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TRANSCRIPT OF MORNING PROCEEDINGS

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INDEPENDENT BROAD-BASED ANTI-CORRUPTION COMMISSION

MELBOURNE

WEDNESDAY, 11 MARCH 2020

(20th 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 <THOMAS JAMES KENESSEY, recalled:

2 COMMISSIONER: Mr Kenessey?---Good morning.

3 Yes, Mr Tovey.

4 <EXAMINED BY MR TOVEY, continued:

5 Mr Kenessey, you were asked some questions yesterday about  
6 whether there are any documents which objectively indicate  
7 the first stage at which you indicated or recommended that  
8 Leightons should walk away from John Woodman; do you  
9 remember being asked those questions?---I do.

10 And have you in the interim had the opportunity of determining  
11 whether any such documents exist?---I misunderstood the  
12 question perhaps. The answer to your question is, yes,  
13 they do exist, but the homework I conducted was more in  
14 line for what the Commissioner asked about is there any  
15 evidence of a different strategy prior to the articles of  
16 The Age. I'm sorry, it's - - -

17 If you can just answer my question?---Certainly.

18 Are you aware of when it was that there is objectively an  
19 indication of you moving towards the dumping of John  
20 Woodman?---It was soon after the articles in The Age  
21 newspaper.

22 You say soon after. How soon after?---It might have been  
23 between the articles, but, sorry, I didn't confirm the  
24 date. But the document would confirm the date.

25 I labelled the first strategy - if you pardon my language  
26 for the Commission, but I titled it "Piss or get off the  
27 pot".

28 And what did that mean?---It meant to - because of the  
29 constraints of the agreement that we had with John the

1 idea was to offer him a further incentive with the idea  
2 that it would either prove that, you know, he could do  
3 what he claimed he could or it gave us the ability to  
4 remove him from the project altogether.

5 All right.

6 COMMISSIONER: What did he claim he could do?---He claimed he  
7 could get the rezoning approved.

8 And according to all of your information you were within a  
9 hair's breadth of getting the minister's approval; isn't  
10 that right?---Prior to the articles?

11 Correct?---Yes.

12 So he had almost delivered what you were wanting?---I would  
13 have to say yes to that.

14 MR TOVEY: Anyway, this "Piss or get off the pot" strategy,  
15 with whom did you discuss that?---I created it and  
16 discussed it with Leightons and Dacland.

17 And this was at the time of The Age articles?---Around that  
18 time, yes.

19 And you discussed it with Dacland, and why was it that you  
20 discussed it with Dacland?---Because I wanted them to  
21 contribute to the increased fee should it be required to  
22 be paid, and also that it would potentially free them of  
23 their agreement with John.

24 So I just want to get this straight. The Age publishes  
25 articles suggesting that Woodman is corrupt in his  
26 relationships with government, council, you and SCWRAG;  
27 that basically is the situation, isn't it? In those  
28 circumstances you and your superiors devise a strategy to  
29 give him more money in the hope that - so that he will be

1 more successful quickly?---Well, my belief - - -  
2 No, was that the situation?---No, my belief was that he  
3 couldn't deliver and this was a way of getting him off the  
4 project. I didn't think he would accept it, though, but  
5 it was worth trying.

6 COMMISSIONER: No, Mr Tovey is asking you what you were  
7 proposing to him, not what you believed?---I didn't  
8 believe he could deliver.

9 No, not what you believed?---Sorry.

10 Mr Tovey is asking you what were you actually proposing to  
11 Mr Woodman?---I didn't get approval to propose it to him.

12 MR TOVEY: And why was that?---I think from memory Leightons  
13 were of the belief that the independent panel's  
14 endorsement of the merits were sufficient for the planning  
15 minister to make the decision, and they didn't want to pay  
16 any more money.

17 So at that stage was a decision made to withdraw his - sorry,  
18 withdraw his contract?---At that time?

19 Yes?---No, that happened - withdraw his contract is not  
20 something - the minister's deferral triggered a change in  
21 process which under his agreement gave rise to a two-year  
22 timer starting to tick, which would give Leighton  
23 Properties the right at its discretion to terminate his  
24 agreement. He wasn't removed from the project - and I use  
25 that word deliberately rather than "sacked" - until early  
26 February '19.

27 Okay.

28 COMMISSIONER: And when did you cease to be an employee of  
29 Leightons?---2016.

1 So what was your role thereafter?---I'm a consultant now to  
2 them, contractor.  
3 So you ceased to be an employee, became a  
4 consultant?---Correct.  
5 Trading as what?---Kenessey Pty Ltd.  
6 And that's still your position?---That I'm trading as  
7 Kenessey Pty Ltd? Yes.  
8 What was the reason for ceasing to be an employee and setting  
9 up your own consultancy?---Well, originally I quit in  
10 early '16 because CIMIC at the time didn't want a property  
11 development company anymore and there was no assurity of  
12 redundancy to be paid or bonuses. I hadn't received a pay  
13 rise for a year, and that was the genesis of my  
14 resignation in early '16.  
15 You said CIMIC?---CIMIC.  
16 Yes?---Which is formerly Leighton Holdings.  
17 And they didn't want a property development company?---Correct.  
18 They wanted to build hospitals, tunnels, bridges,  
19 large-scale infrastructure.  
20 They wanted to move out of property development?---Correct.  
21 I see.  
22 MR TOVEY: As a consultant did you have any other  
23 clients?---I have.  
24 Did you then in 2016?---I haven't checked that, but my  
25 recollection is that I might have worked for VicTrack and  
26 a private developer.  
27 Were Leightons the bulk of your work?---In a good year they  
28 were - approached 50 per cent. But I think in general  
29 they would be the bulk.

1 Then once you became a contractor how were you remunerated for  
2 work you did on the C219 matter?---I had a contract that  
3 I negotiated with Leighton for a two-year monthly agreed  
4 fee with three-and-a-half days work and there were some  
5 bonus structures in there.

6 What were they? Sorry, firstly, what was the fee, your monthly  
7 fee?---I think it's circa 20,000, 21-something, or 19 plus  
8 GST.

9 So that's, what, 240,000 a year or close to it?---Yes.

10 And then what were the bonuses?---I think there was a \$30,000  
11 bonus for retention bonus, which was a translation for a  
12 bonus - I can't remember. That was negotiated. There's a  
13 bonus for rezoning and a bonus for a compulsory  
14 acquisition outcome.

15 All related to C219?---Correct.

16 So that was a success fee, was it?---Well, it's a normal  
17 corporate bonus type thing for an outcome.

18 You were getting rewarded for an outcome?---Yes.

19 So it was a success fee?---Okay.

20 COMMISSIONER: Did the contract provide that as a consultant to  
21 Leightons as distinct from an employee you were still  
22 obliged to comply with the Leightons code of  
23 conduct?---I'm still obliged to comply - - -

24 No, did the contract require you to?---I haven't looked at it  
25 specifically, and I would like to double-check, but  
26 I believe so. That's how I've operated.

27 You say that's how you operated, but did you not know and  
28 understand that you weren't operating within the code in  
29 the way in which you dealt with Mr Woodman?---I'm not sure

1 what you are asking.

2 Were you not aware of the fact that the nature of your  
3 relationship with Mr Woodman and the way he operated and  
4 the level at which you approved or consented to the way in  
5 which he operated meant that you could not be complying  
6 with the code?---I don't believe I consented or approved  
7 his conduct. I'm not sure the example you are referring  
8 to.

9 That's your honest belief, is it, Mr Kenessey?---It is, unless  
10 you have an example - - -

11 Just bear with me?---Sorry.

12 That's your honest belief, is it?---Yes.

13 That you did not consent or approve of the strategies  
14 Mr Woodman was applying to achieve the rezoning  
15 objective - - -?---I did my homework, Mr Commissioner, and  
16 I have an example I could give you, if you like.

17 Yes, but is the answer to my question you never consented or  
18 approved to any of Mr Woodman's strategies that would have  
19 brought you into conflict with the code?---I don't believe  
20 so.

21 MR TOVEY: I will take you to numerous conversations or  
22 messages where you were hand in glove with him discussing  
23 how much he was paying politicians and how they were  
24 committing to C219. Now, do you deny that that was part  
25 of your discourse with him?---He'd also talk about all  
26 these other - - -

27 No, look - - -?---No, I don't deny that.

28 Would you just answer the question?---No, I don't deny that.

29 No, I don't deny that.

1 You don't deny that. When you say you don't deny that, that  
2 means that is true?---Well, he would talk about a lot of  
3 things.

4 You would talk with him about the amounts of money he was  
5 giving to politicians, the commitments he was obtaining  
6 from politicians in respect of C219; true, on numerous  
7 occasions?---Well, I have met with him on numerous  
8 occasions - - -

9 Would you just answer the question?---Sorry, I am, but you are  
10 trying to connect him saying he's connected his donations  
11 to C219. In my mind, that wasn't the case.

12 Well, he told you. He told you that politicians were  
13 intervening - he was seeking to use politicians to  
14 intervene with the minister to achieve your objectives in  
15 respect of C219. He told you that, didn't he?

16 COMMISSIONER: Yes?

17 MS KEATING: Commissioner, these are important topics.

18 Underlying the question is evidence which has not been  
19 either demonstrated to or played to this witness about  
20 what it is that Mr Woodman apparently has told him.

21 I would ask that that occur before this witness be  
22 expected to answer, in fairness. I expect my learned  
23 friend to stand up and take on my objection. I think  
24 that's why I look to sit down, Commissioner. I beg your  
25 pardon.

26 COMMISSIONER: No, no, it's important that you be prepared to  
27 engage with the Bench, of course. Mr Tovey is putting  
28 propositions to the witness. If the witness doesn't  
29 accept the factual basis for it - he's demonstrated with

1 great skill that he won't accept any fact that's put to  
2 him unless he believes it to be true. The fact that none  
3 of the matters that Mr Tovey is currently relying on have  
4 been specifically explored doesn't prevent him from  
5 saying, "I don't accept the factual basis upon which the  
6 question is put."

7 MS KEATING: Yes, Commissioner. There's a difference between  
8 the basis for matters put so far which are contained in  
9 documentary material which the witness has had an  
10 opportunity to review.

11 COMMISSIONER: Yes.

12 MS KEATING: Telephone conversations are, in my submission, a  
13 different category of evidence. I for one don't remember  
14 a conversation I might have had or the content of it a  
15 week ago. Perhaps this witness does. But in fairness,  
16 given the importance of the questions, it should be done  
17 in a way where the witness can be reminded about the  
18 content of the conversations before being expected to  
19 either adopt or disagree with with accuracy these  
20 important propositions, in my submission.

21 COMMISSIONER: Yes. I haven't thus far detected an unfairness  
22 in the way the questions were put. But I will bear your  
23 concern in mind as Mr Tovey progresses now.

24 MS KEATING: Thank you, Commissioner.

25 COMMISSIONER: Yes, Mr Tovey. You understand, Mr Kenessey,  
26 that if Mr Tovey puts a proposition to you as a factual  
27 assumption on which he's inviting you to then express an  
28 opinion, if you don't agree with that factual assumption  
29 you would say so?---Okay.

1 MR TOVEY: You knew, did you not, that the strategy developed  
2 by Mr Woodman was to make contributions to politicians and  
3 in return seek to use those politicians to achieve his  
4 aims in respect of C219; you knew that, did you  
5 not?---Well, my view is that - - -

6 No, I'm not asking you what your view was. I'm just asking you  
7 what you knew. Did you know that or not?

8 COMMISSIONER: Did you know that fact or not? Did you know as  
9 a fact that Mr Woodman - - -?---No.

10 You didn't know that?---I don't believe so.

11 MR TOVEY: Are you serious? Did you not on numerous occasions  
12 discuss with him payments he was making to politicians in  
13 the context of C219?---I think I have said before I don't  
14 believe - I didn't believe any politician would break  
15 their oath to serve whoever they are and enter into quid  
16 pro quo arrangements.

17 You didn't answer my question. Do you remember what my  
18 question was? Do you remember what my question  
19 was?---Your question was, I believe, did I know that he  
20 was paying politicians in return for their support - my  
21 words, not yours - of C219.

22 No, he was paying politicians in order to seek their support in  
23 respect of C219?---I don't accept that.

24 COMMISSIONER: You don't accept you knew?---No, I don't accept  
25 he said - sorry. John Woodman has, like, 40 projects.  
26 Like, he works on numerous things. To say that C219 was  
27 his sole baby and cherished nest egg, I don't accept that.

28 MR TOVEY: Did he ever discuss with you trying to get at  
29 Minister Wynne by the use of politicians who were being

1 supported by him?---I believe I was aware that Judith  
2 Graley was trying to have discussions with Mr Wynne.  
3 And what was that about?---C219.  
4 And what about Pauline Richards? Did you ever discuss with  
5 him, that is with Woodman, the fact that Pauline Richards  
6 had made a commitment to support C219?---He had said that  
7 on numerous occasions, but I believe I said yesterday that  
8 I didn't believe him.  
9 Why didn't you believe him?---Because Gary Rowe had told me  
10 before and at the same time that he had had conversations  
11 with her and that his view was that she wasn't interested;  
12 it was an issue for previous members. She didn't want to  
13 get involved and she didn't really care whether - she just  
14 wanted to finish and didn't seem to care which way it  
15 finished.  
16 Why did you retain him if he was lying to you?---Because  
17 I couldn't get rid of him.  
18 Well, wouldn't that have been a basis for getting rid of  
19 him?---How would I prove that he's lying to me? Sorry,  
20 I don't mean to answer your question with a question.  
21 Did you ever speak to Pauline Richards yourself?---I have.  
22 And did you speak to her about C219?---No.  
23 Did you speak to Mr Woodman about approaching Pauline Richards  
24 to intercede on your behalf in respect of C219?---I don't  
25 think so. I can recall events where John was saying that  
26 she was 100 per cent on board and that he would just have  
27 to discredit The Age and then he would speak to her and  
28 have her use that as a reason to go and speak to Mr Wynne.  
29 But it wasn't just that, was it? He was discussing with you at

1 the very time he was making the contributions that he was  
2 about to make or had committed to make a contribution to  
3 her and that she was committed?---Well, I believe at the  
4 same time I was formulating a strategy of "Piss or get off  
5 the pot", I apologise again, and also formulating a  
6 strategy for Leighton Properties to directly communicate  
7 with government about a value sharing that was just coming  
8 into the planning scheme, value capture.

9 This was at a time before The Age articles?---Which  
10 specifically, sorry?

11 Before any Age article in 2018 - - -?---Yes.

12 You and he were discussing, I suggest, the fact that he was  
13 contributing \$20,000 to her campaign and she was making a  
14 commitment to C219?---I've had so many phone calls,  
15 I can't recall that. But, I mean, if you've got  
16 evidence - - -

17 COMMISSIONER: I'm sorry, I thought you told us a moment ago  
18 you had come to the conclusion when he told you that he  
19 was lying because of something Mr Rowe had told  
20 you?---I don't see how the questions are related,  
21 Mr Commissioner, I'm sorry.

22 MS KEATING: Commissioner, I think the evidence was that he was  
23 asked about whether or not that person supported C219, and  
24 he didn't believe that she supported C219.

25 COMMISSIONER: Yes. You thought to the extent that Mr Woodman  
26 was telling you that he had secured Ms Richards' support  
27 in promoting the rezoning that that was a lie because of  
28 things that Mr Rowe told you?---Well, someone was lying.  
29 Did you say that a few moments ago, Mr Kenessey?---I did say

1           that a few moments ago.

2   And was that the truth?---That's my recollection as I sit here.

3   And did you ever tell Mr Woodman that he should cease conveying

4           facts to you about the effectiveness of his campaign

5           donations when you knew it to be untrue?---No, because in

6           my mind I was setting him up to remove him from the

7           project and I didn't want to raise a red rag to a bull, so

8           to speak, Commissioner.

9   This is before The Age article?---I thought we were talking

10          about after The Age article.

11   Before The Age article did you have any intention of trying to

12          remove him?---I would have to check my file.

13   I asked you to do that?---No, you asked me - sorry.

14   Did I not ask you to see if you had any documentation which

15          suggested that prior to The Age article you were objecting

16          to or concerned about the strategies Mr Woodman was

17          employing?---I understood that question to not be taking

18          the next step for his removal, and I did do that homework

19          and I have got an example I could put to you if you like.

20   Yes, please?---In early '18 post the independent - sorry, the

21          independent panel endorsing the merits of the rezone

22          section 173 agreement - this takes a bit of time, this

23          story, if you let me tell it, Commissioner.

24   So long as you focus on what I'm interested in?---Correct.

25   Which is you expressing some or recording some objection to his

26          approach?---Okay. I'll try and be brief.

27   Yes?---As all public companies do, they want to hit their

28          targets and there was a lot of pressure to get the

29          rezoning done quickly. Council officers were of the view

1 that the agreement for community infrastructure should be  
2 completed prior, so council endorsement to then be sent to  
3 the minister. That didn't quite - they were working with  
4 us in the early days to achieve that outcome, but it  
5 became apparent that we wouldn't meet targets. John's  
6 strategy was that essentially just accept their ambit  
7 claim and - I can give examples of that, but that's  
8 probably not the detail you need right now. Just accept  
9 it and - it actually is relevant, if you bear with me.  
10 So, for example, in the ambit - what I think is an ambit  
11 claim put to us it was a cost of \$10 million for an oval,  
12 a pavilion and an astro-turfed soccer pitch, but in the  
13 same PSP they had just advertised in the local Leader that  
14 they had delivered one for 6.72 million. So it felt like  
15 we were under pressure from officers that, "If you don't  
16 accept our view then you are going to be twiddling your  
17 thumbs and it's not going to go to the minister." So  
18 John's strategy was essentially, "Don't worry about it.  
19 We'll get councillors to do a motion to override the  
20 officers and change the condition for its completion to be  
21 instead of prior to rezoning to prior to planning permit."  
22 I had put to Leightons - after a hostile meeting with  
23 officers with Megan, Gary called me and said, "Officers  
24 are complaining about her behaviour. You need to remove  
25 her." So I did and introduced Jonathon Fetterplace from  
26 Dacland, Meg Lee and Kate Kirby from Gadens. At that  
27 time, and it's about the 1-2 March 2018, I put a strategy  
28 recommendation to - excuse me - Leighton Properties that  
29 I disagreed with John's strategy and that we should work

1 with officers to have it completed prior to it going to  
2 the minister's, and there are a whole lot of reasons below  
3 that. It would make officers happy, Gary happy. It would  
4 de-risk it in a number of ways in which, for example, if  
5 we sent the documents up to the planning minister  
6 incomplete it might be a reason for him to delay or send  
7 it back or who knows. So my recommendation at the time is  
8 that they should reallocate their forecast for that  
9 project from June '18 to the calendar year end. So it was  
10 a disagreement in strategy. There was a lot of back and  
11 forth between me and Michael McConnell, my boss. I can  
12 remember at that time also I was so passionate about my  
13 version of the strategy that I had a screaming match with  
14 George Sassine for about half an hour where I was shaking,  
15 not dissimilar to now, and it culminated in - I said,  
16 "George, this is not the strategy we need to pursue. If  
17 you want me to do it and follow John's, take the motions,  
18 you need to instruct me to do it," which I was instructed  
19 to do because the corporate requirement for people to hit  
20 their targets overrided my, I suppose, property strategy  
21 put to them. So I'm assuming that you would have copies  
22 of those emails.

23 Well, if we do, I haven't sighted them, Mr Kenessey?---I could  
24 provide them if you would like.

25 But none of that goes to the strategy of Mr Woodman seeking to  
26 influence councillors, senior government officials,  
27 bureaucrats through the process of making campaign  
28 donations to provide you and he - that is Leighton and  
29 he - with access to those people for the purpose of trying

1 to influence their views in relation to C219. None of  
2 what you have just told me goes to that strategy, does  
3 it?---Could you make that question just a little bit  
4 shorter? I'm really sorry, it's just long and it's  
5 difficult sitting here.

6 What you have just talked about does not go to the strategy,  
7 the broad strategy, that Mr Woodman was employing, and  
8 I have suggested to you with your knowledge and  
9 understanding, that he would make campaign donations and  
10 support councillors not only for council elections but  
11 councillors who were then standing for state parliament  
12 and ministers in order to try and gain access to them to  
13 influence them in relation to the rezoning?---I don't know  
14 everything that John Woodman does. I'm not - he knew he  
15 wasn't to make donations on our behalf.

16 You knew that?---I'm sure he did - - -

17 But you knew that?---He knew it as well.

18 But you knew that?---I knew that and he knew it.

19 But you knew that he was?---I knew that he was making  
20 donations. But, as I said, he's got, you know, I don't  
21 know, more than 10 projects at the moment. You know, it's  
22 not illegal to make donations to politicians. I mean,  
23 it's registered in the AEC website.

24 Yes. Yes, Mr Tovey.

25 MR TOVEY: But you weren't able to make donations to  
26 politicians, were you?---No.

27 And it would have been on your understanding contrary to  
28 Leightons' rules for you to be involved in any discussion  
29 about politicians committing to promote C219 in return for

1 political - sorry, in return for financial  
2 support?---I don't believe the code goes into such a  
3 myopic detail as to discussions.

4 Well, did you think that would have accorded with the  
5 code?---We never endorsed him making donations on behalf  
6 of Leighton, as far as I can recall. He talked to me  
7 about all sorts of things all the time. It was - one of  
8 my jobs is to manage consultants and stakeholders.

9 I just want to talk to you about what the code said or what  
10 your understanding of the code was. Your understanding of  
11 the code was that (a) you couldn't make donations to  
12 politicians; true?---On behalf of Leighton.

13 Secondly, I'd suggest it would be even more inappropriate to  
14 not only make payments to politicians but attach to those  
15 payments a commitment to help you out in respect of C219;  
16 is that something you thought would have been ethical or  
17 in accordance with the Code of Practice?---I think I have  
18 consistently said that, you know, doing quid pro quos is  
19 not part - in accord with the code.

20 Well, it's anathema, isn't it, to - - -?---A what, sorry?

21 I didn't hear the word, I'm sorry.

22 Getting quid pro quos from politicians is anathema to ethical  
23 business practice?---I don't know what that word means,  
24 I apologise.

25 It's contrary to ethical business practice?---Quid pro quos?

26 Yes?---I would say so.

27 Before I move on, at one stage - we got diverted, I think - we  
28 were talking about your remuneration. So once you were a  
29 consultant you worked for Leightons. Were you doing any

1 work for them other than in respect of C219?---Finishing  
2 off a project called WestLink.  
3 And what was that?---An industrial subdivision opposite  
4 Caroline Springs.  
5 And what percentage of your time did that take?---Not a lot.  
6 Okay. So over that period then from 2016 to early 2019 were  
7 you significantly involved in any project for Leightons  
8 other than the C219 project?---No.  
9 All right. So the situation was then at that stage you were  
10 getting \$240,000 as a retainer paid monthly?---Yes.  
11 You were receiving another \$30,000 incentive payment  
12 annually?---No, not annually.  
13 How often did you receive that?---That was a one-off - I can't  
14 remember the specifics of that. I would probably need to  
15 check my file.  
16 All right?---That was four years ago, three years ago.  
17 Were you receiving any other payment or did your contract  
18 provide for any other payment?---I believe I answered that  
19 question.  
20 Well, what was it?---There would be a bonus for rezoning.  
21 And what was that?---A bonus.  
22 Yes, and what was that? A bonus for rezoning, what does that  
23 mean?---That if the land is rezoned I would be paid a  
24 bonus.  
25 How much?---100,000. I think it was 113, maybe. I would have  
26 to check.  
27 130,000, I would suggest?---It is? Okay. I apologise.  
28 I hadn't looked at my contract for a while.  
29 You were then over a period of four years receiving or over a

1 period of three years receiving something like  
2 three-quarters of a million dollars in respect of C219  
3 plus the promise of another 130,000; would that be a  
4 correct assessment of the case?---The mathematics seems  
5 sound in general terms.

6 So you had a huge - you had a very large personal investment,  
7 personal financial investment, in getting C219 across the  
8 line?---I think even if I was still an employee I would  
9 have incentive to get it over the line. To retain a job -  
10 if I was working for a property developer that was  
11 continuing on, it would be achieving the outcomes and the  
12 goals is what helps you keep your job and move to the next  
13 project.

14 So does that mean you agree that you did have a large  
15 incentive, from your perspective?---I think that figure  
16 is - I mean, the remuneration of someone in my level in  
17 corporate development is below what the normal person  
18 would be getting for that type of work, in my view.

19 On top of money going to you there was the \$70,000 that went to  
20 SCWRAG; true?---I think that was circa 68, I think we  
21 agreed circa 70, yes.

22 Did any of that money go directly to SCWRAG or was it paid to  
23 Megan Schutz?---I don't believe we ever paid money  
24 directly to the community group.

25 Did you pay money direct to service providers?---On occasion.  
26 Those were people who put up signs or - - -?---Coffee carts,  
27 that sort of stuff.

28 Yes. But most of the money that you paid went to Megan  
29 Schutz?---Predominantly.

1 In respect of Ray Walker, Mr Woodman has given evidence that in  
2 I think it was - in any event, I will go back to the date,  
3 but at one stage Walker started being employed by him and  
4 he told you about that?--My recollection of that was that  
5 some time in 2016, I think just after my daughter had come  
6 out of being very ill at the Children's for nearly two  
7 months, and I can't remember the exact date, I apologise,  
8 but I can recall Megan saying that Ray had fallen on  
9 difficult times and that she was looking to organise some  
10 work for him with one of John's companies. I recall that  
11 it didn't really sit that well at the time; it didn't feel  
12 great.

13 But, in any event, it was something that he discussed with  
14 you?---I couldn't recall John discussing it, but then  
15 I found an email in part of my review that I couldn't  
16 remember receiving. So we must have.

17 COMMISSIONER: Why didn't you feel good about it?---Well, it  
18 just removed that independence that I felt was there, in  
19 my view.

20 But wasn't it already removed, Mr Kenessey, by Leightons paying  
21 all these funds to the community group?---Commissioner, if  
22 I may, I think there was a minister who recently bemoaned  
23 the fact that community groups don't have their voice  
24 heard. We thought we had the same ideas, objectives. So  
25 it didn't feel unnatural to support them so long as people  
26 knew that we were supporting them if ever asked. I mean,  
27 it went up the line. It wasn't just me that ticked it  
28 off. My bosses knew about it as well.

29 Mr Kenessey, do you not realise that the fact that you have

1 common objectives, that is that the community group may  
2 have wanted the same thing as Leightons, does not mean  
3 that you enter into arrangements which on the face of it  
4 suggest a conflict of interest?---If I could, just to some  
5 of the thinking?

6 Yes?---You know, resident groups predominantly form an  
7 objection to proposals. It's not uncommon that members of  
8 such groups would be planning lawyers, town planners,  
9 people skilled in the art of - it's not the art, sorry, in  
10 the processes of property development, and they would  
11 provide their skill and services to those groups. I mean,  
12 that happens - I'm sure happens quite a lot.

13 What's that got to do with what we are talking about?---Well,  
14 they are supporting a community group with their skill.

15 And what would be wrong with that?---Nothing.

16 But you, Leighton, who have a direct and immediate interest in  
17 the rezoning, are funding - secretly funding - -

18 -?---I would disagree with that.

19 You do?---Yes.

20 Did you find some documents at all - - -?---I did.

21 In the course of your searches to show that Leightons was  
22 publicly or SCWRAG was publicly reflecting the fact that  
23 their funding was coming from the property owner who  
24 wished to rezone?---I believe so.

25 What did you find?---An email. An email post Royce Millar  
26 calling me. In it I've said to Michael, I've said,  
27 "I can't believe it's an issue. It's always been public  
28 knowledge. Ray talked about it in public meetings and at  
29 panel." That would have been in, what, October '18.

1 So that's your defence to your superior? Is that what you are  
2 saying?---Yes.

3 You send an email to your superior after The Age article, or  
4 when Royce has contacted you, saying, "I don't accept that  
5 allegation. SCWRAG has made it known that we have been  
6 supporting them"?---Yes.

7 Did you find anything else?---I could look if you like.

8 There's a whole block of years that I haven't looked at in  
9 fine detail.

10 You do understand that the thrust of the examination of you has  
11 been to suggest to you that Leightons was secretly funding  
12 the community group?---I understand, Commissioner. I was  
13 up until midnight doing homework and felt that - I could  
14 do more if you like.

15 Yes, Mr Tovey?---I mean, sorry, can I add one more thing?

16 Yes?---I mean, a recollection was that in my view Emily Porter  
17 was fully aware of who was paying her bill, and I would  
18 have suspected if she had concerns that she wouldn't have  
19 taken the brief or so on and so forth. I can look for  
20 more examples if you wish, but that's another example that  
21 gave us comfort that everyone knew we were funding the  
22 group.

23 MR TOVEY: So there was no need then from your perspective to  
24 talk to Mr Woodman or Ms Schutz or for them to speak about  
25 hiding the relationship between Leightons and SCWRAG after  
26 The Age articles or at the time The Age articles were  
27 being mooted?---I'm sorry, could you repeat that? I might  
28 need a break soon, if that's all right, Commissioner.

29 Are you saying from your perspective then there was no reason

1 for any - for either you, Schutz or Woodman to be having  
2 discussions at the time of The Age articles about hiding  
3 the association between SCWRAG and Leightons?---I mean,  
4 I can't recall. If you've got something you want to  
5 direct me to.

6 COMMISSIONER: You don't have any memory of any discussions  
7 ever with Mr Woodman or Ms Schutz about concealing the  
8 relationship between Leightons and the community  
9 group?---I think early on - I've got a recollection from  
10 very early on it was discussed and it was resolved that  
11 the best way would be to be open and transparent and just  
12 be honest.

13 Is that right?---Yes.

14 So you actually have a memory of reaching an agreement with  
15 Mr Woodman, was it?---It's just a memory. I'm not sure  
16 who - it would have - you would have to think that he  
17 would have been included in that strategy, so to speak.

18 MR TOVEY: But what I don't get is, if from your perspective  
19 Leighton's association with SCWRAG is already out there  
20 and been not hidden, how can your initial discussion be  
21 about keeping it hidden?---I would have to look for the  
22 file and give you the context of that.

23 All right?---I mean, I could give you another example,

24 I suppose a memory with the residents group, if I may.

25 Yes?---When in the second community day it was said that the  
26 group had a new objective, my recollection is that they  
27 wanted to campaign - Megan said that they wanted to  
28 campaign for road safety. And, although I was in charge  
29 of C219 and the community day was for the purpose of C219,

1 I thought, "Well, I can't really argue with the community  
2 group because we're helping them have that day. If they  
3 want to have another issue they want to raise, that's  
4 their business. It's not for me to tell them they can't  
5 do that." And they set up a booth about Hall Road.

6 In the interest of transparency, did you ever suggest to  
7 Mr Woodman that he - it should be publicly disclosed that  
8 he was paying Ray Walker's wages?---I can't recall.

9 You didn't, did you? You would know if you did?---Perhaps  
10 I didn't.

11 Getting back then to Mr Rowe, and we have already been over  
12 some of this and I don't want to go to minutiae and every  
13 communication because we will be here  
14 forever?---I understand.

15 But in respect of Mr Rowe you have indicated that you basically  
16 worked hand in glove with him in order to promote the  
17 rezoning, which was the C219 amendment?---I have said that  
18 before.

19 Yes, I know. I'm not suggesting that you haven't said  
20 that?---Sorry, okay. I thought it was a question.

21 It was the starting point. And it was the case, was it, that  
22 as issues or information came to light during the C219  
23 campaign he would discuss with you what was coming to him,  
24 you would discuss what was coming to you?---That would  
25 occur.

26 And it would seem from some of the matters we have looked at  
27 that - I mean, at one stage residents or a resident had  
28 made queries to Amanda Stapledon. She passed that on to  
29 Mr Rowe, and Mr Rowe and you worked on how to respond to

1 that; is that something that happened?---Well, it's  
2 possible. But if you would like to direct me to the  
3 specifics.

4 I'm not going to go to the minutiae, but it is not inconsistent  
5 with the sort of relationship you had with him?---No,  
6 I can remember Gary coming to me during H3 for tips or my  
7 views on it and also, I suppose, strategy ideas or tactics  
8 to use against the other councillors which were on the  
9 opposite side to him.

10 In respect of H3, were you familiar with the fact that  
11 Councillor Aziz moved the initial motion to make Dacland  
12 responsible for the payment of the - for the construction  
13 of the intersection?---Look, from memory that's probably  
14 correct. I never looked at any of those council meetings  
15 where they were calling each other corrupt. I just didn't  
16 want to be a part of it, to be honest, apart from helping  
17 Gary.

18 Can we play, please, tab 123, which is a conversation between  
19 John Woodman and Megan Schutz on 5 November 2018. Now,  
20 what we have been doing - just before we get to actually  
21 playing that - in the course of these proceedings is  
22 running through a transcript at the same time as the audio  
23 is being played. Now, are you saying you are incapable of  
24 following - - -?---Correct.

25 Something on the transcript?---I would prefer to either read a  
26 transcript or listen to audio and then do vice-versa.

27 All right. In that case I want you to listen and we will check  
28 the transcript to make sure it's right and then take you  
29 back to the transcript?---Okay.

1 COMMISSIONER: The transcript should come up on the screen.

2 MR TOVEY: Yes.

3 COMMISSIONER: Ms Keating can follow it also to ensure that  
4 there's no unfairness. If Mr Kenessey prefers not to read  
5 the transcript while listening to the audio, so be it.

6 MR TOVEY: Yes?---I'm happy with that, Commissioner.

7 COMMISSIONER: Is this an exhibit, Mr Tovey, that's being  
8 played?

9 MR TOVEY: Not that I'm aware of, Mr Commissioner.

10 COMMISSIONER: So can you just particularise the conversation?

11 MR TOVEY: The conversation is a conversation between Woodman  
12 and Megan Schutz on 5 November 2018, tab 123.

13 (Audio recording played to the Commission.)

14 WITNESS: I can't really hear it, Mr Tovey, sorry. Can we  
15 start again? I couldn't understand what was being said,  
16 Commissioner.

17 MS KEATING: Commissioner, do those headphones play the audio  
18 through them? It might be the witness can use the  
19 headphones behind the computer screen.

20 COMMISSIONER: Would you like to try them?

21 (Audio recording played to the Commission.)

22 COMMISSIONER: What's the problem, Mr Kenessey?---There's no  
23 sound coming through. Thank you.

24 So, Mr Kenessey, what people normally do when a tape is being  
25 played of a conversation often in circumstances where it's  
26 not easy to pick up precisely what's being said is that  
27 they have the benefit of a transcript as they are  
28 listening. It's a lot easier for them to identify what's  
29 being said?---I might try that then, Commissioner.

1 You might try that and see how we go, and let us know if that's  
2 not helping you?---Thank you.

3 Just put them on. We might start again.

4 (Audio recording played to the Commission.)

5 WITNESS: Could you just rewind the (indistinct).

6 (Audio recording played to the Commission.)

7 MR TOVEY: Thank you. Now - - -?---Sorry, there was a little  
8 mid-section that if I could scroll down just to - I didn't  
9 quite catch.

10 It's okay. I will take you to it as we go?---Okay.

11 That conversation starts off at the - - -?---Sorry, what was  
12 the date of that again?

13 This is 5 November of 2018?---So that's after the first  
14 article.

15 It is?---Of The Age, but before the second.

16 Yes?---Okay.

17 I think the first article was on 28 October?---Sunday or  
18 Saturday? Sunday I think it was.

19 I don't know what day of the week?---I think it was The Sunday  
20 Age.

21 If you look there they are speaking about "Tom's going to get  
22 Gary to do whatever's necessary to, ah, you know, that's  
23 what he's - what he's mulling over at the moment." Is  
24 that the way in which you presented to them your  
25 relationship with Gary Rowe, that he would do whatever you  
26 said?---No. Gary would never do what I said. I've got  
27 examples where suggested motions or ideas were put to him  
28 and he either would discard them after discussing with  
29 officers and put them aside or make amendments with

1 officers to suggested motions.

2 Look at line 11, Woodman observed - - -?---Sorry, I can't see  
3 the numbers.

4 This is about six lines up from the bottom of the page?---Okay.

5 John Woodman says, "Well, well, Gary's going to do whatever Tom  
6 tells him to, and Tom hopefully is to do whatever you tell  
7 him to." Is that the way the relationship between you  
8 worked?---No.

9 Did you have any reason to understand why they would perceive  
10 that to be the case?---It's a conversation between them.  
11 I mean, Gary and I worked very well together.

12 Then obviously there was a vote or some council consideration  
13 coming up on the following Thursday?---Sorry, is this  
14 about Cranbourne West or H3? Is this about Cranbourne  
15 West or H3?

16 It's not absolutely clear?---Because in my mind while it says  
17 Cranbourne West my guess is it would be H3  
18 because - I would have to check my file. At a time there  
19 I think Gary, Peter, John and I had a meeting where John  
20 was asking about H3, they had an argument and I think Gary  
21 wouldn't do what John was asking and John left, I think.

22 I'm not going to be adamant as to what it was because, although  
23 it looks from the transcript to relate to C219, that's not  
24 necessarily the case?---There was no council meeting then,  
25 I don't think, about C219.

26 The council meeting hasn't been identified at this stage. But,  
27 in any event, if we go over the page to line 24 and  
28 Woodman observes, "Somehow or another Rocket has to be  
29 involved in Cranbourne West or someone has to brief him

1 about what's happening, you know"?---Sorry, which line  
2 number, I apologise?  
3 Line 24?---Okay.  
4 Then ultimately he proposes - - -?---Sorry, I'm still reading.  
5 I apologise.  
6 I'm just taking you to the relevant bit?---Okay.  
7 "I need for you and Tom to meet with Amanda and Ray between now  
8 and Thursday." Now, at that time was it the case that you  
9 and Megan Schutz met with Amanda Stapledon and Ray Walker  
10 at some stage?---Not to my recollection. My recollection  
11 is that I had a conversation with Ray Walker at that time  
12 over the phone. But I could check my file to make it  
13 certain.  
14 I'm now told that this was leading up to a consideration of  
15 C219 on 8 November. So this was in anticipation of C219.  
16 But, look, I simply want to know - - -?---Sorry, C219 had  
17 been approved and sent to the minister in May '18.  
18 Yes, it came before council on many occasions where they  
19 consider what step they might take next. But it would  
20 seem - I'm simply informing you that the best information  
21 we have is this conversation would appear to relate to  
22 C219?---My gut feel is that's not correct.  
23 All right. But what's of significance, though, is that it's  
24 apparent from that, is it not, that both Mr Woodman and  
25 Ms Schutz saw you as somebody who would hopefully do  
26 whatever they told you to do and they saw your  
27 relationship with Mr Rowe as him doing whatever you told  
28 him to do. Now, did you give them any basis to believe  
29 that?---Not to my recollection or belief. I mean, the

1           operative word there is "hopefully". Could we have a  
2           break soon, Mr Commissioner? I'm happy to keep going for  
3           a little bit.

4   COMMISSIONER: Yes.

5   MR TOVEY: Just while we are on this topic, on the same day  
6           there is another section of the same conversation which  
7           appears at tab 124.

8   COMMISSIONER: Mr Tovey, was that an exhibit?

9   MR TOVEY: Yes, I would seek that that be exhibited. That's  
10          the conversation of - - -

11   COMMISSIONER: I'm sorry, it's not previously been played?

12   MR TOVEY: No.

13   COMMISSIONER: It's exhibit 158, phone conversation between  
14          Mr Woodman and Ms Schutz of 5 November 2018.

15   MR TOVEY: There is a second part of that conversation, which  
16          could be included in that same exhibit, which I will now  
17          have played, which is very brief.

18   COMMISSIONER: Yes.

19   MR TOVEY: That's 124.

20   COMMISSIONER: I will mark that part A of the exhibit. This  
21          will be part B.

22   #EXHIBIT 158A - Phone conversation between Mr Woodman and  
23          Ms Schutz of 5 November 2018.

24   #EXHIBIT 158B - Phone conversation between Mr Woodman and  
25          Ms Schutz of 5 November 2018.

26                               (Audio recording played to the Commission.)

27   MR TOVEY: Insofar as there was there talk about the meeting -  
28          - -?---I'm sorry, was that a similar time?

29   Yes, that's another clip from the same conversation?---Okay,

1 I apologise.

2 Insofar as there's talk there about a meeting of all the  
3 parties, are you able to give us any guidance as to what  
4 that's about?---Again, that time, from my recollection, it  
5 would be about H3, and I think Gary refused to go to that  
6 meeting, is my recollection.

7 And so what did a meeting of all the parties involve, on your  
8 understanding?---My understanding, recalling, I think it  
9 was about getting Dacland and Watsons together, John, to  
10 see if they could stop punching on, so to speak.

11 COMMISSIONER: But Mr Rowe wasn't going to be in the same tent  
12 over that, was he?---No.

13 Mr Rowe and Mr Woodman were in the same tent in relation to - -  
14 -?---They were definitely not.

15 In relation to the rezoning issue, they both - Mr Rowe and  
16 Mr Woodman both shared a common objective in relation to  
17 the rezoning?---I would have to agree with that.

18 Mr Kenessey, don't appear to be so reluctant when you have to  
19 agree with - - -?---You scared me on the first day,  
20 Commissioner.

21 Yes, Mr Tovey.

22 MR TOVEY: Would that be an appropriate time?

23 COMMISSIONER: Yes. We will adjourn for 10 minutes.

24 (Short adjournment.)

25 COMMISSIONER: The 10-minute adjournments always seem to expand  
26 out. We really need to strictly adhere to the time  
27 limits. Yes. Yes, Mr Tovey.

28 MR TOVEY: Could the witness, please, be shown exhibit 16, page  
29 3716. I'm sorry, go down to 3718, which is exhibit 16.

1 Can you have a look at that? That's an email from John  
2 Woodman to you and Phil Staindl, copying in Lorraine  
3 Wreford and Megan Schutz, on 22 September 2016 in the  
4 run-up to the council election. You will see that it  
5 requires, "Tom, Phil, the attached colour-coded summary of  
6 candidates and persons responsible for follow-up. Thanks,  
7 John Woodman," and can we scroll down, please. You have  
8 then got numerous nominating candidates for council and  
9 they are divided up and colour-coded to be approached  
10 by - sorry, apparently to be approached by either you or  
11 Lorraine Wreford or Phil Staindl, and some of them are  
12 already designated as "friendly". Do you remember  
13 receiving this document?---I think we spoke about it  
14 yesterday.

15 Do you remember receiving it?---Well, not the day, but I have  
16 seen that document, yes.

17 Do you agree you did receive that document?---Yes.

18 When you received it what did you understand "friendly" to  
19 mean?---Could I have a look at the email?

20 Yes. Scroll up to the email?---I would assume friendly to  
21 John's network, from memory.

22 Thank you. Scroll back down again.

23 COMMISSIONER: Sorry, friendly to John's network?---Well, he  
24 knows a lot of people around Casey. It may have been  
25 C219. I can't recall what I thought at the time.

26 What did you think it was, Mr Kenessey?---Well, I was using it  
27 to talk to candidates to see if they were willing to be  
28 briefed about C219.

29 That's what you think it was in relation to?---That's what

1 I was calling candidates about.

2 Yes.

3 MR TOVEY: And so you went through those people who are  
4 colour-coded green?---I did.

5 Did you do that?---Not all of them. I think I stopped after  
6 not getting on to quite a few and one I think gentleman  
7 saying, "Please don't call candidates. You know, we're  
8 not really interested until after we have been elected.  
9 Stop wasting my time," is my summation of my notes from  
10 conversation with him.

11 Were you aware of which of those candidates were being  
12 supported by Mr Woodman, financially supported?---I don't  
13 think so.

14 Were the people who were marked "friendly" being financially  
15 supported?---I think I have stated in evidence that  
16 I think he was holding an event for Gary Rowe.

17 The situation is this: during the 2016 election Mr Woodman  
18 allocated a large amount of money in a covert operation  
19 organised by Mr Aziz to finance the election of friendly  
20 candidates. Is that something that you have ever heard  
21 about?---I have a recollection of Gary having some  
22 conspiracy theory about something like that.

23 And what was Gary's conspiracy theory?---That Sam and John were  
24 working together.

25 At the time of the 2016 election?---I can't put my finger  
26 on - - -

27 COMMISSIONER: You didn't need to rely on Mr Rowe for that  
28 information. You knew that Mr Woodman and Mr Staindl were  
29 working together. Mr Woodman treated you and Mr Staindl

1 as discharging similar functions, didn't he?---I don't  
2 think I would agree with that. I went and checked during  
3 my homework last night, Mr Commissioner, my file about  
4 Mr Staindl, if I could.

5 But I don't follow why you gave the answer to the question  
6 Mr Rowe told you something about Woodman and Staindl.  
7 Why did you refer to Mr Rowe? You know from this  
8 document, apart from anything else?---I disagree with  
9 that, your Honour.

10 What do you disagree with?---You are saying that I know that  
11 yellow means John's supporting them.

12 No, no, you know from this document that Phil Staindl is  
13 working with Mr Woodman as well as you in terms - - -

14 MS KEATING: I don't understand that that was the question,  
15 Commissioner. The question, as I understood it, was,  
16 "Mr Woodman allocated a large amount of money in a covert  
17 operation organised by Aziz to finance the election of  
18 friendly candidates." He was asked whether or not he knew  
19 that, and in response he said, "I have a recollection of  
20 Gary having a conspiracy theory about something like that,  
21 that Sam and John were working together. I can't put my  
22 finger on this." Staindl didn't come into the question,  
23 in my submission.

24 COMMISSIONER: I don't agree. But, in any event, you don't  
25 rely on Mr Rowe for knowledge that Mr Woodman and  
26 Mr Staindl were working together; you knew that as a fact  
27 for yourself, didn't you?---I knew that they were working  
28 together.

29 Yes, thank you.

1 MR TOVEY: It's apparent from this document, is it not, that  
2 you, Lorraine - there's you, Lorraine and Phil who have  
3 been allocated jobs?---It's obvious.  
4 And Lorraine and Phil are lobbyists?---I understood Phil to be.  
5 I don't know if Lorraine was a registered lobbyist or not.  
6 We know that she was a lobbyist for Mr Woodman and probably  
7 nobody else. Why were you on the lobbying  
8 team?---I wouldn't have described my function as lobbying.  
9 I was offering to inform candidates about what we were  
10 doing if they wanted to hear what we were doing.  
11 That's just beating around the bush, isn't it? You're lobbying  
12 in respect of C219. You're wanting to identify candidates  
13 who are supportive of C219?---I don't agree with that.  
14 And you want to convince candidates if you can to be supportive  
15 of C219. That's the whole purpose of this operation, is  
16 it not?---Well, they are potential future decision makers.  
17 I mean, you need to get your message across.  
18 Can't you answer a straight question?---But you are  
19 insinuating - - -  
20 It was an aim of this whole exercise to seek to determine if  
21 council candidates were supporters of C219?---I thought  
22 I have already answered that question.  
23 Could you answer it again? Do you agree with that?---I called  
24 councillors to introduce myself, tell the message - - -  
25 No, yes or no?  
26 MS KEATING: Commissioner, if the witness could be given the  
27 opportunity to respond to the question without - - -  
28 COMMISSIONER: No, he's not answering the question, Ms Keating.  
29 MS KEATING: It may be he doesn't give the answer that's

1 anticipated, Mr Commissioner. But he is attempting to  
2 answer the question.

3 COMMISSIONER: I don't agree with you. I regret to say  
4 Mr Kenessey has repeatedly not answered questions when  
5 asked, and I think it would help him if he tried to simply  
6 answer questions that can be answered by way of a simple  
7 response rather than appear to be in a circuitous way  
8 providing information. Yes, Mr Tovey.

9 MR TOVEY: Was it the purpose or part of the purpose of this  
10 exercise to determine whether candidates supported  
11 C219?---Yes.

12 And was it part of the purpose of the exercise to try and  
13 provide information to candidates which would help them to  
14 support C219?---I think you are asking me was the purpose  
15 to give them information for which it would assist them to  
16 support C219; is that the question you are asking?

17 Yes?---Yes.

18 So you were lobbying. Why didn't you just say  
19 that?---I haven't looked at the definition of "lobbying"  
20 but if that's it then that's it, Mr Commissioner.

21 What is lobbying - - -?---I mean, sorry, Mr Tovey.

22 If it is not - - -

23 COMMISSIONER: Mr Tovey, he's agreed with your proposition.

24 MR TOVEY: Okay.

25 COMMISSIONER: Given his reluctance to use the term "lobbying",  
26 perhaps you can move on.

27 MR TOVEY: Yes. In respect of Susan Serey, you were made aware  
28 that Mr Woodman had contributed to her political  
29 campaign?---He told me so, yes.

1 And you were also personally involved in her coming to you  
2 seeking your assistance in respect of the mailing out of  
3 brochures?---I answered that yesterday. Yes.

4 COMMISSIONER: Did not Ms Serey in fact come to you and see  
5 whether you could get Mr Woodman - - -?---That's what  
6 I thought he was asking.

7 No, but did Ms Serey come to you not only in relation to the  
8 postal of 9,000 letters; did she come to you to ask  
9 whether you could get funding for her campaign?---I don't  
10 recall. I don't believe so.

11 Do you recall that he funded - paid \$10,000 towards her  
12 campaign?---Sorry, could you start again?

13 Do you recall that Mr Woodman paid \$10,000 towards Ms Serey's  
14 campaign?---He said that he would.

15 That's the only information you have, is it?---Well, I don't -  
16 - -

17 As you sit there now, the only information that you have about  
18 whether or not Mr Woodman contributed to Ms Serey's  
19 campaign is that Mr Woodman said he would?---Well - - -

20 Is that the only information you have about that  
21 issue?---I could check, if you like.

22 No, no, I don't want you to check - - -?---But I don't have  
23 visibility to whether he transferred money. I don't have  
24 details of his bank accounts.

25 I don't want you to check anything. I just want you to exhaust  
26 your current memory. Is the only knowledge that you have  
27 as to whether Mr Woodman contributed to Ms Serey's  
28 campaign that Mr Woodman said he would?---Well, we went to  
29 the lunch at Rosetta, as I said, with Tony Abbott. So

1 I assumed he would have.

2 And you had no communications at all with Ms Serey before or  
3 after Mr Woodman contributed to the campaign that  
4 confirmed to you that he had done so or would do  
5 so?---I don't think so. I can't recall. It may have  
6 happened. I don't know.

7 You would know that if you had been party to getting funding  
8 from Mr Woodman for her campaign that would not have  
9 accorded with the code of conduct of Leightons, would  
10 it?---I don't agree with that.

11 You were entitled if you wanted to arrange for - -  
12 -?---I didn't arrange.

13 No, no, just listen to me?---Sorry.

14 Do you say that the code of conduct would have permitted you to  
15 arrange for funding for a councillor who was wishing to  
16 stand for election?---The code would have not allowed me  
17 to arrange, but I don't believe I arranged it.

18 MR TOVEY: Getting back to the arrangements that Mr Woodman had  
19 with councillors, was your position and is your position  
20 that you felt uncomfortable about the nature of the  
21 relationship between Mr Aziz and Councillor Ablett and  
22 Mr Woodman?---Sorry, I missed the start.

23 Did you at any stage become uncomfortable about the nature of  
24 the relationship between Mr Woodman and Councillors Aziz  
25 and/or Ablett?---Probably.

26 When?---I don't think I could be specific in answering that.

27 Megan Schutz has given evidence that they became virtually  
28 totally supine, totally compliant with the wishes of  
29 Mr Woodman. Is that something that you picked up

1 on?---I had a - my recollection is that Councillor Aziz  
2 seemed to be quite willing to follow instructions. That's  
3 words I would have used.

4 And what led you to that view?---I can't pinpoint the exact  
5 moment, Mr Tovey, I apologise.

6 Could the witness please be referred to tab 172, which is a  
7 conversation on 14 February 2018 between himself and John  
8 Woodman.

9 COMMISSIONER: Is this an exhibit, Mr Tovey?

10 MR TOVEY: I'm just checking. 46, Mr Commissioner.

11 COMMISSIONER: Thank you.

12 MR TOVEY: If you can follow this?---What was the date, sorry?

13 This is 14 December 2018?---Okay.

14 (Audio recording played to the Commission.)

15 WITNESS: Can I just confirm that was December '18?

16 MR TOVEY: Sorry?---December '18?

17 That's December '18?---14, did you say?

18 14 December?---Okay.

19 On that occasion you were talking about a proposed council

20 motion, were you?---Yes.

21 And what motion was that?---From memory it was a motion about

22 seeking to find out information about all the committees

23 that council were on in terms of the industrial land

24 supply or employment land review being conducted at State

25 Government level.

26 So this conversation is opened - or, sorry, this section of the

27 conversation opens with you saying, "Yeah, yeah, so who

28 are you going to get to move the motion? Sam or should we

29 get Gazza to do it, given that he's, you know, sponsor, so

1 to speak?" That was the way the conversation went. Now,  
2 there it seems that you are acknowledging that Mr Woodman  
3 can basically choose from a number of councillors, a  
4 number of identified councillors, who's going to move a  
5 motion that he's going to prepare?---I wouldn't phrase it  
6 like that. I would say that we were having a discussion  
7 as to who should move it and I think from, having re-read  
8 it, you know - - -

9 What I want to suggest to you is that it is painfully apparent  
10 from that conversation that you opened up your  
11 conversation with Mr Woodman acknowledging that he could  
12 himself make a choice, "It could be Sam, it could be  
13 Gazza." Now, you knew that he had a relationship with  
14 them which would allow him simply to direct them to move a  
15 motion in council, did you not, at that  
16 stage?---I disagree with that, if I could answer your  
17 question, if I could have a little bit of time. Just for  
18 context, that was after "Piss off or get off the pot". So  
19 I was trying to get rid of John. A resolution of this  
20 conversation was I spoke about it with Gary about  
21 obtaining information about these committees and reports  
22 being done at State Government level. My recollection is  
23 that Gary said, "It's a waste of time. Officers are  
24 already reporting to us. Why would we do such a stupid  
25 motion?" That's my recollection.

26 I'm not asking you about how the motion was going to work.

27 What is clear from this is you anticipated that Mr Woodman  
28 would just tap a councillor of his choice on the shoulder  
29 to move a motion that he was to prepare, or you or Schutz

1           were to prepare?---He seemed very close to Sam.

2   And is that why you nominated Sam? I mean, see, don't you

3           understand it there you are asking him, "Look, who are you

4           going to get to move this motion?" You understood him,

5           did you not, to have immense power over the way in which

6           matters proceeded in front of the Casey Council?---But as

7           I said to the Commission before - - -

8   No, did you understand him to have immense power over the way

9           in which matters proceeded before Casey

10          Council?---I thought I have already answered that question

11          that he had a strong relationship with Sam, from my

12          observation.

13   And Geoff Ablett?---It would appear so, yes.

14   And Amanda Stapledon?---Not so much.

15   And he seemed to have immense power over the way in which

16          council decisions were ultimately structured and made,

17          from your observations?---Well, I observed that.

18   I now want to move on to October - go back just shortly to

19          Lorraine Richards?---Who, sorry?

20   Sorry, to Pauline Richards. On 22 October 2018 there was a

21          conversation - this is a conversation between yourself and

22          Mr Woodman. It hasn't been transcribed, but I will just

23          give you what is the brief summary of that conversation so

24          you can bear this in mind when you are taken to a recorded

25          section of conversation which occurred a couple of days

26          later. On 22 October John Woodman and you had a

27          conversation where, among other things, he informed you

28          that Phil Staindl had been provided with a draft letter to

29          the minister from the community and that Staindl was going

1 to discuss that letter with the minister's planning - the  
2 Minister for Planning's Chief of Staff, Mr Keogh. Do you  
3 remember that being discussed?---Did you say end of  
4 October '18?

5 Yes, this is 22 October?---Sorry, if I could answer?

6 Yes?---I recall, because in my homework last night I found a  
7 document which I reported up to Leighton that I had been  
8 provided a copy of a SCWRAG letter by John that I had  
9 never seen before, or didn't know about its existence.

10 And was this a SCWRAG letter that was being sent on to  
11 Mr Keogh, the ministerial adviser?---From my notes it was  
12 a letter that had been sent before I knew about it.

13 Did you become - did you know then or at some later stage that  
14 there was a process available whereby the ministerial  
15 adviser would vet a draft, then send it back to you so you  
16 could send it on to the minister in a more appropriate  
17 form, if necessary?---Just to clarify, are you asking do  
18 I recall of giving a brief to a minister's adviser for  
19 their input to then on-send?

20 Yes. Did you know of a process whereby - - -?---I don't think  
21 so, no.

22 A ministerial adviser would examine in advance a draft of  
23 something that was going to be submitted to the minister -  
24 - -?---Not from my - - -

25 So it could be tidied up, if necessary?---Not from my  
26 experience. I remember submitting a draft or a - - -

27 That conversation on 22 October 2018 also involved Woodman  
28 telling you that he was giving Pauline Richards \$20,000  
29 extra for her campaign. All right. Following that, could

1 we please go to tab 165, which is part of a conversation  
2 which followed the conversation that I have just  
3 summarised to you. This is a conversation between  
4 yourself and John Woodman on 23 October 2018?---Sorry, the  
5 date was 23 October?

6 (Audio recording played to the Commission.)

7 MR TOVEY: Is that a conversation that you had? I mean, you  
8 are looking bemused. That is a conversation that you  
9 had?---Well, yes. It would appear so, yes.

10 What do you mean it appears so? It was?---Well, yes.

11 And that was a conversation where he was telling you about what  
12 he had arranged for Pauline Richards?---I thought it was  
13 Jacinta Allan. Sorry, can you - - -

14 That whole conversation was about Pauline Richards, who we have  
15 just - - -

16 COMMISSIONER: Do you need to go back to the transcript again,  
17 Mr Kenessey?---Okay. That's why he was putting a post on  
18 his property at Evans Road, which was her electorate.

19 MR TOVEY: Yes, he was comparing her with Jacinta Allan. But,  
20 look, the effect of that was, would you agree, that he was  
21 telling you that he made her a generous offer and she was  
22 responding by being - responding to the extent that she  
23 was saying that C219 would be rejected over her dead body;  
24 that's the gist of the whole conversation, isn't  
25 it?---I thought it only referred to a sign on his  
26 property.

27 But you had already become aware, I suggest two days before,  
28 that he had offered her \$20,000?---And how would I know if  
29 he'd paid it or not?

1 Are you kidding me?---You have asked me to answer - - -

2 COMMISSIONER: I don't think he is, Mr Tovey. It's a serious  
3 question he's asking.

4 MR TOVEY: What I'm asking you is that he's told you he's  
5 proposing to give her \$20,000, this is about what  
6 she's - immediately after that, within two days, you have  
7 a conversation about what she's prepared to do, and are  
8 you saying that it didn't connect to you that this  
9 arrangement might have been a response by her in respect  
10 of his generous offer of \$20,000?---That's if you are  
11 believing what he's saying, because earlier than that, as  
12 I have given evidence before, Gary Rowe told me that that  
13 was not her view according to Gary Rowe.

14 COMMISSIONER: So what happens, Mr Kenessey, is that your world  
15 is dictated by what Mr Rowe tells you, not what you  
16 actually know from your own dealings with Mr Woodman; is  
17 that the way things work?---No, no, I had two people  
18 providing me information and I had to make a judgment call  
19 on which person I was believing. They were telling me  
20 conflicting information.

21 But do you think Mr Rowe knew that Mr Woodman was contemplating  
22 approaching Pauline Richards - - -?---I don't think  
23 Mr Rowe knew that.

24 Do you think that he was - Mr Rowe was aware of the  
25 conversation between you and Mr Woodman about providing  
26 funding for Ms Richards' campaign?---I don't believe so.

27 Do you think Mr Rowe was aware of the fact that Mr Woodman was  
28 telling you that he had actually spoken with Ms Richards  
29 and Ms Richards had indicated a support for C219?---Sorry,

1           that was a long question.  Could you - - -  
2  Do you think Mr Rowe knew all of the information Mr Woodman was  
3           passing to you?  Was he privy to that?---I don't believe  
4           so.  
5  So what has it got to do with Mr Rowe?  How do you use Mr Rowe  
6           to put a complexion on your communications with  
7           Mr Woodman?---Because the rezoning had just been deferred  
8           and it felt like John was clutching at straws about - and  
9           trying to demonstrate that his network was still on board.  
10 What's that got to do with Mr Rowe?---You have to put all the  
11           information together to - I mean, part of my job is  
12           getting information from all types of different sources  
13           and then making assessments as to, you know - to the best  
14           of your ability which ones you believe and which ones you  
15           don't and do they get - do the stories corroborate,  
16           et cetera, et cetera.  
17 Did you see any sign in that conversation or the previous one  
18           that was played to you of you taking issue with Mr Woodman  
19           about the strategy that he was employing?---I didn't take  
20           issue because I was starting a strategy to get rid of him.  
21 I'm sorry, so you don't say anything to him to deter him from  
22           following the course he says he's going to while all along  
23           at that point of time you are intending to get rid of him;  
24           is that the position?---Well, I'm not sure if you have  
25           ever had a - - -  
26 No, is that the position?---That's my position because  
27           arguments with John are difficult to ...  
28 MR TOVEY:  When you say to him in respect of Pauline Richards,  
29           "She understands obviously the nuance that you don't put

1 big industrial next to fucking" - that's obviously  
2 residential, that was just you leading him along, was it,  
3 or lying to him? What was that?---Could I - what's  
4 the - where would you like me to - - -  
5 It's the second page, line 23?---Could you repeat the question?  
6 Yes. So he's telling you that she's going to deliver in the  
7 context of him having made the generous offer - -  
8 -?---Sorry, I thought the context was that he had  
9 explained the situation, the merits to her, and she  
10 understood and hence the nuance of the conflict between  
11 industrial and residential uses.  
12 If that's the case then what you are saying is that - is that  
13 something being honestly said by you?---What, that there's  
14 a conflict between industrial and residential?  
15 That your take from that conversation was that she understood  
16 the nuance that you don't put industrial next to  
17 residential?---Well, that's what I've said.  
18 Is that the truth? Is that the way you truly saw the position  
19 at that time?---Yes. Well, no-one was - I didn't know  
20 people were listening, did I?  
21 What's Mr Woodman lying about? If you accept that she was at  
22 that time understanding the thrust of your C219 argument,  
23 what is it that you say Mr Woodman was lying to you about?  
24 I mean, your response is rubbish, isn't it?---Sorry, there  
25 are two parts - things there. You are talking about  
26 understanding the nuance of the merits in one; secondly  
27 that she supports. I recall information that soon after  
28 the election, I believe it was to Gary, she said, "Look,  
29 I don't want to be involved. I'm a new member. I don't

1 really understand about planning. It's got nothing to do  
2 with me." I've got a recollection of that after she was  
3 voted in, but I think it was Gary who told me.

4 COMMISSIONER: That's not an exhibit, is it, Mr Tovey?

5 MR TOVEY: It was an exhibit. I'm sorry, sir, I took a note of  
6 the exhibit number. Exhibit 59.

7 COMMISSIONER: 59. Thank you.

8 WITNESS: Sorry, Mr Commissioner, could we have a break in  
9 about 10, 15?

10 COMMISSIONER: Yes. Do you mean now?---Ten or 15 minutes. I'm  
11 happy to go for a little bit, but I'm just - but if it's  
12 just so when Mr Tovey's got a convenient time.  
13 Yes.

14 MR TOVEY: We are going to have lunch at - I would like at this  
15 stage, Mr Commissioner, to get through to the finish of  
16 this witness's evidence. It might take us slightly beyond  
17 1 o'clock, but if he wants to have a break I would suggest  
18 that the appropriate time is now.

19 COMMISSIONER: You are going to something else, are you,  
20 Mr Tovey?

21 MR TOVEY: I'm going on to something else, yes.

22 COMMISSIONER: Very good. We will adjourn for 10 minutes.

23 (Short adjournment.)

24 COMMISSIONER: Mr Tovey, before you continue, I want to return  
25 to some evidence Mr Kenessey gave immediately before the  
26 adjournment in which he denied that he had arranged for  
27 Ms Serey to get campaign funding from Mr Woodman. That's  
28 what you said, isn't it, Mr Kenessey? You denied that you  
29 had arranged it?---I didn't believe that I had.

1 No, you didn't say that?---I apologise.

2 What is your state of mind now, Mr Kenessey?---In how do  
3 I feel?

4 Did you on Ms Serey's behalf arrange campaign funding for her  
5 through Mr Woodman?

6 MS KEATING: Commissioner, in terms of the campaign funding,  
7 I believe the Commission has heard evidence of two  
8 different aspects to this. He's been asked about \$10,000.  
9 He's also been asked about mail-outs. If you wouldn't  
10 mind, Commissioner, just identifying which of those or is  
11 it both of those, because the witness has given evidence,  
12 "The code would not allow me to arrange, but I don't  
13 believe I arranged it." That was his evidence. So if he  
14 could just be taken to the specifics, Commissioner.  
15 I don't mean to be difficult.

16 COMMISSIONER: Is that in relation to the arranging of the  
17 9,000 letters for posting, which I will come to, or is  
18 that in relation to the \$10,000 for her campaign?

19 MS KEATING: He was asked, Commissioner, and I understand it  
20 was by you, "Do you recall that Woodman paid \$10,000 for  
21 Susan Serey's campaign?" "He said he would." You asked,  
22 "The only information that you have is that he said he  
23 would?" "I could check. I have no visibility of whether  
24 he transferred the money." Commissioner, you asked, "Is  
25 the only knowledge and in the context of exhausting your  
26 memory you have that Woodman said he would," and he said,  
27 "We went to the lunch at Rosetta's, so I assume he would  
28 have." Commissioner, you said, "You had no communication  
29 with Serey before or after he contributed to that to

1 confirm that he would or did?" He said, "I don't think  
2 so. I can't recall. It may have happened."  
3 Commissioner, you said, "You would know that if you had  
4 been party to getting the funding from Woodman for her  
5 campaign that would not have accorded with the code of  
6 conduct?" "I don't agree with that." Commissioner, you  
7 said, "You believe you were entitled to arrange for that,"  
8 and the answer was, "I didn't arrange for that." And you,  
9 Commissioner, said, "You say the code of conduct permitted  
10 you to arrange for funding for a councillor standing for  
11 election," and the answer was, "The code would not allow  
12 me to arrange, but I don't believe I arranged it." So it  
13 is in relation to the \$10,000 - - -  
14 COMMISSIONER: Yes, but he said - on your notes, Ms Keating, he  
15 said, "I didn't arrange that."  
16 MS KEATING: Yes, that's his evidence.  
17 COMMISSIONER: Is that still your state of mind,  
18 Mr Kenessey?---I don't believe I did. I don't think so.  
19 Could the witness be taken to page 4689, please, of the court  
20 book? So this is a chat message from Ms Serey to you  
21 asking you if you could ask John to organise \$9,000 for  
22 letters to be sent out?---Yes.  
23 What were you doing - and did you do that?---I asked John, yes.  
24 What were you doing discharging such a function?---A friend had  
25 asked me to ask John a question. So I did.  
26 But that would have been - wouldn't this be contrary to  
27 Leighton's code of conduct, Mr Kenessey?---I don't think  
28 I was organising it. I think I have given evidence before  
29 that John had the right to say "no" or do whatever. He

1           had the right to say "no".

2   This is not about John.  This is about you?---I didn't feel

3           like it was.

4   Could you just go on down the page, please?  Keep going.  Just

5           stop there, please.  16 November, what's that about,

6           Mr Kenessey?---Susan has asked me if John could send

7           another 10,000.

8   Susan is asking you; correct?---Yes.

9   And what do you do?---I spoke to John, from memory, and I said,

10           "Would you be happy to send - she asked me.  I'm asking

11           you would you be happy to send another batch of mail."

12   Of money?---Mail.

13   What about the \$10,000?---That's mail, from my recollection.

14           From mail-out letters.

15   There's a recorded conversation between you and Mr Woodman on

16           14 November in which you say to Mr Woodman, "I forgot to

17           ask you.  I think our friend Susie might need a little bit

18           more help."  And then you ask Mr Woodman whether he has

19           time for a cup of tea, and so you agree to meet down at

20           the cafe; do you recall that?  Does that refresh your

21           memory at all?---I usually call John to have a cup of

22           coffee, yes.

23   And did you at that cup of coffee convey to him that Ms Serey

24           wanted funding?---I would have.

25   And was it as a result of that conversation that Mr Woodman

26           then provided further funds to Ms Serey's campaign?---It

27           would be a logical - - -

28   Yes.  In which case you did organise it, didn't

29           you?---Well - - -

1 I don't understand, Mr Kenessey, why you - - -?---I felt more  
2 like a messenger, not an organiser.

3 I don't understand why it's been so difficult with you to get  
4 answers from you?---But it's difficult sitting here,  
5 Commissioner. I've got to tell you it's not pleasant.

6 Is it because you are conscious that the way you operated with  
7 Mr Woodman you knew that you were operating in a zone that  
8 was in contravention of your employer's - - -?---I don't  
9 believe so.

10 Code of conduct?---Sorry to interrupt you.

11 So you don't think that going to Mr Woodman and arranging for  
12 Mr Woodman to do something that you weren't permitted to  
13 do, namely contribute to Ms Serey's campaign, you don't  
14 think that was in breach of the code of conduct?---As  
15 I said to you numerous times my view was that he was in  
16 his rights to say "no".

17 I see. That's your answer?---That's my answer.

18 Yes, thank you. Yes, Mr Tovey.

19 MR TOVEY: I just want to take you to another document. Did  
20 you attend any fundraisers for Mr Rowe?---I did.

21 And when was that?---It would have been before - from memory of  
22 that document - the '16 council election.

23 Was this a fundraising for a State political purpose or for  
24 council purposes?---Council.

25 And where was that conducted?---Crown.

26 Crown Casino?---From memory.

27 And who provided the - - -?---John hosted.

28 Was this a room being hired at Crown Casino?---It would have  
29 been.

1 And a dinner being put on?---From memory, maybe just finger  
2 food.  
3 Were contributions made by guests to the fund?---From memory,  
4 I didn't see it but that was the purpose.  
5 And did you attend?---I did.  
6 Did you assist in arranging that for your friend?---I probably  
7 would have had conversations with Gary and John about it,  
8 yes.  
9 And how much was raised?---I'm uncertain.  
10 And was it part of - was it within the Leightons' code of  
11 conduct for you to be - sorry, for an employee to be  
12 involved in fundraising for councillors?---Well, I didn't  
13 see myself as fundraising.  
14 You didn't see it as - sorry, helping arrange and attending a  
15 fundraiser you don't see as fundraising?---Well, I think  
16 I would have had conversations with John and Gary about  
17 it, but I don't think I would have been organising it.  
18 How many attended?---Fifty to 80.  
19 And what was the cost?---I don't know, from recollection.  
20 How much was raised?---I'm not sure. I think I just answered  
21 that.  
22 Do you have any idea at all? Thousands of dollars, no  
23 doubt?---It would have been thousands.  
24 On 18 June of 2018, this was in the lead-up to the elections -  
25 - -?---Sorry, did you say 2018?  
26 2018?---Aren't we talking about '16?  
27 No, I'm now moving on to 2018?---Okay. Thank you.  
28 Could the witness, please, be shown 4686? Look at the middle  
29 of that page. There is an attachment being sent by Gary

1 Rowe to you. That attachment is a bank account number;  
2 all right? Then the next name immediately thereafter  
3 there is a further message saying, "Account name: Narre  
4 Warren South electorate conference." Was that Mr Rowe  
5 sending you details of the bank account number to make  
6 donations to Susan Serey?---Could I have a look at the  
7 top, if you don't mind? I just can't recall this. Can  
8 I have a look at the top? And further down if possible?  
9 Okay. Sorry, if you could repeat the question?

10 Was that Mr Rowe sending you the details of the bank account  
11 number to make contributions to the Narre Warren South  
12 electorate conference?---It looks like it, yes.

13 And that was Susan Serey?---Yes. It's jolted my memory a bit  
14 that Gary and John might have been working together to  
15 organise that function, and just prior to that function  
16 I can recall now that John and Gary, Peter Williams and I,  
17 from memory, we had lunch at the Stokehouse and John was  
18 asking Gary to do something. Maybe it was in relation to  
19 the Pavilion Estate. They had an argument that time  
20 again, and John left and Gary was so angry, from my  
21 recollection, with John that he refused to attend the Tony  
22 Abbott lunch.

23 What was this about, the transmission of Susan Serey's  
24 electoral bank account?---As I said, I can't recall that,  
25 but it's obviously been sent to me.

26 Why?---Why what?

27 Why would you have anything to do with contributions being made  
28 to her account?---I'm not sure.

29 Can you think of any reason?---Maybe he wanted me to send it to

1 John. I don't know. But that doesn't make sense either  
2 because he would have sent it to John directly then.

3 Did you ever provide Susan Serey with funding?---Personally?

4 Yes?---Yes, I gave her a few hundred dollars of my own and

5 I bought a thing at an auction, from memory.

6 Sorry?---An auction item at a fundraiser for her.

7 Other than that?---I can't recall.

8 How much was that?---The auction item was 350 or something.

9 And was that paid for by - were you reimbursed in respect of

10 that?---No.

11 COMMISSIONER: Are you moving on, Mr Tovey, from the chat

12 message?

13 MR TOVEY: Yes.

14 COMMISSIONER: I will mark the chat message between Mr Rowe and

15 Mr Kenessey, 1 August '18, exhibit 160. The previous chat

16 message between Ms Serey and Mr Kenessey of 16 November

17 '18, that will be exhibit 159.

18 #EXHIBIT 159 - Chat message between Ms Serey and Mr Kenessey of

19 16 November 2018

20 #EXHIBIT 160 - Chat message between Mr Rowe and Mr Kenessey,

21 1 August 2018.

22 MR TOVEY: When you bought the item at auction who was the

23 money paid to?---The event. I can't recall. It was a

24 fundraising function. I believe I paid for it on the

25 evening.

26 I now want to take you to a conversation that was recorded on

27 8 December 2018 - sorry, on 18 December 2018, which is tab

28 72, clip B. It's a conversation between yourself and

29 Mr Woodman.

1 (Audio recording played to the Commission.)

2 MR TOVEY: That conversation, does it not, involves a  
3 suggestion by you that, if possible, the Premier should be  
4 enlisted to put pressure on the planning minister; that's  
5 what it boils down to, does it not?---Yes.

6 That doesn't sit very well with your previous evidence, does  
7 it, that you weren't concerned to have politicians putting  
8 pressure on Mr Wynne to act in a certain way?---Could  
9 I elaborate?

10 I'm just asking you. If you can just answer my question first  
11 and then elaborate?---I would like to if I'm allowed.

12 COMMISSIONER: I'm sorry?---I feel like I'm not being allowed  
13 to answer the question that's being asked.

14 MR TOVEY: Do you acknowledge that you previously told me that  
15 you would have had no part in any strategy whereby you  
16 would have other politicians sought out to put pressure on  
17 the planning minister; is that not what you told me  
18 earlier this morning?---If I could bring you back to my  
19 earlier evidence where I told you that I was planning to  
20 get rid of John. The added context is that in an email he  
21 would have already been told to stop work unless he  
22 provided a written strategy, which was later again done  
23 because John's not the best at following instruction. And  
24 what was in my mind, I needed him to put his strategy into  
25 paper because as soon as I had that it was a rational  
26 reason to which I could - it was the last piece of the  
27 puzzle I needed in my strategy to remove him to then give  
28 to Leighton Properties and to Dacland and Daiwa and say,  
29 "We are standing him aside. Here's the logic to standing

1 him aside, and even John can't argue with this." In that  
2 way the intention was to keep him briefed so that he  
3 couldn't cause mischief, so to speak, and strong arm us  
4 again. But this was a deliberate, slow, methodical  
5 strategy to get him to put what he was trying to do on  
6 paper, which was to get The Age to retract what he had  
7 done and what I thought was a silly strategy moving  
8 forward. But I needed it in writing.

9 COMMISSIONER: I'm not sure that any of that is an answer at  
10 all?---Well, it's the truth, Mr Commissioner.

11 Whether it is or it isn't, Mr Kenessey, it's not an answer to  
12 counsel's question?---I take your point. I apologise.

13 And you have repeatedly done that. You don't answer the  
14 question, and then you provide a whole range of  
15 information and we are no wiser then as to what your  
16 position is in relation to the question that's been  
17 posed?---I will try harder.

18 MR TOVEY: You ask him there whether he can use the Premier to  
19 put pressure on the planning minister?---I did ask him  
20 that.

21 COMMISSIONER: Was that a serious enquiry or were you trying to  
22 set Mr Woodman up to do something that would enable you to  
23 discharge him from his role?---The latter. I was trying  
24 to set him up. I was trying to set him up.

25 So that wasn't a genuine enquiry by you that he go to the  
26 Premier?---I wouldn't think he would do it anyway. So  
27 correct.

28 No, no - - - ?---Sorry, I'm answering the question, sorry.

29 Which is it?---I was setting him up.

1 You were setting him up.

2 MR TOVEY: I just want to understand what was the set-up. The  
3 set-up was that then you would get him to write back  
4 saying that the strategy now was to get the Premier to  
5 intervene, which would be self-evidently contrary to the  
6 code of conduct?---No, I think I just wanted him to put  
7 his strategy on paper because it was plainly ridiculous.  
8 I mean, I'm sure you have got a copy of it.

9 COMMISSIONER: Did you have your employer's - or in this case  
10 you were now a consultant. Did you have Leightons'  
11 consent to put such an extraordinary proposal to  
12 Mr Woodman, that is that he should try and go directly to  
13 the Premier?---As I have said before, Mr Woodman had a  
14 network. I was at the golf day where the Premier was. So  
15 that's a very specific question. My employer knew we were  
16 talking to politicians.

17 And how did they know that?---Because I would have reported it  
18 up the line to them in detail.

19 How often might you have reported that?---Potentially weekly;  
20 maybe more if it was a busy time.

21 So is the inference to be drawn from that, Mr Kenessey, that at  
22 no time were you told that you should desist from  
23 following that strategy of talking to  
24 politicians?---Correct.

25 And the answer to my question about whether or not you had  
26 authority to suggest that Mr Woodman go to the Premier,  
27 you believe you had that authority?---I believe so.

28 I take it you hadn't discussed with your superiors that you  
29 were going to raise that suggestion not by way of an

1 intention that Mr Woodman do it but to set him up so that  
2 you could have sufficient justification to discharge him  
3 from his contract?---We were in relatively regular  
4 discussion on ways to get rid of John by that time.

5 Yes, Mr Tovey.

6 MR TOVEY: Mr Woodman was being paid and promised very large  
7 sums of money, was he not?---He was paid, by my  
8 reconciliation for the preparation for this hearing,  
9 I think it was about 762,000.

10 And with another 2 million to come?---Yes.

11 Towards the end Mr Woodman, you told us, was seeking to justify  
12 his worth to save his contract; is that the  
13 situation?---Yes.

14 In order to do that he was telling you whatever he could about  
15 what levers he might be able to pull?---Yes.

16 And he was making it absolutely clear to you that he had levers  
17 which he could pull in respect of numerous politicians  
18 that he named who he said would intervene with the  
19 minister or he might expect to intervene with the  
20 minister; is that right?---Most likely, yes.

21 He also at that stage indicated to you, did he not, that he had  
22 a number of councillors in his pocket and doing his  
23 bidding?---It's possible. I'm not sure.

24 It's difficult to understand that he wouldn't?---I would have  
25 to check my file. My recollection is about because we  
26 were already out of council there was no need to do that.  
27 So I say "possible" because I don't - you know, with the  
28 State politicians I can say "yes". But I would have to  
29 check my file for local government.

1 COMMISSIONER: But do you think if Mr Woodman had confided in  
2 you that, whether it was a corrupt arrangement with  
3 councillors or merely a position in which he had  
4 contributed to campaigns so that he felt that he had an  
5 opportunity to influence them, whichever of the two, do  
6 you think you would have recorded that in your  
7 notes?---I would have.

8 You would have recorded that he told you that - if he told you  
9 he had a corrupt arrangement, do you think you would have  
10 recorded that in your notes?---I believe I would have.

11 MR TOVEY: I now want to go with you to what was happening  
12 around the time of The Age articles. Could I take you  
13 first to tab 242? I need to tender the last exhibit,  
14 which was the conversation between Mr Woodman and  
15 Mr Kenessey on 19 December 2018, tab 72.

16 COMMISSIONER: That will be exhibit 161.

17 #EXHIBIT 161 - Conversation between Mr Woodman and Mr Kenessey  
18 on 19 December 2018.

19 MR TOVEY: Could we have that played, please?---Sorry, was that  
20 17 October?

21 This is 17 October ?---Thank you.

22 (Audio recording played to the Commission.)

23 MR TOVEY: I think it can be stopped there, Mr Commissioner.

24 COMMISSIONER: Yes.

25 MR TOVEY: That's obviously, is it not, a conversation that  
26 takes place on 17 October and the conversation relates to  
27 it having been discovered that the minister is going to  
28 defer a decision on C219; is that right?---I remember  
29 where I was when I had that conversation.

1 Where were you?---In the lane next to Longrain.  
2 And that was an epic piece of news in the context of what you  
3 had been doing for years?---Huge.  
4 So to use the terms that Mr Woodman used there your initial  
5 reaction was that if that's the case he indicated that you  
6 were fucked?---Probably, yes.  
7 Well, he did?---Yes.  
8 And it would appear that they had an actual copy of the letter,  
9 even though the council hadn't received it yet?---They  
10 had. John forwarded it to me.  
11 And you didn't want to send a copy of that letter on to Sydney  
12 until the council had actually communicated with you  
13 because you didn't want to make it apparent that you had  
14 some back channel to get a copy of the letter before the  
15 council did?---No, I suppose I wanted to breathe. I was  
16 in shock. I wanted to get more information before I went  
17 to Sydney and give a reasoned, concise, considered - - -  
18 But that document would indicate that as at 17 October you had  
19 knowledge that there had been a - sorry, you had knowledge  
20 that The Age was sniffing around?---Correct.  
21 You could only speculate as to whether the activity of The Age  
22 had brought about the consequence that the minister had  
23 deferred his decision?---Correct.  
24 And as a result of that, and this wasn't in the section that  
25 was played to you but you may well remember, Mr Woodman  
26 was proposing that he wanted to have a meeting with your  
27 people in Sydney?---Most likely, yes.  
28 And he also said this, "They're going to say, 'Well, what the  
29 fuck.' I think the way the agreement reads, they can give

1 me the arse now, can't they?" And he went on to indicate  
2 that his recollection of the agreement was that if there  
3 was an inquiry into the use of industrial land the  
4 agreement would be vitiated?---"Change in process" was the  
5 contractual term, and the industrial review would be  
6 deemed to be a change in process.

7 So was it your recollection that at that stage he saw the case  
8 to be that if the minister implemented an overall review  
9 as to the use of industrial land which would impact on  
10 C219 that would have allowed Leightons to get out of the  
11 contract?---It would start the clock ticking for two years  
12 from that event.

13 I see. All right. And that's something that you looked up,  
14 did you, at that time or shortly thereafter?---I might  
15 have had it at my recall; but would have, if not, looked  
16 it up shortly after.

17 Mr Commissioner, I apologise playing these tapes and the review  
18 of documents always takes longer than I anticipate. It  
19 would appear that just looking at what's still to come  
20 there's probably still another six tapes, which will  
21 probably be another hour.

22 COMMISSIONER: Yes.

23 MR TOVEY: So it may be that this is an appropriate time to  
24 have lunch.

25 COMMISSIONER: Very good. 2 o'clock, Mr Tovey?

26 MR TOVEY: Yes, thank you.

27 COMMISSIONER: Go and have some lunch, Mr Kenessey.

28 <(THE WITNESS WITHDREW)

29 LUNCHEON ADJOURNMENT