
TRANSCRIPT OF MORNING 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

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

1 COMMISSIONER: Mr Woinarski, have you resolved the question of
2 the exhibit that you thought might need to be made
3 confidential?

4 MR WOINARSKI: The document, as I understand it - I'm just
5 trying to locate it.

6 COMMISSIONER: I gave it 144.

7 MR WOINARSKI: Yes, exhibit 144. The version I was given, and
8 I'm not suggesting it's not the version that's in the
9 system, Mr Commissioner, is an incomplete version as well
10 as a heavily redacted version. It consists of five pages,
11 single-sided printing, and the last page is 13. On the
12 assumption that that's the totality of the document with
13 its redactions, we have no problem with the document.

14 COMMISSIONER: Yes. So is that the totality of the document
15 you wish to tender?

16 MS HARRIS: Yes, Commissioner. That's correct.

17 COMMISSIONER: Very good. I will treat exhibit 144 as tendered
18 without qualification.

19 #EXHIBIT 144 - Confidential briefing to the CEO, undated.

20 COMMISSIONER: Thank you. Mr Patterson, could you come back in
21 the box, please.

22 <GLENN ANDREW PATTERSON, recalled:

23 COMMISSIONER: I just remind you you are still under
24 affirmation?---Yes.

25 Yes, Ms Harris.

26 MS HARRIS: Mr Patterson, yesterday during your evidence you
27 indicated that - this is at page 1549 of
28 the transcript - the first time you became aware of
29 something you would consider to be corrupt conduct in

1 relation to the evidence that's been provided before this
2 hearing, "I made contact with IBAC, which was probably in
3 about October last year." Was that before or after IBAC
4 had made contact with you?---I had been summonsed by IBAC
5 prior to that.

6 All right. When we left off yesterday I had had played to you
7 a call between you and Mr Ablett. If we could pull that
8 up again, please. I neglected to tender that,
9 Commissioner. I do so now. That's tab 184.

10 COMMISSIONER: What's the date of the conversation, Ms Harris?

11 MS HARRIS: 26 November 2018.

12 COMMISSIONER: I thought I had marked that 147. But, if not,
13 it's exhibit 147.

14 MS HARRIS: Thank you, sir.

15 #EXHIBIT 147 - Conversation between Mr Ablett and Mr Patterson
16 dated 26 November 2018.

17 MS HARRIS: Could we bring that up on the screen again.

18 Mr Patterson, as I recall, yesterday you indicated that
19 you didn't think there was an issue with you speaking to
20 Mr Ablett about the matters contained in this call,
21 particularly around the H3, because it essentially related
22 to matters of being updated as opposed to a matter of
23 substance; is that a fair summary?---Yes, that's my
24 recollection.

25 If we just go down then to line 9, Mr Ablett indicates where he
26 asks you if Dacland had seen the letter that SCWRAG sent
27 in; can you see that there?---Yes.

28 And then if we go over the page, thank you, the top line there
29 where he says, "It's just I thought if they were pretty

1 much in agreement with it that it might be a good thing."
2 Why do you think he thought it would be a good thing if
3 they were pretty much in agreement about it?---I'm unsure.
4 I can't interpret into Mr Ablett's comments there what his
5 intention was.
6 What did you understand it to be when he spoke to
7 you?---I think there was an intent from everybody that was
8 a party to the transaction to reach an agreement prior to
9 the matter being reported back to council. So I imagine,
10 but I'm only speculating, that that's what Councillor
11 Ablett was referencing.
12 And by "agreement" you mean agreement between the
13 developers?---Yes.
14 And that then if there was an agreement between the developers
15 that it would be reported back to council and the motion
16 would pass; is that correct?---Well, there would be no
17 guarantee that the motion would pass, but certainly the
18 matter would be reported back to council in those
19 circumstances indicating agreement had been reached.
20 And in that situation if agreement had been reached it would be
21 likely to remove the obstacles or the concerns that some
22 of the councillors had; is that your understanding?---As
23 I say, everyone, including all the councillors, my
24 understanding was that everyone was seeking to have an
25 agreement reached so that the matter could be resolved.
26 Do you not think then that those comments by Mr Ablett do in
27 fact go beyond being an update and go to the substance of
28 the matter?---No, I retain my position of yesterday that
29 he wasn't seeking to exert any influence on me but was

1 seeking a status update on where we were with the whole
2 process in negotiating that agreement.

3 Notwithstanding the fact that he might not have been trying to
4 influence the situation, is it your understanding that
5 even though he had declared a conflict of interest this
6 kind of involvement by him was still appropriate?---As
7 I say, my premise of that conversation was that he was
8 seeking to obtain an update on the status of the issue,
9 and I think it's legitimate for a councillor, even if they
10 have declared an interest in relation to the matter
11 previously, to make those sorts of enquiries.

12 COMMISSIONER: Who was involved in actually trying to resolve
13 that issue? Were council officers involved?---Through
14 you, Mr Commissioner, as I mentioned yesterday, we made an
15 offer to the two parties to seek independent mediation and
16 we actually had identified a number of legal professionals
17 that could carry out that role who are accredited to do
18 that, and we put those names forward to the two parties,
19 but there wasn't agreement between Dacland and
20 Wolddene/Woodman to engage any of those arbiters. So that
21 was the extent of the council involvement. It really was
22 a matter of negotiation between the two development firms.

23 So why would Mr Ablett think you would have any inside
24 knowledge as to how that was progressing if it wasn't a
25 matter that the council officers were involved in?---So
26 while I wasn't involved personally and my director of
27 planning, Peter Fitchett, was the person who had actually
28 contacted the two companies, identified the potential
29 mediators and put those names forward, he would expect and

1 I think as part of my obligation is to have oversight of
2 all of those kind of issues. So I think it's
3 legitimate - I get a lot of enquiries from councillors
4 about all sorts of matters because he would expect that
5 I would have oversight and general understanding of the
6 status of that, given the prominence of that issue at that
7 time.

8 MS HARRIS: Who would be reporting back to the parties or in
9 contact with the parties about the progress of the
10 matter?---From a council officer point of view?

11 Yes?---As I say, the main person involved with that was Peter
12 Fitchett, who was my director of city planning and
13 infrastructure. I'm unsure whether there were other staff
14 involved as well.

15 So it would be your position then that there would be no reason
16 for a councillor to be involved in that?---Yes, it was a
17 matter that was implementing a council decision and an
18 agreement that we would seek the opportunity for mediation
19 to attempt to resolve the matter, and that's something
20 that would be implemented by staff. So there would be no
21 need for councillors to be involved directly in that
22 arrangement.

23 So did you take it then from that conversation Mr Ablett was
24 asking just for his own information?---I would be
25 speculating. I don't know why Councillor Ablett was
26 asking me.

27 But you were part of the conversation and I'm asking you why
28 you thought he was making those enquiries?---That's all
29 I obtained from the conversation, was that he was

1 personally seeking an update on the status of the matter,
2 yes.

3 You indicated in your evidence yesterday that - this is at page
4 1565 - in relation to the H3 issue and the attempt to
5 reach a resolution, "Councillor Ablett and I recall
6 Councillor Stapledon, who I think around that time just
7 became mayor - I don't know the exact date of that phone
8 call - were keen to see us playing an active role to
9 facilitate an agreement between the two parties in
10 relation to the H3 intersection"; is that correct?---Yes.

11 How did they convey to you that they wanted the council to play
12 an active role in that facilitation?---I don't believe
13 there was any written requests. I believe I had
14 conversations and my recollection is that Councillor
15 Stapledon of all the councillors was probably the one who
16 was most keen for us to find a way through to resolution
17 of the issue and mediation was one suggested option for
18 doing so.

19 Councillor Stapledon also had a conflict of interest in
20 relation to this matter, didn't she?---I believe so, yes.

21 Was it appropriate then that she be involved in an attempt to
22 resolve the matter?---It's just a suggested way forward,
23 and I can't recall whether it initially came from
24 the councillors or from senior staff. But it was
25 something that came up amongst a range of options as a way
26 forward to resolution.

27 What role did she play in attempting to resolve the
28 matter?---I don't know, but from what I observed no direct
29 role that I could see from my perspective.

1 COMMISSIONER: By the time of this conversation you have just
2 been looking at, Mr Patterson, were you aware that
3 Mr Ablett had a conflict?---Yes.
4 So you thus knew both Ablett and Stapledon, although expressing
5 a clear interest in the resolution of the matter in a
6 particular way, both had a conflict?---Yes.
7 Did that trouble you at all, that they were taking such an
8 active part?---Well, Councillor Stapledon, as Counsel
9 Assisting has just referenced, became mayor around that
10 time. I can't exactly recall whether it was just prior or
11 just after this, but certainly in that role would have an
12 interest in a whole range of matters outside her own ward,
13 and she was also the ward representative for this
14 particular area. So that would justify her interest in
15 the matter.
16 Yes. So I'm interested in knowing how you dealt or didn't deal
17 with the situation, given your particular expertise. What
18 I suggest to you is that by the time of this conversation
19 there were a lot of red flags up about what was happening
20 within the council concerning developments in which
21 Mr Woodman had an interest. I don't know if I need to go
22 back over them. You had the ombudsman's report. You had
23 The Age article. You had specifically been asked by
24 Mr Ablett to meet with Mr Woodman, and you had had a
25 one-on-one meeting with Mr Woodman?---I just correct that,
26 Mr Commissioner. That was post this meeting.
27 This was post this discussion?---Yes, that was in early 2019.
28 I'm just wondering why you felt incapacitated to do anything
29 about the matters that should have been troubling

1 you?---Yes, Mr Commissioner - - -

2 MR WOINARSKI: With respect, my understanding of his evidence
3 yesterday, sir, was that he did not know about the
4 ombudsman's report at this time and you have included that
5 in the so-called red flags.

6 COMMISSIONER: Is that right, Mr Patterson?---I don't recall
7 the date of this telephone conversation. If I could be
8 reminded of that.

9 This was 26 November?---I would have been aware of the
10 ombudsman's review by that point.

11 MR WOINARSKI: 2018?---Yes. So my answer to your question,
12 Mr Commissioner, would be that the Local Government Act
13 doesn't provide me any basis on which to refuse to engage
14 with Councillor Ablett in an update, status update of this
15 nature. So there's nothing that precludes or upon which
16 I can rely to actually in that circumstance say to
17 Councillor Ablett, "You know, I'm not able to talk to you
18 about this matter." As I say, if it extends beyond a
19 query to suggesting or trying to seek a particular outcome
20 or things of that nature, that would be different.

21 COMMISSIONER: So it's important for future purposes and
22 certainly in terms of any recommendation that the
23 Commission might ultimately make to government about the
24 need for legislative reform. Is it your position,
25 Mr Patterson, that, even when a CEO has a basis for
26 reasonable suspicion that there's impropriety occurring
27 between councillors and developers, absent hard evidence
28 there's nothing a CEO can do?---Well, one of the premises
29 of your question, Mr Commissioner, would be at that stage

1 I hadn't formed a clear view that there was impropriety on
2 behalf of Councillor Ablett. What I did know at that
3 stage is that he had associations with Mr Woodman. He'd
4 accepted electoral donations historically. Beyond that -
5 which is all legal if they are all declared and through
6 the decision-making processes that follow that. But, yes,
7 that is my contention. Aside from that point that you
8 make, I don't believe there's any power for me to do so.

9 The way I put it to you was suspicions - something less than
10 hard evidence but suspicions. There's nothing you could
11 do in that setting?---I don't believe there's grounds on
12 which I could say to a councillor making a general enquiry
13 about a matter like that that, "I'm unable to talk to you
14 because I have a suspicion about your behaviour or, you
15 know, suggested impropriety."

16 I'm not raising the question of you talking to him. I'm
17 raising the question of, given the totality of
18 circumstances that we have been over, whether or not there
19 was any avenue open to you to address suspicions that
20 might exist?---So my answer to that would be, no, I don't
21 believe there was. Obviously the ombudsman has extensive
22 investigative powers and yet that investigation failed to
23 uncover any improper conduct. The Local Government Act
24 doesn't provide councils and CEOs with the kind of powers
25 required to uncover this kind of conduct. It really took
26 the coercive powers of IBAC to discover the truth.

27 That's not always going to be the solution, is it? We need to
28 have a regime that enables these sorts of problems to be
29 exposed in some way without an organisation that is

1 exercising coercive powers?---I would agree with that,
2 Mr Commissioner, and, as we discussed initially yesterday,
3 there are opportunities I think to strengthen the Local
4 Government Act and also potentially changes to the
5 Planning and Environment Act as well that would actually
6 address that situation.

7 MS HARRIS: Did either Councillor Ablett or Stapledon express a
8 view to you as to how they thought the H3 issue should
9 resolve?---I don't recall them doing that, no.

10 Did they seem to be advocating one way or the
11 other?---I observed which party they were supporting in
12 the debate that had occurred in September 2018. So, yes,
13 I was aware of their alliance.

14 When you say "the debate", was that the pre-council meeting
15 that we were discussing yesterday?---No, I'm talking about
16 the council meeting itself.

17 Did they not declare a conflict in relation to that
18 matter?---They did.

19 So would you clarify how you became aware then of their
20 position?---Sorry, I'm aware of their alliance with - you
21 know, it was known that they had close relationships with
22 Mr Woodman because of those historic electoral donations
23 that had been made. So that was clear.

24 It was clear to you in September 2018; is that what your
25 evidence is?---No, my evidence is that that was clear at
26 the time of this phone call, which was November 2018.

27 Was it clear to you in September 2018?---I don't believe I had
28 been appraised of all of those historic conflicts of
29 declarations of interest upon my commencement given that

1 I had only started in the role in September 2018.
2 When did you become aware of their alliance with
3 Mr Woodman?---I don't recall specifically.
4 You would have been aware that Wolfdene was a party in relation
5 to the H3 intersection issue?---Yes.
6 And were you aware of Mr John Woodman's association with
7 Wolfdene?---I don't know the exact nature of it and
8 I still don't to this day, but I was aware that there was
9 a link to Mr Woodman through Wolfdene, yes.
10 And at the time then of this conversation you say you were
11 aware of Mr Ablett's association with John Woodman, you
12 didn't think it was appropriate to indicate to him that
13 you didn't want to discuss the H3 matter with him given he
14 had declared a conflict?---As I say, there's a range of
15 stakeholders to the issue aside from Mr Woodman. It
16 wasn't specifically related just to him. There was a
17 whole range of parties to it. As I said, stated
18 previously, I think it was legitimate for him to ask me
19 for a general update on the matter given that it was a
20 current issue that was working its way through the council
21 decision-making process.
22 Which stakeholder's interest was Mr Ablett representing when he
23 had that discussion with you?---I have no idea.
24 You didn't seek to inform yourself of that?---No.
25 In relation to the pre-council meeting on 18 September - we
26 discussed that yesterday, you will recall - were
27 Councillors Ablett and Stapledon a part of that
28 discussion?---I don't recall, but I imagine they would
29 have declared an interest and left that pre-briefing. But

1 I just don't have that recollection.

2 That would be an obligation on them under the Act, wouldn't it,
3 that - you have indicated yesterday that that meeting
4 would constitute in your view an assembly of councillors;
5 is that right?---That's correct.

6 And so under the legislation Councillors Ablett and Stapledon
7 should not have been a part of that conversation, should
8 they?---That's correct.

9 Did you fulfil your obligation - - -

10 COMMISSIONER: Can we just pause for a moment, Ms Harris. That
11 concept, an assembly of councillors under the Local
12 Government Act, it's only an assembly if there's also a
13 council officer present?---Yes.

14 Do you know why that was inserted?---I don't know why that was
15 inserted, but that's a change that was made some years
16 ago. We have been working under that regime for quite
17 some time.

18 So if there are three or more councillors discussing a council
19 matter and there's a council officer present then all of
20 the duties under the Local Government Act will apply to
21 the councillor?---Yes.

22 But if there's no council officer present they
23 won't?---Correct. That's exactly right.

24 Can you see any reason why that requirement of a council
25 officer being present should be maintained?---No, I do
26 not.

27 If that requirement were removed, then the conduct of
28 Mr Ablett, for example, in dealing outside the council
29 meeting with other councillors in relation to a matter in

1 which he had a conflict would not be able to
2 occur?---Correct.

3 MS HARRIS: In relation to that meeting was there a council
4 officer present; is that what you indicated to the
5 Commissioner?---Yes.

6 Did you fulfil your obligations or have someone fulfil on your
7 behalf obligations under the Act in terms of a written
8 record being kept of that meeting?---I don't recall, but
9 I have faith in my governance team that runs a very
10 compliant and robust governance system, as I mentioned
11 yesterday, that they would have been on top of that issue.
12 But it was my - I had been in the job 24 hours at that
13 stage. So I just don't recall specifically whether that
14 occurred or not.

15 Whose responsibility would that have been on that day?---That
16 would have been the responsibility of our organisation,
17 the staff, through the governance team, to prepare any
18 notes from that meeting.

19 And do you know who in particular that would have been on that
20 day?---No, I don't recall because, as I say, it was my
21 second day in the office and I don't recall specifically
22 who was present in that role on that evening.

23 But you would expect those documents to be available if they
24 exist?---Yes.

25 I asked you yesterday about you meeting with Ms Schutz, and you
26 indicated that you had only met with her once and you
27 believed it was in late December 2018; is that
28 correct?---I don't recall. I said it was late 2019.
29 I don't recall. It was I think in that November/December

1 period of 2019. But, apart from that, that is my
2 recollection, yes.

3 So late 2019?---Sorry, 2018 I should say.

4 Are you able to say roughly how long after you commenced in the
5 role you met with her?---As I say, I think it was in that
6 first three months. So probably two to three months after
7 commencement.

8 Certainly not in the first few weeks?---No, definitely not.

9 And you indicated that she discussed with you issues she had
10 with certain members of staff and gave you names of people
11 that she had issues with?---Yes.

12 Did you inform Ms Schutz either directly or indirectly of the
13 people that were moved on, the staff that were moved
14 on?---My recollection is the timing of that meeting
15 I hadn't moved on any staff in that area at that time, and
16 certainly the changes that were made in the planning team
17 occurred after the service review was completed for
18 planning services, and that occurred and was implemented
19 in the first and second quarters of 2019, from my
20 recollection. The staff that I moved on, the senior staff
21 in my earlier period there, were in teams other than
22 planning.

23 And did you either inform her directly or pass on information
24 via someone else of planning staff that had been moved
25 on?---As I say, my recollection is that no planning staff
26 had been moved on at that meeting with Ms Schutz in late
27 2018.

28 But, leaving aside that meeting, at any time did you inform
29 her?---Yes, I keep a whole range of people up to date with

1 movements of key staff, and if people have expressed views
2 to me about staff in general terms I provide updates, as
3 is appropriate from a confidentiality and probity point of
4 view.

5 And did you update Ms Schutz?---I don't recall doing so, no.

6 We have heard played to the Commission a conversation during
7 which it's described that you, Heath Woodman, Andrew Wyatt
8 and Megan Schutz have a strong connection. What do you
9 say about that?---Well, I say that's big-noting,
10 embellishment and boasting and completely
11 misrepresentative of the truth, and I can't speak for
12 why - for their own ends why they might make that claim.
13 All I can say to the Commission is that how I choose to
14 respond to that and manage those relationships I have done
15 with integrity.

16 In fairness, we will play that call. It's tab 182,
17 exhibit 137, Commissioner.

18 COMMISSIONER: It's exhibit 137, is it, Ms Harris?

19 MS HARRIS: Yes. Tab 182.

20 (Audio recording played to the Commission.)

21 MS HARRIS: Mr Patterson, then what do you say about the
22 suggestion by Mr Woodman that you had a strong connection,
23 first of all, with Andrew Wyatt?---As I mentioned, I know
24 Mr Wyatt because he was a developer in the Yarra Ranges
25 Council area and I had met him a number of times in that
26 capacity in my previous role as the CEO at Yarra Ranges
27 Council.

28 And the answer to my question?---Which was?

29 What do you say about Mr Woodman's comment that there's a

1 strong connection between you and Mr Wyatt?---I don't
2 believe - I wouldn't characterise it that way at all. The
3 nature of our engagement was around planning applications
4 and development applications in the Shire of Yarra Ranges.
5 That was the extent of my involvement with him there.

6 And, you know - - -

7 Are you friends?---I have been to the football socially with
8 him once with my children, you know, and a number of other
9 families were part of that event.

10 When was that?---That was in one of the home and away games
11 last year. I think it was in August last year, 2019.

12 What was the arrangement in relation to why you came to be at
13 the football with Mr Wyatt?---He invited me to it, to the
14 game.

15 In a personal capacity or - - -?---I took it as a social
16 engagement because we had - we are both Richmond Football
17 Club supporters. Over the time I had known him at Yarra
18 Ranges, not that we had done any socialising there over
19 that 10-year period, we had been talking quite often
20 about - or he had been suggesting that we needed to go to
21 the football at some stage, and that eventually occurred,
22 as I say, the middle of last year.

23 And who else was there?---There was a range of adults and
24 children there. Some of the other people there had
25 brought children, and most of the people there I think
26 were associated with - and I would say also I didn't know
27 anyone else there apart from Mr Wyatt. They were either
28 people who were employees of or advisers to the Blueways
29 development group. That was the majority of people there.

1 I think there were some others that were invitees beyond
2 that, but I don't know who they were.

3 So when you refer to Blueways were they hosting you there; was
4 that the situation?---Yes, that's correct, yes.

5 Was it in a corporate box or a general - - -?---Yes, it was in
6 what was referred to as a cheap and cheerful corporate
7 box.

8 Was Mr Heath Woodman there?---No.

9 Did this social event have anything to do with Wolfdene?---No.

10 Was that the only time you socialised with Mr Wyatt?---Yes,
11 I have never socialised with Mr Wyatt in any capacity
12 prior to or since that date.

13 Was anyone else from Casey Council there?---No.

14 How did it come about that you were invited?---Invitation, as
15 I said, was extended from Mr Wyatt.

16 Via email or over the phone?---I don't recall. It might have
17 been email or text or phone. I just don't recall. But
18 certainly that's where the invitation extended from.

19 And did that day include beverages, food?---It included lunch,
20 yes.

21 And I think you indicated that it was you and your children; is
22 that correct?---Correct, yes.

23 Who paid for that?---I don't know, but I was - it was
24 hospitality that was extended to me. So I didn't pay.

25 You didn't pay for it?---No.

26 Did you declare that on your gifts register?---I didn't declare
27 it at the time. I saw it as a social engagement at the
28 time but on reflection appreciated that that was an
29 oversight and I corrected that late 2019, and it has been

1 declared since late 2019.

2 Was that declaration made prior to or after the commencement of
3 the IBAC public hearings?---After.

4 COMMISSIONER: It is true to say, though, Mr Patterson, that
5 Mr Wyatt was used as a conduit by Ms Schutz to get to you
6 in relation to some things that she and Mr Woodman wanted
7 done?---Yes, that's correct. I think that occurred at
8 least once. I recall it occurring in relation to an FOI
9 application, and Mr Wyatt approached me on behalf of
10 Ms Schutz, because I didn't really have a relationship
11 with her at all, and put forward a suggestion from her
12 about how she would like me to intervene in that
13 particular matter.

14 Can you just summarise, please, what was the FOI application
15 that Ms Schutz and Mr Woodman wanted to resist?---Yes.
16 No, it was the other way around. They had actually lodged
17 an application to seek emails, telephone records, diary
18 excerpts, all sorts of material from a large number of our
19 current and former staff, I think from the interim CEO,
20 director of planning and a number of senior planning
21 staff, and we had consistently refused to agree to that
22 application, and the time that Mr Wyatt had the approach
23 from Ms Schutz seeking me to intervene was at the time
24 that we had persisted with that and she, Ms Schutz, had
25 lodged an appeal with the Victorian office of information
26 commissioner and we were continuing to defend that
27 position. Ms Schutz was wanting me to intervene to either
28 overturn or review that decision. My action at that time
29 was to engage with my governance team and other staff, and

1 there's documented evidence that I went back to Mr Wyatt
2 with the confirmed position that we would be persisting
3 with that appeal and wouldn't be changing course.

4 And what happened?---The matter was still on foot until the
5 commencement of this hearing in November last year and her
6 application was withdrawn, my recollection was, around the
7 time of commencement of this hearing, in the first day or
8 two of the hearing.

9 And, in summary, the issue related to what? An allegation of
10 bullying?---I think it related to a thought that Ms Schutz
11 had that a number of senior council staff had been leaking
12 information about her and Mr Woodman, and they were
13 seeking to obtain evidence to confirm that suspicion.

14 Because it had finished up in The Age, had it not?---Yes,
15 correct.

16 MS HARRIS: I'm confused then, Mr Patterson. In relation to
17 that matter the Commissioner was just asking you about,
18 what was Mr Wyatt's role in the FOI matter?---Nothing
19 other than just being a conduit. As I say, I had met and
20 have only still met Ms Schutz once, and obviously she
21 formed a view that he had a more fully formed relationship
22 with me and he was used as a conduit for her request to
23 get me to review that situation.

24 Did you think that was strange?---There's lots of unusual
25 things that happen in a CEO of local government's world
26 and it's not usual practice but I say it's not uncommon
27 either. It happens quite a bit.

28 Did you ask Mr Wyatt why he was involved in that matter, what
29 his interest was?---I understood that Ms Schutz did work

1 for Mr Wyatt and that they had, you know, a relationship
2 that had extended over some time. So I appreciated the
3 nature of their relationship.

4 Did you ask him why he was involved?--Well, I knew that was
5 the reason why, because he expressed that I think to me
6 that, you know, "Megan has asked me to put this request to
7 you."

8 At the time that Mr Wyatt was passing messages from Ms Schutz
9 to you were lawyers involved in these matters?---We had
10 engaged lawyers to represent the council, yes, that's
11 my - I believe so.

12 And Ms Schutz and Mr Woodman had lawyers, I assume?---I don't
13 know the answer to that. I imagine Ms Schutz would be
14 carrying out that role on behalf of herself.

15 Why then wouldn't those communications be carried on through
16 the lawyers?---That would be normal practice. But, as
17 I say, in my industry and my sector it's very common that
18 you get advocated to about all sorts of things outside
19 formal processes, and that was just another example of
20 that.

21 But you were being advocated to by a party to proceedings; is
22 that right?---I don't believe Mr Wyatt was a party to
23 proceedings.

24 No, but he was passing on Ms Schutz's messages to
25 you?---Correct.

26 And she was a party to proceedings?---Yes.

27 And that didn't concern you?---As I say, my response to that
28 was to engage with my team, get an update on the issue,
29 and I fully defended the position taken by my

1 organisation, which was contrary, completely contrary, to
2 what Ms Schutz was seeking me to do.

3 COMMISSIONER: What Mr Wyatt did was to provide you with a very
4 lengthy letter or email that Ms Schutz had sent him; is
5 that correct?---I think so. I think that's my
6 recollection. It's been a while, but I believe so, yes.
7 Have a look at 4649. The letter can be put up on the screen,
8 but I don't think it appropriate that there be any
9 publication of the names of the council officers
10 concerned. So that's Mr Wyatt's email to you. Below that
11 then if you go on is Ms Schutz's email to Mr Wyatt. So
12 you will see here at the last portion of the letter,
13 Mr Patterson, Ms Schutz is contending that this particular
14 Age publication also led to the deferral of the C219
15 rezoning. Did that give you any insight into the level of
16 connection between Ms Schutz and Mr Woodman and the C219
17 issue?---I was aware - yes, it did. The answer is yes.

18 Yes, Ms Harris.

19 MS HARRIS: Just looking there, it says, "Thanks for briefing
20 Glenn on this matter." Presumably you would have already
21 been briefed on this particular FOI matter; is that
22 right?---I was briefed in general terms by my governance
23 team, yes.

24 And, if we go on then, that she would be grateful for a
25 retraction of the allegations, et cetera. This is her
26 seeking - that is, Ms Schutz seeking - you via Mr Wyatt to
27 intervene in this matter, isn't it?---Yes.

28 Is that the way you perceived it?---Yes.

29 And essentially going through the backdoor, bypassing lawyers,

1 et cetera. That's the way you saw it, wasn't it?---Yes.

2 I tender the document, sir.

3 COMMISSIONER: That will be exhibit 148.

4 #EXHIBIT 148 - Email from Ms Schutz to Mr Wyatt and email from
5 Mr Wyatt to Mr Patterson.

6 COMMISSIONER: I take it, Mr Patterson, it's not unusual,
7 though, for parties to approach the CEO in this way?---Not
8 unusual at all, Mr Commissioner, no. It happens on all
9 sorts of matters.

10 MS HARRIS: And that wasn't the only contact Ms Schutz put
11 through Mr Wyatt to you in relation to the FOI matter, was
12 it?---I think there were two approaches, from
13 recollection, yes. I think that's correct.

14 Returning then to the telephone call and the reference to the
15 strong connection, when was the last time you had any
16 contact with Andrew Wyatt?---At that football game, which
17 would have been August, I think, 2019.

18 And since then there's been no contact either via telephone,
19 email, text message?---I don't recall so, no. I don't
20 believe so.

21 If we can just go up, please, to page 2, line 29. What was the
22 strong connection between you and Heath Woodman?---There
23 isn't one. That's a complete fallacy and is delusional.
24 Simple as that.

25 Do you have any or have you had any social interactions with
26 Heath Woodman?---I have never socialised with Heath
27 Woodman in any form whatsoever ever.

28 And the date of this conversation is 8 October 2018. That
29 would pre-date when you say you met Ms Schutz; is that

1 correct?---I think so, yes. As I say, I don't recall the
2 specific date, but I believe that's the case.

3 So then what do you say about there being a strong connection
4 between you and Ms Schutz?---I can't imagine how anybody
5 would form that view on an independent assessment of that.
6 I've met the woman once. On the other couple of occasions
7 when directly or indirectly she's approached me seeking
8 support of her view of things, on every occasion I have
9 taken an opposing view and written back to her in those
10 terms. So that's the extent of our relationship. So for
11 me that doesn't constitute a close relationship.

12 There's no reason you could think of why she would interpret
13 your relationship in that way?---No.

14 Because you will note that she goes on then at paragraph 30 to
15 say, "What they know about the strong connection now," and
16 then she continues. So she's certainly - in a private
17 conversation where they have no idea it's being recorded
18 she doesn't deny that, does she?---No. As I say, I put
19 that in the category of boasting, big-noting,
20 embellishment and basically a complete misrepresentation
21 of the relationship.

22 The description she goes on to give about a meeting that was
23 then rescheduled and you being copied into an email, if we
24 can just go down and over the page, please, over to the
25 next page, I should say, she refers to the fact that you
26 had obviously intervened. Is that true? Did you
27 intervene in this matter?---I don't recall that matter at
28 all. I know earlier in my time at City of Casey in this
29 role Ms Schutz would take to copying me into emails, as

1 she referenced that she had done here. That doesn't
2 indicate to me that I would have taken any action in
3 relation to that. The other observation I would make is
4 that that's completely contrary to the way I lead and
5 manage the business. I don't go around bashing people on
6 the head. I don't dictate to people. I'm a
7 collaborative, inclusive leader and wouldn't have taken
8 that approach.

9 She indicates that you fixed another meeting with the right
10 people. Do you recall that happening?---No, I don't
11 recall that either.

12 In the context that she's describing, who would have been the
13 right people to have in that meeting, do you
14 know?---I have no idea because I don't understand the
15 purpose of the meeting, therefore who should be attending.

16 And just further down, at line 49, she refers to, "He's already
17 told us that [REDACTED] going. He's on his way out."
18 Did you tell Ms Schutz that [REDACTED] was
19 going?---I don't recall telling Ms Schutz that directly,
20 but [REDACTED] - my recollection is - left the business to
21 retire in I think January 2019 and had a long lead-in to
22 that particular decision. So the fact that he was leaving
23 the organisation was well known in the organisation and
24 publicly for some months before his departure.

25 But you don't believe that you told Ms Schutz that?---I don't
26 recall saying it to her, no.

27 Or pass that information via anybody else to her?---I don't
28 recall that either, no.

29 Yes, thank you.

1 COMMISSIONER: Just for completeness, Mr Patterson, there was
2 further communications between Mr Wyatt and you about the
3 FOI application in February the following year in which he
4 again sent you a long email which Ms Schutz had sent him
5 in which - the bottom line being that she was proposing
6 that there should be a mediated outcome, and the email to
7 Mr Wyatt concluded, "If the CEO agrees mediation is a good
8 idea, avoiding public exposure of the issue," and you
9 responded to Mr Wyatt saying, "We have agreed we will
10 proceed to the compulsory conference mediation." Is that
11 what happened?---Yes.

12 MS HARRIS: If I can just then draw your attention to the final
13 line on the screen that "Dave is on the list as well". Do
14 you know what list she's referring to?---I have no idea,
15 but I imagine she's talking about senior staff that again
16 she would like to see removed from the organisation.

17 Was [REDACTED] on that list that she - or list of names she
18 provided to you?---She didn't provide a list of names to
19 me, but he was someone who came up in conversation in that
20 one meeting I had with her, yes.

21 And what about Dave?---I don't recall, no. I don't think so.
22 Pardon me for a moment. That call that is on the screen now is
23 not the only time your name has come up in conversation
24 between Ms Schutz and Mr Woodman. If you will have a
25 listen to this, please. It's at tab 75, exhibit 48,
26 Commissioner.

27 COMMISSIONER: There are two parts to 48, Ms Harris. There's
28 an A and a B. Which one is it?

29 MS HARRIS: This is clip B, sir.

1 (Audio recording played to the Commission.)

2 MS HARRIS: Mr Patterson, what role, if any, did Mr Woodman
3 play in your recruitment?---None.

4 Are you aware of whether or not he had any influence over
5 whether or not you were recruited?---None that I could
6 see.

7 Did anybody ever express that view to you?---What view would
8 that be?

9 That Mr Woodman had some kind of influence over you being
10 recruited?---No. The only person I have heard that from
11 is Mr Woodman.

12 And can you tell us about that?---Well, from those excerpts you
13 have just played to me then.

14 But nothing independent of that conversation?---No, no.

15 What about Ms Schutz? Did she have a role in your
16 recruitment?---No.

17 COMMISSIONER: Given that these are private conversations which
18 they didn't know were being recorded, have you got any
19 explanation at all for why they would think that they were
20 responsible for your recruitment?---No. Again, I think
21 it's just a complete misrepresentation, overstatement of
22 the extent of their influence. As I said to the
23 Commission yesterday, it was a completely independent,
24 robust process utilising executive recruitment
25 consultants, a separate consultant to support the probity
26 matters associated with the appointment, a four-stage
27 process. I understand there was about 50 applicants for
28 the role. It was advertised nationally and really
29 globally online as well, and it took about three to four

1 months to make the appointment. So it was a very
2 rigorous - the most rigorous process I had been through
3 for any recruitment to a CEO role. So how they could
4 suggest that they influenced that process is beyond me.

5 Was there any councillor involved in the final selection of
6 you?---All the councillors were, Mr Commissioner. It was
7 their decision.

8 At what point of time did the councillors become involved in
9 your selection?---As I mentioned yesterday, there was an
10 initial interview that I had with the recruitment
11 consultant, which is part of the shortlisting process.

12 Yes?---I understand then that about eight to 10 candidates were
13 taken through to the next stage, which was a series of
14 online videos that we had to submit to the recruitment
15 firm, and following that was the first interview with
16 the full council. So that was the first opportunity for
17 the councillors to meet I think around six applicants.

18 And so the selection by - it was Davidson, was it?---Correct,
19 yes.

20 That was entirely independent of the council, that
21 shortlist?---Yes, that's my understanding.

22 MS HARRIS: The two conversations that have been played would
23 suggest that Mr Woodman and Ms Schutz think they have a
24 direct line to you, albeit via Mr Wyatt. Can you think of
25 any reason why they would think that?---No.

26 If we can go back to the top of that call, please, there's
27 discussion about Andrew Wyatt having a conversation with
28 you about Pavilion. Did Mr Wyatt have a conversation with
29 you about Pavilion?---I don't recall that. That was a

1 matter that had been determined some years before
2 I arrived at the City of Casey and I have no knowledge of
3 the detail of that particular transaction.
4 It suggests that you looked into the detail of Pavilion. Is
5 that the case?---No, I did not.
6 Did you ever tell Mr Wyatt that was the case?---No.
7 COMMISSIONER: Can I just clarify, Ms Harris. On line 81, when
8 Ms Schutz commences, "He said" - - -
9 MS HARRIS: That's Mr Wyatt.
10 COMMISSIONER: That's Mr Wyatt.
11 MS HARRIS: Yes.
12 COMMISSIONER: As you understand it.
13 MS HARRIS: That's my understanding, Commissioner. Mr Wyatt is
14 telling Ms Schutz - - -
15 COMMISSIONER: You understood that?---Yes, I do understand
16 that.
17 MS HARRIS: Did you have a conversation with Mr Wyatt in which
18 you suggested council officers don't like arguments?---No.
19 And they can't argue anything?---No, that's the
20 complete - that's a falsehood. The opposite is the case.
21 Through all of these matters that have been aired through
22 this hearing and in fact my experience with all of my
23 officers is that at all times they have acted with
24 integrity and given fearless and frank advice.
25 Was any information sent to your private email account about
26 the FOI matter?---No. I've never had a personal email
27 account ever.
28 So anything to do with the FOI matter would have gone through
29 your council email address?---Yes.

1 MR WOINARSKI: Can I just say in relation to that, if I may,
2 Mr Commissioner, that the records that the Commission has
3 will reveal that the documents about the FOI that came
4 through Mr Wyatt will have been located on the City of
5 Casey email account of Mr Patterson.

6 COMMISSIONER: Yes.

7 MR WOINARSKI: It's quite clear.

8 COMMISSIONER: That's correct, Ms Harris.

9 MS HARRIS: Yes. I'm instructed it is, sir. Just on page 3 at
10 line 128, did you ever express the view that if council
11 officers had been leaking information you will sack
12 them?---No.

13 When you met with Mr Woodman in January '19 did he suggest to
14 you - I have finished with that document, thank you - did
15 he suggest to you any names of staff that he considered
16 problematic?---No, we didn't discuss any individual staff
17 at all during that meeting.

18 Did he discuss with you or did he suggest to you that he
19 considered that the two of you had any type of personal
20 association?---No.

21 Did he discuss his son Heath Woodman with you?---No.

22 There's been some conversation around feedback about - when you
23 first started, feedback about how council staff were
24 performing. Did you have a conversation with Councillor
25 Ablett about staff performance?---I spoke to all the
26 councillors about my expectations, as I said yesterday,
27 that was supported by the organisation, that we were
28 seeking high performance as an enterprise, and certainly
29 the planning services team was part of that improvement

1 push.

2 And did you speak with Mr Ablett about staff

3 performance?---Yes, along with other councillors.

4 Did you ask him at any stage for names of people that weren't

5 performing?---No.

6 Could we play tab 42, please. It's exhibit 41, Commissioner.

7 COMMISSIONER: Is it a phone call on 11 November?

8 MS HARRIS: It is, sir, yes.

9 COMMISSIONER: '18?

10 MS HARRIS: Yes.

11 (Audio recording played to the Commission.)

12 MS HARRIS: Thank you. If we can go back to page 1, please.

13 If we look at line 255, did you have a conversation with

14 Mr Ablett about putting your own people in as the head of

15 planning?---No, and that didn't happen.

16 Did you discuss with him people within planning reporting back

17 to you about the performance of the planning

18 department?---No.

19 Is there any reason you can think of why Mr Ablett would think

20 that to be the case?---No.

21 Did you ask him to give you some names of people that were

22 underperforming?---No.

23 And you can see there that he comments to Mr Woodman, I'm

24 sorry, at line 260, "Do you want to give me some names?

25 I'll listen. I'm not going to listen to everyone, but you

26 were the one that instigated that." Did you have that

27 conversation with Mr Ablett?---I don't recall having that

28 conversation with Mr Ablett, no.

29 Did you have a conversation along those lines with

1 Mr Ablett?---No.

2 Is there anything that you consider Mr Ablett instigated in
3 relation to review of staff in council?---No. The only
4 thing he instigated - well, along with the whole council,
5 as a councillor, as part of the broader group - was the
6 commencement of the service review process for planning
7 services. But nothing in relation to staff or individual
8 staff.

9 In relation to the comment that you would put in your own
10 people as head of planning, who was head of planning when
11 you started?---Peter Fitchett was the director of city
12 planning and infrastructure.

13 Has that changed in the past 18 months or so?---That changed.
14 Mr Fitchett retired around September, I think, of 2019,
15 some year after I started, and that person has been
16 replaced in December 2019.

17 And who holds that position now?---James Collins.

18 Is that the gentleman you referred to yesterday as working
19 previously with you at the Yarra council?---Yes.

20 Yes, thank you. I have finished with that document. Could the
21 witness be shown page 4639, please. Mr Patterson, what
22 was the purpose of sending Mr Wyatt this email?---This was
23 in response to discussions we had had about improving the
24 performance of the planning teams, and also there's a
25 reference in there in the second last paragraph, and the
26 last paragraph too, about what we are calling Partnerships
27 for a Growing Casey, that MOU process, that
28 fee-for-service proposal, which was offered to Wolfdene
29 and taken up along with about seven other developers.

1 What is the fee-for-service program?---That's a program where
2 developers pay for us to engage planners and engineers to
3 work on the details of approvals that flow out of precinct
4 structure plans that have been approved in our growth
5 areas, and it's a program of work that's new to Casey that
6 has been undertaken in a number of other councils -
7 I think Wyndham Council has probably been the most
8 successful example of that - and is recognised by the
9 Victorian Planning Authority in their Streamlining for
10 Growth initiatives as worthwhile initiatives that growth
11 councils should be taking up.

12 In relation to the second paragraph, if we could go up, please,
13 4639, you refer to Megan being pleased to know
14 senior - two senior officers' names that had come up
15 during your meeting a few weeks ago have been addressed.
16 That would suggest that you met with her prior to
17 20 October 2018, wouldn't it?---That may well be the case.
18 As I say, I have only met with her once. I couldn't
19 recall the exact date of it. But, yes, it must have been
20 earlier in October.

21 And those two names that appear there, [REDACTED] and
22 [REDACTED], were they two names that came up during that
23 meeting?---Yes, they were. I just would note that neither
24 of those people are in the planning area, but certainly
25 those two officers' names came up.

26 Did they come up in the context of Ms Schutz being unhappy
27 about their performance?---It was a general observation
28 about their performance, yes.

29 And her being unhappy about that?---That was her reflection,

1 yes.

2 The [REDACTED], would that be the [REDACTED] referred to in the
3 phone call earlier?---I believe so, yes.

4 Why did you think it was appropriate to report that back to
5 Mr Wyatt?---As I say, I engage in these sorts of
6 conversations with a whole range of people. I listen, as
7 I said yesterday, to a whole range of stakeholders,
8 literally hundreds of people, who give me advice and input
9 and their perceptions on both performance about processes
10 and systems but also our people. So in that regard this
11 is not an isolated case. I have those sort of
12 conversations with a lot of people, and it's all about
13 giving a signal that we are working on improving the
14 business.

15 Did Mr Wyatt nominate those two people as problematic?---No,
16 Mr Wyatt didn't express any views about those people.

17 So why then were you talking to him about those two
18 people?---Well, because he was at the meeting with Megan
19 Schutz because he introduced me to Megan Schutz at that
20 one and only meeting I had with her in late 2018.

21 Who else was at that meeting?---No-one. It was just the three
22 of us and we met in the Bunjil Place cafe, which is our
23 civic centre in Narre Warren.

24 COMMISSIONER: Sorry, who was the third person?---Mr Wyatt. He
25 was there. It was an introduction. He introduced me to
26 Ms Schutz.

27 MS HARRIS: So were you providing Mr Wyatt with that
28 information in order to pass it back - for him to pass it
29 back to Ms Schutz?---Yes, I imagine that's what would

1 happen, yes.

2 You didn't consider that to be personal information in relation
3 to those two people?---At that stage I believed decisions
4 had been made about both of those two people and that was
5 public knowledge.

6 When you say "public knowledge", just within council?---I'm not
7 sure beyond that. I know certainly in relation to
8 ██████████, my recollection is that he concluded
9 employment with us within about four or five weeks of my
10 commencing in the role. I took that decision quite
11 quickly for a whole range of reasons. And, as I said,
12 ██████████ imminent departure, which occurred in I think
13 January of 2019, was forecast a lot earlier than that, and
14 he used long-service leave between finishing effectively
15 in the organisation and his official conclusion of
16 employment with the City of Casey.

17 You refer then in the third paragraph to Ms Seirlis. What's
18 Ms Seirlis's relationship with Megan Schutz?

19 COMMISSIONER: Just before you do that, Ms Harris, I think it
20 would be best if the names of the two gentlemen in the
21 second last and last line of the second paragraph are
22 redacted from publication. There's no need for them to be
23 the subject of a gratuitous observation.

24 MS HARRIS: Yes, Commissioner. My question was: what's the
25 relationship between Ms Seirlis and
26 Ms Schutz?---Ms Seirlis is a City of Casey employee and
27 has been for some time. As of today she is our Manager
28 Growth and Investment, and at the time of this email and
29 since my appointment she was in a strategic adviser role,

1 but a big part of her role previously prior to being the
2 manager of growth and investment was in managing the
3 issues around growth areas planning. She is a qualified
4 planner with many years experience, and she would have
5 known Megan Schutz through her interactions around
6 greenfields developments in the City of Casey.

7 But was she someone Ms Schutz had expressed a view
8 about?---Ms Seirlis was universally recognised as being a
9 high performer, and I do recall Ms Schutz and a whole
10 range of other people, dozens of them, giving me that
11 feedback about her.

12 Was it your impression that Ms Seirlis and Ms Schutz were
13 friends?---Not at all.

14 So what role then did you say Ms Seirlis now holds?---She's our
15 Manager Growth and Investment. So she looks after the
16 growth areas planning, strategic planning and also our
17 city economy and tourism and Regional Partnerships
18 function.

19 Was that a new role?---It was a restructured role which
20 commenced in 2019 after the implementation of the planning
21 services service review.

22 I tender that document, sir.

23 COMMISSIONER: That will be exhibit 149, email between
24 Mr Patterson and Mr Wyatt, 20 October 2018.

25 #EXHIBIT 149 - Email between Mr Patterson and Mr Wyatt,
26 20 October 2018.

27 MS HARRIS: Commissioner, would that be an appropriate time for
28 the morning break? I can indicate that I won't have much
29 longer with this witness.

1 COMMISSIONER: Very good. I will have a few questions about
2 the monitor's report.

3 MS HARRIS: As do I, sir, yes.

4 COMMISSIONER: We will adjourn for 10 minutes.

5 MS HARRIS: Thank you.

6 (Short adjournment.)

7 MR WOINARSKI: Mr Commissioner, may I just say something, if
8 I may?

9 COMMISSIONER: Yes.

10 MR WOINARSKI: Yesterday, Mr Commissioner, Mr Patterson was
11 asked some questions about some private work that he'd had
12 done in relation to a property that was subdivided, the
13 work having been done by Watsons, as he indicated quite
14 clearly. We don't know whether the Commission has the
15 bundle of documents that relate to that, but we now have
16 hard copies that we understand is the complete
17 documentation in relation to the work, bills and payments,
18 and we are quite willing to hand them up to give the
19 Commission a copy if they do not have them.

20 COMMISSIONER: What is the position, Ms Harris?

21 MS HARRIS: I understand that we don't have them.

22 COMMISSIONER: Yes. Perhaps you could make them available,
23 Mr Woinarski.

24 MR WOINARSKI: I have two copies here and one for you, sir.

25 COMMISSIONER: Thank you very much.

26 MR WOINARSKI: We would ask, though, because of the nature of
27 some of the material that they remain a private exhibit.
28 There are bank accounts and various other things like
29 that.

1 COMMISSIONER: Very good. Just have a seat for a moment,
2 Mr Woinarski.

3 MR WOINARSKI: And of course there's also the addresses too.

4 COMMISSIONER: Yes. I was only wanting to address the question
5 of whether or not anything in those materials might
6 require further questioning of Mr Patterson.

7 MR WOINARSKI: I do understand that, sir, and that's why we
8 have provided them once we got the hard copies.

9 COMMISSIONER: Yes. Thank you. We will see how we progress,
10 but my current impression is that won't be necessary.
11 Yes, Ms Harris.

12 MS HARRIS: Excuse me for a moment, sir. Can I just clarify an
13 issue, Mr Patterson. I asked you earlier about whether or
14 not you use a private email address. Do you ever use your
15 wife's email address?---My wife has a hotmail account and,
16 no, apart from sending the occasional document to her,
17 which is usually of a private nature, for printing at our
18 home, no, I do not.

19 Have you ever had council or council-related documents sent to
20 your wife's email address?---No.

21 Or used your wife's email address to correspond about council
22 matters?---No, never.

23 Returning then to questions in relation to Ms Seirlis,
24 following on from what we were discussing prior to the
25 break, the new role that Ms Seirlis is now in, was that
26 role created as a result of an internal
27 consultation?---Yes.

28 And who was part of that consultation process?---To explain, it
29 was part of - one of the - part of the outcomes of the

1 planning services service review. So that addressed a
2 whole range of issues around structure, culture,
3 processes, systems, and we had about 100 recommendations
4 that we are now working through the implementation of, and
5 one aspect of that was structure and there was new roles
6 shaped. That department, City Planning and
7 Infrastructure, hadn't been redesigned really to meet the
8 current needs and workload, and had been in a state where
9 it really had very little change structurally for a number
10 of years. So that was the opportunity to do that. Once
11 the proposals for change were known there was an
12 exhaustive consultation and engagement process with the
13 staff, and over a number of months staff were involved in
14 shaping the outcomes of that structural review.

15 And did that include the engagement of your either HR or People
16 and Culture department?---Yes, it did. They were central
17 to that process.

18 Did anybody express to you or through the process concerns
19 about creating that role?---Not at all.

20 Or concerns about appointing Ms Seirlis to that role?---No. As
21 I say, Ms Seirlis is a highly regarded member of our
22 staff.

23 And was that role filled by a recruitment process?---Yes. All
24 internal vacancies or new positions that were created in
25 that redesign were advertised as required under the Local
26 Government Act either internally and in many cases
27 externally for senior officers, which was the case in that
28 growth and investment role because it's above the
29 threshold that requires external advertising.

1 In the confidential briefing note, exhibit 144, that was shown
2 to you yesterday there was reference to a defamation
3 action and you being briefed about a defamation action.
4 Was that the case?---I would need more clarification.
5 There's a number of defamation actions on foot. So
6 I would need more clarification on the specific details of
7 that, Mr Commissioner.
8 If we could pull up the document, please. The document is at
9 4828, and if we could go to 4831, please. Just for
10 context, Mr Patterson, this relates to Mr Aziz?---Okay.
11 Yes. Yes, I'm familiar with that.
12 I understand that council resolutions relating to funding of
13 the defamation action commenced prior to your commencement
14 with council; that's correct, isn't it?---Yes, so
15 I commenced in September 2018, and my understanding is
16 that the council initially agreed to fund this particular
17 action in early 2017, some 18 months earlier.
18 And have you had any involvement since your commencement with
19 decisions around the funding of Mr Aziz's defamation
20 action?---No, I don't have any authority to make decisions
21 around that. There was only, from my recollection, one
22 occasion, which would have been in mid-2019, after my
23 appointment where the council staff were obliged to bring
24 a report back to the full council indicating that the cap
25 that they had placed on council's contribution to this
26 action had been exceeded, and there was further invoices
27 from the legal people associated with this seeking council
28 direction as to how they wished to treat that.
29 And what was the outcome of that meeting?---The outcome of that

1 meeting was that the council agreed to pay the additional
2 costs, which I think amounted to about \$11,000 at that
3 time.

4 When you say "amounted to \$11,000", that was \$11,000 in
5 addition to the cap that they had already placed on
6 it?---Yes, yes.

7 Do you know then how much the council ultimately paid in
8 relation to the defamation action?---Council paid
9 approximately \$80,000, and there was a requirement that
10 any settlement that occurred as a result of the action,
11 that those funds would flow to the council to offset that
12 cost, and my understanding is a settlement of in the order
13 of \$15,000 was made. So the net cost to the council was
14 in the order of \$65,000.

15 Given your experience in councils previously, have you seen
16 this before?---No, I have not.

17 Did you think it was unusual?---Yes.

18 Did you have concerns about it?---Yes.

19 And what did you do about those concerns?---I have no power,
20 again, to review or rescind council decisions that were
21 made months or in some cases years before I arrived. But
22 the consistent officer advice prior to and post my arrival
23 in relation to this matter is that the council should not
24 be funding what's essentially a private action with the
25 use of public funds.

26 Because essentially the ratepayers funded that action; that's
27 right, isn't it?---That is absolutely correct.

28 Why were these meetings conducted in closed council?---There's
29 a number of - I think there's five conditions in the Local

1 Government Act under which matters can be considered
2 confidentially and in camera, and I imagine the decision
3 was taken to do that in this case because it related to
4 legal action, which is one of those conditions.

5 And not because it might have been controversial that
6 ratepayers' money was being used to fund a councillor's
7 private legal action?---I would only be speculating
8 because I wasn't in the role when those earlier reports
9 were made. So I can't really answer.

10 In light of being asked about changes to provisions, what
11 changes could be made to see a CEO intervene in a matter
12 like this if they have concerns about it?---Well, I think
13 it would require provisions that actually made supporting
14 an action like this, which is essentially of a private
15 nature, fundamentally illegal. If there was a provision
16 that provided for that, then there could have been some
17 different action taken.

18 You would agree that conducting a matter like this in closed
19 council obviously creates issues around
20 transparency?---I don't necessarily agree with that.
21 There's a number of matters that are considered in camera
22 for quite legitimate reasons.

23 And do you think that there were legitimate reasons for
24 conducting this matter in private?---As I say, it was
25 before my time, but I imagine - and it would be declared
26 in the minutes of the council meeting the reason as to why
27 it was considered in camera. But I imagine the council at
28 that time relied upon the provision that it related to
29 legal advice, and it was a legal matter, and that was the

1 rationale or the reason for it being considered in camera.
2 One of the matters you were briefed on was the fact that
3 certain councillors were concerned about this matter,
4 weren't they?--My understanding from what I have been
5 told is that only one councillor of the 11 voted against
6 supporting this particular action.

7 Did that councillor have any conversations with you about their
8 concerns?--No, I don't believe so.

9 Who did they raise concerns with, do you know?---It was raised
10 in the debate in the initial meeting, as I understand
11 it - again, it was about 18 months before I commenced in
12 the role, but I think in that early 2017 decision both -
13 the officers were expressing concern about what was
14 proposed and that councillor opposed the decision that was
15 taken that night. So that was why his view was known.

16 COMMISSIONER: I'm sorry, and how much was the council in the
17 end out of pocket as a result of funding Mr Aziz's private
18 legal proceeding?---\$65,000, Mr Commissioner.

19 Which had to be borne by the ratepayers?---Yes.

20 MS HARRIS: You have indicated that you haven't seen this
21 before in your experience with council. Are you aware of
22 whether this has happened before at Casey?---No, I'm not
23 aware.

24 I would like then to take you to the monitor's report.

25 I understand it's at page - - -

26 COMMISSIONER: Exhibit 142.

27 MS HARRIS: Thank you, sir. 4715. Overall, if I can put it
28 this way rather than taking you to specific sections right
29 now, the monitor noted a culture of bullying and

1 intimidation; is that right?---Yes.

2 A failure to call out that kind of behaviour?---Yes.

3 A fear amongst councillors of conflict and intimidation?---Yes.

4 That there was a failure to declare conflicts of interest in
5 accordance with the Act?---Yes.

6 And a poor understanding of what was actually required of
7 councillors declaring a conflict of interest?---Yes.

8 And a lack of understanding by councillors around the
9 interplay - that's my word, not hers - between declaring
10 conflicts of interest and transparency; would that be a
11 fair summary?---It would, yes.

12 Would you agree as a general proposition that if councillors
13 are concerned about expressing themselves freely, whether
14 it be due to intimidation or bullying, that they can't
15 discharge their statutory obligations?---It has potential
16 to compromise that obligation, yes.

17 This is at page 6 of the report, if we can just scroll down.

18 Under the heading "Bullying and intimidation", the monitor
19 refers to the bullying comprising of exclusion, cliques
20 and intimidation by councillors. Did you witness any of
21 that yourself?---No. Certainly at least one councillor
22 had a reputation for that type of behaviour. He never
23 presented to me in that way. But certainly historically
24 prior to my arrival there had been a number of incidents,
25 three of which had gone to a councillor conduct panel, and
26 one of those in the previous term of council related to
27 bullying.

28 Who was that councillor?---Councillor Aziz.

29 Were there complaints made to you along those lines?---No, not

1 since my arrival, no.

2 So the matters you are referring to were prior to your
3 time?---Yes, they were in the previous term of council.
4 So at least three years ago.

5 The monitor notes comments by community members of poor
6 behaviour between councillors. Was that something you
7 observed in meetings?---Yes. I observed that on the
8 second day of my appointment, on 18 September 2018, in
9 relation to the H3 Hall Road intersection matter. There
10 was very poor behaviour between councillors, and what
11 I would call inappropriate and disrespectful and very
12 personal attacks on some of the councillors, and I think
13 in a public forum that was the last time that I observed
14 behaviour of that strength.

15 What recourse is available to you to deal with that behaviour
16 by councillors?---Really none at all. It's up to
17 colleagues of a councillor. They can lodge a complaint.
18 As I say, that can go through to a councillor conduct
19 panel. My obligation under the health and safety
20 provisions of the legislation is if there's any impact on
21 staff wellbeing or welfare obviously there's action that
22 I can take in response to that as part of my
23 responsibility for providing a safe workplace. However,
24 in that incidence it was very much between councillors and
25 not targeted at council staff.

26 In your view, is it appropriate for you to have a chat with
27 those councillors behaving inappropriately?---I did take
28 up that opportunity.

29 What was the outcome?---Part of my role, I think - while

1 I mightn't have legislative responsibility for doing so,
2 but I came in with a clear mandate, as I mentioned to the
3 Commission yesterday, for cultural change and improvement
4 in relationships, internally and externally - is to coach
5 people towards better behaviour to the extent that I can,
6 and I availed myself of that opportunity on a regular
7 basis. As I mentioned to the Commission yesterday, there
8 was a significant improvement in council behaviour in the
9 last 18 months.

10 Did you witness councillors calling out bad behaviour in
11 circumstances like the one you have just described?---No,
12 I did not.

13 Do you think that's something that the monitor is referring to
14 when she refers to lack of councillor engagement in terms
15 of calling out bad behaviour?---Yes, I do.

16 Was that something that you sought to address in the changes
17 you made?---Yes.

18 How did you do that?---As I say, my role is more of a coaching
19 one. So I don't have many statutory avenues to pursue in
20 order to deal with councillor behaviour. I outlined to
21 councillors as a group and individually the impact of
22 their behaviour on staff and how hopefully both groups,
23 councillors and senior and other staff, are looking to
24 forge a better relationship and how we might go about
25 doing that. As I say, I was - you know, I achieved a lot
26 I think in that space in the last 18 months and council
27 behaviour noticeably improved. I think I mentioned
28 yesterday we actually measured that. So it wasn't just
29 our perception or intuition about what had changed. We

1 actually set some qualitative measures at the start and we
2 measured those after 12 months and they showed significant
3 improvement, as did the pulse survey that we took in the
4 council culture survey in 2019 as well.

5 As part of the education piece that you were doing when you
6 came on board did you - I think you indicated yesterday
7 you provided training in relation to conflicts of
8 interest?---There was refresher training and, as I say,
9 that's an ongoing issue, almost meeting by meeting, as
10 councillors lodge declarations to make sure that they are
11 being done in a way that's complying with the legislation.

12 Did it disappoint you then when the monitor observed - this is
13 at page 7 - councillors stumbling over what was required
14 in declaring conflicts of interest?---Yes.

15 And having a low understanding of the importance of complying
16 with the legislation?---Yes.

17 COMMISSIONER: More significantly, the monitor has recorded in
18 two places in the report that the councillors did not take
19 up invitations for training in this area?---Yes, that's
20 correct.

21 Did you try and encourage them to do so?---We made offers for
22 that to occur, yes.

23 MS HARRIS: To that point that the Commissioner just raised, if
24 we could go to page 8, please, the top of that page. It
25 refers to in that second sentence, this is following on
26 from the comments about the conflict of interest, "This is
27 despite efforts by the administration to educate and
28 provide just-in-time advice and current scrutiny arising
29 from the IBAC investigation." What is just-in-time

1 advice?---That's what I just referenced. That is when we
2 have councillors declaring an interest either by email to
3 myself or the governance team prior to meetings or at
4 council meetings to ensure that they are doing so in a way
5 that identifies whether it's a direct or an indirect
6 interest and the nature of the interest, and that they are
7 prepared for making the appropriate declaration publicly
8 at the meeting subsequent to that.

9 In the next paragraph the monitor indicates that councillors
10 have highlighted to her that they suspect some councillors
11 are not declaring conflicts of interest when they should
12 be. Was that concern ever voiced to you?---Only more
13 recently I think with probably evidence that's been
14 derived through these hearings.

15 So when you say "more recently", is that since the commencement
16 of the IBAC hearing?---Yes.

17 And what has been said to you about that?---Well, it's a
18 reflection of the evidence that's been coming before the
19 Commission and how some - it would appear or it's alleged
20 that there's certain activities that some councillors are
21 involved with that haven't flowed through to conflicts of
22 declarations, of interest, in relation to those
23 relationships or employment matters.

24 What did you do with that information?---I'm not sure what you
25 mean.

26 What did you do about it when they told you that? What action
27 did you take?---I didn't have direct - I didn't have a
28 councillor saying that to me directly. It was just - my
29 comment earlier was it's a general awareness around that,

1 and it's difficult to do very much about that in my role,
2 given that one of those councillors is not in the country
3 and the other one took extended leave of absence. So at
4 the time when those omissions were first aired neither of
5 those councillors were in active service and contactable.
6 My question to you was had any councillor expressed to you, as
7 they had to the monitor, that a councillor had failed to
8 declare a conflict of interest in their view?---Yes, they
9 had in relation to the evidence that was before this
10 Commission.

11 And when was that?---Towards the end of 2019.

12 Who did it refer to?---I believe it referred to Councillor
13 Ablett and Councillor Aziz.

14 And prior to the IBAC hearing had any councillor approached you
15 about concerns about failing to declare conflicts of
16 interest?---No.

17 The monitor refers to the en bloc voting and, in the second
18 paragraph there, there being an observation of low-level
19 transparency, resolved en bloc with no discussion, and she
20 goes on to talk about council meeting to decide those
21 matters before the council meeting. Is that in line with
22 what you were discussing yesterday?---Yes. I'm not sure
23 she's saying that. As I mentioned yesterday, this is a
24 council pre-meeting that occurs for half an hour
25 immediately prior to the meeting. It's an opportunity for
26 councillors - there's a number of things that are covered
27 off in that meeting, but one of those is to go through the
28 agenda items and for councillors to be given the
29 opportunity to indicate which items that are on the

1 council agenda that they either wish to withdraw for
2 discussion or to change a recommendation and put an
3 alternative resolution. So there's no decisions made at
4 that pre-meeting. There's no indication of how
5 councillors are going to vote. It's really an opportunity
6 just to indicate to the chair of the meeting, the mayor,
7 which items are to be withdrawn, and then the balance of
8 items that are not withdrawn are then passed in one bulk
9 motion and approved in the council meeting.

10 And I think you indicated yesterday that's not a practice you
11 intend to continue; is that correct?---No, we ceased that
12 practice, and we had our first council meeting Tuesday
13 night this week with the interim administrator. As
14 I mentioned yesterday, we have made probably seven or
15 eight changes already, and there's more to come at the
16 next few council meetings. But one of the immediate ones
17 we could change was to cease that practice, and we have
18 done that.

19 And if we could just go down to the - - -

20 COMMISSIONER: So what does that mean, Mr Patterson, that, if
21 you have, say, 100 items on the agenda and it's been
22 resolved or the council only wants to debate 10 of them,
23 you'd still go through the other 90 and in public, in a
24 public sitting, record the fact that the motion is simply
25 passed?---That's correct, yes.

26 MS HARRIS: Thank you. If we could just go down further,
27 please, over the page. If we can just stop there. The
28 second paragraph that commences, "The other aspect of
29 council meeting that is a major concern", it talks about

1 the low standard of debate, lack of thorough critical
2 analysis and objective consideration of matters. You sat
3 in council meetings; is that correct?---Yes.

4 Did you observe what you considered to be a low standard of
5 debate?---It's not up for me to determine the level or
6 quality of debate, but I would agree with the balance of
7 that, that there were a number of councillors who didn't
8 engage very thoroughly with some of the items that were
9 listed on the council meeting agendas.

10 And I think you indicated yesterday that it was apparent that
11 some councillors hadn't read the material?---That was an
12 officer observation, that that was sometimes the case,
13 yes.

14 And does it follow then that there was, in your observation, at
15 times a lack of analysis of the issues?---Yes.

16 And you would agree then, wouldn't you, that if that was the
17 case, councillors are not engaging with the issues and
18 debating them appropriately, they are not necessarily
19 fulfilling their obligations under the Local Government
20 Act, are they ?---Correct.

21 Did you witness voting blocs?---No, I did not.

22 Did anyone make any comments to you about voting blocs existing
23 at Casey Council?---There was a sense that there was a
24 bloc that on particular items could come together, and
25 I think historically had come together to determine
26 particular matters. For example, election of mayors,
27 those kinds of things which that group considered to be
28 critical. But I also never really became familiar with
29 who the members of that group were, and I think the

1 membership of that bloc historically tended to change
2 based on the nature of relationships improving or
3 deteriorating over time. But certainly in my time
4 I didn't see any patterns - and the decision-making
5 minutes of the meetings would confirm this. I didn't see
6 any pattern of bloc voting in relation to the general flow
7 of work and decisions through the council meeting process.
8 I have no other questions for the witness, sir.

9 COMMISSIONER: Yes, thank you. Just a few additional
10 questions, Mr Patterson, about the monitor's report,
11 firstly to ask you whether you agree if you look at the
12 various governance issues that the monitor identified,
13 bullying and intimidation, fear of conflict, intimidation,
14 councillors being reluctant to engage, the example of
15 councillors not taking issue with what on its face seems
16 to be an extraordinary leave of absence by one councillor,
17 the lack of transparency and accountability, the
18 inadequate way in which councillors were dealing with
19 conflicts of interest, the en bloc voting, all of that
20 would only serve to encourage improper influence if those
21 dealing with councillors were minded to try and achieve
22 improper outcomes, that that environment would only be
23 conducive to making that much easier to achieve, would it
24 not?---Yes. As we know, I think prevailing culture is
25 probably the biggest input into providing the conditions
26 in which that kind of influence can be exerted, and that
27 was certainly prevalent amongst this group - not that all
28 participated in that, but certainly that was the
29 prevailing sort of conditions or characteristics of the

1 culture that you described or the monitor described in her
2 report.

3 If we could go to page 7 under the heading at the top of the
4 page, "Councillor engagement and participation", which
5 councillor is it that has only attended five of 22 council
6 meetings?---That's Councillor Milla Gilic.

7 Does it surprise you that councillors at no stage took a more
8 proactive step in relation to her attendance?---Yes.

9 And again is that a reflection on the culture that existed
10 within the council?---Yes.

11 You said you had seen no sign of en bloc - or perhaps, seeing
12 that the monitor has used "en bloc" as speaking of the
13 whole council in relation to agendas, I'm talking really
14 now about cliques within the council?---Yes.

15 In all of the planning issues we have examined there have been
16 voting blocs with the council and they have generally in
17 the broad tended to form according to the political party
18 that those councillors represented. I'm just wondering is
19 that a common experience that you have had over your time
20 as a CEO, that councillors tend to vote according to the
21 party with whom they are politically aligned?---Most of
22 the councils - and I have been a CEO at four of them -
23 that I have experienced or talking with colleagues,
24 I would say the majority of councils don't operate in that
25 way, and I observe that some of the major political
26 parties in this state now are moving to lessen the
27 opportunity for council candidates to be endorsed by
28 particular parties and to try and de-politicise part of
29 that process. But my observation and what I've learned

1 from colleagues is that, yes, I think in those councils
2 where there's endorsed candidates for political parties
3 that there's usually a correlation between the party
4 membership as declared and voting patterns.

5 I mean, how much scope is there for political ideology at local
6 government level?---Well, my view as an administrator, as
7 a public servant, would be that the ideal situation is
8 that the chamber should be apolitical. That's when you
9 get the best decision making and the best outcomes for
10 community.

11 So a few questions about conflict of interest. If we start
12 with the proposition that throughout Australia it is
13 contrary to the law for councillors to participate in
14 decision making where they have a conflict of interest as
15 defined according to their respective legislative regimes,
16 and that's because, is it not, where there is a conflict
17 there are at least two existing interests which that
18 councillor has which are in conflict? That's not to say
19 that the councillor is doing anything corrupt or morally
20 inappropriate, but the law recognises, does it not, that
21 where there are co-existing interests which are
22 potentially in conflict the councillor can't act in the
23 matter?---Yes, correct.

24 And that applies at State government level as well, does it
25 not?---Yes.

26 Although there's a difference in terms of the threshold for a
27 conflict for campaign donations between local government
28 and State Government, both at a state and at a local
29 government level once that threshold is exceeded conflict

1 of interest as a matter of course arises. Can you see why
2 there should be a difference between a threshold which
3 creates a conflict for a councillor and a threshold which
4 creates a conflict for a member of parliament?---No, but
5 I'm not an expert on state matters, I suppose, from that
6 perspective. Maybe the argument is that state campaigns
7 are more expensive because of the scale of representation
8 and campaigning that needs to occur in state electorates
9 as opposed to council electorates, and I think that's part
10 of the thinking in the new provision in the Local
11 Government Bill where the minister is very keen and the
12 legislation has been proposed as having ward based
13 structures. So you actually have a smaller area that each
14 councillor is representing and hence the cost and impact
15 of campaigning would be reduced, hence the reliance on
16 electoral donations would be reduced. I think that's part
17 of the thinking behind that provision. But, yes, the
18 other part of my response would be to say that consistency
19 I think in all of these matters to the extent that's
20 practical is always desirable to avoid confusion or
21 questioning from people that participate in that process.
22 The underlying rationale for the conflict of interest in
23 relation to anything, whether it be a private interest or
24 the receipt of a campaign donation, is that human nature
25 being what it is there is always then a risk of a quid pro
26 quo. If you get something from someone else, then there's
27 an expectation that you should return something. So,
28 having regard to that as the underlying rationale for our
29 conflict rules, can there be a distinction between the

1 risk of influence at a local government level and the risk
2 of influence at a State Government level?---Possibly not.
3 I think, as we mentioned yesterday, there's the
4 opportunity to either consider, you know, further controls
5 or caps or an outright ban on certain types of donations
6 to mitigate some of the risks to which you refer.

7 At present - - -?---Sorry, Mr Commissioner, I might just make
8 one further observation too.

9 Yes?---I think another mechanism that could be considered is
10 actually rather than just having council candidates make
11 their declarations, as I mentioned they are currently
12 coming in through the CEO and then reported to the
13 Minister for Local Government within a fortnight of the
14 election, there might be that role for something like, you
15 know, another integrity body, like the Local Government
16 Inspectorate, to play some role in that. I would also say
17 another thought that has been getting around the sector is
18 whether there is an obligation put on the donor for
19 actually making declarations, which is currently not part
20 of the requirements for the local government sector.

21 Yes. So thus far you and I have been talking about the issue
22 in theory. As you will have observed from the evidence
23 that you are aware of that has emerged during the hearings
24 the fact that there have been campaign donations made to a
25 variety of councillors has in a variety of circumstances
26 resulted in a capacity by the donor, the person making the
27 donation, a capacity to interact with and exert influence
28 over the councillor. That's precisely what the conflict
29 of interest law is designed to prevent, is it not?---Yes,

1 absolutely.

2 What role do you see that the CEO could play to reduce the risk
3 of that occurring?---As I said yesterday, I think it's
4 evident, abundantly evident now in these circumstances and
5 probably in other circumstances in other councils across
6 the state as well, that leaving the onus and the
7 accountability with the individual to make declarations is
8 insufficient. So there needs to be some additional powers
9 provided to someone. As I mentioned yesterday, whether
10 that's to councillor colleagues, whether it's to CEOs or
11 other bodies, and also putting some onus or responsibility
12 back on the people making the donations, I think all of
13 those need to be considered. I don't have a sort of final
14 view on that, but certainly there's some additional
15 scrutiny I think that could be provided from other
16 sources.

17 Under the Local Government Act there's a provision that
18 requires councillors to exercise reasonable care and
19 diligence in discharging their duties. Can that be done
20 if councillors either have little or no knowledge of the
21 issue on which they are being asked to vote or, worse, are
22 being directed or encouraged by other councillors or third
23 parties to vote in a particular way without familiarity
24 with the issue?---No, it certainly doesn't go towards
25 fulfilling that objective. The standard of council
26 reports, and I'm sure the Commission has seen plenty of
27 them in your work here, are very high quality. So staff
28 pay a lot of attention to making sure that they are well
29 researched, all the context, background, relevant

1 provisions, everything is associated with those and
2 I think it's somewhat disappointing for staff sometimes to
3 see the scant regard that's paid to thoroughly considering
4 some of the items that come before council.

5 So what presently exists under the local government regime for
6 addressing a councillor who demonstrates a lack of
7 reasonable care and diligence?---There really is none.
8 I'd probably use the example of the councillor we were
9 referring to who only attended those five meetings. You
10 know, there's councillors who are very diligent, very
11 conscientious and who take their role very seriously,
12 including thorough consideration of matters that come
13 before formal council meetings, appreciating there's a lot
14 more to the role than just that. But there's others, like
15 the councillor referred to previously, who we can't see
16 any evidence that they have had any impact or given any
17 consideration to any items for the course of their term.

18 What recourse do you have to any external bodies to assist you
19 when it becomes obvious to you that councillors are not
20 discharging their functions as they should?---In the sort
21 of circumstances we are talking about here just in terms
22 of lack of participation, lack of representation, lack of
23 engagement with the issues that come before council, all
24 those types of matters, really no formal mechanism for
25 doing that at all is available to the CEO.

26 Do CEOs never go to their roof body or to the Victorian
27 government association?---We could. I mean, we are
28 represented - the peak bodies are the Municipal
29 Association of Victoria and the Victorian Local Governance

1 Association. Obviously there's the State Government
2 department, Local Government Victoria, who is aware of
3 these kind of matters. But there's no powers that
4 actually allow you to take any action against those kinds
5 of circumstances. Just to elaborate a little bit on your
6 earlier comment about the lack of attendance of one
7 councillor, again the leave of absence provisions are very
8 lax within the Act and allow for extended periods of leave
9 to be provided without a lot of justification, and the
10 irony of that is that if that leave is granted that
11 councillor is shown as attending a meeting. So it's not
12 listed as an absence. So when we do our annual report and
13 list councillor attendance it looks quite flattering, but
14 the reality is somewhat different.

15 We explored very briefly yesterday the CEO's vulnerability in
16 that your tenure is entirely at the behest of the council,
17 and we have had numerous recent examples of councils that
18 have discharged CEOs, sometimes on multiple occasions. In
19 the absence of a greater security of tenure, do you see
20 any change in the way in which CEOs are prepared to take
21 up issues with council, particularly if they are wanting
22 to criticise the conduct of a councillor who is seen as
23 part of a bloc that controls council decision making?---It
24 can be a very tenuous relationship. My observation would
25 be and my experience is that the vast majority of CEOs
26 that I know across the country take up the role seriously.
27 They understand their statutory obligations that come with
28 the role and will discharge that fully. So I don't think,
29 generally speaking, CEOs are tentative about discharging

1 their roles; hence why you quite often find situations
2 where councils have taken decisions to terminate
3 employment based on some of their experiences around those
4 kind of situations. So, yes, it is - I love local
5 government and I believe in the institution and I think it
6 does great work. That primary employment relationship is
7 something that is problematic in that dynamic in the
8 circumstances you describe when you have got to maintain a
9 good working relationship with this group and show respect
10 to the people that carry out those roles and at the same
11 time be providing good governance.

12 If the CEO is discharged, is it a six-month period the CEO is
13 paid out for?---Contracts of employment vary amongst CEOs,
14 but generally it's usually a maximum of a six-month
15 payment. It can be sometimes quite substantially less
16 than that.

17 Which is then a cost borne by the ratepayers?---Yes, correct.

18 Do you have any suggestion to make as to how one might better
19 secure the CEO's tenure and hence the level at which the
20 CEO can contribute to council governance?---I think
21 I would probably look at it from the other perspective,
22 Mr Commissioner, and say I think there's a range of other
23 requirements that could be placed on various
24 stakeholders: councillors in relation to their colleagues,
25 as we mentioned about electoral donations. So I think
26 there's a number of other ways in which controls could be
27 introduced into legislation that would distribute the
28 accountability of some of the matters we are talking
29 about. The CEO may well be one of those stakeholders as

1 well, as long as there's some commensurate provisions that
2 provide some security or security of tenure or safety
3 around those matters as well because, as I say, I have
4 seen plenty of examples where some retribution is meted
5 out because of decisions that have been taken by CEOs and
6 it doesn't always end well for the CEO.

7 Yes, thank you, Mr Patterson. Have you got any questions,
8 Mr Woinarski?

9 MR WOINARSKI: We have a number of questions that we would like
10 to ask. Mr Commissioner, there is arising out of some
11 questions that were asked this morning about the
12 employment of certain people, we would request that we go
13 into private hearing. I have discussed certain matters
14 with Mr Patterson and he is not in a position to fully and
15 properly answer those questions that really do need to be
16 answered in a public hearing.

17 COMMISSIONER: Does this concern people who are currently in
18 the employ of the council?

19 MR WOINARSKI: In relation to one or two possibly, but in
20 relation to others they are no longer in the employ of the
21 council and it goes to perhaps - - -

22 COMMISSIONER: But his evidence would or might reflect
23 adversely on them; is that the concern?

24 MR WOINARSKI: Yes.

25 COMMISSIONER: Are there any other matters that you want to
26 explore with him that you would wish to - - -

27 MR WOINARSKI: There are a number of other issues. There is
28 one issue, perhaps in view of the questions that you,
29 Mr Commissioner, have been asking him now and have asked

1 him yesterday, perhaps I can lead into this
2 by - Mr Patterson is well aware of the nature of the
3 conduct that you are investigating and whether or not
4 there's been corruption by those associated with planning
5 developments in relation to councils. In conversation
6 with him about that topic that I have had with him he has
7 expressed certain views which I think may be of assistance
8 to you so far as it's not just the Local Government Act
9 that needs being looked at but also the Planning and
10 Environment Act 1987 that could be considered. He sees
11 there as being a connection to those and, as I understand
12 it - and I don't want to put words in his mouth, but as
13 I understand it he actually sees a possibility that one
14 way to deal with the issue is to remove the planning
15 process from local government. Have I put that
16 fairly?---That's an extreme version of the options that
17 are available. But, yes, that's certainly one option
18 available.

19 COMMISSIONER: Yes?---So my view would be, and I think it's a
20 view shared by plenty of my colleagues and it is just a
21 personal view, this is not endorsed by peak bodies or
22 anybody else, I think we have touched on and started to
23 allude to some of the Local Government Act changes,
24 certainly the bill that's coming is overall very welcome
25 and there's a lot of movement in the right direction.
26 I would contend and I think again plenty of my colleagues
27 would contend there's a little bit more we could do in
28 that space, and I would also just remind you about the
29 comment I made yesterday in relation to the electoral

1 donations in the Local Government Act. The provisions
2 there have been suspended pending the outcome of this
3 hearing. So that's an immediate opportunity. So outside
4 the governance arrangements in the Local Government Act
5 I would just note that the Planning and Environment Act is
6 a 1987 piece of legislation as well and I would say in
7 broad terms there's an opportunity, subject to obviously
8 the State and their various agencies cooperating with
9 this, but I think there's an opportunity for local and
10 State Government to go through some sort of review of that
11 in order to make sure that it's contemporary in its
12 nature, putting an integrity lens over it, to make sure
13 that communities are represented and participate in the
14 planning process in the way that they would expect and
15 potentially to the point just made redefine the role of
16 local and State Government. All stakeholders to those
17 processes are very frustrated by the duplication, re-work
18 and delays in the planning process, not so much from a
19 statutory planning permit point of view but certainly from
20 a planning scheme amendment point of view. So I would
21 contend there's a better way, and I think if some of the
22 roles of local government are redefined in that process
23 there's an opportunity to address a lot of the risks that
24 have been identified from a corruption point of view
25 through this process. My view would be that in principle,
26 not talking about the detail, that councillors and
27 councils can continue to have a representative role in the
28 planning process at a local level, but I think when we are
29 citizens of a city of five million people now, moving to

1 eight to nine million by the mid-century, that we have in
2 Melbourne - to use that as an example, we have 31 councils
3 and a State Government through DELWP and the Victorian
4 Planning Authority, whose remit has expanded over time,
5 trying to coordinate an integrated approach to land use
6 planning, transport and other infrastructure planning,
7 frankly, that doesn't work. So I think there's an
8 opportunity to look at different models that would enhance
9 potentially the role of some of the State agencies in
10 planning across the whole of the City of Melbourne and
11 potentially the state.

12 Mr Woinarski, are you and Ms Boston proposing to participate in
13 the public forum in the last week of our sittings?

14 MR WOINARSKI: It will depend a little bit on our instructions.

15 But as I understand it at the present time we are, yes.

16 COMMISSIONER: And if that's the case are your instructions
17 going to largely come from Mr Patterson?

18 MR WOINARSKI: They are. It will be him and his staff.

19 COMMISSIONER: You will perhaps have a further opportunity then
20 to ventilate Mr Patterson's views. That's very helpful.

21 MR WOINARSKI: Certainly. We just thought that it would be
22 something that should be put on the table at this point of
23 time because it's not something, as we understand it,
24 that's arisen up until now and we were not sure whether it
25 was something that had even crossed your mind, sir. I'm
26 conscious of my first request, but I will deal with other
27 matters first of all.

28 COMMISSIONER: Yes.

29 <EXAMINED BY MR WOINARSKI:

1 Firstly, conflict of interest declarations by councillors,
2 accepting that in the course of debate something may arise
3 which has not been apparent to a councillor and therefore
4 they see a conflict of interest, putting that example
5 aside, councillors are circulated with papers before a
6 meeting?---They are, approximately one week prior to the
7 meeting.

8 And should that give them ample time in which to realise
9 whether or not they have a conflict other than in the
10 extreme case that I have hypothesised?---Yes, it should.

11 And is it your view that councillors should notify you in
12 writing prior to the meeting, by email or writing, that
13 they have a conflict?---It's always preferable if they do
14 that prior to the meeting in order that we can provide
15 that education around how they do that and to make sure
16 that their presentation and declaration at the council
17 meeting fulfils their obligations.

18 And do you have a view one way or the other as to whether that
19 declaration of conflict should be conveyed to other
20 councillors before the meeting?---I'm always for
21 transparency. So I would have thought it would be
22 preferable to do that, yes.

23 COMMISSIONER: I think Mr Patterson made clear also yesterday
24 the notion of a councillor who has a conflict of interest
25 being able to remove themselves from the meeting but seek
26 to influence the other councillors either outside the
27 meeting or by using a phone whilst they are in the
28 meeting, either course quite reprehensible, and the
29 legislation needs to address that.

1 MR WOINARSKI: We are just looking for practicalities of how
2 some of that can be done. You have been asked questions
3 about Mr Ablett. When did you first become aware that
4 there was any suggestion Mr Woodman or Mr Watson or
5 companies associated with Mr Woodman had been paying any
6 moneys to Mr Ablett?---I only became aware of that through
7 the initial media coverage of these proceedings in
8 November last year.

9 COMMISSIONER: I think I take it you mean corrupt payments.

10 MR WOINARSKI: Corrupt payments, yes. Payments that could be
11 regarded as - - -

12 COMMISSIONER: That is we need to distinguish between the
13 example cited recently in the media of money in a paper
14 bag and campaign donations. You are referring to the
15 former?

16 MR WOINARSKI: I am; you are absolutely correct. You also have
17 been asked questions about Mr Aziz. And, again using the
18 terminology that the Commissioner has just used, when did
19 you first become of any suggestion that Councillor Aziz
20 may have been receiving payments from Mr Woodman or
21 Watsons or companies associated with Mr Woodman that could
22 be considered corrupt?---Again around the same time when
23 the evidence before this hearing commenced. So
24 October/November last year.

25 And how did you become aware of that?---I read the introductory
26 comments from the Counsel Assisting and observed the terms
27 of reference of this hearing and the associated media to
28 do with that. So that was when I first became aware of
29 those matters.

1 There's been reference, I think it was today, to a phone call
2 you made to IBAC after you had received a summons. What
3 was that in relation to?---Yes. In that early period we
4 were arranging legal representation for the councillors
5 who had received summons from IBAC and I had contact
6 with - obviously had taken advice about how we do that,
7 and the advice was that we would work through our
8 insurance company. So we had a pro forma letter to send
9 out which we did to the councillors who were affected and
10 they needed to instigate that. So they would contact
11 myself or my director of corporate services or our
12 governance lead and indicate that they had been summonsed
13 and required legal representation. And part of what we
14 required them to do was to indicate the nature of why they
15 needed representation. So really it was essentially what
16 was being asked of them and therefore why that justified
17 the representation so we could refer that to our insurers
18 and obtain coverage for them, and then obviously allocate
19 people to them. So it was in one of those conversations
20 with Councillor Aziz that he responded to our standard
21 letter offering that service and seeking that information
22 from him that he started to elaborate on a number of the
23 specific matters that have been again provided through the
24 evidence in this hearing process, and that was what caused
25 me to have severe concerns and I immediately contacted the
26 Commission as a result of that conversation.

27 And conveyed the content of the conversation to the
28 Commission?---I did, yes.

29 Perhaps without asking a question, if I may, but if I may just

1 make this observation. Yesterday exhibit 143, which is a
2 record kept by Mr Patterson of various conversations he
3 had with individuals about - as he was coming into the
4 job.

5 COMMISSIONER: Yes.

6 MR WOINARSKI: We have had it provided to us overnight by
7 Mr Patterson. Can I just record the fact that at 12 point
8 font it prints out at 40 pages.

9 COMMISSIONER: That's the exhibit that I ordered was not for
10 publication, yes.

11 MR WOINARSKI: The other matter that I wanted to ask - I think
12 I can probably do this without asking questions, but the
13 email trail which I'm sure the Commission has available in
14 relation to the approach by Mr Wyatt concerning the FOI
15 application by Ms Schutz will indicate that Mr Patterson
16 sought advice from I think it's Ms de Kretser?---Yes,
17 that's correct.

18 And the advice that was given by her was the very advice that
19 he followed. Is that correct?---That's correct, yes.

20 We can provide that email trail, but I'm sure the Commission
21 has it. If they don't, if they let us know, we will
22 provide that.

23 COMMISSIONER: You might take that up with Counsel Assisting.

24 MR WOINARSKI: Just in fairness, I think it needs to be made
25 public.

26 COMMISSIONER: Yes.

27 MR WOINARSKI: That does really come to this question of an
28 issue of a private hearing, sir.

29 COMMISSIONER: Yes.

1 MR WOINARSKI: Could you just explain perhaps a little bit more
2 fully how it was that you did come to use Watsons for the
3 subdivision?---Yes, I can. There was a fellow by the name
4 of Ross Morecombe who - - -

5 COMMISSIONER: This is in relation to your earlier
6 dealing?---I beg your pardon?

7 This is in relation to your early dealing in 2016?---'17, yes,
8 correct.

9 MR WOINARSKI: In the bundle of documents you have, sir.

10 COMMISSIONER: I'm really not interested in that, Mr Woinarski.

11 MR WOINARSKI: Thank you, sir.

12 COMMISSIONER: I will mark the documents produced by
13 Mr Patterson re his permit application at Old Mornington
14 Road exhibit 150. Unless there's some very specific point
15 that you want to emphasise, it seems to me that it's an
16 old matter that we don't need to explore.

17 MR WOINARSKI: We would not, as I have already indicated, want
18 that to become a public document.

19 COMMISSIONER: Why is that?

20 MR WOINARSKI: There are references to bank accounts, addresses
21 and the like, and also funding, the amounts paid.

22 COMMISSIONER: Yes. Very well. I will accede to that request.
23 That will be made not for publication.

24 #EXHIBIT 150 - (Not for publication). Mr Patterson's permit
25 application.

26 MR WOINARSKI: That does come to the private hearing, if it
27 please - - -

28 COMMISSIONER: To your final issue.

29 MR WOINARSKI: Yes.

1 COMMISSIONER: And how long will that evidence take,

2 Mr Woinarski?

3 MR WOINARSKI: I would anticipate no more than five to

4 10 minutes maximum.

5 COMMISSIONER: Very good. All right. We will adjourn the

6 public hearing. Perhaps before we do that I should say

7 publicly is there any reason why Mr Patterson should not

8 be discharged from his summons?

9 MS HARRIS: Mr Commissioner, apparently something has arisen

10 whilst I have been on my feet this afternoon that those

11 instructing me would like to discuss. Perhaps if I could

12 seek those instructions before I answer that question.

13 COMMISSIONER: Very good. All right. We will adjourn the

14 public hearing at this stage and sit by way of private

15 hearing for five to 10 minutes, and we will resume at 2.15

16 this afternoon. I will adjourn momentarily.

17 <(THE WITNESS WITHDREW)

18 (Short adjournment.)

19 (PRIVATE HEARING FOLLOWS)

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