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INDEPENDENT BROAD-BASED ANTI-CORRUPTION COMMISSION

MELBOURNE

TUESDAY, 10 MARCH 2020

(19th day of examinations)

BEFORE THE HONOURABLE ROBERT REDLICH QC

Counsel Assisting: Mr Michael Tovey QC  
Ms Amber Harris

OPERATION SANDON INVESTIGATION

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

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

1 UPON RESUMING AT 2.00 PM:

2 <THOMAS JAMES KENESSEY, recalled:

3 COMMISSIONER: Did you have a good break, Mr Kenessey?---As  
4 good as you could, Mr Commissioner. Thank you.

5 Yes, Mr Tovey.

6 <EXAMINED BY MR TOVEY, continued:

7 MR TOVEY: Thank you, Mr Commissioner. Mr Commissioner, page  
8 3966 that was referred to the witness which was the email  
9 dated 14 March of 2014 involving the witness, John Woodman  
10 and Mr - about the - - -

11 COMMISSIONER: Are you talking about the invitation to the  
12 cocktail function?

13 MR TOVEY: Yes.

14 COMMISSIONER: That's the invitation for 4 April '14.

15 MR TOVEY: Yes.

16 COMMISSIONER: That will be exhibit 155.

17 MR TOVEY: Thank you.

18 #EXHIBIT 155 - Invitation to the cocktail function of 4 April  
19 2014.

20 MR TOVEY: Could you please look at pages 3384, 3385, 3386?

21 Can we scroll to the top of that page? If you just stop  
22 there. So that is 25 October 2014, and I'm just trying to  
23 get the times and work out whether this goes backwards or  
24 not. I apologise, Mr Commissioner. On most of these  
25 I have noted the sequence, but that one I can't work out.  
26 So you'll see that - - -

27 COMMISSIONER: Are you wanting the witness to look at 3383,  
28 Mr Tovey?

29 MR TOVEY: Yes, if you could look at 3383. That's an email

1 from John Woodman on 25 October of 2014 to yourself and  
2 Peter Williams and Megan Schutz relating to a document  
3 which has been drafted and about which he comments, "Megs,  
4 let's start ramming it down their throats, starting with  
5 Dunny, not Daniel." Now, if we can go backwards, first of  
6 all, who are Dunny and Daniel in that note?---I suspect  
7 Dunny would be Steve Dunn from the MPA, and Daniel would  
8 be - I think it was Daniel Parsons, the minister's  
9 adviser.

10 Which minister's?---Matthew Guy.

11 All right. If we go back, so if we could scroll back down.

12 Again there's a comment there which appears to be from  
13 Megan Schutz to yourself and she refers to the document  
14 that Mr Woodman has later commented on. "Thanks, Tom. To  
15 my mind it's a progress report on process rather than a  
16 briefing on the amendment. Not sure it's the best course  
17 to not provide written statements setting out our strong  
18 strategic merits of the amendment when we are clearly at  
19 odds with council officers. Why not formalise our  
20 justification in writing referenced to our technical  
21 reports. Our method may be misconstrued. I think we  
22 should start getting our superior story out there,"  
23 et cetera, et cetera. Now, if we go down there's a  
24 document called "Briefing note"; is that right?---Would  
25 you like me to look at it?

26 Yes, if we could scroll through it?---Where would you like me  
27 to start from, sorry? I was focusing on you. I'm not  
28 good at reading and listening at the same time.

29 Could you scroll down?

1 MS KEATING: Perhaps if we could just commence at the start of  
2 the document.

3 WITNESS: I'll just tell you to scroll when I've finished, if  
4 that's okay.

5 COMMISSIONER: You're wanting the witness to read his briefing  
6 note, are you not?

7 MR TOVEY: Yes, I'm just trying to - - -?---I'm sorry.  
8 Could you read the briefing note.

9 COMMISSIONER: Go down to "Megan/John"?---Scroll down.

10 MR TOVEY: If you could go down, please, so the witness can  
11 read it?---Could you scroll down so that the Richard Bryce  
12 one is at the top? It was half cut off, sorry. Keep  
13 going up, either way. Down, sorry. Other way. A bit  
14 more. Thank you. Too much. Down a little bit. A bit  
15 further. That's it. Thank you.

16 Just scroll down some more, please. Could you just scroll  
17 down?---Would you like me to read that?

18 If we start off - can we just go to the top of that page to see  
19 what page number it is. 3385. That's Megan Schutz  
20 informing you that she's prepared a briefing note, is it,  
21 of the situation; is that right?---What was the question,  
22 I'm sorry?

23 Is the situation that - could I tender that document while we  
24 still have it up, please?

25 COMMISSIONER: Yes, email from Ms Schutz to Mr Kenessey of  
26 23 October 2014, 156.

27 MR TOVEY: So that email indicates that she is forwarding to  
28 you a draft briefing to Daniel Parsons; is that  
29 right?---Yes.

1 And Mr Parsons is a ministerial adviser, isn't he?---To Matthew  
2 Guy, from recollection.

3 All right. Then if you look at that going up - if we could  
4 just scroll up, please. Just keep on going. I just want  
5 to see the whole of the - no, the above document. All  
6 right, so the document that is now on the screen, we're  
7 just looking at page 3384. You have already seen that  
8 document. That's the briefing note that she's  
9 provided?---No, that's my words, I think.

10 Is that your words?---I think so. I'd have to double-check  
11 with my file, but it would appear so. I would have  
12 assumed there'd be an attachment, from memory, with  
13 Megan's draft briefing. There were numerous pages.

14 All right. If we go back to 3382. If we go back to 3383.  
15 Could we go down to 3386, please. Having seen those  
16 documents, are you able to say what's going on  
17 there?---There's a document missing there, from my  
18 recollection, but - - -

19 That Megan Schutz has sent you?---Yes.

20 But in any event did it involve the refinement of a briefing  
21 note to a ministerial adviser in respect of C219?---Yes.  
22 The draft she provided was, like, three or four pages and  
23 we thought that was - no minister would ever read that.

24 So this was back in October of 2014. You were already  
25 addressing attention to the briefing of the minister in  
26 respect of this matter?---Sorry?

27 This is back in October of 2014 and at that time you had  
28 already directed attention, with the import of John  
29 Woodman and Megan Schutz, to briefing the minister about

1 C219?---Did I use them to help me - us collectively  
2 prepare a briefing document?  
3 Yes?---Yes.  
4 Could we go to pages 4632 to 4634, please? If we just scroll  
5 down to 4634 and then go backwards. Okay, so we go down  
6 to 11.15 pm on 22 January of 2015 and you've sent an email  
7 to Gary Rowe, the subject being "Fact sheet and contact  
8 details for other quarters household", and could you read  
9 through that?---Okay. Next page. Just a sec, sorry, I'm  
10 a slow reader. I apologise.  
11 Just indicate when you've got to the bottom?---Sorry, I'm just  
12 re-reading. This was 2014, yes, this email?  
13 Yes?---So I've made a mistake referring to '15. Sorry.  
14 COMMISSIONER: Is there something in particular you want to put  
15 to Mr Kenessey about that?  
16 MR TOVEY: If you just scroll on down, please? Is that you and  
17 Councillor Rowe discussing the way in which the C219  
18 project might be promoted to the community?---It looks  
19 like it. I believe so.  
20 And you would agree there you go into a lot of detail?---Yes.  
21 And is that typical of the way in which you and he worked  
22 together in devising strategies?---Yes.  
23 So you saw yourself, did you, to be totally engaged with him in  
24 devising the way in which that matter would be  
25 promoted?---I did.  
26 And so far as you were aware he was totally engaged with  
27 you?---As far as I was aware, yes.  
28 I tender those documents, Mr Commissioner.  
29 COMMISSIONER: That's the email from - - -

1 WITNESS: Sorry, to finish reading, just to add, I think the  
2 reference to Peter at the bottom is Peter Fitchett, a  
3 council officer, not Peter Williams. If I could read that  
4 and just give you the context, if that's okay?

5 COMMISSIONER: "Can you forward this to Peter in the morning"  
6 is the end of that email?---"Your comments are much  
7 appreciated. I think I prefer the shorter version.  
8 Perhaps you should provide a fact sheet to Peter and we  
9 stay out of it altogether. Thoughts? I confirm as per  
10 our discussion" - maybe it was Peter the reporter, sorry,  
11 I apologise, from the Leader, not Peter Fitchett. There  
12 is a reference to a Peter at the top of the email.

13 What's the reason, Mr Kenessey, that Leightons have a policy  
14 that they won't provide comment or be referred to in any  
15 media publication or article?---There are higher powers  
16 than mine that could only answer that, Mr Commissioner.  
17 I would have liked to have told my story, but the rules  
18 won't let me.

19 I'm sorry?---Sorry. I'd love to have told my story, but it's  
20 just a blanket Leighton rule not to talk to the media.  
21 Only senior figures are authorised to or the MD of  
22 Leighton Properties or it's the parent company's media  
23 person who is allowed to speak to the media. But people  
24 at my level, it was just a blanket no.

25 MR TOVEY: The community day was - - -

26 COMMISSIONER: That will be exhibit 157. I'll mark the  
27 previous exhibit 156, email chain commencing with email  
28 from Schutz to Kenessey of 23 October '14, and this will  
29 be exhibit 157.

1 #EXHIBIT 156 - Email chain commencing with email from Ms Schutz  
2 to Mr Kenessey of 23 October 2014.

3 #EXHIBIT 157 - Email from Mr Kenessey to Mr Rowe on 22 January  
4 2015.

5 MR TOVEY: The community day was on 7 February, was it?---It  
6 sounds about right.

7 Of 2015. How much did Leightons spend on the community day?

8 Megan Schutz estimated it was around 20,000?---That's what  
9 I would have said off the top of my head, but I'd refer to  
10 my reconciliation for a more accurate response.

11 And do you recall what your reconciliation shows?---Forgive me,  
12 I've been looking at a lot of stuff.

13 Was that figure - - -?---It would have been coffee, bouncing  
14 castle, you know, ice cream.

15 Was that figure independent of the contributions you calculated  
16 as having been made to SCWRAG?---Yes.

17 What about the payments to Emily Porter? Were they included in  
18 your calculations as what was paid to SCWRAG?---Included.

19 If I could just take you then to - in the lead-up - I can take  
20 you to the evidence if you want to have some greater  
21 detail, but the evidence given by Megan Schutz was that in  
22 the lead-up to the community day there had been  
23 doorknocking, letterboxing; you agree with that?---Yes.

24 And that was being paid for by Leightons?---Yes.

25 Was Schutz Consulting being retained to conduct those  
26 exercises?---She was managing that process.

27 There was also a survey done; is that right?---Yes.

28 That that survey was - sorry, that the design of that survey  
29 form was done with the assistance of a consultant provided

1 by Leightons?---My recollection, and I'd have to  
2 triple-check this, is that the original questionnaire  
3 prior to the community day was designed by us, but I'd  
4 really prefer to go back and check. KREAB Consulting, who  
5 was the community - how would you go - the professional  
6 body that works in surveying and doing that, they came on  
7 to work on the community day and then collate and report  
8 what was done at the community day. I can't recall if the  
9 questionnaire that was used pre the community day was  
10 - I can't remember when KREAB came on board, is my point.  
11 I've got - sorry.

12 She has said that the survey was designed to make it more  
13 likely that people would provide the answer that you were  
14 after; is that correct?---I recall you asking that  
15 question on Friday and my initial reaction was to disagree  
16 with that. So I went and dug out the questionnaire and  
17 the script, and my reading of it is I don't think that's  
18 the case.

19 To use her words, at page 1101 she was asked, "Was the survey  
20 tilted in favour of getting a result?" And she said, "It  
21 wasn't too bad, but it was engineered." She said, "There  
22 was a lot of time spent." She said, "I think I drafted  
23 the original survey, then it was finetuned." Now, is that  
24 the situation?---I can't recall, but I'm happy to provide  
25 you with the document for you to assess whether you think  
26 it's tilted.

27 Well, is that the process where she - the one she - she gives  
28 evidence that from her perspective it was engineered, she  
29 was part of that. She did the first draft and it was

1 finetuned. Would you disagree with that?---A lot of  
2 documents we worked on together were finetuned, to use  
3 that expression.

4 COMMISSIONER: Did Ms Schutz have a contract with you to do all  
5 this work?---Yes.

6 And what did that contract - what were the principal terms of  
7 that contract in terms of her remuneration?---Initially it  
8 was for a lump sum as we were being told the rezoning  
9 would take 12 months, so that was for \$90,000. That  
10 changed - I looked at that at the request from you last  
11 week. I think it was in the start of, sorry, '15. She  
12 said that the 90,000 lump sum had been exhausted and  
13 because the process had been a lot slower than anticipated  
14 she wanted to renegotiate her fee. I think it was in  
15 March she sent an email saying - quoting 7,500 per  
16 calendar month based on a \$300 per hour, a 25 hour  
17 methodology. That didn't seem to go anywhere and there  
18 must have been a protracted negotiation because in  
19 I believe it was May, following that March, we received an  
20 email that she had done a risk assessment of her firm and  
21 would no longer be providing legal advice but only town  
22 planning and that her new monthly fee would be \$10,000 and  
23 for that she would be project managing strategy, she would  
24 be liaising with stakeholders, briefing relevant  
25 politicians as required and producing documents such as  
26 all the documentations required for a formal amendment,  
27 amended planning scheme - PSP documents, explanatory  
28 reports, reviews of the development contributions plans  
29 and letters to councillors for the same. So there was a

1 lot of documentation going on at that time.  
2 That was \$90,000 until early 2015 and then what happened after  
3 that?---After her - the May - after the May '15, I think  
4 it was '15, I would like to double-check, I'm pretty sure,  
5 it went to \$10,000 a month.  
6 And are you able to tell us now what was the total amount that  
7 Leightons paid Ms Schutz to do that work? Because it's  
8 not included in the 70,000 that you paid SCWRAG, is  
9 it?---No, they're separate.  
10 Separate. So what's the total amount that Leightons paid  
11 Ms Schutz?---I'd have to check.  
12 Well, roughly?---I did this late the other night. I think it  
13 might have totalled 818,000, but that included the  
14 SCWRAG - - -  
15 I'm sorry?---818,000. I would like to double-check it. I did  
16 that quite late. But that included all the SCWRAG  
17 payments as well.  
18 So it's well over three-quarters of a million dollars  
19 anyway?---It's a lot of money.  
20 And all the things you just mentioned a moment ago that  
21 Ms Schutz was going to do, you have the expertise to do  
22 those things?---Not all of them. I'm not a town planner.  
23 So coming back to the question, though, Mr Kenessey, which we  
24 pursued earlier with you, why was Ms Schutz engaged at  
25 great expense to do all the things that you could do?---In  
26 the normal course of property development I still employ  
27 town planners. I have town planners - - -  
28 You've explained that you don't have town planning expertise.  
29 But most of the things that she was doing were things that

1           you could do?---She sort of - we had a contract with her.  
2           She came with John, and John said - well, sorry, hold on.  
3   No, no, John - Mr Woodman invited you to engage Ms Schutz?---He  
4           said we must, from memory, or, you know, they came as a  
5           team, a double package.  
6   So if you wanted to engage Mr Woodman you had to engage  
7           her?---Yes.  
8   Did you get some advice from your superiors that you should  
9           enter into such an arrangement?---They were involved with  
10          it, yes.  
11   Sorry?---They were involved with her appointment. They were at  
12          meetings where they met her and she had worked at senior  
13          level at government, so - - -  
14   So your superiors knew of her?---Yes.  
15   But when Mr Woodman said to you you must - "if you want to  
16          engage me you have to engage her as well," is that the way  
17          it was being put?---I don't remember it as threatening, so  
18          to speak, I don't mean to, but it was made clear that they  
19          worked together from the very outset.  
20   I'm not clear now on what you are saying. Was it Mr Woodman's  
21          position that if you wanted to engage him you had to  
22          engage her?---If I had to say, yes, that would be my  
23          recollection.  
24   So you'll recall me asking you questions earlier this morning  
25          about why Ms Schutz was interposed between you and  
26          SCWRAG?---Yes.  
27   Do you recall? You didn't give that explanation  
28          earlier?---I think they're a different context, with  
29          respect. I'm not trying to be difficult. I just don't

1 quite understand.

2 What are you now speaking about when you say Mr Woodman said  
3 you must engage Ms Schutz?---Well, at the time we had  
4 Brian Haratsis and MacroPlan as well, who were also being  
5 retained to provide advice at the same time, and Megan  
6 came along with very - said what seemed a credential and  
7 credible town planner that we'd require to do all the  
8 technical advice to help with John.

9 So the arrangement was all of Ms Schutz' fees in support of,  
10 what, the consultancy arrangement? What were her fees  
11 for? Were they to be for work separate to any work she  
12 was doing for Mr Woodman?---Yes.

13 So what work was she doing for you that wasn't in support of  
14 Mr Woodman's consultancy? You've told us about  
15 SCWRAG?---Yes.

16 Was there other work she was doing for you that wasn't in  
17 support of Mr Woodman's consultancy?---She gave us advice  
18 in terms of compulsory land acquisition.

19 What did that relate to?---The freeway splay for the future  
20 upgrade of the Western Port Highway to a freeway grade  
21 road.

22 Was that legal advice?---Yes.

23 Is that part of the three-quarters of a million dollars in  
24 total?---Yes, yes.

25 Yes, Mr Tovey.

26 MR TOVEY: She's also told us, and indeed Mr Woodman has also  
27 given evidence that the use of a community group to  
28 support a rezoning from their perspective at least was par  
29 for the course, it was a standard strategic step. Is that

1 something that you were aware of?---From my recollection  
2 of that period of time, that the group formed organically.  
3 Did you keep in touch with Ms Schutz as to what the group was  
4 doing and what her involvement was?---We spoke about it.  
5 Were you aware that she was constantly drafting or vetting  
6 documents that were being sent to council, to the  
7 government?---In the early days, yes. I probably helped  
8 review some of those.  
9 And that's what she was getting paid for, is that right?---She  
10 was getting paid to provide advice for us. She claims  
11 that she was doing that pro bono. It was - - -  
12 Once the minister had declined - sorry, had deferred making a  
13 decision in respect of C219, it was the case, was it not,  
14 that the strategy then became a strategy very much focused  
15 on using SCWRAG as the voice of the community to move the  
16 minister to deal with the amendment and to approve  
17 it?---That was John's strategy. I had a different  
18 strategy.  
19 John remained employed, did he not, in order to implement that  
20 strategy?---At that time that was his strategy and  
21 suggestion.  
22 And that was - - -  
23 COMMISSIONER: I think you wanted to add something?---If that's  
24 okay.  
25 Yes?---At that time it was my assessment and it was confirmed  
26 as we went along that John - after the articles, John's  
27 network within the Labor Party would at best not want to  
28 talk to him or at worst not want to know him anymore. So  
29 I started formulating a strategy to remove him from the

1 project and also to create a strategy for us to directly  
2 communicate with government about a value capture, value  
3 sharing policy that I had learnt about on another  
4 development rezoning in Hobsons Bay.

5 So, Mr Kenessey, prior to the Age article we've seen a vast  
6 amount of material passing between Ms Schutz, you,  
7 Mr Woodman and you and I've not sighted any material at  
8 all that suggests there was any dissatisfaction on your  
9 part with the strategies which Mr Woodman and Ms Schutz  
10 were employing. Do you take issue with that?---On gut  
11 feel, yes.

12 So what is it you think you did before the Age article that  
13 would have revealed you weren't happy with Mr Woodman's  
14 strategy?---Before the Age article?

15 Yes.

16 MS KEATING: Commissioner, perhaps it can be clarified what  
17 aspects of the strategy is embedded in the question and  
18 what was or wasn't taken issue with in that regard.

19 COMMISSIONER: Ms Keating, Mr Kenessey has shown a very fine  
20 ability to deal with questions if he doesn't understand  
21 them or feels that they are too broad. I don't think he  
22 needs that level of assistance.

23 MS KEATING: I accept that, Commissioner.

24 WITNESS: I can't draw anything offhand, but I would be happy  
25 to check my file and come back to you.

26 COMMISSIONER: But, Mr Kenessey, you've now spent quite a  
27 substantial time looking at your notes, revisiting the  
28 history of this matter. You've shown a good memory. I'm  
29 just asking you in the very broadest terms: before the Age

1 article when serious allegations are then raised about  
2 Mr Woodman and Ms Schutz, were you dissatisfied with some  
3 aspect of Mr Woodman's strategy?---I would have been, and  
4 it would be around some of the strong-arming events,  
5 probably.

6 Probably?---Well ...

7 And the strong-arm events, are they the things you referred to  
8 on Thursday?---They are. They are.

9 Just remind us what are the strong-arm events?---Well, one of  
10 them was that, "You'll pay Schutz and myself double or  
11 we'll focus on five other projects," or something along  
12 those lines.

13 Yes?---And there was another reference I gave to you about the  
14 project being pulled and they were separate incidents.

15 Where Mr Woodman said he would pull the project if you didn't  
16 cooperate?---Yes.

17 But leaving aside his demands of you in terms of his  
18 remuneration or Ms Schutz's, no dissatisfaction with his  
19 strategy?---Specifically in reference to before The Age?

20 Correct?---Just give me a moment, I'm sorry. I'm just trying  
21 to - - -

22 I'm not now asking for fine detail. I'm asking whether you  
23 have a consciousness, as you sit there now, that there was  
24 anything about his strategy in relation to getting C219  
25 over the line prior to the Age article that you were  
26 dissatisfied with?---My gut feel is probably, but I can't  
27 put my finger on anything.

28 I'm not sure that you'll finish your evidence today, but you  
29 might like to think about that overnight?---Of course.

1 Because my present impression is that from all of the material  
2 that is available to the Commission you seem to have been  
3 an active and willing participant in the implementation of  
4 his strategies prior to the Age article. So, if that's  
5 not correct, I'll give you an opportunity tomorrow to let  
6 me know?---Thank you.

7 MR TOVEY: In respect of SCWRAG, Ms Schutz ultimately agreed,  
8 as did in fact Mr Walker, that SCWRAG was virtually  
9 totally the creature of Megan Schutz and John Woodman.  
10 You must have had a fair idea of that?---My view is that  
11 in relation to the rezoning that's not the case. With H3  
12 I'd say that SCWRAG became - well, it appeared to have  
13 become a creature of John and Megan.

14 And what was it about H3 that made that apparent to you?---The  
15 merits of H3 are quickly - very simple and quick to unpick  
16 in my mind. Safety and improvements in safety are  
17 something everyone strives for and no one can criticise,  
18 but the easiest way to improve the safety of that stretch  
19 of road is to shut the temporary intersection that should  
20 have been shut, in my understanding, some time ago when  
21 the intersection, the signalised intersection closer to  
22 Amstel opened, hence removing an unsignalised intersection  
23 creating just two lanes of traffic going past, which is  
24 relatively safe. All the incidents of accidents, and you  
25 just have to drive there, occur around the corner of Evans  
26 and Hall Road. So, if safety was the true outcome or  
27 objective, closing the temporary road and signalling the  
28 Evans-Hall Road intersection would be the highest priority  
29 for any organisation in my view.

1 So you inferred from that, did you, that there was no  
2 significant justification for SCWRAG taking on the H3 or  
3 Hall Road redevelopment project?---I didn't understand why  
4 they would be so - you know, if safety was their key  
5 outcome, Evans and Hall are your primary target.  
6 How did you get involved in considering those matters? I mean,  
7 why did H3 have that impact on you or your relationship  
8 with Mr Woodman?---John kept trying to drag me into the  
9 disagreement between the developers on either side of the  
10 road about that intersection.  
11 And what could you do about that?---Well, the developer on the  
12 other side of the road was essentially the entity that  
13 purchased the land from Leighton Properties in 2016.  
14 Was that Dacland?---Yes.  
15 And did he expect you to be able to exert some influence in  
16 that regard?---They didn't have the best relationship and  
17 I feel like he wanted me to mediate.  
18 Did you come to feel that he might burn relationships with  
19 councils or with governments in the way they were going  
20 about the H3 promotion?---It very worried me the behaviour  
21 of what was happening.  
22 And did you think that would then impact on his credibility for  
23 the purposes of your C219?---Probably. It concerned me  
24 greatly.  
25 COMMISSIONER: Did you communicate your suspicion that  
26 justification for the H3 position which Mr Woodman was  
27 getting SCWRAG to present was dubious? Did you ever let  
28 Mr Woodman know what you've now told us?---I think we had  
29 a discussion where we agreed to disagree. I can remember

1 an update somewhere up the line with those words, but I'd  
2 have to find it for you.

3 Again, you might look at that overnight,

4 Mr Kenessey?---I understand.

5 Because again I don't - my impression is that everything that  
6 Woodman, Schutz, SCWRAG did in relation to H3, insofar as  
7 you were privy to it, was not the subject of any  
8 dissatisfaction or concern by you. So you might look at  
9 that question?---Understood.

10 MR TOVEY: Going back to then the setting up of SCWRAG, could  
11 you please look at 3651? If you look at this, this is a  
12 document dated 22 March 2015 and - - -

13 COMMISSIONER: Is this an exhibit, Mr Tovey?

14 MR TOVEY: 3651, if you'd bear with me, please, sir. I didn't  
15 have it noted as one. Sorry, 14. It is 14.

16 COMMISSIONER: It is exhibit 14. Thank you. I thought  
17 I recognised it.

18 MR TOVEY: This is Megan Schutz on 22 March talking to people  
19 associated with SCWRAG, including Ray Walker and his wife.  
20 If we just scroll down there, please. So, it addresses  
21 them. It says, "As discussed, it's absolutely critical at  
22 this stage to strongly encourage all members of the  
23 Cranbourne West community to email the minister,"  
24 et cetera, et cetera. Was that part of the strategy that  
25 you discussed with Megan Schutz?---Would you like me to  
26 read it?

27 Yes, if you could just read with me and listen?---I apologise.

28 Reading and listening is not something I do very well.

29 COMMISSIONER: You take your time, Mr Kenessey?---Yes.

1 MR TOVEY: Perhaps if you could just read right through the  
2 document so you understand its context before I start  
3 asking you questions?---Okay. Scroll, please. Yes, keep  
4 going. Sorry, it seems to be a different document coming  
5 up. I think I've finished.

6 COMMISSIONER: Are you finished, Mr Kenessey?---I think so. If  
7 that was a new document at the bottom, then - happy to  
8 take a break if that helps.

9 Just before we do, Mr Kenessey, four days before that  
10 particular email from Schutz to Mr Walker and his wife you  
11 received an email from Ms Schutz in which she set out,  
12 amongst a number of things, that she thought that "we",  
13 that's Woodman, you, her, should set up a website for the  
14 community group; do you recall that?---Not the actual  
15 email, but we did help them set up a website.

16 Do you recall that that was done about this time, in March  
17 2015?---It sounds about right.

18 And who was going to pay for that?---Leighton.

19 MR TOVEY: There's a problem and that is the document that  
20 appears on my computer, only part of it is in the database  
21 that the hearing has.

22 COMMISSIONER: Yes. Do you want to show the witness the  
23 document?

24 MR TOVEY: I want to show him the whole of that document.

25 COMMISSIONER: All right, we might let you do that. We'll have  
26 a quick break, Mr Kenessey, and can we resume at  
27 3 o'clock?---Yes.

28 Very good.

29 (Short adjournment.)

1 COMMISSIONER: Are you right, Mr Kenessey?---I am, thank you.

2 Yes, Mr Tovey.

3 MR TOVEY: Could we go back to that document, please? So if we

4 scroll down. In fact, we can see that the document

5 continues. So if you could just continue to read.

6 I think we had got past the three dot points. That was

7 part of what you had already read. I would like you to

8 read the rest of it?---Scroll down. Scroll.

9 Okay, if we just go back to the top of that. "As we discussed

10 at the meeting, it would be helpful" - this is the second

11 paragraph - "to have a unified voice speaking on behalf of

12 the community. I therefore suggest that residents form an

13 action group to speak on behalf of the community. In this

14 regard we all agreed that an appropriate name for the

15 group is the Save Cranbourne West Residents Action Group

16 and that each of you want to be a member of the group and

17 lead your community. Now that we have established the

18 group we can let the community know about it." So it

19 would appear from that, would it not, that as of 22 March

20 Megan Schutz has attended a meeting whereby she's

21 suggested the setting up of a residents association, she's

22 suggested that residents form up an action group, and

23 she's suggested the name?---It would appear so.

24 And then if you go down the list of things that are to be done,

25 Schutz Consulting is going to arrange for signage. Go

26 down to 234. Schutz Consulting is going to finalise a

27 preparation of a website. Schutz Consulting is to do a

28 letterbox drop. Schutz Consulting is to bring up a

29 database of phone numbers to make people aware. Schutz

1 Consulting is to email the email database. Go to 6.  
2 Scroll down, please. Schutz Consulting is to refine its  
3 list of phone numbers. Schutz Consulting to prepare a  
4 draft petition for consideration by the group. Schutz  
5 Consulting to write a letter - sorry, SCWRAG to write a  
6 letter to the minister, and there's going to be another  
7 meeting. Now, it is, I would suggest to you, absolutely  
8 apparent from all that that Schutz Consulting was the  
9 force behind the setting up of SCWRAG?---With the consent  
10 of the people who are the landowners.  
11 Of course they couldn't be - they aren't going to be involved  
12 in SCWRAG unless they are consenting. What I'm suggesting  
13 to you is it's as plain as day from all that that Megan  
14 Schutz set out to set up SCWRAG?---Well, that's what  
15 you're saying.  
16 It's clear from that, isn't it? I thought you'd agreed with  
17 that?---I haven't agreed with that. They had a meeting  
18 which according to the email they'd all agreed with all  
19 those action items, so it's - - -  
20 Of course they did, but it was all being led by her?---She was  
21 helping them, yes.  
22 She was the one who had thought of the name, was setting up the  
23 website and was doing absolutely all the work which had  
24 been identified at the first meeting?---I'm not sure if  
25 I said this earlier, but a planning scheme is really hard  
26 to navigate. So if you can help people who share the same  
27 view, the feeling at the time was, well, there's nothing  
28 wrong with that.  
29 I'm not asking - - -

1 COMMISSIONER: Mr Kenessey, that might be your position. But  
2 do you have any difficulty with saying, "Yes, all of these  
3 proposals originated with Ms Schutz"?---That's hard to  
4 disagree with, sorry.

5 And I want to go further. I want to suggest to you that this  
6 was all done with your blessing. You'd been privy to the  
7 decision to set up the community representation  
8 organisation in this way?---That's hard to argue with as  
9 well.

10 MR TOVEY: Insofar as one looks at paragraph 6 of that  
11 document, there are two paragraph 6s, but the second  
12 paragraph 6, "Schutz Consulting to prepare a draft  
13 petition for consideration by the group. It was agreed  
14 that this petition would be used by members of the group  
15 in carrying out doorknocking in each of the estates with a  
16 view to the petition eventually being forwarded to the  
17 Minister for Planning." That's something that no doubt  
18 had been discussed with you as the representative of  
19 the person financing her endeavours?---The petition would  
20 have been discussed at some point in time, of course.

21 And in fact there were two petitions, were there not, at  
22 various times obtained?---That's correct.

23 And did Leightons pay for the work that was done in putting  
24 together those petitions?---We would have funded the  
25 doorknockers who would have been on top of the residents  
26 who doorknocked also.

27 And what was the purpose of the petition?---To give the  
28 community a voice.

29 It was to give you a voice, wasn't it? I mean, you didn't care

1 less about the community. You wanted your own commercial  
2 interest to be paramount, did you not?

3 COMMISSIONER: I'm sorry, what was your answer?---I'm just  
4 trying to think of an answer. I think any corporation,  
5 you know, wants to achieve its financial goals. In this  
6 instance the community agreed with us rather than opposed  
7 us in a development sense, so we were happy to work with  
8 them.

9 MR TOVEY: Your motive was not to assist the community. Your  
10 motive was to achieve your own commercial interests,  
11 wasn't it?---I don't think you can isolate the two.  
12 That's what motivated you. You didn't get in there - you  
13 weren't spending \$70,000 because some community somewhere  
14 had decided that they wanted a rezoning of land. The  
15 reason you were spending your \$70,000 on SCWRAG plus  
16 millions on Woodman and Schutz was because you wanted the  
17 rezoning?---Yes, but residents don't want their kids  
18 riding bikes with trucks still on the same road either.  
19 That's a justification for your position, but it's not an  
20 explanation of why you were involved. Are you seriously  
21 suggesting that you were involved in this for any reason  
22 other than Leightons' commercial interest?---Can't argue  
23 with that.

24 Similarly, you have now agreed with the Commissioner that you,  
25 having seen the documentation and there's more if you need  
26 to see it, concede that you must have been aware that the  
27 strategy was to have Megan Schutz go to the community in  
28 an attempt to set up SCWRAG. You have agreed with that,  
29 have you not?

1 MS KEATING: Commissioner, as I say, to the extent that  
2 "strategy" is a loaded term and has been the subject of  
3 evidence throughout the course of three weeks of hearing,  
4 this witness has not looked at the transcript of evidence  
5 and is not privy to what's contained in the media  
6 material. So I note that limitation on the question.

7 COMMISSIONER: Ms Keating, you have a most disarming manner.  
8 You make a speech and then you sit down as though you  
9 don't want me to engage with you. I'm happy to discuss  
10 your submission with you. What is it that you think the  
11 witness is going to have difficulty answering?

12 MS KEATING: I'm concerned that conclusions will be made by  
13 both you, Commissioner, and propositions will be put by  
14 Mr Tovey that embrace matters beyond what has been put to  
15 this witness today.

16 COMMISSIONER: Yes.

17 MS KEATING: And my concern is that that is acknowledged and  
18 understood when the witness comes to answer this question  
19 and that he's not criticised for not commenting more  
20 broadly or embracing broader propositions in terms of what  
21 "strategy" means.

22 COMMISSIONER: Yes, thank you. So, Mr Tovey, can you indicate  
23 what you have in mind when you talk about the strategy?

24 MR TOVEY: Plan. It was preplanned that Ms Schutz would do  
25 what the witness has now admitted he expected her to do.

26 COMMISSIONER: In relation to SCWRAG.

27 MR TOVEY: In relation to SCWRAG.

28 COMMISSIONER: Do you have any difficulty with that,  
29 Mr Kenessey?---I'm a little bit confused, I have to be

1 honest.

2 Yes. So what's being suggested is that you and Woodman and  
3 Schutz agree that you should utilise a community action or  
4 representative group and that Ms Schutz should do what she  
5 needs to to set it up, to give it a website, to give it  
6 all of those functions set out in that document, and that  
7 that community group could then by their own processes  
8 advance your proposal as to the development that you  
9 wanted to see come to fruition?---I think as I said  
10 earlier, the genesis of the community group was organic in  
11 our view, in Leightons' view, and that in terms of  
12 strategy post the community day I think it's obvious we  
13 would have supported assisting them because we paid the  
14 bills which were circa \$70,000.

15 So you've used that term a couple of times "organic". Do you  
16 mean that there was some aspect of what the community  
17 group did in relation to supporting the rezoning that you  
18 didn't agree with or that you were not aware would be part  
19 of the process they would follow?---I didn't agree with  
20 H3. But going back to how the group were formed, as  
21 I said in evidence I believe on Thursday, I met Ray and  
22 Verlie at the community day and suggested because of their  
23 passion and how articulate they were they should speak to  
24 other landowners, families, people and form a group, and  
25 then after that community day I most likely would have  
26 discussed helping equally enraged residents come together.

27 MR TOVEY: Could the witness please be taken to - sorry,

28 I tender page 3651.

29 COMMISSIONER: I thought you said that was an exhibit,

1 Mr Tovey.

2 MR TOVEY: I'm sorry, it is, yes. Could we now go to page  
3 4506, which is exhibit 11? Could you read that document,  
4 please?---Keep going, please.

5 Have you had a chance to read all that?---Sorry, I got lost.

6 I might start again. Okay.

7 COMMISSIONER: So Mr Woodman wrote to you by email at 9.42 am.

8 You then responded with your three points?---I believe  
9 that they would have been - I'd have to check my notes,  
10 but I believe that would have been a council meeting and  
11 they were the notes that were yet to be published - - -

12 Just follow this. You respond at 11.33. Then Mr Woodman  
13 provides a further email. If you go up, please, to 4506,  
14 Mr Woodman then further emails you at 1.47 pm, 4506. Go  
15 up. Keep going. Keep going?---Would you like me to read  
16 that?

17 Yes?---Can I scroll back down to the previous - a bit further.

18 Thank you. Okay.

19 So there's Mr Woodman's email to you at 1.47. Keep going up,  
20 please. Keep going up the page. And then following  
21 Mr Woodman's email, if you go up to the next document,  
22 Ms Schutz responds to Mr Woodman's email copying you  
23 in?---Would you like me to read that also?

24 Yes?---Okay.

25 And this then precedes the lengthy document to Ray and Verlie  
26 in which Ms Schutz sets out what she thinks needs to  
27 happen to get the community group up and running?---Could  
28 I ask a question?

29 Yes?---They seem to be on the 22nd minutes from a meeting

1 between that group. Does it refer to the date that that  
2 group met?

3 Yes, I'm not sure about that. But do you doubt that this  
4 series of emails on 18 March is the genesis of Ms Schutz  
5 undertaking her task with SCWRAG and with your blessing,  
6 Mr Kenessey?---It's hard to argue, Mr Commissioner.

7 In which case you could just say "yes"?---Sorry. It's been a  
8 long day.

9 Yes. That series of emails - the others haven't been tendered,  
10 is that so?

11 MR TOVEY: I think both those emails have been tendered. 4506  
12 is exhibit 11 and 4505 is exhibit 10.

13 COMMISSIONER: Thank you.

14 MR TOVEY: Going back to exhibit 10 at 4506, going down to the  
15 bottom of the page, what that says was - and this is at  
16 the 18th. This is an email from John Woodman to you and  
17 Megan Schutz, "Guys, I need to report up the line to  
18 Judith the above that was passed last night, remembering  
19 that the Labor Party agreed that subject to councillors  
20 supporting the translation from employment to residential  
21 the Labor Party will also support, please send through  
22 ASAP so I can email our good friend in readiness for  
23 tomorrow's meeting. Thanks." All right? Now, you  
24 understand that's what that email says? You have to  
25 answer "yes"?---Yes.

26 When he talks about "reporting up the line to Judith that the  
27 above was passed last night", he was referring to "the  
28 above" being a resolution of council, was he, to pass the  
29 previous - - -?---I would like to check my file, but it

1 would appear to be the case from my quick scan of that  
2 document.

3 On 17 March council considered an officer's report in respect  
4 of C219 and there was consideration of the implementation  
5 of a consulting process, noting that Schutz Consulting had  
6 received a significant number of submissions from  
7 residents, approximately 550 in support of residential  
8 zoning. So, would you accept from me that there was a  
9 council meeting the night before which dealt with those  
10 issues?---It sounds familiar.

11 All right. When he's talking about needing to "report up the  
12 line to Judith", is that Judith Graley?---I would assume  
13 so, yes.

14 So that was for the purpose of keeping her informed as to the  
15 progress of C219 before the council?---It would appear so,  
16 yes.

17 And it would seem, would it not, to be treating her as somebody  
18 who was in a line, in a channel to higher authorities  
19 relating to C219 submissions?---Part of his network.

20 That's the way you understood it?---Yes.

21 "Remembering that the Labor Party agreed that subject to  
22 council supporting the translation from employment to  
23 residential the Labor Party would also support". Is that  
24 what he says there to you?---That's how I read it.

25 So when he's saying that in that email, the effect of what he  
26 is confirming is that the Labor Party has indicated that  
27 if the council supports C219, so would it?---That's what  
28 I take from reading that.

29 And was that your understanding at the time?---If I received

1           that email, it must have been.

2   And was it because of that that Watsons and Woodman were seen  
3           by you as critical to get C19 through because the first  
4           step, as you've already given evidence about, had to be  
5           getting the councillors on side?---Partly.

6   When you say "partly", what do you mean by that?---I mean that,  
7           as I referred to in my evidence I think on Thursday, that  
8           Gary wanted me to remove Megan and John from the project  
9           for quite some time. But because, as I'd said then, that  
10          he had told me on a couple of occasions that he had the  
11          numbers and went through some of the people who he said  
12          were supporting him for mayor - he never became mayor, in  
13          those years I believe it was Ablett and Aziz - I thought  
14          that if we did try and remove John and Megan there would  
15          be a stoush and I couldn't, with the information that  
16          I was privy to, guarantee to my superiors that the project  
17          would be alive after such an event.

18   Now, if you go up the page, at page 4506. Sorry, before we do  
19          that, I apologise, can we just stay on that one paragraph  
20          we were looking at. "Please send through ASAP so that  
21          I can email our good friend in readiness for tomorrow's  
22          meeting." What was "tomorrow's meeting" and who was "our  
23          good friend"?---Do you mind if I read it again?

24   Yes?---Is it on the right part? I can't from that ascertain  
25          what "send through ASAP" is. Is there something further  
26          down?

27   No?---It might have been the resolution passed by councillors  
28          because I doubt that the minutes would have been up that  
29          early in the morning following a council meeting. But

1 that's a guess.

2 COMMISSIONER: So do you say at about this time Mr Rowe has  
3 asked you to get rid of Woodman and Schutz because he  
4 doesn't want you to go through the rump of councillors  
5 that Mr Woodman would use to get council  
6 approval?---I can't recall exactly when he first expressed  
7 that view. I just know it's been there for a long time  
8 and I - the exact reasons I'd be lying to you if I told  
9 you.

10 But might it have been some years later than this that Mr Rowe  
11 made that suggestion to you?---No, I'm pretty sure that it  
12 was for quite a while.

13 So around this sort of time?---When was this? '15?

14 This was '15?---It feels like it might be earlier, maybe '16.

15 But in any event, having made that suggestion to you, you  
16 didn't implement it and Mr Woodman and Ms Schutz remained  
17 your consultants until after the Age article?---Yes.

18 As I said to you earlier, I've seen nothing, Mr Kenessey, to  
19 suggest that you were dissatisfied with or wanted to  
20 depart from the various strategies that Mr Woodman was  
21 employing to try and get C219 over the line. You'll look  
22 at that overnight?---I most certainly will.

23 Yes.

24 MR TOVEY: If you go up the page then, 4506, so that's an email  
25 from you to John Woodman copied to Megan Schutz and Phil  
26 Staindl. So here you are including Mr Staindl in the loop  
27 as early as March 2015; do you agree?---That surprised me.  
28 I thought it was later that I met him, but I'm happy to  
29 check my file as well about Mr Staindl. I haven't really

1 done a lot of work in terms of reviewing contact with  
2 Mr Staindl.

3 All right. So it would appear, would it not, that if you are  
4 emailing Mr Staindl about this proposal it would be  
5 because you are already aware that Mr Staindl is the  
6 lobbyist who is going to be the connection between Woodman  
7 and the State Government?---It would appear that way, but  
8 that's not how I recall it. So, if I could, I would like  
9 to review my files. It was a reply email, if I could say.  
10 If you then look at that email you provide there, "Re council  
11 resolution", and you include three points. What I want to  
12 ask you is: is that something that is being repeated by  
13 you from the previous night's council agenda or is it a  
14 proposed resolution that you are putting forward?---As  
15 I said I think a bit earlier, my gut feel is that they are  
16 the minutes from the meeting from the night before that  
17 are yet to be publicly issued by council and thus  
18 providing that information to John, but I can double-check  
19 that also.

20 Could you, please?---Certainly.

21 Now, were you at any time involved with the assistance of  
22 Leightons' lawyers having proposed council resolutions  
23 drafted or notices of motions?

24 MS KEATING: Commissioner, I'm not sure if this question  
25 involves some aspect of legal advice in which privilege  
26 might be claimed. It's not this witness's privilege to  
27 claim and it's not clear to me and I just raise that  
28 concern.

29 COMMISSIONER: Yes. It depends what the witness's answer to

1           that question is. I'm not sure that the witness saying  
2           "Yes, I did get legal advice" involves any breach of  
3           privilege.

4 MS KEATING: It may not.

5 COMMISSIONER: It would depend on the questions that follow,  
6           Ms Keating.

7 MS KEATING: Yes. Thank you.

8 WITNESS: If I may, sorry, is the question did I know about  
9           motions being sent to councillors?

10 MR TOVEY: Yes?---The answer to that is yes.

11 And what was your knowledge in respect of that?---I helped  
12           draft some of them. I would send them to Gary so that it  
13           was - I suppose council officers get to put what they  
14           recommend. The idea was, so that we're crystal clear,  
15           this is a motion that we would like, for lack of a better  
16           term, but from my records Gary never actually followed any  
17           of the motions I suggested to him. He would usually speak  
18           to officers and do whatever he wanted. There were times  
19           when he actually didn't even do a motion because he said,  
20           "It's a waste of time. What you're asking for is already  
21           happening."

22 Did you work on those motions with Megan Schutz?---Most likely.

23 And were they sent to councillors other than Mr Rowe?---I was  
24           asked by Luke Connell, a senior council officer, to clear  
25           up some mistakes or, sorry, misunderstandings and he said  
26           to me that I should brief the mayor and Gary Rowe at the  
27           time and get them to provide a motion to correct  
28           misunderstandings in previous meetings and resolutions.

29 And did you do that?---I did.

1 And who was the mayor then?---From recollection of my review,  
2 Aziz.

3 COMMISSIONER: So when you're talking to Mr Woodman at this  
4 point of time about securing the council's approval in the  
5 way you've expressed, what did he say to you about the  
6 level of cooperation and support that he expected you and  
7 he would receive in putting such a proposal?---I think  
8 from early on he said we would have support. I remember  
9 briefing councillors and having support for a review, not  
10 absolute support for the rezoning, but we were satisfied  
11 that there was a - what would you call it - a trigger  
12 point that a review was warranted, and then following on  
13 from the completion of our review with officers and  
14 briefing the vast majority of them, they started to vote  
15 unanimously with us.

16 Because you knew from as far back as February the previous year  
17 that without the councillors even having a formal request  
18 from you, from Leightons or from the Kellys, the  
19 councillors were prepared to put forward a motion  
20 requesting that you provide the council with information  
21 in support of a rezoning?---As I said on Thursday, we  
22 didn't know about that motion. We thought it was a  
23 conversation.

24 You mean you never learnt at any time after the motion was  
25 passed?---We probably did, a few - 10 days or so after,  
26 after Keri New wrote an email to Peter Williams saying  
27 we've been - I can't remember, I could find the email,  
28 "There's a resolution that we have to speak to you and you  
29 have to write a letter," something to that effect. It

1           became clear at that time that something had happened.

2   So you knew 10 days afterwards?---I'd have to check the date.

3           It would be about that.

4   All right. Did that strike you as quite extraordinary, that

5           three councillors put forward a motion before you,

6           Leightons or the Kellys - - -?---It's weird.

7   Had made any submission to the council, inviting you to make a

8           submission to the council and, further, that that motion

9           which was passed was conducted in a confidential setting?

10   Did any of that strike you as unusual?---It felt weird,

11   but we didn't - as I said, we'd never done a rezoning,

12   didn't even know what a motion was back then. It was an

13   in camera meeting and reports back to Leighton, to Gavin

14   Tonnet, the national head of residential, that the

15   conversation - it was about a conversation and that it

16   went well and my recollection of that era is that we need

17   to write and formally request. I think I said on Thursday

18   again, at the meeting with councillors Peter Fitchett

19   nearly broke my hand. I can still remember it to this

20   day.

21   But surely, Mr Kenessey, what that told you upon learning that

22   that process had been followed was that Mr Woodman had

23   quite a special relationship with a number of

24   councillors?---Sorry, could you repeat that or ask it a

25   different way?

26   Once you discovered 10 days or so after the event that

27   Mr Woodman had achieved that quite "weird", to use your

28   word, result of getting the council in advance of you

29   making any representations, a motion passed inviting the

1 owners to make submissions to the council about rezoning,  
2 did you ever thereafter to your satisfaction ascertain how  
3 Mr Woodman managed to get that level of cooperation?---No,  
4 I've always found it bemusing. I think if you recall even  
5 on Thursday I said that in preparation for my panel  
6 hearing, to provide evidence there, I spent lots of time  
7 searching down a rabbit hole trying to better understand  
8 that period and was confused then about it. I mean, the  
9 officers came and said that they were asked to come and  
10 talk to us and write a letter. I'll find the actual email  
11 for you so I'm not misquoting. But - - -

12 I just want to understand your position. Did you regard  
13 yourself as being in a position where you should  
14 scrutinise and question what Mr Woodman was doing or did  
15 you see yourself as someone who, lacking his level of  
16 expertise and forensic skills in this area, did you see  
17 yourself as someone that simply should utilise his skills  
18 and not question the way he was going about  
19 things?---I didn't know what he was doing, so how would  
20 you question it?

21 Well, you did know what he was doing and you knew at this point  
22 that he had secured three councillors to put forward a  
23 motion without you doing anything?---Again, we didn't know  
24 it was a motion.

25 You found out about it. You found out it was passed?---Well,  
26 I don't know if it was a motion. The email I think said  
27 there was a requirement, if you want to talk about the  
28 rezoning, you need to - - -

29 I'm trying to understand your position. Were you sitting there

1 analysing and evaluating what Mr Woodman was doing or were  
2 you happy to embrace the steps that he was taking without  
3 questioning them?---We were processing information he  
4 provided and we were probably analysing and debating  
5 whether or not certain - his advice should be followed.  
6 Who is "we"? Who is the "we"?---Well, I imagine it would be  
7 Leighton.  
8 "I imagine it would be Leighton"?---Well, no, no, that was a  
9 poor choice of words. I apologise for that.  
10 You have indicated that this was your task?---Yes, I would  
11 analyse what he was suggesting.  
12 Were you getting support from anyone else in Leightons in  
13 evaluating Mr Woodman's forensic proposals?---I'm not  
14 sure what - the "forensic proposals" is where I'm getting  
15 caught.  
16 Strategy?---Well, Peter Williams would help and my executive.  
17 And who was your executive?---At that time it would have been  
18 Andrew Cooper, Gavin Tonnet, Robert Dodd, Mark Gray.  
19 And this was the executive of what?---Leighton Properties.  
20 And so you would report to them regularly, would  
21 you?---I would, and they even in those early days would  
22 have meetings with John and would speak to him directly.  
23 They did?---Yes.  
24 Did you report to them that within a few days of you discussing  
25 with Mr Woodman how you would like to proceed with C219  
26 that he had secured the passing of a resolution by the  
27 council?---I'm not sure how many times I can say we didn't  
28 know there was a passing of a motion, a resolution.  
29 Councillors provided some in principle support to hear our

1 story.

2 However you want to describe it, did you communicate that to  
3 the executive, that he had secured that literally  
4 overnight?---I don't think he secured it overnight. He  
5 said he would go and - we knew that councillors were  
6 speaking to the bureaucracy.

7 You learned, albeit you say 10 days after the event - -

8 -?---I would like to check that if I may, sorry.

9 Well, you have not checked it since you gave your initial  
10 explanation about that on Thursday?---No, but your - - -  
11 Have you gone back and looked at the records at all since you  
12 were asked about this on Thursday?---Yes.

13 Are you able to say as you sit there now that within a very  
14 short time after that council resolution or motion was  
15 passed you learned that there had been some sort of  
16 agreement by the council?---What we understood is that we  
17 had to write to council.

18 All right, Mr Tovey; I can't take that any further.

19 MR TOVEY: I recall you initially gave evidence, did you not,  
20 that the resolution that the Commissioner is talking about  
21 first came to your consciousness when you were going  
22 through the panel process and you came to wonder where  
23 they had come along; is that not right?---No. As I think  
24 I said on Thursday my recollection is that Gary was angry,  
25 in one of the first meetings I had met him, that Sam had  
26 meddled in his ward and passed an urgent motion that  
27 clearly wasn't urgent. So we were putting pieces together  
28 at the time. Like, we just didn't know about it. I had  
29 been used to playing in the normal planning scheme where

1           you put an application in, it's got 90 days to be reviewed  
2           and you move on and then you build something.

3   There were a whole lot of red flags, though, weren't there?  
4           First of all, Gary Rowe thought it was irregular;  
5           secondly, the process was carried out in secret; and,  
6           thirdly, you yourself didn't even find out until later  
7           that it had happened; and, fourthly, it had happened  
8           without any application being put in by you. Now, all  
9           those things were pretty strange, were they not?---Well,  
10          yes.

11   All right. I just want to get a couple of things out of  
12          the way tonight, if I can. If we go to exhibit 11, page  
13          4505, at the top of that page there's an email headed  
14          "Council resolution" from Megan Schutz to yourself, John  
15          Woodman, peter@ - what's that - peter@mejora - -  
16          -?---That's Peter Williams from Leighton Properties left  
17          to start his own consulting, and was consulting back and  
18          that was his new email address.

19   And Phil Staindl. So seeing that again would you agree now  
20          that Phil Staindl was intimately involved at the very  
21          early stages of this process of seeking to have approval  
22          for the C219 decision?---It would appear so.

23   All right. "We're slightly too wordy. Got the exact message.  
24          I was thinking of a flyer using the consistent branding  
25          sent out to the email database, letterbox dropped, text  
26          message, doorknocked again???" When she's talking there  
27          about email database, letterbox dropped et cetera,  
28          et cetera, this is all information obtained during the  
29          lead-up to the community day, was it?---If I may, can

1 I read it?

2 Yes, please?---Didn't you say before that the community day was  
3 on 7 February?

4 Yes?---So could you please repeat your question?

5 Was this referring to information that had been obtained in  
6 anticipation of the community day in doorknocks, surveys  
7 et cetera?---But this is after the community day.

8 I understand that?---Sorry, I'm just getting a bit tired.

9 She's talking there about an email database et cetera,  
10 et cetera. I'm sorry, I should have been clearer. Was an  
11 email database and a phone database established as a  
12 result of her initial surveys and - - -?---From my  
13 recollection, that's probably the case.

14 Doorknocking and letterboxing. All right. But here she is she  
15 says, "I think we should be setting up a  
16 [www.savecranbournewest.com.au](http://www.savecranbournewest.com.au) website"?---That's what the  
17 email says.

18 Referred to on the flyer, and then she indicates what the flyer  
19 will say, "Flyer to say council have rejected government  
20 bureaucrats' call for industrial to stay. They have  
21 listened to the Cranbourne West community and taken  
22 action"; is that right?---That's what it says.

23 So what she's suggesting is that "we" - that's your group -  
24 "set up a website which is called 'Save Cranbourne West'",  
25 true, and she's designing a flyer that will go out at the  
26 same time that that is achieved?---That's what the email  
27 says.

28 Then we have seen some days later these things in fact come to  
29 fruition and SCWRAG is set up. Looking at that, the only

1 explanation is that it was the strategy well before the  
2 community day that you set up a community group if you  
3 could. This is, I suggest to you, explicable only if  
4 looked through - if looked at through the lens of an  
5 ongoing strategy.

6 COMMISSIONER: I thought the witness had agreed with that,  
7 Mr Tovey.

8 MR TOVEY: Do you agree with that?---I thought I have answered  
9 this question before.

10 Sorry, what is your answer then?---I'm now confused. I'm  
11 getting a bit tired, I'm really sorry.

12 I just wanted to take you to two phone calls. Do you think you  
13 are able to do that?---I'm not in the greatest - I'm just  
14 getting tired. I'm just getting confused easily.  
15 I apologise for that.

16 I was going to finish off with those, Commissioner. But if the  
17 witness can't - is not feeling that he can give proper  
18 attention to the matter - - -

19 COMMISSIONER: I would certainly like to finish the witness  
20 tomorrow, Mr Tovey.

21 MR TOVEY: Yes.

22 COMMISSIONER: How much longer do you think you will be?

23 MR TOVEY: I would anticipate that I'm going to be quite some  
24 time, but I would think probably only two hours or less  
25 than that.

26 COMMISSIONER: Yes. I'm just concerned that we have had a lot  
27 of breaks and the witness is still struggling. We may  
28 have to see how we can shorten the areas that you still  
29 want to explore.

1 MR TOVEY: I'm going to do that, and I have borne in mind the  
2 fact that the witness has already had a number of breaks  
3 and there is a lot of material there which isn't critical  
4 which I am gradually weeding out over lunchtime and  
5 tonight.

6 COMMISSIONER: Yes. Is there any reason why we shouldn't  
7 commence slightly earlier then?

8 MR TOVEY: Not at all.

9 COMMISSIONER: Ms Keating, is there any reason why we couldn't  
10 start at, say, 9.45?

11 MS KEATING: No, Commissioner.

12 COMMISSIONER: Very good. We will adjourn now, Mr Kenessey,  
13 and you need to have - I was going to say have a rest  
14 tonight, but there are some things you want to look at.  
15 But you only need to do that in the broad. I'm interested  
16 to know whether you can find records or something that  
17 refreshes your memory that would enable you to say that  
18 before the May - before The Age articles of 2018 you had  
19 made clear in some way to Mr Woodman or Ms Schutz or both  
20 of them that you were in disagreement with their broad  
21 strategies in terms of the implementation of C219 or H3;  
22 do you follow?---I understand.

23 Very good. We will adjourn until 9.45 am?---Thank you.

24 <(THE WITNESS WITHDREW)

25 ADJOURNED UNTIL WEDNESDAY, 11 MARCH 2020 AT 9.45 AM

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