
8 talking with Leightons, and I didn't read that well  
9 enough.  
10 And so as of 17 March of 2015 in any event you had been paid  
11 \$15,000 by Mr Woodman for a horse that didn't run?---Lots  
12 of horses don't run, sir.  
13 That was Good Choice; true?---Good Call.  
14 Sorry, Good Call. You continued to be a partner in that  
15 horse?---Yes, I did, and we nearly got him to the races on  
16 a lot of occasions.  
17 You knew Mr Woodman was the principal of Watsons?---Yes, I did.  
18 You saw that as his company?---Yes.  
19 You were aware of \$10,000 in cash going into your bank account  
20 before Christmas in 2013?---I saw that today, sir.  
21 You must have been aware of that?---At the time I would have  
22 been, yes.  
23 You were aware, you say, of \$15,000 going into your credit card  
24 from him?---Yes.  
25 And that was - you say you paid him back?---I never gave him an  
26 invoice for a large number of months and he was happy with  
27 that.  
28 So you had an ongoing - so as of February 2014 you had a  
29 relationship with him where you were invoicing him

1 regularly; is that right?---Once a month. No, if you look  
2 at all the invoices that you have, there are months that  
3 are missed. I think 15 was 10,000 and the next year might  
4 have been 30, but the last two years were higher which  
5 were taxed, so they weren't all consistent.

6 But, see, as of February 2014 you say that he gave you 15,000  
7 for your credit card?---Yes, and I never invoiced him in  
8 2015 for quite a number of months.

9 So at that stage the reason that \$15,000 was eventually offset,  
10 you say, was because you had a process whereby you were  
11 invoicing monthly as at that stage?---No, in 2015 the  
12 invoices weren't monthly.

13 No, 2014. In February 2014?---I'm not sure about that.

14 I don't have the book for 2014. But in 2014 I don't think  
15 they were monthly because they weren't in 2015 or '16  
16 either.

17 So what was the arrangement then?---On a needs basis, because  
18 I was paying for everything and on a needs basis I'd say,  
19 "Look, the horse got crook. There was a vet bill. You  
20 might have to help out here."

21 But when he gave you the 15,000 to pay off your credit card - -  
22 -?---Yes.

23 To make you look better for the purposes of the 2014 State  
24 election, I thought you were telling me that that meant  
25 that was going to get offset against monthly  
26 invoices?---Yes, as we were going on a needs basis.

27 I never sent him any invoice for quite a number of months  
28 in that year.

29 So in any event you had a very close financial relationship

1 with him, did you not, at that stage?---There were  
2 finances involved with paying for horses.

3 How many people can you rely on to pay off your credit card  
4 when you just say "Hey mate" - how many people do you know  
5 who you could ask to provide \$15,000 to pay off your  
6 credit card so you look better politically? Do you know  
7 anybody other than Mr Woodman who you could ask  
8 that?---Not off the top of my head, sir.

9 No. So that was a contribution from him for which you were  
10 extremely grateful?---It was, and he got paid back for it.  
11 At that stage we had become friends.

12 So you were friends?---In the little circle I was in I thought  
13 we were good friends and, yes, we got along well and never  
14 did I consider horses a part of council until the  
15 Commissioner pointed out the perception last Thursday and  
16 I've been thinking about that ever since.

17 From March of 2015 you came to declare a conflict in respect of  
18 matters involving Watsons or Mr Woodman, did you not?---It  
19 was Mr Woodman's idea to formalise it.

20 And was that so you and Mr Aziz could rig things behind the  
21 scenes?---I never rigged anything with Sam Aziz. I'm not  
22 that close to him.

23 Did you ever rig anything with Sam Aziz?---No. I spoke to  
24 councillors about issues, but nothing ever rigged, no.

25 When you use the term "rigged", what do you mean by  
26 that?---Well, set something up that you vote a certain way  
27 about something like that.

28 Yes, but rigging involves corruption, doesn't it?---Well, it  
29 would if you were rigging something. But I never rigged

1 anything with him. Not ever. I never rigged anything  
2 with any councillor, sir, or officer or anyone.

3 COMMISSIONER: Mr Tovey, the conflict of interest that you've  
4 identified that was declared, the Act requires two things  
5 in relation to a conflict. One, that it identify whether  
6 it's a direct or indirect interest that gives rise to the  
7 conflict and, second, the Local Government Act requires  
8 that the details of the conflict be provided.

9 MR TOVEY: I'm moving to that directly.

10 COMMISSIONER: Very good. Thank you.

11 MR TOVEY: And indeed from this point on you were to maintain a  
12 very strong financial relationship where he was paying to  
13 you regularly significant amounts of money?---The last two  
14 years were significant. The ones before that I wouldn't  
15 say they were significant, for horses.

16 I don't want to argue about that just for the moment. So on  
17 scores of occasions you indicated that you had a  
18 conflict?---After the penny dropped?

19 Yes?---Yes, sir.

20 Did you ever in any one of those declarations say that the  
21 conflict arose because you were receiving money from him  
22 or had been lent money by him?---I - - -

23 That's a simple question: yes or no?---Financially, no, I put  
24 down I had horses with him. But I was out of the room.  
25 But no one - I wasn't aware until later, no one had  
26 briefed us on - until I asked Mr Tyler to run it through  
27 with me after a long period of time and then I realised  
28 that there was a certain way that we should be filling in  
29 the forms, but the council hadn't been briefed, or whether

1 I missed it, on the correct way to fill out a conflict of  
2 interest form because there are a number of categories  
3 even at the end you have to fill in that when I was given  
4 a form I never got those categories with it. But at least  
5 I was out of the room and that's what I was really happy  
6 with and I didn't lie about the reason.

7 COMMISSIONER: Could I just pause there for a moment?---Yes,  
8 sir.

9 So you've been a councillor since 2008?---Yes, sir.

10 Prior to you asking Mr Tyler, the CEO, to assist you in more  
11 accurately completing these forms, had there ever been - -  
12 -?---He actually approached me, sir.

13 Yes. Had there ever been any audit or oversight by government,  
14 by the department, of the way the council was going about  
15 its compliance with those legal requirements?---Nothing  
16 was ever said to me, sir.

17 Nothing you knew about?---Nothing I knew about, no.

18 MR TOVEY: You see, on 17 March 2015 you declared at the  
19 meeting that you had an indirect interest - sorry, what  
20 type of conflict? It was an indirect conflict in that  
21 "interested parties". So you say "I know an interested  
22 party". Then you say, "I recently now own a racehorse  
23 with other owners. One of the owners works for Watsons  
24 Surveyors who may get work if the Cranbourne West precinct  
25 becomes residential from industrial." Is that what you  
26 said?---If you've got it in front of you, that's what  
27 I said, what I wrote down. It should have been direct  
28 financial. Mr Tyler sorted me out on that as well. He  
29 pulled me up on it.

1 "One of the owners works for Watsons," is what you  
2 said?---Mm-hm.  
3 Why didn't you just say "One of the owners runs  
4 Watsons"?---I should have.  
5 COMMISSIONER: "Or is a director"?---And it should have been  
6 direct, sir.  
7 MR TOVEY: Yes, you thought Watsons was his company?---I wasn't  
8 sure it was direct or indirect and Mr Tyler explained that  
9 to me and you might see in forms later that I did do that.  
10 I'm not asking you about the way in which you categorised it.  
11 I'm asking about the way you described it. "One of the  
12 owners works for Watsons Surveyors." That could only be,  
13 could it not, sir, an attempt to disguise the true nature  
14 of the co-owner?---No, I never consciously tried to  
15 disguise Mr Woodman. I just wrote it that way to get out  
16 of the room and I was out of the room and that's all  
17 really what mattered to me, that I was out of the room.  
18 If you were to meet me in the street and I said to you, "Who's  
19 John Woodman," you'd say, "Well, he's Watsons. He owns  
20 Watsons"?---I would, sir.  
21 You wouldn't say, "He's a person who works for Watsons,"  
22 because that would be quite disingenuous, wouldn't it, it  
23 would be quite misleading as to his true  
24 function?---I take on board what you say, sir, and it was  
25 an oversight. I should have put Mr Woodman's name, for  
26 sure.  
27 COMMISSIONER: But it occurs to me, Mr Ablett, that talking  
28 about your co-ownership of a horse hardly stated the  
29 accuracy of your relationship with Mr Woodman. You needed

1 to talk about all of the payments you had received, don't  
2 you think? It wasn't merely that you had an equity, part  
3 of the ownership of the horse. You were receiving  
4 payments from Mr Woodman for providing services in  
5 relation to the horse, weren't you?---Yes, I wasn't aware  
6 that I should have put down the financial details  
7 and - - -

8 And would you look, please, at page 12 of the court book, again  
9 taking you to the Ombudsman's report. Would you look at  
10 paragraph 42 of the Ombudsman's report? The Ombudsman was  
11 here dealing with the parlous state of the law in Victoria  
12 in relation to electoral campaign donations?---Sorry, sir,  
13 do you want me to read this?

14 Yes, please. Just have a look at paragraph 42, if you  
15 would?---Yes. Yes, I've read that.

16 And then paragraph 43?---Yes, sir.

17 You are one of the two candidates, are you not, that the  
18 Ombudsman was referring to there?---Yes, sir.

19 How much did you get for your campaign?---\$40,000 from  
20 Mr Woodman.

21 \$40,000?---And I believe he went to - he donated the money  
22 to - not to me but to the Liberal Party, Australian  
23 Liberal Party Victorian branch, and I believe he sent an  
24 email or asked one of the people in there that that 40,000  
25 be for my campaign.

26 Yes. And they did as Mr Woodman requested?---I believe so,  
27 sir.

28 They gave it to you?---Yes, to the - Mr Rosario was handling  
29 all the money.

1 But you knew that Mr Woodman finished up contributing \$40,000  
2 to your campaign?---Yes.

3 Did you understand at that time that a campaign donation was  
4 something that you would need to declare as a gift for the  
5 purposes of a conflict of interest?---Yes. I think  
6 I might have put that down on some of them, did I?

7 MR TOVEY: You did?---I didn't?

8 You did?---I did, yes. I should have put them down on them  
9 all. My main objective was to get out of the room  
10 and - - -

11 COMMISSIONER: I'm now looking at the first conflict you  
12 declared in March 2015. At that time you had a campaign  
13 donation of \$40,000?---I did, sir, yes.

14 Which should have been declared?---Yes.

15 Do you know why you didn't declare it?---No, sir. I guess  
16 I didn't think.

17 Yes, Mr Tovey.

18 MR TOVEY: Now that that's been raised, sir, I just wanted to  
19 go to where that was declared.

20 COMMISSIONER: Just before you leave the Ombudsman's report,  
21 you told me that you read it some time ago, but you've  
22 read the Ombudsman's report?---Yes, but I don't remember  
23 much of it.

24 But the Ombudsman found that in relation to three different  
25 planning issues there was a developer who had -  
26 Mr Woodman, amongst some others - who had contributed  
27 financially in various ways to councillors who were  
28 participating on council decisions, primarily you, but  
29 there were some others?---Okay.

1 And in the end the Ombudsman said, "Because of my limitations  
2 in terms of getting evidence I can't prove that motions  
3 were voted for because of that financial support." So for  
4 that reason the Ombudsman was unable to substantiate the  
5 allegations. Did you not read that and did you not have  
6 concern then about the way you and your colleagues were  
7 managing your affairs as councillors?---I realise that had  
8 a conflict of interest.

9 But didn't the Ombudsman's report tell you that there was a  
10 broad problem at Casey that needed to be addressed in  
11 relation to developers providing financial support of  
12 various sorts to councillors who were then voting on  
13 motions?---I guess I didn't fully understand that bit,  
14 sir. It didn't dawn on me, and that's my fault.

15 MR TOVEY: Just taking up for the moment the matter that the  
16 Commissioner raised, you first I suggest raised the  
17 election contribution in a conflict of interest  
18 declaration on 17 January of 2017; all right? On that  
19 date you said this, "I have a direct conflict of interest  
20 for item 6.3" - this was a vote on Evans Road. "I have a  
21 direct conflict of interest for item 6.3 as Watsons  
22 donated" - it says "40M"?---Sorry, my mistake. 40,000.  
23 40K.

24 "40,000 to the Liberal Party. Some of this may have come to me  
25 in a donation from the Liberal Party."?---The reason  
26 I said that was during the election some - when I was  
27 supposed to get pamphlets sent out, the Liberal people  
28 came to me and said Mr Mantach had taken a lot of the  
29 money that was supposed to come to me.

1 So you said "Some of this". You didn't say, "A lot of it did  
2 come to me" or "I had arranged" or "I was told that 40,000  
3 came to me"?---I wasn't trying to hide any conflict.  
4 I just wanted to get out of the room so I wasn't voting  
5 and I accept that I received \$40,000, but I was told a lot  
6 of that was taken by someone else.  
7 Anyway, is it the case that nowhere over the years did you ever  
8 declare a conflict on the basis that Watsons or Mr Woodman  
9 was paying you?---I did not write that down on a conflict  
10 form, sir, no.  
11 Never once?---No, I didn't understand that I had to. As long  
12 as I got out of the room and listed a valid reason to get  
13 out, which going back to my point before and that's  
14 something that I explained to the CEO at the time,  
15 Mr Tyler, and he explained it to me but not the whole  
16 group, that none of us were filling out the forms the  
17 correct way they should have been filled out.  
18 What was it between February 2014 and March 2015 that made you  
19 aware that you needed to declare a conflict in respect of  
20 Watsons' matters or - sorry, I will rephrase that. What  
21 was there that occurred between February 2014 and 2015  
22 that made you aware that you had to declare a conflict in  
23 respect of the rezoning?---Mr Woodman told me that he had  
24 a financial interest in it and he was hoping to make money  
25 out of it.  
26 And how?---He didn't say how. He just said he had financial  
27 interests in that plot of land, and that's when the penny  
28 dropped with me.  
29 Did you and Mr Woodman ever have together an interest in the

1 outcome of a development?---In the outcome of it? No,  
2 I received no money from him, never will. He spoke  
3 about - sorry. Go on.

4 Did you ever expect to profit personally from anything that he  
5 was doing?---No, he spoke like "we" a lot of time, like  
6 "We have a problem, Geoff, and I need to get my car fixed  
7 and I have an appointment," and I said, "But that's you."  
8 So he spoke "we". But he did say he had a profit and that  
9 if he made some money "we" as in I took it that we might  
10 be able to buy some more expensive horses together.

11 So what did he say exactly? If he made a profit. So if he  
12 made a profit out of rezoning?---Rezoning, him, that some  
13 money might come my way with him to buy some - - -  
14 Okay, and you assumed that was in respect of horses?---Well,  
15 horses because no other way that I would take that.  
16 That's the way I took it.

17 When did he say this to you?---I can't remember the exact date,  
18 sir.

19 And what project was it that was going to lead to you getting  
20 money from him if it was successful?---It was the  
21 Cranbourne West project he was talking about. But that  
22 was after I realised he had a conflict of interest. I'm  
23 aware he was making money out of it.

24 So he has told you that if he gets through Cranbourne West  
25 there is going to be a significant payment in it for you;  
26 is that right?---Well, I didn't take it as me. I took it  
27 as us doing something with horses. I wasn't going to take  
28 any cash from anything like that. I never have.

29 What did you think - - -?---I thought we might be buying some

1 more expensive horses and really growing the business.

2 Whose business?---Well, ours, or my horse business, racing.

3 But there is no way known I would ever take payment.

4 Never have, never will. Didn't happen, won't happen.

5 And why did he link this - to your knowledge why was it that he  
6 linked this hope of you getting more money to develop your  
7 business to the completion of C219?---I'm not sure. Maybe  
8 it was just a statement he made.

9 What was it that caused that to occur?---I don't think there  
10 was anything sinister in what he said and I just let it go  
11 in one ear and out the other because while I was talking  
12 to him, when I found out he had financial business,  
13 I talked the talk but I certainly wasn't going to walk the  
14 walk when I found out he had a financial interest in that  
15 property. I gave him lip service. I gave him time  
16 because we had horses. But quite often you have a  
17 conversation with someone and you walk away going, "No,  
18 I'm not having a bar of that," and he asked me about  
19 some - how I might think councillors might vote and  
20 I walked out thinking, "I'm not talking to any councillor  
21 about how they're going to vote. They can make up their  
22 own minds."

23 COMMISSIONER: As I've understood your evidence already, you  
24 recognised, you say, that it would be improper if you had  
25 a conflict to try and influence other councillors - -  
26 -?---Yes, I would.

27 Outside the council chambers?---True. Yes, sir.

28 Do you understand the significance of what you're saying, that  
29 you would never have tried to influence any other

1           councillors to vote on motions where you knew you had a  
2           conflict of interest?---Yes, and I knew Mr Woodman had  
3           spoken to Ms Schutz about who might vote which way and  
4           whatever, but - - -

5           We're talking about you. You wouldn't try - - -?---No, no, I'm  
6           not going to go to another councillor - - -

7           You would never have done that, you say?---No.

8           We don't have a law in Victoria that makes it an offence for a  
9           councillor who has a conflict of interest to try and  
10          influence other councillors outside the council chambers  
11          as to how they should vote. Some other states do have  
12          that law. We don't. But you say you recognised it would  
13          be quite unethical - - -?---Unethical, sir, yes.

14          For you to have tried to influence councillors outside the  
15          chamber?---Yes.

16          MR TOVEY: You say, sir, that you are offended by any  
17          suggestion that you and Mr Aziz ever rigged anything; is  
18          that right?---Yes, sir, I never rigged anything with Sam  
19          Aziz.

20          Could the witness please be played tab 193.

21          COMMISSIONER: Is this a new exhibit, Mr Tovey?

22          MR TOVEY: It is.

23          COMMISSIONER: Thank you.

24          MR TOVEY: I'm sorry, in fact I've misread the note. It should  
25          be tab 191. Your Honour, this tape is going to refer to a  
26          matter of personal nature relating to a councillor called

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COMMISSIONER: She's not the subject otherwise of evidence that you propose to rely on, Mr Tovey? She's not the subject of any evidence that you are proposing to rely upon?

MR TOVEY: No.

COMMISSIONER: Very good. I'll make that suppression order in relation to [REDACTED] that her name should not be disclosed in any publication.

MR TOVEY: So could we please have played tab 191. This is a conversation between Geoff Ablett and a person by the name of Neale Burgess, who was also not the subject of investigation and somebody whose name I would suggest should be suppressed.

COMMISSIONER: I'm sorry, his name doesn't appear in this excerpt.

MR TOVEY: No. I'm just saying that for the purpose of the witness understanding what the extract relates to. So this is from a conversation between yourself and Neale Burgess on 2 November of 2018.

COMMISSIONER: I'm sorry, who is Mr Burgess?

MR TOVEY: I will ask. Who is Mr Burgess?---Neale Burgess, MP for the Liberal Party for Hastings.

Could we have that played, please.

(Audio recording played to the Commission.)

MR TOVEY: Then it went on to a different subject. But when you said, "Look, I can understand all that, Liberal Party and all that, but I'm not in your bloc anymore, mate" - this is what you've said to Sam Aziz?---Yes.

"Because I'm sick of rigging stuff"?---Yes, when I meant

1 rigging - - -

2 You told me before that you've never rigged anything with Sam

3 Aziz?---It depends on the definition of - - -

4 What are you talking about there?---I'm not talking about

5 rigging stuff. I'm talking about - - -

6 No, look, you told me before, did you not, about your

7 understanding of the meaning of the word

8 "rigging"?---That's what it boils down to.

9 Yes?---Him advocating for what he wanted, not rigging.

10 For Mr Woodman?---No, for anything, any matter at council.

11 There was a bloc of Liberals and one other and I - what

12 happened was in 2014 - when I became mayor last time there

13 was always a group and other councillors were left out,

14 and I felt that wasn't right and that's why I wanted to

15 leave the group and Sam was the leader of whatever

16 recommendation that he wanted, he would come to you and

17 put pressure on you. So that's what I meant, having

18 pressure put on me to vote his way.

19 You said, "Because I'm sick of rigging stuff". Are you there

20 talking about - - -?---No, I didn't rig anything. It was

21 a strong advocacy for some particular recommendation, not

22 necessarily related to Mr Woodman.

23 And were you ever involved in any advocacy for any Woodman

24 interest?---No.

25 Was Mr Aziz, to your knowledge?---He was asked to lead the

26 Cranbourne West in council.

27 No - - -?---And he spoke to other councillors.

28 Did you and he speak about Mr - - -?---Yes, and I said to him,

29 when the penny dropped, "I'm not in the room. I'm out."

1 So you refused to speak to him about anything to do with the  
2 Cranbourne West rezoning - - -?---We might have spoken  
3 about it, but again I gave Mr Woodman at the end of the  
4 day a lot of lip service, a lot of time because we had  
5 horses together, and I walked away thinking, "I'm not  
6 doing that." And we spoke - I had conversations with him,  
7 but I talked the talk but I didn't walk the walk, as  
8 I said before. I was only prepared to go so far. Once  
9 I found out the real nitty-gritty of what was going on,  
10 I wasn't going to be in that room.

11 COMMISSIONER: Could I just pick up your phrase "I'm not in  
12 your bloc anymore". Do you see that there?---Yes.  
13 Which is something you appear there to be saying you said to  
14 Mr Aziz. You told Mr Aziz that you would no longer be in  
15 his bloc?---Mmm.

16 Did you tell him something like that?---Yes.

17 What was the bloc you were referring to?---I saw him,  
18 Councillor Stapledon, Councillor Smith, Councillor  
19 Rosario, [REDACTED].

20 Who?---[REDACTED], but she's been very, very ill, so  
21 delete that. She's been very ill indeed.

22 Yes?---And I hope she gets well.

23 Yes. So the others in that bloc, Aziz - - -?---Councillor  
24 Stapledon.

25 Stapledon?---Councillor Rosario and Councillor Smith.

26 Yes. And in what sense were you a bloc, Mr Ablett?---Well,  
27 I was easing my way out of the Liberal Party, which didn't  
28 please them, and there were some things, some decisions  
29 that I - I can't recollect them - but there were some

1 decisions made that I thought "No", and we started to have  
2 disagreements. And in the end I said, "I don't want to be  
3 in this bloc. I want to be able to vote freely and not  
4 have pressure put on me to vote a certain way."

5 All right. But prior to that time then there was, as a  
6 generalisation, that group, including you, voted in a  
7 bloc?---Not all the time. We had - I'd describe it as  
8 having discussions, in depth discussions about  
9 recommendations, but not all the time I voted - I voted  
10 the way I wanted to. So there was always an uneasiness  
11 about me and Sam about voting and eventually that erupted  
12 into what I said there.

13 And was there another bloc in council different to your  
14 bloc?---No, not to my knowledge. I actually felt further  
15 down the line when I became mayor again, an example, I was  
16 walking home and I went to walk out the door and Sam  
17 called me into a room and it was full of about seven  
18 councillors and I said, "What are we doing? What's this  
19 meeting about?" And he said, "We're going to decide what  
20 we want for committees." And I said, "Where are the other  
21 councillors?" "Don't worry about them." The next day  
22 I got approached by Rex Flannery and I apologised  
23 profusely to him. I said, "I didn't know the meeting was  
24 on," and that is the truth, and we've been good friends  
25 since because he said, "Always be straight with me," and  
26 so when I became mayor everybody was at the meetings and  
27 I left this sort of bloc and they didn't talk to me,  
28 haven't spoken to me much at all since.

29 And this issue where you feel that Sam "had pulled Susan over";

1           who is Susan?---Susan Serey.

2   Yes.  He got her to support him on some issue.  What's the

3           issue you're talking about there?---I can't - I don't

4           know, sir.

5  MR TOVEY:  I'll be coming back to that, Mr Commissioner.

6  COMMISSIONER:  Very good.

7  MR TOVEY:  I now want to - - -

8  COMMISSIONER:  I'll mark that phone call.  What was the date of

9           it, Mr Tovey?

10  MR TOVEY:  That phone call was 2 November 2018.

11  COMMISSIONER:  2 November 2019?

12  MR TOVEY:  No, 18.

13  COMMISSIONER:  18.  Is there any reason why Mr Burgess's name

14           should be suppressed?  There's nothing adverse in that

15           conversation about him.

16  MR TOVEY:  No.

17  COMMISSIONER:  That will be exhibit 91.

18  #EXHIBIT 91 - Excerpt of phone call between Mr Ablett and

19           Mr Burgess, 2 November 2018.

20  MR TOVEY:  Did you own a property at [REDACTED]

21           [REDACTED]?---Yes, sir, I still do.

22  When did you buy that property?---I can't remember exactly.  It

23           would be seven or eight years ago.

24  So about 2012?---About that time, sir.

25  And how did you pay for it?---I put a deposit down and I took

26           out a loan to pay - and I've been making payments on it.

27  How much did you pay for it?---250,000.

28  Where were you living at that time?---Junction Village.

29  And where's Junction Village?---It's next to the race track in

1 Cranbourne, sir.

2 And have you always lived there?---No, only the last 11,  
3 12 years.

4 So that's your home, is it?---Yes, sir.

5 And that's at [REDACTED]  
6 [REDACTED]---Yes.

7 Now, the property at [REDACTED]?---Yes.

8 Was that multiple acres?---Thirty acres, sir. Multiple titles  
9 on one parcel of land.

10 Sorry?---Multiple titles on one parcel of land.

11 And was there a house there?---No, sir.

12 So this is just bare land, is it?---Got a big hay shed on it.  
13 A big hay shed.

14 Had Watsons done any work on [REDACTED]?---Yes.

15 When was that done?---About four years ago. Would you like me  
16 to explain why or - - -

17 What was the work?---When I bought the place it was a division  
18 of a larger farm and there was a gravel road, and Mr Phil  
19 Faithful, who owned the property, was selling the top  
20 30 acres which had magnificent views over Westernport Bay  
21 and Melbourne. It's a nice place, and the rest is down in  
22 a valley, so I paid a bit more over 250. I said to  
23 Mr Faithful, "Have you surveyed this property?" And he  
24 said, "Yes, we had a company in Warragul," and I met the  
25 guy and he said, "Yes, I've packaged all that up. It's  
26 all - surveying's terrific." 12 months later another  
27 gentleman bought over the road and then he said, "By the  
28 way, I own up to your hay shed," which was about a half  
29 acre, and I thought he's just doing a land grab because a

1 surveyor, a properly qualified surveyor, had told me that  
2 he had surveyed that property, and this went backwards and  
3 forwards and I finally met the other guy and he said,  
4 "Look, I don't mind if you use it." I said, "No, you're  
5 just trying to take my land." So I asked Mr Woodman how  
6 much would it cost to come up and his surveyors came up  
7 and said, "Look, the boundary is" - - -

8 So how much did he say it would cost?---He didn't. I just  
9 said, "You just give me the account at the end," and I'll  
10 get to that, we're working on it because that's coming off  
11 the price of the property that he's buying, because he  
12 got - when his surveyors came up and it took four years,  
13 not of them working but of bureaucracy to get the title  
14 corrected.

15 In any event, after all this was done and the title was  
16 corrected, how much did you owe him?---I don't know. He's  
17 got that.

18 He's never rendered you a bill?---No, because he got interested  
19 in the property and said, "We'll work it out. I want to  
20 make an offer on your property," because he - - -

21 How can you work it out if you don't know what his contribution  
22 was?---Well, I think he gave me an estimation of around  
23 10,000 or \$15,000. It was a sort of a one day survey  
24 thing. It wasn't hundreds of thousands of dollars or  
25 anything like that, and I thought that was quite  
26 reasonable.

27 All right. Why didn't you say that when I first asked you  
28 about it, about what it cost?---I'm thinking as you're  
29 going, sir.

1 Anyway, then at some stage in late 2018 or in 2019 did you come  
2 to the stage where you came to an arrangement with him to  
3 sell off all or part of the land?---Yes, the  
4 land - because of the redoing of the front boundary, it  
5 triggered another three titles because there was a  
6 government road going near the gate and it finished up  
7 having seven titles - - -  
8 I'm not concerned. How much of the land did you sell off to  
9 him?---Well, it's not sold yet. We've got lawyers working  
10 on that at the moment. Because the - - -  
11 How much land did you think you were selling?---Twenty acres,  
12 which was the prime bit of the property.  
13 Did that include the shed?---No.  
14 So you keep - - -?---The bottom 10.  
15 You keep 10?---He gets 20.  
16 And shed, and he gets 20. And what was the valuation of that  
17 in land tax, do you know?---No.  
18 You paid 250. Was it ever valued at more than 250? This is  
19 the whole lot?---It's just on 290 as it is. The trick is  
20 here seven titles under the policy at Baw Baw - - -  
21 Sorry?---Sorry, I was just going to explain what happened.  
22 It's currently valued at 290, is it?---On a rates notice, yes.  
23 All right. That's for the whole lot?---On a rates notice, yes,  
24 sir.  
25 And when did you sell it to him?---It's not sold yet, sir. The  
26 lawyers are working on that - - -  
27 Did you enter a contract of sale?---Yes, and in the contract of  
28 sale, if I could just explain. There are seven titles now  
29 and under the policy of Baw Baw, if you re-vegetate or

1 want to grow agriculture, the seven titles can be made  
2 into two titles which triggers a building permit for each  
3 allotment. So the first option that Mr Woodman is looking  
4 at is working with Baw Baw to get a re-vegetation plan.  
5 The back is very steep and land moves, particularly if you  
6 get a wet winter, and they're trying to re-vegetate those  
7 areas so the land doesn't move. So if Baw Baw are  
8 compliant to all the re-vegetation that has to happen, and  
9 I think that's a really good thing, and it triggers two  
10 building permits, then he will be able to build on top of  
11 the hill with 20 acres for 350 grand and SEJ Real Estate  
12 in Warragul just said that's worth 425, that 20 acres,  
13 with a building permit. So he's actually getting a  
14 bargain if that goes through. If the - - -  
15 I just want to see where you are now?---That's what we're  
16 working through with the Baw Baw Shire.  
17 So a contract of sale was drawn up?---Yes, by - he had a lawyer  
18 and I've got a lawyer.  
19 He paid your lawyer, though, didn't he?---I beg your pardon?  
20 Your lawyer was Senet Legal who he paid?---Yes.  
21 How much did he pay Senet Legal?---I don't know. They told me  
22 that was the law if he was buying that property.  
23 Have you ever heard of an arrangement whereby the purchaser  
24 pays the vendor's solicitor?---It was something the  
25 lawyers worked out, sir. That wasn't my idea.  
26 What about section 32s, compliance notices? You have never  
27 been charged for any of this. He's just paid for the  
28 whole thing?---No, the price is coming off the property.  
29 And is there any document evidencing that?---The lawyers are

1 working on those documents.

2 As of - - -

3 COMMISSIONER: Sorry, when did he actually do the surveying,

4 Mr Ablett?---About four years ago, sir, and the

5 bureaucracy took that long to get the title corrected.

6 So he's never been paid for that work?---No, sir.

7 You say it's going to be taken into account eventually when you

8 settle?---Yes. When he did the original survey work he

9 wasn't interested in the block. But when all his

10 surveyors all came to me and said, "Look, if you ever want

11 to sell this we want to buy it," he got interested and he

12 said, "Let's talk about this. I'll do this. We'll park

13 this over here because I'm keen on buying this," and we've

14 progressed it since then.

15 MR TOVEY: So your understanding is that he's keen to develop

16 the block himself?---Yes.

17 He's interested in the block?---He's been up there and he's had

18 a look and he's just blown away by it, like everyone else

19 who wants to buy it.

20 So if he says he's not interested, he must have been making a

21 mistake about that?---I missed that bit, sir?

22 He gave evidence that he's not particularly interested in the

23 block at all?---That's not what he told me when he was on

24 top of the hill with me.

25 He gave evidence that this was simply a way of him helping you

26 out in respect of the cost of the surveying work that you

27 couldn't pay for?---No, I've had lots of conversations

28 with him before this process started and he's pretty keen

29 on it and lawyers are working on it as I speak, and we

1 even had discussions that if the planning permit doesn't  
2 come through for subdivision, because he's been up the top  
3 he'd like to buy it for his family. Unbelievable camping  
4 spot, a gateway to Gippsland, and he believes his children  
5 and grandchildren would love to go up there camping. He  
6 would put a caravan up on top of the hill and the views  
7 are unbelievable and Mount Worth is just 20 minutes away  
8 and it's just a great spot only an hour from Cranbourne  
9 and the surveyor said from Frankston that it only took him  
10 an hour from Frankston to get up there and you've got  
11 wedge-tailed eagles and deer and it's like you're out in  
12 the wilderness but you're only 10 minutes from Warragul.

13 I just want to ask you about the contract?---Okay.

14 So he pays 350,000 for - - -?---Twenty acres with a building  
15 permit.

16 For two-thirds of a block of land - - -?---With a building  
17 permit.

18 Just let me - - -?---Sorry.

19 For two-thirds of a block of land that you paid 250 for; is  
20 that right? We'll just take this a step at a time?---Yes.

21 It's never been valued at more than 290, that is the whole  
22 lot?---Yes.

23 And how much has he given you so far without taking  
24 possession?---\$150,000 deposit.

25 Yes? And any more?---No.

26 COMMISSIONER: So is there a written agreement covering  
27 this?---Yes, yes. Senet Legal are my lawyers and Maddocks  
28 are Mr Woodman's lawyers.

29 MR TOVEY: Could you look at exhibit 27, page 4244?

1 COMMISSIONER: We might have a break, Mr Tovey, at a point when  
2 it's convenient.

3 MR TOVEY: This is a convenient time, yes.

4 COMMISSIONER: Now?

5 MR TOVEY: We can bring it up during the break.

6 COMMISSIONER: Very good. Have a 10 minute break,  
7 Mr Ablett?---Thank you.

8 (Short adjournment.)

9 COMMISSIONER: Yes, Mr Tovey. We'll sit on until quarter  
10 past 4.

11 MR TOVEY: We are looking at page 4244, exhibit 27. Just have  
12 a look at the next few pages and just scroll through and  
13 satisfy yourself that that's the contract of sale with an  
14 attached section 32.

15 COMMISSIONER: What are the parts you want him to focus on,  
16 Mr Tovey?

17 MR TOVEY: You agree that that's a contract of sale?---Yes,  
18 sir.

19 That's executed by you and Mr Woodman on 23 May of 2018; is  
20 that right?---Yes, sir. The date is on the contract, sir.

21 If we go to page 4246 and you see there reference to volume and  
22 folio number being lot 8. Is lot 8 the whole of the land  
23 or only part of it?---Only part of it is lot 8.

24 And is that the 20 acres?---I'm not sure, sir. But the  
25 20 acres is the higher bit of the land.

26 But what's lot 8?---One of the titles. There are seven titles.  
27 7, 8 and 9 are the larger titles, so lot 8 would be the  
28 big one on top. I'm pretty sure it's the big one on top.  
29 That's almost the 20 acres that he's buying would be lot

1           8, from memory.

2   Then there's a condition as to payment down the bottom of the

3           page. The price is 350,000 with a deposit of 50,000, with

4           the balance of \$300,000 to be paid; is that right?---Yes.

5   So this is on 23 May 2018. If you then go over to the

6           provision for settlement on the next page, 4247, and so

7           settlement is due on the latter of either 12 months after

8           the day of sale, which was 23 May 2019; right? Or 14 days

9           after satisfaction of the conditions subsequent, being

10          special condition 8.5 and 8.1; right? So, in any event,

11          the matter didn't settle after 12 months, did it?---No,

12          it's being worked through at the moment, sir.

13   And so far you have got how much? 150?---Deposit, yes.

14   The provision here is for a deposit of 50. So, although there

15          is no settlement, you've been given not only the deposit

16          but an extra 100?---No, my lawyer assures me that he

17          controlled all those payments as per the contract.

18   Well, we'll get there, but the deposit was a deposit of 50; is

19          that right?---Yes, sir.

20   Okay. We then go to page 4251, which tells you what must

21          happen at settlement; all right? So at settlement, this

22          is once the final payment is made, the purchaser must pay

23          the balance and you, the vendor, must do all things

24          necessary to enable the purchaser to become the registered

25          proprietor. And you understood that to be the case? You

26          accept that that was the term of the agreement?---Yes,

27          sir. It was drawn up by lawyers, not myself, but

28          I understand it.

29   Then, as you will recall, at page 4247 settlement was either

1 after 12 months or 14 days after the satisfaction of  
2 the condition subsequent.

3 COMMISSIONER: Which is a planning permit for the land to  
4 construct a dwelling and a planning permit to construct a  
5 dwelling on the adjoining land owned by the vendor.

6 MR TOVEY: So if you look at page 4261 and go down to  
7 paragraph 8. So this is the condition that has to be met  
8 before settlement can be achieved. "'Condition  
9 subsequent' means the purchaser notifying the vendor that  
10 the purchaser has obtained both the following planning  
11 permits: a permit to construct a dwelling on the land and  
12 a permit to construct a dwelling on the adjoining land  
13 owned by" you, the vendor; is that right?---Yes, sir.  
14 It's being worked through.

15 So you understood it that the matter couldn't be settled until  
16 those permits were obtained; is that right?---That's  
17 what's being worked through at the moment.

18 Yes, and in fact Mr Woodman has told us that as at the moment  
19 no application has yet been made for those  
20 permits?---That's not my understanding. I believe there  
21 have been discussions with the Baw Baw Shire in regard to  
22 the matter of re-vegetation which would trigger two  
23 allotments. Baw Baw have been involved in  
24 conversations - - -

25 What you are talking about there is - - -?---Seven titles into  
26 two to trigger the permits.

27 No. What we are talking about here is permits - - -

28 COMMISSIONER: Mr Tovey is asking you about whether or not  
29 applications have yet been made for permits to construct

1 the dwellings on the two pieces of land?---No, sir, the  
2 process is, "What sort of vegetation plan are you  
3 presenting to us," which has been happening at the moment,  
4 "That we would be satisfied to say, 'Okay, those seven  
5 titles can come into two titles to trigger the building'",  
6 and that's where it is at at the moment.

7 MR TOVEY: All right. So if you go to 8.1.2, "The condition  
8 subsequent date means the day which is five years after  
9 the day of sale or such other date as is agreed upon in  
10 writing by the parties." All right; you understood  
11 that?---Yes.

12 So what that meant was that you had up to five years to  
13 complete the conditions, both of you?---According to that,  
14 yes.

15 Before settlement was required, and if you agreed you could put  
16 it off as long as you wanted to after agreement in  
17 writing?---Yes.

18 Is that right?---And we have also had discussions about if the  
19 planning permits don't go ahead him buying the property as  
20 is for around the figure that we have already said here.

21 I just want you to comment on the terms of the agreement for  
22 the time being?---Okay, sorry.

23 Then 8.4, "If the contract is rescinded under special condition  
24 8.3 the vendor must refund the purchaser all the money  
25 paid"?---That would be 150,000, yes.

26 So that leaves totally at the discretion of Mr Woodman when it  
27 is that settlement is going to take place, doesn't  
28 it?---I have to sell the block. So that won't happen.

29 The money you've got you have got for at least five years under

1           this agreement?---It's not going to go five years.

2    You have just agreed that the term of the agreement is that the

3           time for the fulfillment of condition 8, the condition

4           subsequent, the contract provides five years; all

5           right?---The contract does, yes.

6    So you have got five years where if you don't complete your end

7           of the contract, you have got the money, the use of the

8           money that he's given you; do you understand that?---I'm

9           not going to do that because I have to sell the property.

10   You have to sell - - -?---But I understand your point, yes.

11   You have to sell the property to whom?---I have had heaps of

12           people wanting to buy it. So if there is a hold-up in any

13           way, shape or form he'll get his money back and I have

14           already got people to sell it to. But we have already

15           spoken about if the building permits don't go

16           through - - -

17   So - - - ?---It's not going to go five years.

18   Hold on, I thought you were telling me that you were working

19           towards the development of this property in a certain

20           way?---Yes, we are.

21   But now you are selling it to somebody else even though - -

22           -?---No, I'm not selling it to somebody else. We are

23           going to work this process through and I'm not waiting

24           five years; everything will be wound up and done properly,

25           even though that's in the contract.

26   Under the contract you have got five years to hold the money

27           he's already given you and you can't get it back. That's

28           under the contract; do you understand that?---Yes, but I

29           wouldn't do that.

1 Okay. Under the contract the only basis on which he can get  
2 your money back is if he exercises his discretion to  
3 rescind the contract?---And he can do that.

4 In the meantime there is no provision for you paying any  
5 interest if he decides to rescind, is there?---I haven't  
6 seen any. But, as I said, I didn't draw up the contract.  
7 But you are correct.

8 So under this agreement you have \$150,000 of his money which  
9 you are entitled to keep for at least five years and give  
10 it back whenever he wants after that, right, and you get  
11 that interest free; you understand that?---In the  
12 contract. But, as I have said, I have had talks with him  
13 about purchasing even if the planning permits don't come  
14 through.

15 Did that seem to you to be a very generous deal?---Now that you  
16 have highlighted the five years, but I'm not going to do  
17 that because I need - - -

18 No, at the time that you entered into it did that seem to you  
19 to be a generous deal, that you had interest free use of  
20 \$150,000 of his money for five years and if he wanted to  
21 let you go on it could have gone on forever?---I signed it  
22 on lawyer's advice and it won't go on for five years  
23 because I need to sell it.

24 Mr Woodman - sorry, I'll ask you this. You are aware, are you,  
25 having read press reports or having been asked questions  
26 in preparation for this that there is a conversation where  
27 you and Mr Woodman speak about how you are both going to  
28 benefit financially if C219 is sorted?---As  
29 I explained - - -

1 No, are you aware that there is such a conversation which has  
2 been the subject of evidence?---No, but I think we alluded  
3 to some sort of dialogue before today.

4 Did the settlement of this have anything to do with C219?---No.  
5 No, sir. Not at all.

6 You'll notice also there's nothing in this contract about  
7 setting off or repaying the surveyors' fees that you told  
8 us about. Why's that?---Because at that time he wasn't  
9 interested in purchasing the land and the lawyers would  
10 work those costs out and that would come off the top  
11 of - sorry, the cost of the property, and in talking with  
12 Mr Woodman now when he came up to survey the property he  
13 had no intention. So he said there's a price around about  
14 that price there. But since he's become involved we could  
15 negotiate 50:50 or something on that because he is now  
16 buying the property where before he was not.

17 So the true value you decided before the contract of sale was  
18 something in excess of \$350,000?---I'm not sure what you  
19 mean.

20 COMMISSIONER: I don't think the witness is saying that,  
21 Mr Tovey. (To witness.) You are saying that the  
22 surveying costs are still something that - - -?---They're  
23 the only thing that we could negotiate because he actually  
24 said to me, "Because the 10 or 15 grand that it's cost,  
25 because I'm buying it now I feel that I wasn't buying it  
26 when I first come up, but I'm happy for that to come off  
27 the cost." But he may drop it a little bit because he's  
28 buying it.

29 Come off the cost of - - -?---Of him paying me.

1 You mean come off the purchase price?---Yes, it would be less  
2 for him.

3 Yes. Mr Tovey is asking you why isn't that included in the  
4 contract, that the surveying costs are to be  
5 included?---I don't know. I don't know, sir. But that's  
6 something John Woodman and I discussed along with a couple  
7 of other things.

8 So the terms of this contract, who devised - who was the  
9 architect that created these terms?---Maddocks and Senet  
10 Legal put it together, sir.

11 Yes, but presumably on someone's instructions?---They certainly  
12 weren't mine. I had nothing to do with it.

13 Who gave them the indication of what the terms should  
14 be?---Probably Mr Woodman. It would have to be.

15 So if indeed the correct view to take of this contract is that  
16 it's highly favourable to you, that's come from  
17 Mr Woodman's instructions to his lawyers?---I would say  
18 so. It didn't come from me.

19 MR TOVEY: I'm asking you again about the cost of  
20 the surveying. Was it always anticipated that you would  
21 have to pay for the cost of the surveying on the  
22 property?---Yes, and then Mr Woodman became interested in  
23 purchasing it and he said, "We'll just hold this over here  
24 and then we'll work out a price."

25 So there was no suggestion by you or him that the whole thing  
26 would just be pro bono or anything like that?---No, he  
27 said, "I'm keeping strict records of the surveying."

28 I just want to take you to a conversation on 9 November of  
29 2018. Could we play, please, Mr Commissioner, tab 138.

1 This is 9 November 2018, a discussion between Mr Ablett  
2 and Mr Woodman about the boundary alignment.

3 (Audio recording played to the Commission.)

4 MR TOVEY: Could I just have that stopped for a minute, please?

5 I just need to get the document. Now could we play it?

6 Thank you.

7 (Audio recording played to the Commission.)

8 MR TOVEY: That's a conversation between you two?---Yes.

9 You told me that there was no - you told me absolutely just a

10 minute ago there was no pro bono aspect to this?---No,

11 well, Mr Woodman has the price of what the survey cost.

12 That's what he told me.

13 You told me that there was never any pro bono suggestion in

14 respect of the conduct of that work?---I think he might

15 have been talking pro bono about that particular surveyor,

16 but the other three or four there was a bill for that he's

17 got. There wasn't just one surveyor. There was a whole

18 heap there for a couple of days.

19 What's happened there is The Age has written a story, has it

20 not, again suggesting or is about to write a story or he's

21 telling you that The Age is about to write a story saying

22 you are in partnership in a farm together?---We are not in

23 a partnership.

24 All right?---Yes.

25 That's on 9 November of 2018; is that right?---If that's the

26 date on that, yes.

27 And on 9 November of 2018 he says to you, speaking about The

28 Age journalist, "You don't have to - just in case he

29 rings, you don't have to - you don't have to tell him

1 this, but the story is that when you first became a  
2 councillor you mentioned to me that you have a surveying  
3 problem and the neighbour happened to be somebody I was  
4 working with at Monash Medical, Tony Lewis, and on a pro  
5 bono basis I've sorted out a boundary re-alignment"?---No.  
6 That's what he - - -?---That's what he said.  
7 For him, yes?---He also said there's a bill for surveying.  
8 This is what he is saying to you; all right?---That's he saying  
9 to me, yes.  
10 You know that's rubbish, don't you?---Yes.  
11 You know what he's saying to you is rubbish?---Again in one ear  
12 and out the other ear. There is a bill for surveying.  
13 You know that what he's done is he's ringing you up and he is  
14 preparing you with a story which would enable you to lie  
15 to the journalist - - -?---Did I do that?  
16 I'm asking you - - -?---I wouldn't do it.  
17 What you understood him to be trying to do at the time. At the  
18 time did you understand him to be ringing you up and  
19 asking you, a councillor, to lie to a journalist about the  
20 way in which the boundary re-alignment had taken place?  
21 Is that what he was doing?---I don't know what he was  
22 doing, but I wasn't going to lie to any journalist about  
23 what happened.  
24 So you understood that what he was saying was a lie?---He was  
25 wording me up to say something that - - -  
26 A lie?---Pro bono, because it wasn't pro bono. One guy was pro  
27 bono, but the rest - there were three other surveyors  
28 there that were paid for. But that was his final  
29 project - - -

1 He was wording you up to lie, was he not, and you tell me you  
2 didn't want to?---I wouldn't lie to a journalist, no.

3 COMMISSIONER: Was it correct to say, however, that your  
4 neighbour was someone that Mr Woodman had some contact  
5 with at Monash Medical?---Yes, because he owned the  
6 property opposite me, and we had to get his consent to go  
7 on his property to re-align.

8 Right. So that part of it was correct?---Yes.

9 "The neighbour happened to be someone I was working with at  
10 Monash Medical, Tony Lewis"?---Talking to him, and he got  
11 the half a million dollars from the big fundraiser that  
12 was in the paper for humidicribs for very, very premature  
13 babies. That was because we knew Tony Lewis, and John did  
14 that for him.

15 So that was correct?---Yes.

16 And the bit of it then that's incorrect was that it was going  
17 to be done - that Mr Woodman did it on a pro bono basis;  
18 is that the bit that's incorrect?---Yes, it's - one of the  
19 guys did it for nothing to finish his project, but the  
20 other surveyors there's a bill for.

21 Right. Is it correct to say - when was that, that you had that  
22 discussion with Mr Woodman about the initial surveying  
23 problem? Was it at the time you bought the  
24 property?---No, it would have been just after that. I may  
25 have mentioned to him there's a problem, but I never asked  
26 him to do anything until - it only got sorted out about  
27 three years ago, and it took four years. So it could have  
28 been around the time, because I have had it for seven or  
29 eight years. It could have been, yes.

1 It could have been about the time you bought the  
2 property?---Yes.

3 And when was it you bought the property, Mr Ablett?---It's been  
4 seven or eight years ago. It was 12 months after I bought  
5 the property that we realised we had a title - a boundary  
6 problem because Mr Lewis bought the property over the road  
7 and said, "Your boundary's out."

8 Does the contract not show that you purchased the property in  
9 2010?---I'm not sure. Is that in the contract, sir? If  
10 that's what it says in the contract that would be right,  
11 I would think.

12 Is there some evidence in that document as to when the property  
13 was acquired, Mr Tovey?

14 MR TOVEY: I would have to check that overnight.

15 COMMISSIONER: But if it was 2010 then that tells us that you  
16 were already in an association with Mr Woodman if not at  
17 the time you bought it, shortly afterwards?---It was  
18 12 months to two years before Mr Lewis bought the property  
19 and then we realised.

20 MR TOVEY: And there were two lies that you were being asked to  
21 be told, were there not? The first was that the  
22 re-alignment was for Tony Lewis when it was in fact for  
23 you?---It was for both of us.

24 And, second, that it was done pro bono when it wasn't?---It  
25 wasn't pro bono. One of the surveyors - - -  
26 All right. So you agree then - - -?---Didn't charge.  
27 What he's suggesting to you is that if you are contacted by a  
28 journalist you lie, tell those lies; that's what the  
29 conversation - - -?---Sorry, just say that again, please?

1 What Mr Woodman was suggesting to you in that conversation was  
2 that you repeat that story to a journalist if a journalist  
3 contacts you?---I think he said, "You could say that."  
4 But, no, I wouldn't lie to a journalist.

5 No, I'm just asking you at the time you understood him to be  
6 asking you to tell that story to a journalist if a  
7 journalist contacted you; that was what he was doing at  
8 the time, that was your understanding?---I think so, yes.

9 All right. So if that was the case he was asking you to lie to  
10 a journalist. Why was there a need to lie?---I have no  
11 idea. I don't know, sir.

12 COMMISSIONER: Is this a convenient time, Mr Tovey?

13 MR TOVEY: Yes.

14 COMMISSIONER: So, Mr Ablett, we'll resume at 10 o'clock  
15 tomorrow morning?---Yes, thank you.

16 I just remind you, Mr Ablett, that I have made an order for  
17 witnesses to be absent from the hearing whilst it's being  
18 conducted which means you must not talk to any witnesses,  
19 past or future, about the evidence you are giving or that  
20 they might give; do you follow that?---I fully understand  
21 that, sir.

22 Very good?---Thank you.

23 And I'll tender that last exhibit. It's exhibit 92.

24 10 o'clock, please.

25 #EXHIBIT 92 - Recording of discussion between Mr Ablett and  
26 Mr Woodman on 9 November 2018.

27 <(THE WITNESS WITHDREW)

28 ADJOURNED UNTIL TUESDAY, 3 DECEMBER 2019 AT 10.00 AM

29