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TRANSCRIPT OF AFTERNOON PROCEEDINGS

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INDEPENDENT BROAD-BASED ANTI-CORRUPTION COMMISSION

MELBOURNE

THURSDAY, 5 MARCH 2020

(17th 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 2.27 PM:

2 COMMISSIONER: Mr Tovey.

3 MR TOVEY: Mr Commissioner, I call Mr Kenessey.

4 COMMISSIONER: Mr Kenessey, this is a public hearing, the  
5 Commission. Mr Tovey I authorise to ask you questions.

6 I may also ask you some questions. At the conclusion of  
7 those questions you are represented by counsel. I'm  
8 sorry, it's Ms Keating, of course.

9 MS KEATING: Yes, Commissioner.

10 COMMISSIONER: She will be able to ask you questions and you  
11 can elucidate on anything that you wish.

12 <THOMAS JAMES KENESSEY, affirmed and examined:

13 COMMISSIONER: Mr Kenessey, I've got to put some formal matters  
14 to you. You were served with a summons and in that  
15 summons the matters about which you are to be questioned  
16 were set out. But I will just go over them again with  
17 you. You will be asked about your knowledge of the City  
18 of Casey Council in relation to consideration of  
19 development applications and other planning matters within  
20 the City of Casey; the transparency of planning and  
21 property development decision making within Victoria,  
22 including but not limited to local government; whether  
23 public officers involved in planning and property  
24 development decision making have been improperly  
25 influenced through donations, gifts or other hospitality;  
26 the circumstances surrounding any actual and potential  
27 financial benefits obtained by any public officer, their  
28 families or their associates resulting from or otherwise  
29 in connection with planning and property development

1 decision making within Victoria; and the systems and  
2 controls in place within public bodies concerning planning  
3 with particular focus on the existence and adequacy of  
4 systems and controls for ensuring the integrity of the  
5 planning process, including by detecting instances of  
6 public officers providing benefits to themselves, their  
7 family, friends or associates.

8 When you were served with the summons you were  
9 also served with a document headed "Rights and  
10 obligations". Has Ms Keating been through those rights  
11 and obligations with you?---Yes, she has.

12 And are you confident you understand them?---Yes, I am.

13 Do you want me to repeat any of them?---No, I don't want to  
14 waste the Commission's time.

15 Very good. Let me just emphasise a couple of things to you.

16 Mr Tovey will be asking you questions and sometimes he  
17 will ask you what we call open-ended questions; that is,  
18 he will ask you a question which doesn't in any way  
19 suggest that he already knows the answer, but he might  
20 well know the answer. I say that to you because I want to  
21 emphasise it's really important that you give accurate and  
22 truthful evidence. So long as you do that, as the "Rights  
23 and obligations" have set out for you, your evidence can't  
24 be used against you in a court of law. But if you were to  
25 give false evidence, then you could be prosecuted for  
26 perjury. So it's only in that setting that your evidence  
27 could be used against you. So I just want to emphasise  
28 it's really important that you are accurate and truthful.

29 Now, if at any stage you don't understand the

1 question, you want a question repeated, you feel you want  
2 to consult with Ms Keating before answering a question,  
3 just say that you would like to do that. If you want a  
4 break at any stage, please let me know and we'll have a  
5 break. Do you follow?---Thank you.

6 Good. Yes, Mr Tovey.

7 <EXAMINED BY MR TOVEY:

8 What's your full name, please, Mr Kenessey?---Thomas James  
9 Kenessey.

10 And did you attend here today in response to a summons served  
11 on you?---Yes.

12 And could you have a look at this document? Was that summons  
13 numbered SE3196?---It looks like what I was served, but  
14 without having them side by side I wouldn't be able to  
15 confirm.

16 So that's a summons SE3196 and a document titled "Section  
17 121(3)(c). Rights and obligations" and a covering letter;  
18 is that right?---Sorry, I wasn't checking what you were  
19 doing. I didn't know I was supposed to. My apologies.

20 So you got the summons?---Yes.

21 You got a document - - -?---SE3196, is that what you said?

22 Yes?---Okay, yes.

23 You have got a document titled "Section 121(3)(c). Statement  
24 of rights and obligations" and a covering letter?---Okay,  
25 yes.

26 So they are the documents you received, are they?---Yes.

27 I tender those.

28 COMMISSIONER: Exhibit 151.

29 #EXHIBIT 151 - Bundle of documents served on Mr Kenessey.

1 MR TOVEY: Other than with your legal representative, have you  
2 discussed the existence of your summons or the subject  
3 matter of the investigation with other persons before  
4 giving your evidence today?---Yes, I have.

5 And with who?---In the early days with Gary Rowe. Before the  
6 summons, sorry. But told him we couldn't talk about it  
7 because my legal representation had said we couldn't talk  
8 about it.

9 Yes?---Once he got his legal representation, we didn't see each  
10 other again.

11 Other than that, has there been any discussion of the issues  
12 that you have been involved in with other persons?---Well,  
13 with friends and colleagues, yes.

14 Let me take you back to 2014. Now, in 2014 did you become  
15 involved in promoting what ultimately became known as the  
16 C219 rezoning?---I would say I was involved in it before  
17 that.

18 All right. In 2014 what position did you hold?---With  
19 Leighton? An employee, sorry?

20 Yes. What work were you doing?---I was a development manager  
21 for Leighton Properties.

22 Employed by Leighton Properties?---Leighton Properties, yes.

23 Personally?---Yes.

24 Not through some company structure?---No.

25 And where were you employed?---I'm trying to remember where the  
26 office was at that time. We have moved from Rialto to  
27 Collins Place and then 14 William. I would have to check  
28 my file.

29 It was in Melbourne, though, was it?---It was in Melbourne,

1           yes.

2   At that stage did you become involved in the rezoning - sorry,

3           through Leightons in the issue which ultimately turned out

4           to be C219 rezoning?---If I could give you a bit of

5           history?

6   Please?---Is that okay? So I worked for Leighton Properties as

7           an employee for 13 years. In 2012 I was assigned the land

8           now known as C219 as a project. I had taken over that

9           project from colleagues who had previously tried a

10          rezoning attempt and failed.

11   So when was it that you took over?---2012.

12   Yes?---Back then I was in the non-core division and seen as a

13          bit of a troubleshooter, so to speak. So they asked me to

14          do a full forensic analysis of - - -

15   Could you just speak a little bit more slowly and a little bit

16          more loudly, thank you?---I'm sorry.

17   Yes. So what happened?---I was tasked with reviewing the

18          project and providing recommendations on what to do with

19          the site.

20   Yes?---Developed - I'm an engineer by background, so developed

21          a matrix structure of assessing revenues, costs and all

22          the associated inputs.

23   Yes?---Assessed work done to date, assessed how you deal with

24          the project if it was a clean sheet, and created a series

25          of recommendations based on all that assessment for the

26          executive, senior executive on how to proceed further with

27          the project.

28   At that stage in 2012 Leightons owned that land, did

29          they?---Correct.

1 And in 2012 had it been designated industrial land

2 already?---Correct.

3 At that stage how many acres were there involved?---Sorry, I'm  
4 in hectares.

5 In hectares?---123 hectares.

6 Just so we can keep on track, the rezoning ended up at least  
7 for a period of time embracing all or some of the Kelly  
8 land; is that right?---Yes, if I could step just one step  
9 back again, I apologise. As part of that initial review  
10 I told my executive never to ask me to rezone the land.  
11 They tried and failed, and there wasn't the support for  
12 it. So I encouraged them to adopt a strategy to go out  
13 and find an anchor marquee tenant for the land for which  
14 it was designed, large lot industrial uses, encouraged  
15 them to go very aggressively, and they went so  
16 aggressively that they actually put the land in at zero  
17 cost. After numerous attempts and fails - and in  
18 particular what came out was a trend that the users for  
19 which the land was set aside didn't want to be there, and  
20 that was simply due to its proximity to residential - we  
21 weren't actually getting to the next stage of even  
22 providing financial offers, and that in simple terms, and  
23 I can elaborate a whole lot of - - -

24 Just keep it simple?---Okay.

25 We will tell you if we want it complicated?---Sure. Sorry.

26 That really is the crux of why we are here. That was the  
27 genesis of the second rezoning attempt.

28 At that point in time, in that period from 2012 to 2015, had  
29 there been any industrial occupation of the land? Had

1           there been any commercial occupation of that land?---No.  
2   So it was still greenfields?---Correct.  
3   All right.  Where did the Kelly land fit in?---So when I went  
4           to further review - so in September '13 the executive  
5           decided to try again, given the failings of it being able  
6           to - - -  
7   Sorry, September 13 what year?---2013.  Sorry, September 2013.  
8   So September 2013?---Due to recognition of the fact that the  
9           land for which it was designated the users didn't want to  
10          be there, the executive decided they wanted a review on  
11          the possibility of rezoning the site.  Until the end of  
12          the year we conducted with numerous consultants a  
13          structured review on how would be best to approach  
14          rezoning the land.  
15   Yes.  And how did that unfold - again, keeping it simple?---We  
16          narrowed it down to - our only options in our view, with  
17          our consultants' view as well, was that it was either via  
18          the MPA, the Melbourne Planning Authority, which is now  
19          the Victorian Planning Authority, or via councillors.  And  
20          I make the distinction deliberately.  
21   So the MPA option would have been to make an application, would  
22          it, to have them review the zoning of the land?---In  
23          simple terms, yes, and via the growth corridor plans.  
24   And councillors, was that - did that involve convincing  
25          councillors to embrace what you wanted to do?---We hadn't  
26          spoken to any at that stage.  
27   No, but when you are talking about the options, is that what  
28          the councillors option was?---Well, the council officers  
29          had made a submission to Plan Melbourne refresh shortly

1 before that time, in which they stated that they wanted  
2 the land to be designated as State significant industrial  
3 land, which would remove control of the designation of  
4 that land from the local government and place it into  
5 State Government.

6 Yes?---So our assessment based on that, that they wanted to  
7 I suppose upgrade the designation of the land to State  
8 significant, which the criteria was protection of that  
9 land from rezoning and management of the planning of it to  
10 the State - we also had a couple of consultants speak to  
11 officers to see how receptive they would be to  
12 investigating and discussing the issues we were having,  
13 and they pretty much said that they thought it should be  
14 industrial.

15 All right. So where did that leave you in respect of the  
16 prospect of having it rezoned?---Sorry, I didn't answer  
17 your question about the Kellys either, I don't think.

18 No, it's okay. While we are there - we will go back to the  
19 Kellys in a minute - given what you have just described,  
20 did that mean that you didn't see there was a significant  
21 prospect of having it rezoned?---No, we still thought  
22 there was a - to use your word - significant prospect of  
23 having it rezoned.

24 Where did the Kellys come into it?---Our land - if you looked  
25 at - if you look at - I don't if you - you probably don't  
26 need to; I will try to describe it as best I can in words.  
27 The PSP employment, which was all industrial land back  
28 then - I will correct myself, some of it was called  
29 business - the Kelly and the Leighton land were by far the

1 largest contiguous parcels. In the north of the wetlands  
2 they were highly fragmented. MAB's 20-hectare parcel was  
3 one of the biggest parcels there. To the east of MAB it's  
4 fragmented ownership, difficult to subdivide. So when you  
5 talk about large lot industrial users they are  
6 either - probably a minimum of five to 10 and up to 20,  
7 25. So if the block of land that is what I will call the  
8 in globo unsubdivided block of land is of the same size or  
9 smaller, clearly large lot users aren't going to go into  
10 the northern part of the precinct because they require  
11 aggregation of land. So in the PSP it had different  
12 designations of where - whether it was mixed use or  
13 business, and I'm happy to take you through it, but - - -  
14 No, it's okay?---So it's pretty obvious that the large lot  
15 users are to be placed on the Kelly and Leighton land.  
16 Yes?---Now, it was also - - -  
17 How much land was the Kelly land?---I think in total it was  
18 200. So with - maybe they were 80. I think it was  
19 203 hectares in total, the original application.  
20 And how large was the total of the industrial precinct that had  
21 been established?---Industrial land within the PSP was  
22 circa 450 hectares.  
23 So your land and the Casey land - - -  
24 COMMISSIONER: Kellys'.  
25 WITNESS: Sorry, I didn't answer the question. In simple terms  
26 we thought if we were having that problem they would too.  
27 So - - -  
28 MR TOVEY: But your land and the Kelly land was then a little  
29 bit less than 50 per cent of the totality of the

1 prescribed employment precinct?---I would agree with that,  
2 yes.

3 So how was it that then you came to connect with Watsons or  
4 Mr Woodman or persons or entities associated with  
5 them?---So a gentleman called Fred Krumins, who'd worked  
6 for us for a number of years as a consultant expert in  
7 industrial land subdivision in Melbourne, sat on I think a  
8 couple of the government boards for industrial land, he  
9 confirmed to us that John was a representative of the  
10 Kelly family and that we should speak to him as the Kelly  
11 family's representative, and that also he has done  
12 rezonings in the past and we should speak to him and see  
13 what he thinks.

14 COMMISSIONER: What was his name, sorry?---Fred Krumins.

15 How do you spell that?---K-R-U-M-I-N-S.

16 Who was he employed by?---Leighton Properties.

17 So a fellow employee?---No, he was a consultant advising us at  
18 the time on - we were analysing a structured analysis on  
19 how to try and get the land rezoned. He was providing  
20 input.

21 So were there other consultants also involved?---Yes, we had  
22 MacroPlan. Brian Haratsis is their principal and  
23 Australia wide recognised as a leading figure in the  
24 industry, has written books and liaises with government.  
25 He had two of his employees helping us, Glenn Lamont and  
26 Luke Beatty. I had spoken to Geoff Underwood about it,  
27 who used to work for government as a liaison between  
28 developers and government. Spoke to John Cicero, who  
29 managed Leighton Properties' last rezoning attempt. So

1 John is a principal at Best Hooper. There were a few  
2 other people off the top of my head I can't remember.  
3 So Mr Krumins, who was a consultant for Leightons?---Yes.  
4 He comes to you and what does he say?---He said that John  
5 Woodman is the Kelly family's representative. There's  
6 also further background, is that Watsons had conducted a  
7 trunk sewer between our land to the south, through our  
8 property and then to the north onto the Kellys' land with  
9 a pump station. So colleagues of mine had worked with  
10 John in delivering that. So he was known to our  
11 organisation in the context of delivering a trunk sewer.

12 MR TOVEY: It was in that context that you came to meet John  
13 Woodman?---Correct.

14 How did that relationship - how was that relationship created  
15 after the initial introduction? How did the relationship  
16 move?---So in the first meeting - from memory it was at  
17 Fred's office - it was just trying to listen to hear what  
18 he had to say and, you know, what sort of an operator he  
19 was. We were still going through our processes at that  
20 time and hadn't narrowed down.

21 So was he doing a pitch at that stage?---No. I pitched to him  
22 that we were having trouble finding the users and wanted  
23 to see what he thought and whether the Kellys would be  
24 interested in joining us in a rezoning application.

25 Had the Kellys at that stage initiated or contemplated a  
26 rezoning application, to your knowledge?---I don't think  
27 I could answer that. Sorry, I don't know.

28 What was his role in respect of the Kelly land at that point if  
29 it wasn't in respect of rezoning?---So he helped them in

1 terms of the advice of the pump station, I think dealing  
2 with the authorities and I assume dealing with  
3 compensation payment for the land required for the pump  
4 station. So he was, my understanding, providing advice to  
5 them on their property, gearing it up in the PSP for - I'm  
6 not sure. I mean, the trunk infrastructure, from my  
7 understanding, was required and he might have negotiated  
8 with them to get a small amount of money for the land,  
9 which is normal course. Sorry, to add to that - - -  
10 When was it that this initial contact took place between  
11 yourself and Mr Woodman?---October '14 - sorry, '13.  
12 And have you retained notes or records or minutes of your  
13 meetings with Mr Woodman?---I've got a lot of records from  
14 that time, yes.  
15 And have you collated them for the purposes of giving your  
16 evidence?---I have.  
17 And you have had the opportunity of refreshing your memory from  
18 them, have you?---To the best of my ability.  
19 Yes. What sort of volume of documentation are you talking  
20 about?---I think I've got 300 and something, maybe 400  
21 just on the - up to the October '14.  
22 Yes?---I think about 60 pages of notes.  
23 I think we will just stick where we are for the time being. In  
24 any event, you have your initial meeting. At that stage  
25 you are saying as a matter of your personal recollection  
26 at that stage Woodmans and Kellys had not been  
27 contemplating rezoning?---Correct.  
28 Okay. So how did it come then that ultimately - - -  
29 COMMISSIONER: I'm sorry, what was your last answer?---Correct.

1 Correct to what?---That - - -

2 What were you agreeing with?---Sorry, I understood the question  
3 was that at that time the Kellys or John wasn't trying to  
4 get their land rezoned.

5 You need to be careful about your answers, Mr Kenessey. A  
6 little earlier on your answer to a similar question was  
7 you didn't know whether or not the Kellys had contemplated  
8 that?---I understand. I apologise.

9 You just need to be careful?---Okay. It's not normal - - -  
10 I understand. I'm just saying how easy it is that you say  
11 something that's inaccurate?---I appreciate it. Thank  
12 you.

13 MR TOVEY: By February of 2014 you have Leightons and Watsons  
14 writing to the City of Casey requesting in principle  
15 support for the consideration of rezoning; is that - -  
16 -?---February 11, I think it was, the letter.

17 That's right. How did you get to that point?---In 2013  
18 MacroPlan had revealed to us that the MPA option to pursue  
19 the rezoning was not an option, and that left councillors.  
20 We asked Brian Haratsis and MacroPlan as Leighton's  
21 preferred consultant did they know any councillors and how  
22 well they knew council. His response was that he did not  
23 know any councillors, and our understanding is that John  
24 had a wide network in the south-east after operating a  
25 business there for 30 years and having multiple successful  
26 projects, his recent inclusion of Brompton Lodge in the  
27 Logical Inclusions Committee was supported by the GAA, all  
28 authorities and everyone was - so, for us, it was Brian  
29 didn't have the contacts and John did and seemed to be the

1           logical choice.

2   So the logical choice to do what?---Help us with our rezoning  
3           and spread our message of the merits of our troubles  
4           attracting users to the land. Essentially - I can go into  
5           as much detail as you like, but I'm conscious - - -

6   In any event, you told me earlier on that you had identified  
7           two options. One was the MPA option and the other one was  
8           councillors?---Correct.

9   Now, the MPA option becomes non-viable, on the advice that you  
10          are given?---Yes.

11   So then the only option was the councillors option?---That's  
12          what - - -

13   Is that right?---That's what we thought at the time.

14   And that option you thought could best be achieved by John  
15          Woodman, who had a track record of doing well with Casey  
16          councillors; is that a fair indication of the way in which  
17          you thought?---I don't think we narrowed it down to Casey  
18          councillors. In the early days it was we retained the use  
19          of MacroPlan as well and they were going to manage State  
20          Government liaison.

21   Yes?---And John was going to be responsible for local  
22          government.

23   How long did they remain part of that plan?---Well into 2014.

24   All right.

25   COMMISSIONER: You mentioned Brompton Park - - -?---Brompton  
26          Lodge.

27   Brompton Lodge. What was that?---It was land that was outside  
28          of the urban growth boundary that was brought into and  
29          subsequently rezoned to residential.

1 By who?---John.

2 Through what council?---Casey. It's in close proximity to the  
3 site where - - -

4 So in 2014, by the time you start to consider a working  
5 relationship with Woodman, you were aware of Brompton  
6 Lodge and the success he had had there?---Yes.

7 MR TOVEY: Were you part of a committee at Leightons or were  
8 you riding this individually?---I was responsible for the  
9 project. I had a colleague who worked with me at the time  
10 here in Melbourne, and we reported to the senior executive  
11 leadership team in Sydney.

12 What's the name of the colleague that you had?---Peter  
13 Williams.

14 And who led up the team in Sydney that you reported  
15 to?---Andrew Cooper.

16 There's reference in some telephone conversations, to which you  
17 will be taken some time in the next couple of days, to  
18 somebody by the name of George?---George Sassine.

19 Who is he?---He's my current direct report direct report.

20 And who was he at the time, or perhaps by 2018, when there are  
21 Age allegations and things were getting a little bit  
22 hairy, no doubt, what was his job then?---As I've  
23 described now, Michael McConnell is my direct report, who  
24 I report to, and Michael reports to George, and that's  
25 been the case for - I would have to check my notes - a  
26 couple of years at least.

27 And what's George's designation?---I would have to check.

28 So getting back then to your meetings with Mr Woodman, would he  
29 come along to meetings with you at your offices, or did

1           you have a regular process by which you had a working  
2           party going on? Was it ad hoc and who would come?---Over  
3           the period of - since 2014 the process would vary from  
4           regular meetings if required to ad hoc. It was more as  
5           required, to be honest, I'd say, if I had to choose.  
6   What about during that early period when you were working out  
7           how you would proceed? I'm talking about the period  
8           leading up to 11 February of 1914, when you wrote to  
9           council?---Sorry, what year, sorry?  
10   11 February - in that early period leading up to the letter of  
11           11 February of 2014?---Yes.  
12   Where you wrote to the council?---Yes.  
13   Seeking that they consider rezoning?---What's the question,  
14           sorry?  
15   What was the nature of contact between yourself and Mr Woodman  
16           over that period of time?---I think I had meetings with  
17           him. The Sydney executive had meetings with him. We had  
18           meetings together with the project team, which was  
19           MacroPlan as well.  
20   Yes. And what did Mr Woodman have to say about what benefit he  
21           could be to you? At that - sorry, before I ask you that,  
22           was he ultimately offered a contract?---Yes.  
23   Was that contract in writing?---Yes, it was.  
24   And when was that contract executed?---It was after a 1 April  
25           '14 motion from council to commit to a review, and it  
26           would have been perhaps June/July '14. But he had been  
27           given drafts prior to that.  
28   COMMISSIONER: But before you entered into a contract with  
29           Mr Woodman - that is, you, Leightons, and Mr Woodman - -

1 -?---I understand.

2 Was there already some agreement or understanding as to what  
3 you, that is Leightons, and Mr Woodman on behalf of the  
4 Kellys were going to do?---In December 19 we worked  
5 through a matrix of how our consultant team should work,  
6 and the executive just before our Christmas party endorsed  
7 having John as the lead for the council portion of the  
8 rezoning process. Then early in January the negotiations  
9 began with John and he was issued documents and drafts in  
10 that period. So what I'm saying is he was told that we  
11 would like him or Leighton would like him to be the lead  
12 consultant and - - -

13 For Leightons as well as for the Kellys?---Correct.

14 But until that contract was entered into later in that year had  
15 you already agreed on a common strategy? Even before the  
16 point of time when Woodman was to work for you as well,  
17 was there a common strategy agreed on?---In '13 John said  
18 that he agreed that councillors would be the best way to  
19 go to approach our rezoning, or he agreed with what we  
20 were proposing.

21 Yes?---And then in early in '14 he said he would speak to some  
22 of his councillor people that he knew and that they would  
23 speak to the bureaucracy and he would report back to us to  
24 see if there was - essentially the executive were worried  
25 to spend about, you know, over half a million dollars in  
26 consultants' fees if the councillors weren't inclined to  
27 consider the application, because there's no obligation in  
28 the planning system for rezonings for them to base their  
29 assessment on merits or not. So let's just assume there

1 are merits to an application. Councillors are free to go,  
2 "Well, I just don't want to," and put it aside, and  
3 Leighton wanted to have an indication from councillors  
4 would they be open to a review or a, "This is the problem  
5 we are having, you know. How do we engage in working  
6 towards a potential rezoning?"

7 And when was it that you first reached an understanding with  
8 Mr Woodman that before anything contractual could be  
9 entered into he was going to suss out how the council and  
10 the councillors might view a rezoning application?---I'm  
11 sorry, I don't understand the question. Could you  
12 rephrase that?

13 As I follow, it's not until mid-2014 - - -?---Yes.

14 That Leightons enters into a contract with

15 Mr Woodman?---Correct, yes.

16 But for some period of time before then - - -?---Yes.

17 Mr Woodman, to your knowledge, is making enquiries of

18 councillors as to are they disposed towards the idea of a  
19 rezoning?---Yes, yes.

20 Is that right?---That's what my records show.

21 And when first was it that Mr Woodman, to your knowledge,

22 started making enquiries of the council as to whether or

23 not they would look favourably on a

24 rezoning?---4 February.

25 Of?---February.

26 Of?---2014.

27 And what happened on that date?---Well, from my recollection of

28 what I could find is that councillors talked to

29 bureaucrats, this is at the time what we knew, and that

1 they were supportive of a review rezone and that, "But if  
2 you want to rezone you need to actually write a letter and  
3 ask for it." We then went and met some officers,  
4 obviously myself and Peter as representatives of Leighton,  
5 John as representative of the Kelly family. I remember  
6 Peter Fitchett nearly breaking my hand when we shook  
7 hands. Didn't know what it meant, but that's a memory of  
8 that meeting for me. I won't use the - I'm  
9 trying - "hostile" is not the word, but it wasn't exactly  
10 a friendly meeting. I suppose Peter and I were a bit  
11 confused by that. I mean, the other thing is it was an in  
12 camera meeting and we didn't even know what in camera was  
13 back then.

14 Was that on 4 February, was it?---Yes.

15 So that's why you picked that date?---Yes.

16 But before that date had you already come to an understanding  
17 with Mr Woodman that he was going to make enquiries of the  
18 councillors as to whether they were disposed to the idea  
19 of rezoning?---Leighton was aware that he was going to ask  
20 councillors.

21 When did you first discuss with Mr Woodman that he should make  
22 such enquiries? When's the first time that would have  
23 been discussed?---Probably January '14.

24 Yes, Mr Tovey.

25 MR TOVEY: So the situation was that in January '14 enquiries  
26 were set in train by Mr Woodman. To your understanding,  
27 they were enquiries being made of councillors as to  
28 whether or not this proposal might have any legs; is that  
29 correct?---Or whether they would be willing to consider

1           it, yes.

2   And then following that it was on 4 February of 2014, was it,  
3           that you actually got to a meeting with councillors?---We  
4           weren't there.

5   COMMISSIONER:   Councillors or council officers?---It was after  
6           4th of Feb.   It would have been - it was around the  
7           time - it might have been before the letter or just after  
8           the letter.   But it was mid-February, say.

9   MR TOVEY:   Yes.   So what happened on 4 February?   I must have  
10           misunderstood what you said?---Our notes say that John  
11           reported back to one of my bosses, Gavin, who was the  
12           national head of residential.

13   Yes?---That councillors had had conversations about it and it  
14           was a fairly positive type report.   I mean, it was said,  
15           you know, they seemed to be supportive of the idea.

16   And there is still a record, is there, of that reporting back  
17           by him?---Yes.

18   Did he name which councillors he had spoken to?---From memory,  
19           I can't recall that.   I don't think so, but I'm not  
20           certain.

21   Did it become apparent to you over a period of time - and  
22           I will be going back to the sequence in a minute - that he  
23           had a very sophisticated and close association with a  
24           certain bloc of councillors?---Yes, he seemed to have sort  
25           of good relationships with a few of the councillors.

26   Did it occur to you over a period of time that that association  
27           was something which could be possibly explained by  
28           unethical - sorry, an unethical dealing with those  
29           councillors?---Didn't cross our mind back then.

1 Never?---I can't unequivocally say never. It's - been on this  
2 project for eight years.

3 COMMISSIONER: Just going back to the Brompton Lodge for a  
4 moment. So you learned from Mr Woodman that he'd had  
5 success with Brompton Lodge?---I can't tell you that. It  
6 was part of our file.

7 You don't have any memory of talking to Mr Woodman about his  
8 success with Brompton Lodge?---No.

9 So it was just a record on Leightons' file that you have looked  
10 at that's refreshed your memory, was it?---Well, no,  
11 I also know that he was responsible for Marriott Waters,  
12 getting the shopping centre in its current location. My  
13 previous boss, Bill Beck, was trying to get it at Merinda  
14 Park station, which John Woodman won the stoush in that  
15 planning battle. So I'd had that, I suppose,  
16 reputational - I had never met him but, you know, there  
17 were other I suppose things we knew about him and from our  
18 research and other people we asked about his track record.

19 And which council was Marriott Park?---Marriott Waters?

20 Yes?---Casey.

21 So Mr Tovey is asking you, having done the research on  
22 Mr Woodman's history with councils and in particular  
23 Casey - - -?---Yes.

24 It was apparent to you that he obviously had some level of  
25 relationship with councillors which gave rise to the  
26 prospect of some success?---Correct.

27 Is that right?---Correct. At the time Peet Limited made an  
28 offer to buy our land, and they were made aware of the  
29 discussions with Watsons and they wanted their contract

1 novated in '14, and they were more than willing to novate  
2 that contract and were happy that Watsons were running the  
3 project. So, you know, there were other things that were  
4 giving us comfort.

5 I think you have leapt ahead a bit. Mr Tovey will cover that  
6 with you?---I'm sorry.

7 MR TOVEY: We're still in early 2014. This is at a stage  
8 before any contract has been actually signed. But by  
9 February of 2014 everything is in motion once the letter  
10 is sent to the council; is that right?---Sorry, are you  
11 asking did the letter set in motion - - -

12 The letter to the council set in motion the project, did it  
13 not?---Yes.

14 So by that stage I take it, and tell me if I'm wrong, that you  
15 must have had with Mr Woodman a fairly detailed insight as  
16 to where you proposed to go from there?---I'm not sure  
17 I understand the question, sorry.

18 In February of 2014 the ball gets bowled?---Yes.

19 The letter is sent to the council?---Yes.

20 By that stage you must have gone at least some significant part  
21 of the way to devise your strategy going forward?---That's  
22 not my recollection. I mean, my recollection is that we  
23 put the letter in and the officers said, "Well, you know,  
24 we need a greater body of work to do this." There was a  
25 to and froing of letters between council, I think Megan  
26 Schutz might have written one, where we tried to explain  
27 that we understand from Leighton's perspective it's  
28 plainly ridiculous to go and ask to say, "Hey, just  
29 believe us. We've got this problem. Please rezone our

1 land to residential. When we said we were seeking in  
2 principle support what we were actually seeking is in  
3 principle support that would you consider the merits of  
4 this and at least allow us to work with your officers and  
5 conduct a review and, you know, let's pull this thing  
6 apart and see where it lands."

7 And that's the way it progressed initially?---Is my  
8 recollection.

9 At that stage had Mr Woodman committed to see the project  
10 through?---That was one of the unusual contract  
11 negotiating points, if I may call it that way. Leightons  
12 was used to engaging consultants who Leightons could  
13 terminate at their own free will.

14 Yes?---And John was adamant that he would not work on that  
15 basis because he had been not paid by clients in the past  
16 who achieved their rezonings and then refused to pay, and  
17 he would never enter into another consulting agreement  
18 again that wouldn't protect his interests in that way.

19 So what was negotiated?---In terms of that type of clause?

20 At that stage, this is in early 2014 - - -?---Yes.

21 In the lead-up to the contract were there any payments being  
22 made to Mr Woodman?---From memory, no.

23 So then the first - I assume that there were negotiations going  
24 on, obvious from what you are now saying?---Correct.

25 And - - -?---Protracted.

26 Was it then in mid-2014, immediately upon the completion of  
27 those negotiations, that the terms of the contract were  
28 formulated and the contract was executed?---Draft terms of  
29 contract were first delivered to John in January, from my

1 recollection.

2 Thank you. So what was being proposed in January of  
3 2014?---The contract as well as some appendices of our  
4 business code of conduct.

5 Repeat that?---So a draft contract, which laid out services to  
6 be provided. I think at the time John and Megan were  
7 saying we could get the rezoning done in 12 months. There  
8 were estimates of fees and costs and appendices to said  
9 agreement, which included Leighton's business code of  
10 conduct.

11 COMMISSIONER: So by that time then you had already got  
12 feedback from Mr Woodman that he was optimistic about  
13 getting council approval?---That would be my memory.

14 We know that by the beginning of February Mr Woodman prepares a  
15 draft motion for the council to consider  
16 rezoning?---Sorry, what was the date?

17 By early February?---That's not my recollection.

18 Are you going to take the witness to those documents?

19 MR TOVEY: In early February of 2014 there was a letter that  
20 was sent to the council, Mr Commissioner, rather than a  
21 motion of the council.

22 COMMISSIONER: Yes?---There was one at the end of March, just  
23 before the 1 April meeting.

24 MR TOVEY: When did the matter first come before council?---To  
25 our knowledge, in a formal sense back then, 1 April 2014.  
26 All right.

27 COMMISSIONER: Might the witness be shown, please, document  
28 3313. So that's an email, Mr Kenessey, from Mr Woodman  
29 addressed to Amanda Stapledon, Sam Aziz, and if you go to

1 the body of the email it includes Geoff, who I assume is  
2 Geoff Ablett, and if you go down then beyond 3313 to  
3 3315 - - -?---Sorry, I'm not sure where you are directing  
4 me.

5 Do you see that?---I can see it now.

6 And that's a document prepared by Mr Woodman. Do you see the  
7 date, 3 February, the bottom of page 2?---I can see that.

8 Does that refresh your memory at all about any discussion with  
9 Mr Woodman that he was going to require or request those  
10 three councillors to support a motion?---I believe this is  
11 the first time I have ever seen this document.

12 And on that day, 4 February, there's a motion introduced by  
13 Mr Aziz, an urgent business motion that council should  
14 liaise with the owners, plural, of the industrial zoned  
15 land within the Cranbourne West PSP to validate their  
16 request for council to consider the preparing of an  
17 amendment to the PSP from industrial to residential. Can  
18 I take it you would have been aware that Mr Woodman was  
19 going to do that?---No.

20 You don't think you were?---I don't think we were aware as  
21 Leightons, no, me or Leightons.

22 It refers to the owners in plural. Were there any other  
23 persons supporting that application other than you and the  
24 Kellys?---No.

25 Yes?---Can I have a read of it, do you mind?

26 Certainly, of course?---Of the motion section that you read?

27 That's not in this document, Mr Kenessey?---If I could add  
28 without a question?

29 Yes, of course?---I met Gary Rowe at the Kelly family farm in

1 mid-March '14, I think. At that time or soon after that  
2 time - and Gary had just come back from holidays, is my  
3 recollection. At that time, and I'm sure Peter would  
4 confirm this, is that Gary was quite upset that (a) Sam  
5 had meddled in his ward and (b) that he had put an urgent  
6 motion for something that clearly wasn't - I'll bleep out  
7 the other word - urgent. So that's my recollection of the  
8 time.

9 What was your relationship - that's with Gary Rowe?---That's  
10 when I met Gary Rowe.

11 Yes, and he went to you, did he?---No, John set up a meeting  
12 between the Kelly family and Gary as the ward councillor.

13 How did you find out about Mr Rowe's disclosure?---He told us.

14 Who?---He told us.

15 Mr Rowe?---Yes. That's my recollection.

16 Mr Kenessey, the motion is at 1268, if you would like to see  
17 that?---Is this from 4 Feb? This was an in camera  
18 meeting; is that right?

19 It's headed "Confidential", yes. Any idea, Mr Kenessey, why  
20 Mr Aziz would move an urgent motion like this in  
21 confidence?---Any idea why he would do it?

22 Do you have any idea why that particular procedure was  
23 adopted?---I don't know. I can remember preparing for  
24 panel and looking for minutes of that meeting but never  
25 found it. I always found it a bit odd, reference to it.

26 So now having looked at the motion - - -?---Yes.

27 Does that assist you, your memory - - -?---I have never seen  
28 that before.

29 So the first you say you found out about this - - -?---I don't

1 think I have ever seen that before.

2 So the first you say that you knew of Mr Woodman - - -?---He  
3 said he was going to go and have a chat to some  
4 councillors and that they would discuss it and come back  
5 to us.

6 But you didn't know that he was actually going to arrange and  
7 in fact successfully arranged - - -?---No.

8 For them to pass a motion?---No. No, I didn't even know what a  
9 motion was back then, Mr Commissioner.

10 I will mark the email from Mr Woodman of 3 February 2014  
11 exhibit 152; council's confidential motion of 4 February  
12 exhibit 153. Yes, I'm sorry, Mr Tovey.

13 MR TOVEY: The first document I'm told, Mr Commissioner, is  
14 already exhibit 7.

15 COMMISSIONER: Thank you. So the motion will be exhibit 152.

16 #EXHIBIT 152 - Council's confidential motion of 4 February.

17 MR TOVEY: I'll be coming back, Mr Kenessey, to the steps step  
18 by step as they were taken in respect of C219. But what's  
19 a bit difficult to understand, and I ask you to comment  
20 on, is that in early 2014 you have Mr Woodman negotiating  
21 a contract with a large public company; is that  
22 right?---Correct. He was negotiating - we were in  
23 negotiation.

24 He was wanting a success fee?---Not a success fee.

25 What would you call it?---He was - he said that if he was  
26 successful - if the rezoning was successful he wanted  
27 Watsons to do the civil engineering consultancy work for  
28 the development. To quote John - he used to repeat the  
29 line - "I just want work for my people."

1 Was money put aside? Was money put aside for him?---At what  
2 time?  
3 At any time. Was there a sum of money put aside at any time to  
4 pay him if he succeeded?---There's a contractual clause  
5 for that.  
6 What was it?---What the quantum is?  
7 Yes. What was the provision?---That if Leightons sold the land  
8 and the purchaser of that land didn't agree to novation of  
9 his services, then he would be paid, from off the top of  
10 my head, 2.5 per cent of the sale price, which from memory  
11 is about \$2 million.  
12 Was there any guarantee in respect of that?---A guarantee was  
13 provided in early '18.  
14 For how much?---For the amount of his fee and as well as  
15 I think the first guarantee required under Dacland Dahua's  
16 purchasers agreement with John.  
17 How much was the bank guarantee?---I believe for the same  
18 quantum as the fee.  
19 Which was?---Circa \$2 million.  
20 And you say there was no success fee, that he has a bank  
21 guarantee for \$2 million if he gets the deal across the  
22 line no matter what?---No, I believe the initial question  
23 was how were the negotiations progressing, and then we  
24 have jumped to after the negotiations ended. I'm sorry.  
25 I accept what you say now. That's fair enough. In any event,  
26 at the outset he was wanting a guaranteed return - -  
27 -?---No, no, not a guarantee. A guarantee was due to  
28 another event that I'm sure we will get to.  
29 At the outset he was wanting to be assured that he wouldn't be

1 gazumped if in fact he was successful in getting the  
2 matter through?---He wanted to remove the usual type  
3 contract that Leightons was used to of the principal of  
4 the - the employer or - that Leighton could at their own  
5 discretion cease his services.

6 Mr Chairman, I'd ask that we have a short break.

7 COMMISSIONER: Yes, certainly. How long will you need,  
8 Mr Tovey?

9 MR TOVEY: Ten minutes.

10 COMMISSIONER: Very good. Mr Kenessey, when we break you are  
11 welcome to leave the building, have a coffee or  
12 refreshment, talk to your counsel as you wish. Ten  
13 minutes?---Thank you, Mr Commissioner.

14 (Short adjournment.)

15 COMMISSIONER: Yes, Mr Tovey.

16 MR TOVEY: Excuse me for one moment.

17 COMMISSIONER: Yes.

18 MR TOVEY: In that period in February 2014 is it fair to say  
19 that negotiations were going backwards and forwards with  
20 Mr Woodman doing what he could to secure the best  
21 remuneration he could; that's the way negotiations  
22 normally go?---That's what I was going to say. It was a  
23 normal negotiation.

24 And at that stage you understood him to be giving you whatever  
25 information he could which might assist you in coming to  
26 the conclusion that he was a good investment?---Well, he  
27 was sharing information with us.

28 Just going briefly - I don't want to get diverted into the  
29 minutiae at this stage; we will be doing that for quite

1 some time. But I'm trying to get an overview from you.  
2 So you have got, as you have heard, on 3 February 2014 the  
3 email chain to which you have been referred. On  
4 4 February there is an in camera resolution of council  
5 supporting the rezoning or supporting investigation of the  
6 rezoning. Then on the 11th - that resolution referred to  
7 liaising with the owners to validate their request for  
8 council to consider preparing an amendment. So whoever  
9 passed that - sorry, whoever proposed that motion was  
10 aware of the rezoning consideration request some week  
11 before in fact the written request arrived. Do you  
12 understand that's what one draws from this? I'm just  
13 explaining it to you. Do you understand what I'm  
14 saying?---Okay. You are saying that - okay.  
15 From those of us who are looking back in hindsight as observers  
16 of what was going on at the time, it's very difficult to  
17 understand how it could be that Mr Woodman has obtained  
18 from Mr Aziz an introduction of the recommendation to  
19 consider rezoning into council secretly and passed without  
20 telling you about it?---I've got records to say that it  
21 was indicated to us as more of a chat type scenario.  
22 And what does that mean?---It wasn't a motion. It wasn't a  
23 formal - it was to be councillors and officers discussing  
24 it at their regular meetings.  
25 From your point of view at the time and those with whom you  
26 were associated at Leightons it would have been  
27 fairly - it would have been a fairly strongly positive  
28 affirmation of Mr Woodman's power, would it not, if he had  
29 been able to tell you, "Look, I've already got through

1 council an in principle affirmation that they will support  
2 our proposal"?---My recollection is our perspective that  
3 they would be supportive, but obviously more work to  
4 justify it would need to be done.

5 COMMISSIONER: Would you mind again looking at exhibit 152,  
6 page 3318? Could you identify there where the Kellys'  
7 land is, Mr Kenessey?---If you see the hatched - lack of a  
8 better word - boomerang in the north-east portion on the  
9 western side of - inside that black circle?

10 Yes?---And then underneath that there's a picture of some  
11 wetlands.

12 When you say the hatched portion, see where it says "subject  
13 land"?---Yes. So north-west of that.

14 Yes?---That's a freeway reservation.

15 And there's a boomerang with - - -?---Red and white.

16 Red and white strips, yes?---Correct. Centrally below that  
17 there's a line and it's a dotted line. That indicates a  
18 stand of trees. The southern end of that line is the  
19 boundary between the Kelly and the Leighton land.

20 I see. And is the Kelly land to the south or to the  
21 north?---To the north.

22 The bottom of that boomerang, is that a road or is that just a  
23 fence?---That's a future proposed road, Wedge Road, and  
24 the boomerang is a proposed future freeway off-ramp from  
25 the upgrade of Western Port Highway to Western Port  
26 Freeway.

27 So there can be no doubt then that Mr Woodman's proposed -  
28 request of the councillors, which then became the subject  
29 of the motion in camera included your client's

1 land?---From this document it would appear, if that was  
2 what - - -

3 And you are saying that that was without your  
4 client's - without your employer's authority?---We  
5 understood that they were just going to have an informal  
6 chat.

7 The consequence of that is you are saying - - -?---That's my  
8 recollection.

9 Mr Woodman engaged the councillors to pass this motion covering  
10 your land without your authority?---From my recollection,  
11 yes.

12 MR TOVEY: In June then - sorry, in the middle of the year you  
13 enter into a contract. Can you explain then what the next  
14 step in the process was?---From what date? From April  
15 or - - -

16 Yes, look, we've just left February. On 1 April there was a  
17 resolution - sorry, there was a consideration by council,  
18 was there not - - -?---I can be quick, sorry. So  
19 after - sort of from mid-February - from the submission of  
20 the 11 February letter there was some toing and - meeting  
21 of officers and then some toing and froing to clarify that  
22 we weren't seeking to go straight from industrial to  
23 resolution, that we had a problem and we were merely  
24 trying to start a process that would consider and  
25 ultimately justify a rezoning. That went to the April  
26 20 - sorry, 1 April 2014 meeting.

27 Yes?---Where councillors voted to do a review.

28 Yes?---Peter Williams and I worked with officers up to the  
29 October '14 meeting conducting a review of essentially our

1 land, the Kellys' land and what we think should be the  
2 outcome.

3 Yes. And what happened? During that period of time were you  
4 meeting with council officers?---Yes.

5 Was Mr Woodman meeting with council officers?---During that  
6 period of the review it was Peter Williams and I only.

7 Yes. And so what was the process that you went through with  
8 Peter Williams?---So we designed a matrix type structure  
9 where for the land we would explore every use you could  
10 think of, from large polluting style factory, distribution  
11 centres, smaller medium sized warehouses, offices, you get  
12 the drift, all the way down to residential.

13 Yes?---And then criteria, you know, to assess those options  
14 such as demand, depth of demand, topography of the land,  
15 demand as in today and also demand I think it was 15 or  
16 20 years, you know, acknowledging that while there might  
17 not be demand today, you know, when Dandenong South fills  
18 up with industrial land there might be demand in the  
19 future, the effects of infrastructure today as making it  
20 an attractive site for industrial. You know, at that time  
21 Thompsons Road was a single lane carriageway, undivided  
22 road. But we acknowledged that in 15, 20 years when it's  
23 duplicated and Western Port Highway becomes a freeway it  
24 would make it more attractive in a transport only myopic  
25 assessment of criteria. It was those sort of things, and  
26 we went through each option of that matrices. Council  
27 officers were experienced. Kathryn Seirlis had worked in  
28 the Dandenong City Council. We agreed what the jobs per  
29 hectare numbers were for, for example, distribution

1 centres. So we basically filled out data and worked out  
2 data and rationale in terms of supply and demand, jobs so  
3 on and so forth. It was a rigorous process.

4 And from your perspective were you hoping that exercise would  
5 demonstrate that it was impractical to retain the land as  
6 employment land - or, sorry, not impractical but less  
7 appropriate than having it rezoned as  
8 residential?---Throughout this rezoning process it's  
9 always been just about getting to the next step. You  
10 know, the merits haven't changed if it is not suitable for  
11 its designated purpose. We are not here for that.  
12 But - sorry, I've lost my train of thought. Can you  
13 repeat your question, I'm sorry?

14 I was asking you a question which perhaps the answer to is  
15 obvious, and that is from your perspective you were trying  
16 to push the conversation in a direction which would bring  
17 about recognition that rezoning was the best answer?---The  
18 review concluded that, yes.

19 So on 21 October of 2014 the matter is back before council  
20 again and council resolved the proposed revisions in  
21 respect of the Cranbourne West PSP being endorsed and  
22 there be public consultation. Now, what did that  
23 mean?---If I could take you back to mid- - - -

24 Sorry - - -?---I'm sorry.

25 My question was perhaps not as clear as it might have been.

26 When they talk about proposed revisions to the PSP, at  
27 that stage what were the proposed revisions?---Through  
28 that '14 period there were other landowners and council  
29 officers had decided to not only review our land in

1 isolation but the entire PSP, and as such amendments to  
2 not only our land but other land owned by others was to be  
3 exhibited as well.

4 So there was a proposal then that your land, Kellys' land and  
5 other land be rezoned; is that - - -?---Without having  
6 looked at it, my memory is that NRCL wanted some changes,  
7 investor and perhaps some others.

8 What's the process of public consultation? Where does that fit  
9 in with the ongoing rezoning process?---That was a little  
10 bit - you have to remember this is our first rezoning at  
11 Leighton, or mine in particular and the people we worked  
12 with. Through normal course of rezoning there's a whole  
13 lot of work done and there's a formal exhibition of  
14 documents where people can make submissions and if  
15 everyone agrees then it just moves forward. But if they  
16 can't agree then we end up at a similar venue like this  
17 and then a panel hears the outcome. That informal  
18 exhibition was, you know, from what I know now a little  
19 bit unusual in that it didn't really mean anything except  
20 the council was going to put it out to the community to  
21 see what they thought.

22 In the course of that - were you at the council  
23 meeting?---I would likely have been, but I could check my  
24 file.

25 The meeting that I'm referring to was chaired by Councillor  
26 Aziz and Councillor Gary Rowe, and the council adopted the  
27 recommendation and the matter moved by Gary Rowe was that  
28 the proponent's land - sorry, that the PSP including the  
29 Kelly family and the proponent's land be rezoned as

1 totally residential. Was that the case?---That's from the  
2 October 14 meeting?

3 No, that's 21 October?---21 October, I apologise; that's my  
4 recollection.

5 That accords with your recollection. At that stage had you had  
6 any contact with either Sam Aziz or Gary Rowe?---Yes.

7 And what had that been?---I met Gary Rowe, as I think I said  
8 earlier, I think it was mid-March '14.

9 Yes?---He told me at that time that he - - -

10 How did you come to meet him?---At the Kelly family's property.  
11 Yes, and how was that organised?---My recollection it probably  
12 would have been John as their representative.

13 If you go on? So John has organised a meeting with  
14 you - sorry, between yourself and Councillor Rowe at the  
15 Kelly property?---To be sure, I'm not clear on the genesis  
16 of who organised it. It might have been Gary as the ward  
17 councillor coming back and wanting to find out what was  
18 happening. I can't really remember who was the organiser.

19 Do you remember the meeting?---I remember the meeting.

20 Who was present at that meeting?---Myself, Gary Rowe, John  
21 Woodman, Joe Kelly, Dan Kelly. I'm not sure - I would  
22 have to check my notes. There might have been one of the  
23 other Kelly brothers. And maybe Peter Williams.

24 What was discussed with Mr Rowe?---We ran Gary - it was the  
25 first time I had met Gary, ran him through the steps that  
26 had produced us to conduct our review to explore the  
27 rezoning. He understood what we were saying and  
28 understood the examples we were providing to him. He told  
29 us that he was a supporter of - not a supporter. He had

1 wanted that land to be residential since before he entered  
2 parliament in the '90s, and essentially - I can't remember  
3 if he or how, but that led to ongoing discussions about we  
4 should have a review - at that point there were times when  
5 he said before the 1 April meeting that I should contact  
6 all councillors and tell the story to all of them about  
7 the troubles we were having attracting tenants so that  
8 even the ones that he thought would not support what we  
9 were saying and would support officers' views, he said  
10 that it was important to do so to give everyone the chance  
11 to have the message heard from the horse's mouth, for lack  
12 of a better expression, and that to give them direct  
13 opportunity to ask questions should they have any.

14 Was there any council officer at this meeting?---They were  
15 generally phone calls.

16 Sorry, at the meeting at the Kelly - - -?---From memory, no.

17 After this time did you regularly consult with Gary Rowe over  
18 issues relating to the rezoning of C219?---He asked me  
19 once - - -

20 Just "yes" or "no". Did you?---Yes.

21 And you would contact him and he would contact you?---Yes.

22 Did you meet on many occasions?---I consider Gary a close  
23 personal friend.

24 Was that at the time? Did that arise after this initial  
25 meeting at the - - -?---It's born out of meeting him and  
26 working with him on this rezoning.

27 And did you give him any financial support, either you  
28 personally or Leightons?---No, not to my recollection.

29 Was there any support given by Watsons to Mr Rowe in respect of

1 any campaign that he was running to your  
2 knowledge?---I attended a fundraiser for Gary that Watsons  
3 had organised.

4 And when was that?---I would have to check my file, but it  
5 would have been in the council elections that he lost. So  
6 that was - I'll check my file. I think it's - whatever  
7 the last council election was.

8 COMMISSIONER: The most recent one?---The most recent one, from  
9 memory. But I could check my file.

10 So Leightons has never provided any funding for any of  
11 Mr Rowe's campaigns?---Leightons, not to my knowledge.

12 MR TOVEY: So by October of 2014 was Megan Schutz involved in  
13 the move to get the rezoning up and running and  
14 approved?---Sorry, could you please repeat the date?

15 October 2014 or late 2014?---She was introduced by John as an  
16 ex-senior staffer from the department of planning and that  
17 now worked with her, and that him and her were a team that  
18 worked together and she would be engaged - she should be  
19 engaged by Leightons, and I believe that she was engaged a  
20 couple of months before John was.

21 So at that stage you already had a contract with John?---No,  
22 no, Megan signed before John did.

23 All right. October 2014 - - - ?---We had a contract, yes.

24 By then you had a contract?---Yes.

25 And you also - so it was some time before October 2014 that you  
26 were introduced to Megan Schutz?---Yes.

27 And precisely what role was she - sorry, what role was she  
28 expected to play?---Technical planning advice.

29 Is that the basis on which she was remunerated?---Yes. There

1           were occasions where her remuneration would include costs  
2           for Save Cranbourne West Residents Action Group.  
3 Was she on a retainer?---There was a period, yes.  
4 Over what period was that?---I would say, without having  
5           specifically looked at that, it would have been the last  
6           two years from before they were removed. So that would be  
7           '17, '18, maybe a little bit earlier.  
8 And how much was she getting?---Her fee went from - it doubled  
9           at the end of or the start of '17. I would have to - so  
10          she was on 10 and it went to 20.  
11 A month?---Yes. Correct.  
12 And is that all she was - so she's on 120 a year which goes up  
13          to 240 a year?---Initially for the designing of the  
14          contract it was a fixed fee quotation of \$90,000 for  
15          early - sorry, early technical planning advice and then  
16          appearing at a panel.  
17 Yes?---So when her contract was signed we were being told that  
18          the process would take approximately 12 months and that  
19          her fees would total \$90,000.  
20 Yes. And when was that?---That would have been early/mid-14.  
21 And then after that was she on - when did the 10,000 retainer  
22          come along?---I would have to check my file to give an  
23          accurate answer, I'm sorry.  
24 Would you mind checking that for us?---Certainly.  
25 And then at some stage she's getting 20,000 a month. Was it  
26          just for planning advice that she was always  
27          employed?---She helped set up community days.  
28 Why would you be concerned about that?---I'm not sure I - - -  
29 Well, were you rewarding her for having set up the community

1           organisation?---No, not to my knowledge.

2   What was the relationship between her getting close to a

3           quarter of a million a year and setting up the community

4           organisation?---Are you asking if there's a link between

5           the - - -

6   Yes?---I would like to check my file, if you may, but there

7           were some strong arm events that I suppose led us to feel

8           that there was no choice but to pay retainers that

9           wouldn't normally otherwise be paid.

10   What were the strong arm events that caused you

11           concern?---Being told that if we didn't do it then the

12           rezoning would be pulled.

13   And who told you that?---John Woodman.

14   And when was that?---There were a couple of events early '18,

15           from memory early '17.

16   COMMISSIONER:   What was he asking you to do?---Pay more money.

17   To?---Him and her.

18   To both of them?---Yes.

19   And if you didn't do that he would do what?---Well, it was

20           intimated that our rezoning would be at risk.

21   It's not quite the same thing as "pulled".  You used the word

22           "pulled" before?---Well, sorry, I used the word "pulled",

23           yes.

24   This was something he said to you directly?  This was a

25           conversation with you?---I believe I might even have an

26           email of it.

27   You think it was in writing?---My recollection is.

28   And did you agree to that threat?---Well, we paid the money,

29           yes.

1 You did.

2 MR TOVEY: So at the time was it the case that you felt you  
3 were being extorted?---Your words. We felt like that we  
4 had no choice.

5 That's being extorted?---Yes, sorry. In terms of the rezoning  
6 processes as opposed to the planning scheme, council or  
7 the planning minister at any moment can for whatever  
8 reason end your rezoning, and there's no VCAT, there's no  
9 Supreme Court to go to. Unlike the planning system, where  
10 you can - everyone puts on show the merits of what they  
11 are doing, we can have a nice, transparent discussion and  
12 robust adult style debate about data rationale, evidence,  
13 in the rezoning scheme you are on constant knife edge  
14 where the council for whatever reason could say, "Well,  
15 I've changed my mind. I don't want to do your rezoning  
16 and that's the end of it." So, I mean, yes.

17 COMMISSIONER: Yes, but - don't let me put words in your mouth,  
18 Mr Kenessey. This was not you responding to the  
19 vicissitudes of councillors might change their mind. This  
20 was you responding to Mr Woodman intimating that, as  
21 I have understood you, he might do something if you don't  
22 cooperate, he might do something which would end the  
23 rezoning prospect?---What was that word, sorry, I don't  
24 understand what that word - - -

25 You have explained how you are always at the mercy of the  
26 council in that they can change their mind. But when  
27 Mr Woodman was saying to you, "You've got to pay us more,  
28 me and Ms Schutz" - - -?---Yes.

29 "Or otherwise the rezoning is at risk" - - -?---Yes.

1 You didn't understand him to be just saying there were all of  
2 those normal risks associated with councils changing their  
3 mind; you understood him to be saying, "I might do  
4 something that would put it at risk"?--We thought that  
5 that was the case.  
6 That's what he was suggesting?---Yes.  
7 MR TOVEY: You said there were a couple of occasions where you  
8 thought this?---Potentially more. I have got eight years  
9 of emails that I couldn't get through, I apologise.  
10 And what about Megan Schutz? You felt compelled, did you, to  
11 increase her remuneration?---Well, John said that hers  
12 would increase as well or else, if I recall correctly.  
13 Did he say "or else" what?---No, I believe that's in an email  
14 as well.  
15 Are you in a position to check over the weekend, that email - -  
16 -?---I could check that.  
17 To tell us what the most you can about what threats or  
18 intimations were being made at that particular time and  
19 the precise time it was?---Naturally I could.  
20 Now, was that at a time that you thought that he was existing  
21 considerable influence at council level?---If I may, Gary  
22 Rowe on a couple of occasions - sorry, Gary Rowe had  
23 wanted me and Leightons to get rid of John and Megan for a  
24 considerable amount of time.  
25 And what did Mr Rowe say to you about that?---He thought that  
26 they were a liability and should just sack them. I'm  
27 going somewhere with this if you - - -  
28 Yes, please, just go on?---However, Gary over a couple of years  
29 had assured me that he was going to be mayor.

1 Yes?---That it was a done deal and he told me who was  
2 supporting and it was all going to happen, thumbs up. And  
3 funnily enough in those years I think it was Aziz and  
4 Ablett that became mayor in those two years.

5 Yes?---So, you know, we were getting - when John was saying he  
6 would do things, we felt that, you know, even if Gary  
7 wanted to I suppose help us, for lack of a better word,  
8 for the process, you know - I'm not sure what I'm trying  
9 to say. If John were to do something, he could do the  
10 right thing.

11 Ablett?---Gary Rowe.

12 Sorry, Gary Rowe?---I didn't think that Gary had the numbers.

13 So I advised my executive that as a risk assessment we had  
14 to bow to John and try and get rid of him as soon as  
15 possible by the land being rezoned.

16 Were you and Gary Rowe working hand in glove during this period  
17 of time to achieve the aim of getting the land  
18 rezoned?---As I said, we have become - - -

19 I'm not saying necessarily that was for any corrupt motive, but  
20 were you doing it?---Yes. We have worked pretty closely,  
21 and with officers.

22 I mean, Mr Rowe from time to time was in council and possibly  
23 out of council very dubious about Councillors Ablett and  
24 Aziz, was he not?---That would be my recollection without  
25 any specifics.

26 Did he tell you that his belief was that they were possibly  
27 corrupt - - -?---It's likely.

28 Or words to that effect?---It's likely.

29 Him having told you that, did you raise that with Mr Woodman or

1 did you feel you were locked in and couldn't?---When I met  
2 Gary he basically told me there were two sides of the  
3 Liberal Party and John was on the wrong side, within  
4 council I'm talking about, and Gary was on a minority  
5 side. There was an ombudsman's report into council in  
6 2015. So Gary might have said it, but we didn't pay much  
7 credence to it. I mean, from my understanding Aziz and  
8 Rowe hated each other.

9 One of your concerns was - sorry, one of the things that Rowe  
10 was telling you was that Woodman was a bad choice and  
11 would bring you undone?---Words to that effect.

12 And after The Age articles came out in late 2018, in I think it  
13 was October and December, was it your view at that stage  
14 that you should have heeded Mr Rowe's advice?---I could  
15 expand but, in summary, I think that would be fair to say.

16 Because once Mr Woodman was pinged for any inappropriate  
17 associations or any sharp or unethical conduct it was  
18 going to reflect on you, was it not?---You would have to  
19 expect that.

20 And were you worried from the time of his - sorry, from  
21 the time of council involvement in the H3 intersection  
22 that there might be blow-back and that might affect the  
23 result in C219?---I was concerned the two developers  
24 fighting over an intersection would have negative impacts  
25 on our rezoning.

26 If I can just move on to Megan Schutz. Did you have regular  
27 contact with her?---Yes.

28 Did you have contact with her in respect of the initial phase  
29 of setting up SCWRAG?---Can I give you the expanded answer

1           or would you prefer short?

2   Just "yes" or "no" and we will take it step by step?---Okay.

3           So was the question was I involved in the initial

4           commencement of SCWRAG?

5   Yes?---I met Ray at the first community day that we held with

6           council.

7   And was Megan Schutz there?---I introduced Ray and Verlie to

8           Megan, is my recollection. She was there, sorry, to

9           answer your question. I wasn't answering your question.

10   Was it not the case that the setting up of SCWRAG was part of

11          the strategy which had been devised with Schutz and

12          Woodman in order to move towards C219 being approved?---My

13          recollection is that - pretty much no-one wants to live

14          next to an industrial estate. Ray was pretty fired up.

15   No, I'm saying before you became involved in the process which

16          led to the setting up of SCWRAG was there a strategy to

17          set up a community action group which you could use as a

18          mouthpiece?---I'm trying to answer the question.

19   Please?---So I met Ray and Verlie and they were pretty fired

20          up. Ray's quite articulate and reasoned, by my

21          experience. I said, "Ray, if you are so passionate, you

22          know, you need to get a voice. You need to find some of

23          the other neighbours and landowners and set up a community

24          group." So I introduced him to Megan who, from my memory,

25          introduced him to a few other couples and from then on was

26          the genesis of the residents group.

27   But it wasn't that simple, was it? What had happened was that

28          there had before the moment at which you had met Ray

29          Walker, there had been a whole process put in place to

1 mould community opinion in a certain way and to try and  
2 channel that at a community day?---My recollection of the  
3 process, I wouldn't agree with that.

4 Would that be an appropriate time, Mr Chairman?

5 COMMISSIONER: Yes.

6 WITNESS: I'm happy to give some - sorry.

7 COMMISSIONER: Yes, Mr Kenessey?---So when it was resolved to  
8 put it on to public consultation we funded some  
9 doorknockers with a questionnaire to go on and gauge the  
10 mood of the community. The script said, "Hi, I'm here on  
11 behalf of the landowner of the big land there. We just  
12 want to ask you some questions, things like are you aware  
13 that's industrial land, you know, why did you choose to  
14 live here, what's important to where you live?" The  
15 feedback was unequivocal that no-one wanted - well, nine  
16 out of 10 didn't want industrial. So that was sort of  
17 part of the flow of the community day and trying to gauge  
18 the support to demonstrate to councillors and politicians  
19 that the community and us as landowners were, unusually as  
20 developers, aligned in what we wanted.

21 MR TOVEY: I understand that that's what you say, and what you  
22 are saying is that this was something which was being  
23 moved by the community. But what Ms Schutz has told us is  
24 to the effect that it was the community being moved by you  
25 by being presented with doorknockers who were putting  
26 pre-planned questions and surveys with carefully devised  
27 questions.

28 MS KEATING: Commissioner, before the witness answers the  
29 question it seems to me as if these propositions have been

1 developed without a foundation first. The witness hasn't  
2 suggested anything about something being moved by the  
3 community, as it's been put.

4 COMMISSIONER: I think there's probably some substance in that,  
5 Mr Tovey, but rather than debate it I see it's 4.30. We  
6 will adjourn until - - -

7 MR TOVEY: Until 10 o'clock on Tuesday morning.

8 COMMISSIONER: Tuesday morning. So, Mr Kenessey, you have a  
9 rest over the weekend. I suspect there's a bit to go.  
10 But if there are some documents, Mr Tovey, that you have  
11 indicated you want Mr Kenessey to try and locate could you  
12 have some discussions with Ms Keating after we adjourn?

13 MR TOVEY: Yes.

14 COMMISSIONER: And see if we can't resolve that issue.

15 MR TOVEY: I have asked him to refresh his memory in respect of  
16 certain matters. I have refrained from seeking the  
17 production of documents because it involves some other  
18 processes.

19 COMMISSIONER: I will leave the matter in your hand in  
20 discussion with Mr Keating.

21 MR TOVEY: If the witness has no objection and has a cache of  
22 documents that he's able to provide, we would be very  
23 happy to receive that.

24 COMMISSIONER: Very good. 10 o'clock on Tuesday next.

25 <(THE WITNESS WITHDREW)

26 ADJOURNED UNTIL TUESDAY, 10 MARCH 2020 AT 10.00 AM

27

28

29