

# **EPIQ AUSTRALIA PTY LTD**

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**INQUIRY INTO THE CITY OF PERTH**

**PUBLIC HEARING - DAY 82**

**WEDNESDAY, 7 AUGUST 2019**

**INQUIRY PANEL:**

**COMMISSIONER ANTHONY (TONY) POWER**

**COUNSEL ASSISTING:**

**MR PHILIP URQUHART**

**COUNSEL APPEARING:**

**MS FIONA STANTON and MS JENNY McKENZIE (Mr Yit Kee YONG)**

**MR ALAN SKINNER with MR PETER MARIOTTO & MR PURDY (Mr  
Dimitrios LIMNIOS)**

**MR PETER McGOWAN (Ms Judith McEVOY)**

**MR JOEL YELDON (Ms Janet DAVIDSON)**

**MR AARON McDONALD ( Mr Reece HARLEY)**

**MR ROBERT FRENCH (Mr Robert BUTLER)**

**MR CHRISTOPHER HOOD (Mr Jim ADAMOS)**

.07/08/2019

HEARING COMMENCED AT 9.31 AM:

5 COMMISSIONER: I will begin with an Acknowledgment of Country. The Inquiry into the City of Perth acknowledges the traditional custodians of the land on which it is conducting this hearing, the Whadjuk people of the Noongar Nation and their Elders past, present and future. The Inquiry acknowledges and respects their continuing culture and the contribution they make, and will continue to make, to the life of this City and this region.

10 Mr Urquhart.

MR URQUHART: Thank you, Commissioner.

**MR Yit Kee YONG, recalled on former oath:**

15 Mr Yong, I was asking you some questions about the Osaka group of companies that Mr Takemori was the director of yesterday?---Yes.

20 Just before I continue with that, can I ask you this: you did advise the Commissioner that you had discussed your evidence with your brother over the lunch break yesterday?---Yes.

25 Leaving aside any discussions you had with your lawyers, did you discuss your evidence with anybody else, apart from your brother, over the lunch break yesterday?---No.

Are you absolutely certain about that?---Yes.

30 Because you do understand the Inquiry has means of finding out whether you spoke to anyone on your telephone, for example?---Yes.

So you maintain that, do you?---Yes.

35 You didn't speak to other members of your family?---No.

Absolutely certain of that?---Yes.

40 What about after court yesterday? I don't want know about whether or not you discussed anything with your lawyers regarding your evidence, but what about members of your family, did you discuss your evidence with them last night?---No.

Are you certain about that?---Yes.

45 You are?---Yes.

You didn't make any telephone calls to them?---Yesterday, after 5 o'clock, I went on my way back to the office and found no-one in the office, so I rang them.

So you did ring?---Because I can't find anyone, I was not aware, so I rang them and they say they are on the way here to deliver a document.

5 Who did you speak to?---It was my mum, because I rang my brother and he was not in the office and I rang my mum and she says she's bringing a document here, so I said, okay, I will wait for her in the office. That's it.

She was bringing a document to the office?---To the Commissioner.

10

A document to the Commissioner?---Yes.

So your mum gave you a document - - -?---No, she's on the way here to pass a document to officer, on-forwards to the Commissioner. I said, in that case I will just wait in the office. That's it, that's the only phone call I have.

15

So your mother said she was dropping a document off to - - -?---Because she asked me whether I'm still here - whether she want to come and pick me up, she's on the way here. I said, "No, I'm already in the office."

20

What document was that, do you know?---I don't know. I don't know.

Was it something to do with your father's law degree?---Yes.

25 It is?---It is, because I was told, "Why are you coming here, I'm already on the way back" and she says, "Because I was told to pass documents." I said, "Okay then." She told me that she's passing - she had to run back to home because the document was not in the office, so she ran back with my father to collect the documents at home and rush back because she said the timeline was 5.30 or before 5, so she need to rush to get the documents.

30

Can you remind me again where your father got his law degree from?---University of Wolverhampton.

35 Where is that?---UK.

UK?---It's a UK uni. So that's it, that's the only conversation.

40 Have you considered the questions I asked of you regarding what Mr Takemori's account was of this meeting he had with you in March of 2016?---That was discussed yesterday.

45 Yes, that's right, and have you reconsidered your evidence in relation to that?---Yes. I really believe that I'm asking him for his support to sign up the enrolment form. I don't know why he says he was informed that for assessment of my duty at City of Perth. I'm very surprised.

Am I right in saying, though, that's pretty much all you said to him, "Look, I'd like you to sign these documents to support me as a Councillor"? Isn't that pretty much all you said?---No. I said, "You can have a look at the form, you can have a look, you can flip through it, you can read and see whether you're comfortable signing it."  
5

But he accepted your word for it though, didn't he? He didn't read through carefully every single line of each of these eight documents, did he?---He pick it up, he read, he flip over.  
10

What did he read?---From front page and then flip over and then he read and I say, "This is in support of your company. This is your company name, your ACN number, your details will be here and you're signing at the bottom. You will be nominating two persons - I will be putting two persons representing the company."  
15

You said that to him, did you?---Yes, because - - -

You would be getting two persons to represent the company?---Yes, first nominee, second nominee. I show to him specifically, first, second on the form.  
20

And that's it. You didn't mention anything about elections, did you?---Yes, because it was not election time. I said, "You're nominating two persons representing the company."

You essentially said to him, "These forms, if you sign them, will mean that two people can represent your company in support of me", that was essentially it, wasn't it?---What he's actually signing - - -

I know what he's actually signing but I want to know whether you agree with me or not?---No.  
30

As to my summary of what you said to him?---No.

You kept it very, very general though, didn't you?---Not very, very general, I kept it that, "You are appointing first nominee, second nominee representing the company."  
35

Yes. That's what I've just summarised to you?---M'mm.

That's all you said to him, wasn't it?---Yes.  
40

No mention of elections?---Yes.

No mention that these people will be voting on behalf of your eight companies, you didn't say anything like that to him, did you?---I didn't say at that particular time but subsequent to that conversation I said to the effect that the name will be in support for my election - the names will be in support of my election.  
45

Subsequent to this conversation?---Subsequent means that he has signed the forms.

5 When did you have this subsequent conversation with him?---Meaning after he's signing that form.

What, on another occasion?---No, on the same occasion.

10 On the same occasion?---After he sign all the forms.

Are you sure about that?---Yes.

15 You told him that these people will be voting on behalf of his company?---Yes, that's my understanding. I was surprised at why he says this is an assessment of me.

20 That is totally in contradiction to his evidence that he gave at a private hearing that I read out to you yesterday, isn't it? Isn't it? That's not what he said in his evidence that I read out to you yesterday?---That is what he said.

That was his evidence?---That was his evidence.

What you're saying now is in total contradiction to his evidence?---Yes, but - - -

25 Because he made it quite clear that if he knew he was allowing you to nominate people to vote on behalf of his companies, he never would have allowed it - - -?---He said - - -

30 Let me finished - because he's not interested in Local Government politics and didn't want to get involved. That was his evidence. Are you saying he's wrong about that?---He's not wrong in that way but he - what I can understand is his intention was, signing that form by allowing me to nominate two persons will in a way support me but not involve with politics.

35 Yes, not involved in elections?---Yes.

So you never said anything to him about the right of these people to vote in elections, did you?---Yes, because I was surprised when he says - - -

40 Mr Yong, this is yet another example of you contradicting your own evidence within a matter of virtually seconds. Why are you giving different evidence regarding the same question? You say one thing and then when I say to you that's not the case, you agree and say, "Yes, that's not what happened"?---Sorry, I should have asked you again what's the question. Just rather than answering you straight.

45 I should ask you to repeat the question.

Mr Yong, you haven't had any difficulty understanding my questions this morning,

have you?---Yes, I am - - -

You have had difficulty?---No, just a bit - - -

5 Let's get it clear, shall we?---Yes, sir.

When Mr Takemori told this Inquiry that he did not know that these forms meant that two people would be allowed to vote on behalf of each of his companies at elections, that he was not told that by you, and if he was told that, he wouldn't have  
10 agreed to it. That's an accurate account of the conversations you had with him when you got him to sign these forms, isn't it?---Yes, but my understanding is, I explain to him in a way that the form was signed in order to support me. I didn't say it was for elections.

15 Yes, and you never said that at the time he was signing them or after he had signed them, did you?---About the election, no. Yes, not about the election, just signing up in support of me.

I will stand corrected, but that wasn't your evidence three or four minutes ago.  
20 You said that you had told him. Mr Yong, I'm at a loss as to why you keep changing your evidence after - - -?---I did not.

- - - the Commissioner has told you repeatedly yesterday - - -?---I did not.

25 - - - to just simply tell the truth. Are you maintaining now that you did not say to me five minutes ago that you told Mr Takemori that this was to do with elections and voting at elections?---I gave him the form, I explained - - -

Are you maintaining you did or did not tell him that?---I maintain I told him that.

30

You are now saying you did tell him that?---Signing the form in support for me.

No, "signing these forms meant that these two people can vote on behalf of your companies", did you or did you not tell him that?---I'm trying to make recollection  
35 whether I have said, whether to sign up to vote for me or to sign up to support me

[9.45 am]

His account is that nothing was mentioned about voting?---Not voting, in support,  
40 yes.

I suggest to you all you said was, "If you sign these forms, they will just be supporting me", that's all you said to him, wasn't it?---Not just supporting, by nominating two persons to support, because I explain to him on first and second  
45 nominee on the form, he took it and he read the form.

It would have been so easy for you to give a more thorough explanation than that,

wouldn't it?---At that point in time, my understanding is - - -

It would have been perfectly okay for you to give a more thorough explanation than that?---It would have been.

5

Yes?---Meaning I should have explained more detail.

But you didn't want to explain more detail to him because then you might not have got him to sign each of these forms?---No. My understanding is he's in support for my - - -

10

Mr Yong, did you ask Mr Takemori whether each of these eight companies held a lease for property within the City of Perth?---Yes, I did. I prepare a letter. That's why I want to make sure that he comply fully, I prepare a letter with the company's name, "I" name - sorry, with the address "director of the company, hereby confirm that we have leases and occupy at that" - - -

15

What letter are you talking about?---It's a piece of A4 paper that I prepared for him and I listed out the companies that he was directors of Osaka Gas and he sign at the bottom. So I said, "Thank you for that" so I through this, he agreed and accepted.

20

When was this letter given to him?---On the cafe meeting.

On the cafe meeting?---The same day as I met him signing up the green forms.

25

You gave him a piece of paper?---A piece of paper was prepared saying - - -

Prepared by whom?---I prepare letter to confirm that he agree and he understand.

30

You prepared a letter?---Yes, a simple one A4 size paper, white. A4 paper, I gave it to him, together with the green forms.

Had you already arranged for him to come along and sign these green forms?---Yes, because we discuss yesterday that the form was filled out already when I met him.

35

Yes, that's not in dispute?---So together with the letter - - -

Together with the letter? You've never mentioned the letter until now so tell me more about this letter?---The letter is one piece of paper that I prepared to meet him to sign.

40

What was on this letter?---Is his name, his address and his position in the company, with the list of companies, seven or eight Osaka Gas company that he was the director, and it says, "I" so and so, I prepare that "as director of the Osaka Gas of the listed companies below, I hereby acknowledge that there is a lease or a

45

legal instrument that I'm entitled to sign", or to that effect, to sign that form, with the eight companies at the bottom and then he sign at the bottom his full name, Takemori, and then with his name at the bottom and date. So that's why I'm satisfied with that.

5

And the date? What date was it?---On the date that he signed.

On the date that he signed?---Yes.

10 So you're saying that he signed a letter in which he acknowledged that these eight companies had, what?---Had rights to occupy and - right to occupy or lease, a legal instrument to that effect, a legal instrument to occupy 108 of that building - I can't remember which floor - in order to him - - -

15 Right to occupy, or lease or have a legal instrument?---Instrument to - in relation to all these companies, to occupy that building.

Why did you get him to sign that?---In order to satisfy that he understand and comply with the terms in the green form.

20

Which you had already completed?---That I showed to him that part that is tick, is about his lease and legal instrument that he's signing.

Where did you generate this document from?---From my office.

25

In your office?---Before I met him, I type a letter. I just wanted to make sure that he understand that he - other than signing that green form, he understand that there's a lease or legal instrument to the offices that his companies are occupying.

30 And these had all the names of his companies on this list?---Yes.

How did you find those out?---From the ASIC website.

35 The ASIC website?---Yes, Osaka Gas and then they were listed down what other companies.

So you made that search yourself, did you?---Yes, I did. I wanted to make sure that he is actually have a legal company and director of those companies.

40 And that's where you got Australian Company Numbers from as well?---That's right. So I wanted to make sure that the company matches the ACN number.

45 I would like to know why you didn't tell us about this yesterday, because all you said yesterday is that you came along with these eight forms?---I did not mention that.

Yes, why was that?---Just didn't mention that.

I know you didn't mention it, I'm asking you why?---Because just recall after reflection last night what had happened.

5 You recalled after a reflection last night, is that right?---Yes, it's true.

Is that right?---It's true that there's a letter.

It is true?---Yes.

10

You often say things are true. Would you agree with me that you haven't given truthful answers to my questions on every occasion over the last two days?---But this letter is definitely exists.

15

Do you agree with me you haven't given truthful answers to a number of my questions over the last two days?---I have given truthful answer.

20

Do you agree with me you haven't always given truthful answers in regards to the questions I've asked of you?---Yes, I should have asked clearer explanation about the question before answering.

25

No. For example, what you volunteered to the Commissioner yesterday about your version of why you made the complaints to the City of Perth regarding the irregularities on the electoral rolls, that was false evidence, wasn't it?---Yes.

Let's get back to this now. Are you sure you're not inventing things?---I'm not inventing things.

30

No?---I'm not, you can ask - - -

I can ask who?---You can ask - there's no other witness at the cafe, but you can ask Mr Takemori.

35

Yes, we have and I've told you what his account is. We have also been told by Osaka Gas Australia Pty Ltd's lawyers that there was only one lease in existence - - -?---But - - -

40

Now, let me finish - for level 16, 108 St Georges Terrace and that was for the parent company, Osaka Gas Australia Pty Ltd?---In that case.

Mr Takemori's evidence was that he believed that was the case as well. Are you now saying he signed a document that you showed him in which it said that all eight companies either were entitled to occupy because of a lease or some other legal instrument?---That is true, yes.

45

Really?---Yes, because I want to make sure that he understands what he's signing, so I prepared it.

Did you organise for this coffee?---Yes, I did.

So you made arrangements with him?---Yes, I said - - -

5

Did you just not say to him, "I'd like to catch up with you"?---I said - I can't remember whether I sent an email or sent a text message or give him a call to arrange a coffee at his own convenient time, in order for me to catch up with him over coffee in relation to support of my - support for me for my Councillor.

10

Yes, support for you for your Council?---Council, support me, yes, in a way support me.

So you didn't mention anything about forms at that point in time, did you?---I didn't mention about the forms?

15

No. You didn't ask him anything about whether the eight companies each had a lease for those premises at 108 St Georges Terrace, did you?---I didn't ask but I show him that letter with - - -

20

That's when you got there?---When I got there.

When you got there, so you sprung this on him, didn't you? Do you know what I mean by this?---Give it to him at that time.

25

Yes, you just mentioned this for the first time about filling out forms at that meeting when you had coffee with him?---Yes, but he could have bring it back and discuss it and see whether he want to sign it or not.

30

So you filled out this form, assuming - sorry, the letter. You've completed this letter assuming that each of these eight companies would have some proprietary interest in those premises at 108 St Georges Terrace, did you?---I'm assuming that he has rights to occupy and use that premises.

35

You're a lawyer, do you really think that a parent company and seven of its subsidiaries that operate from one floor of a building would each have either a lease or some legal instrument entitling each and every one to occupy space within that floor?---I have never been to that office so just I just assume - - -

40

As a lawyer, did you really think that would be the case, that the parent company would have a lease and then each of the seven subsidiary companies would also have a lease or some other written document, written legal enforceable document entitling them to occupy that same floor as well?---Where they same floor or more floors, I'm not - - -

45

It's the same floor, Mr Yong, because in a moment I'm going to show you each of these forms that you filled out and you've nominated the same floor, level

16?---Same floor.

5 So did you really expect that to be the case, did you, as a lawyer? As a qualified lawyer to practice here in this State who does work in property law and drafts up leases, did you seriously expect that would be the case?---That is the reason why I prepared that letter, for him to confirm that.

10 Did you seriously expect that to be the case?---I did not seriously expect that to be the case. That's the reason why I prepared that letter for him to acknowledge.

But you didn't even ask him beforehand, did you?---No. I show him the letter, the letter would have shown - - -

15 It would have been the most extraordinary situation, would it not?---Yes.

Mr Yong, we will go a step further: you had actually filled out the first page of each of these forms, didn't you, before - - -?---Meeting.

20 - - - you met Mr Takemori?---Yes.

So therefore you made the assumption, did you - - -?---Yes.

25 - - - that each of these eight companies had the relevant interest on the one floor of the one building that entitled them to have two nominees?---That is the main reason why I prepared that letter for him to sign. If he is comfortable, he sign it, if he's not comfortable, I would assume that he - - -

[10.00 am]

30 It would be a complete waste of time then for you, wouldn't it? You didn't even ascertain from him that his companies had this extraordinary situation where there were eight separate leases or legal instruments with respect to the one floor?---Yes.

35 You didn't even check that with him and instead you just assumed that for some reason they had, so you went ahead and filled out the eight forms in expectation that that would be the case?---Eight forms plus that letter.

40 Which would be quite an amazing situation, wouldn't it, in your experience as a lawyer?---Is very extraordinary.

Very extraordinary, yet you just assumed that would be the case?---That is the reason why I prepared that letter, for him to acknowledge and sign this, to make sure - making sure.

45 Mr Yong, you didn't even first check to see if that extraordinary situation existed?---Yes.

You didn't check, you just went ahead and assumed that it did?---Yes, I did.

Mr Yong, there was no letter, was there?---There is a letter.

5 There is a letter?---There is a letter.

There is a letter?---There is a letter.

So you prepared that letter at work, did you?---I can recall that, yes.

10

You should have a copy of it, should you?---I'm not sure whether it's been - a copy with it because - - -

You didn't save a copy?---No, I did not save a copy.

15

Why didn't you save a copy, because you've kept a copy of everything else? You've kept copies of these nominations forms, didn't you?---Yes.

Why didn't you keep a copy of this very important letter?---Takemori would have a copy.

20

I'm asking you. You didn't keep a copy?---I need to think carefully if there's a copy or there's not a copy and where - if there was, where is it saved but definitely there's a letter.

25

Did you keep a copy?---Signed copy?

You kept a signed copy?---You're asking the unsigned copy or signed copy? Signed copy was given to Takemori. I'm thinking of a copy that is in my system.

30

Yes?---It's been a while but I'll need to find out which - - -

You were very careful about keeping copies of all the records regarding companies that you got to have nominees for, weren't you?---M'mm.

35

So if you kept your practice of keeping copies or making copies of all relevant documents in relation to this, you surely would have kept a copy of this?---Yes.

Have you kept a copy or not?---Should be saved in but - - -

40

Should be saved where?---My computer.

Your computer?---Office computer.

45 In your office computer, there should be a copy there?---Yes.

Right now? I'm not talking about tomorrow, I'm talking about right now there

should be a copy?---There should be a copy.

Yes?---Yes.

- 5 If you're telling the truth about this letter, there should be a copy?---There should be a copy.

Setting out the exact names - - -?---Of the company.

- 10 Of the company and all their companies and the Australian Company Numbers as well?---I can't recall exact of the company with ACN number but company, I definitely know there's company names, yes, but if you say with ACN, I need to make sure - - -

- 15 Will you allow the Inquiry to get access to that document? Will you permit the Inquiry to gain access to that document?---There's other kind - - -

I'm not interested in that, I'm just interested in this document?---I can go back and provide it this afternoon.

- 20 Will you allow an investigator from the Inquiry to accompany you for that task?---Yes.

- 25 Do you know why I'm asking that?---Because maybe you're afraid of me creating one on the same spot.

Yes?---You don't worry about that, sir.

- 30 Is there a file that you've kept on your computer that has all these documents relevant to nominees, or have you deleted that file? Mr Yong - - -?---It's not in - it is one in the folders in my desktop.

It should still be there?---It should be still there.

- 35 It's in a folder in your desktop?---It should be still there.

Together with other information relating to nominees that you got?---No.

- 40 To go on the electoral roll. So what's in this folder?---There are quite a few folders, I need to specify and find out which folder in that desktop.

How would the folder be titled? What's the title to this folder? Is it Osaka, is it Takemori?---It should be City of Perth.

- 45 City of Perth nominees, something like that?---Something, City of Perth 2013 or - if you allow me to, I will show you that letter.

That's what we will do. Can an investigator accompany you back to your offices immediately upon the conclusion of your evidence this morning?---Yes.

To find that letter. I can assure that that's the only letter the Inquiry's interested in.

5

COMMISSIONER: Mr Yong, is there any reason why you would not permit the Inquiry to conduct an examination to determine when that letter was created?---He's interested to know when letter's - - -

10 Is there any reason why the Inquiry cannot conduct an examination to see when that letter was created?---Sure.

Thank you. I have one more question for you: you were served with a notice to produce documents relevant to this Inquiry; why didn't you produce that letter?---Because I didn't know it was relevant. This was signed by Takemori.

15

Mr Urquhart.

MR URQUHART: Really? Is that your evidence? Do you remember what that summons said? Do you remember what that summons said? Do you remember what that summons said about what you had to produce?---Documents, iPhone.

20

Do you agree with me that your conduct in obtaining these forms from Mr Takemori was not entirely proper because you did not explain to him carefully what these forms meant?---My understanding, he understand what he's signing it for.

25

Do you agree with me that your conduct was not entirely proper by not explaining to him in more detail what these forms meant?---Yes. My understanding is like we explained yesterday.

30

It wasn't proper of you to do that?---You mean duty for me to explain to him the form?

35

Yes?---As he's a director signing that form - - -

Do you agree with me or not - you can disagree if you want?---I disagree.

You disagree, okay. The other nomination forms that you got people to fill out we went through briefly yesterday and I showed you the W&W Holdings one, for example. Did you keep a copy of that nomination form?---I did.

40

And all the others?---I did.

45

Did you still have those nomination forms as of last year?---No more.

Sorry, did you?---No.

What did you do with them?---Because after the election, lost the election, they have to destroy that and shredded them.

5 You shredded them?---Destroyed them because they have personal details on the form.

Most of them didn't have personal details, aside from their address?---With their address.

10

But you've got this form or this letter, rather, that you gave to Mr Takemori, you've kept that?---The letter?

15 Yes, the letter you say that you had with you that you had already completed when you went and saw him with these eight forms?---Yes, that letter.

You've still got that. What about the nomination forms for all the Osaka companies, have you kept copies of those?---No.

20 We are going to have a look at these forms now. Could we have a look at first, please, Madam Associate, 8.0945. TRIM number, sir, 13853.

COMMISSIONER: Thank you.

25 MR URQUHART: This is the one for Osaka Gas Australia Pty Ltd, the parent company, Mr Yong. Is that all your handwriting?---Yes.

On the first page?---Yes.

30 The rateable property, you see that about halfway down, level 16, 108 St Georges Terrace, Perth, 6000, do you see that?---Yes.

Postal address, why haven't you written the same?---The same as the rest we discussed - - -

35

The same as the rateable property?---Yes, same as what we discuss yesterday, to receive the letter from City of Perth.

That's not the postal address of the body corporate, is it?---No.

40

That's a false statement, isn't it?---Yes.

That was improper of you to do that, isn't it?---It's improper.

45 Because the idea is that you wanted all the material the City of Perth would send out coming to you?---Yes.

That was already completed when you gave this form to Mr Takemori, wasn't it?---Yes.

5 If we go over now on to the second page, please, Madam Associate, 946. Do you see in the details there regarding the first nominee, a Mr, or it might be Ms Ho, do you see that?---Yes.

10 Mr Ho wasn't with you when you had coffee with Mr Takemori, was he?---He wasn't.

In fact, you didn't see him until some time after the coffee appointment, did you?---Yes.

15 Some time later, wasn't it?---That's right

[10.15 am]

Not the same day?---Not the same day.

20 Weeks later?---Yes, somewhere around that time, few weeks, or within a few weeks.

25 So you accept that none of those details were completed when you gave the form to Mr Takemori to sign?---Not on the top part.

Can I clarify with you that you have written down the postal address in your own handwriting there, "PO Box 6116, East Perth 6892"?---Yes.

30 Had you already written that out before you gave this form to Mr Ho to complete?---No.

You hadn't?---It was empty, it should be an empty form.

35 When Mr Ho, not Mr Takemori - is it Mr or Ms Ho, you tell me. Wen-Shuo is Ho's other names; is that a male or a female?---Male.

So Mr Ho, he's filled out those personal details of his, yes?---Yes.

40 Then you've completed his postal address?---Yes.

So why did you do that?---We discuss yesterday.

So you get the voting papers and everything else?---Yes.

45 Then he signed it, do you see that?---Yes.

"Signature of first nominee", and then you've written the date, haven't you?---Yes.

That's not the right date, is it? He didn't sign it on 5 March because that's the same day that Mr Takemori signed the form?---Yes.

5 Why have you put a false date there?---Because I don't know what is the actual date he signs, just to be consistent with Keiji Takemori.

Yes, you wanted it to look like that Mr Takemori was there when Mr Ho signed this form?---No.

10

No? Why put the same date as the date that Mr Takemori signed the form?---Because when Mr Ho signed that form, I don't know which date he sign it so I just make it consistent with Keiji Takemori, rather than - just assuming which date.

15

You're then agreeing with me to that last question I asked you which is that you put that date, 5 March 2016, so it looked like Mr Takemori was present when Mr Ho signed?---No, he was not.

20 I know he wasn't but you made it look like he was?---It was not meant to look like that way.

But you've put the same date as the same date as when Mr Takemori signed it?---It looks like, yes.

25

That was your design to do, to make it look like the director of the company had authorised Mr Ho to be the first nominee?---That was not the true intention.

30 What was the intention then?---The intention was Takemori put a date but Ho didn't put a date, so we just put a date.

But you didn't put the date that Mr Ho signed the form?---But how do I know the date Mr Ho signed it, because I would not.

35 Because you gave it to him?---Yes, should be on or around that date.

Of course it should be but it's not, is it?---Yes.

40 And the reason why it as not is because you wanted to give the impression that Mr Takemori was there when Mr Ho signed it?---M'mm.

Yes?---Yes, in a way, yes, putting it that way.

45 In a way, but that's the only way?---Okay.

That's the only reason, isn't it, why you wrote in 5 March 2016?---Yes.

Mr Yong, that's the truth, isn't it?---I can put it that way, yes.

Could you please, from now on, give the truth to the question when I ask it for the first time?---Yes.

5

Can you please?---Yes.

It would make these proceedings go so much more quickly?---Yes.

10 Can you? Can you do that?---Yes, I can.

Didn't the Commissioner ask you that repeatedly over Monday and Tuesday?---Yes.

15 But you're still not doing it, are you? You're still not giving truthful answers?---Yes, I give.

20 Why do you keep giving misleading answers to my questions?---Because my mind is thinking, rather than in line with what you're thinking is so I'm trying to get in line, synchronised to your question.

But if my question of you is a statement of the truth, then you just agree?---Agree.

25 Even if it looks bad on you?---Agree.

Because it doesn't look good for you, does it, now that you've given the truthful answer as to why you put 5 March 2016 there, it doesn't look good for you, does it?---Yes.

30 Because it shows a cover-up, doesn't it?---Yes.

It shows improper conduct by you?---Yes.

35 947 now, please, Madam Associate. The second nominee is Mrs Ho, is that right?---Yes.

And again, none of those details that appear in the first two-thirds of that page was there when Mr Takemori signed that page at the bottom?---Yes.

40 And again, the reason why you've put 5 March 2016, because that's your handwriting, isn't it, the date there - both dates, 5 March 2016?---Yes.

That's to show that, to indicate that Mrs Ho was signing the form on the same day that Mr Takemori signed it, yes?---Yes.

45

Mr Yong, your evidence is that Mr Takemori gave you permission to get whatever nominee you wanted, is that right, or not?---Based on what he's signing at the

bottom, about authorising and giving me the form.

5 But you never said to him, did you, "Mr Takemori, do I have your permission to get people to be nominees for your company so that they can vote at the next City of Perth elections", you never said that to him, did you?---Yes, I said from the beginning, yes, I asked him to support for my Council.

10 Madam Associate, if we could go now, please, to 951. This is the form that you completed for Osaka Gas Ichthys Development Pty Ltd. That's not your handwriting, is it?---No.

Whose is that?---It would be my brother's.

15 Your brother's? Your brother Joon?---Yes.

What was he doing filling out these forms?---Just a company name.

20 What was he doing filling out these forms? Did you ask him to help you?---I found a list of Osaka Gas companies and he fill out the company name and the ACN.

The question is, did you ask him to help you?---Yes, I did.

25 So he knew what you were doing?---He knew what I'm signing up with Osaka Gas.

Is that your writing on the bottom half of that page or your brother's?---My handwriting.

30 That's your handwriting, again, same details as before, isn't it?---Yes.

Going over the page now to 952, can you see that?---M'mm.

35 Incidentally, the two Hoes that signed as first and second nominee, did you explain to them what they were signing? I'm talking about the previous document for Osaka Gas Australia. Did you tell them what this was all about?---Yes.

You did, did you?---Yes.

40 Are you sure about that?---Sure. They know that they are signing to - - -

Did they know that they wouldn't be receiving their voting papers?---At that time they wouldn't know.

45 No, they wouldn't know?---Subsequent, they will receive that.

Subsequently they would have received what?---Subsequent, they would receive the ballot paper from City of Perth.

No, they wouldn't have, you would have received them?---They would receive them.

5 They wouldn't have received them from the City of Perth, you would have received them from the City of Perth?---I mean subsequently when the City of Perth updated that roll, the address.

10 Don't worry about that. At the time when you were filling out these forms you wanted all these ballot papers to go to you?---Yes.

The Hoes, are they friends of yours?---Yes.

15 This person, 952, the document we are looking at now - incidentally, sir, this is TRIM number 13854 for this document.

COMMISSIONER: Thank you.

20 MR URQUHART: Tiong, Steven. Very Steven Tiong, he's a friend of yours?---Yes.

25 On this occasion, this is one of a number of occasions where there's no phone numbers, fax numbers or emails provided for the first nominee, do you see that?---Yes.

And you intentionally did that, didn't you?---Yes.

Then you've completed the postal address, haven't you?---Yes.

30 On this occasion, we have the date, 31 March 2016, do you see that?---Yes.

Mr Tiong wrote that in, didn't he?---Yes.

35 He wasn't supposed to, was he?---He wasn't supposed to?

Yes, you were supposed to do that?---No, he can fill out the form.

Are you sure?---Yes.

40 You didn't let Mr Ho date the form from the previous document, or Jamie Ho?---It's up to him, if he didn't fill it, I will fill it.

45 Didn't you say to them, for the Hoes, "Don't bother about dating it, I'll do that"?---No.

No?---No.

953 now, this is the second nominee. Who's this? This is Christine Yong, this is your former employee, isn't it?---Yes.

5 Did you get her to complete these details when she was working for you?---I can't recall the actual date, maybe after she left or maybe she's still around. I can't actual the date when she completed that form.

10 Ms Yong has given evidence before the Inquiry that you asked her to sign it as the nominee for the company but she didn't understand what that meant; is she right about that?---No, she's not right about that. We tell her that we are signing her up for enrolment on the roll.

On the roll, you told her that, did you?---I did.

15 Did you tell her that she wouldn't be getting her voting papers though?---I didn't say that.

You didn't say that? No, you didn't want her to know that, did you?---Yes.

20 Incidentally, we can see also there that there's no phone numbers, the fax numbers or emails for Ms Yong?---M'mm.

25 That was deliberately left blank by her, wasn't it, at your request?---No, I did not request her to do anything

[10.30]

30 You told her not to bother about completing those details, didn't you?---No, I tell her that to fill out but she's the one to fill out the form and address. I did not tell her not to fill.

35 As you were there when she was completing it, you didn't say to her, "Oh, can you fill in your phone numbers and fax numbers and emails", did you?---I didn't tell her that.

And you could have done that yourself because you would have had those details?---Yes, I could have.

40 But you chose not to, didn't you?---Yes.

Because you didn't want the City of Perth contacting her, did you?---Yes.

45 Speaking of you not wanting the City of Perth to contact people, am I right in saying that you didn't want the City of Perth contacting Mr Takemori?---No.

No?---No.

Just on that form there, see that page 953, can you see at the bottom there where Mr Takemori's filled in the details?---Yes.

5 "Email address in case of enquiries, contact number in case of enquiries", nothing's been filled in, do you see that?---Nothing filled in.

Do you see that?---I can't recall out of the - - -

10 Can you just see that? Wait for the question. Can you see that, just answer that question?---Yes.

Can you see that?---Yes.

15 And it's also the case with respect to the previous nomination form we saw and I can assure you, it's the case for all the other nomination forms?---Okay. I was not sure.

20 His email address, contact number details have not been completed and you told him, didn't you, when he signed these forms, Mr Takemori, or Keiji, being his first name, "Just you sign these forms and I will complete the rest of the details"?---That was for the top part. I didn't tell him about the - - -

What about the bottom half?---No, I did not say anything.

25 All you said to him though, wasn't it - - -?---No.

- - - "just sign your name"?---No.

30 Mr Yong - - -?---My understanding - - -

See there on this page, "Name of authorised person: Keiji Takemori. Position held: Director." Mr Takemori didn't write those details, did he?---No.

35 You did?---That's right.

And you wrote them, I'm going to suggest to you, with respect to - either you or a member of your family wrote "Keiji Takemori, director", with respect to every single form, didn't you?---Yes.

40 All you got Mr Takemori to do was sign his name?---On this form, yes.

And on every single other form as well?---Yes.

45 Why was that? Why didn't you say to him, "Mr Takemori, also fill in your email address and contact number"?---Because we just thought too easy to sign and nominate person and submit.

Why didn't you do that though?---Just a matter of - - -

Sorry?---Matter of convenience to us but not convenient to the City of Perth.

5 Sorry, what was that?---It's convenient for us just to submit without filling all the forms.

Yes, that's right?---But not convenient to City of Perth.

10 Yes, because you didn't want the City of Perth making direct contact with Mr Takemori, did you?---No. City of Perth, if they wanted, they can contact Takemori.

How?---Looking at the first page.

15

Yes, all right. "Postal address of body corporate", let's go back there, 951, it's going to your post office box address?---Contact by postal, rather than email and contact number, yes.

20 So the only contact they would use is the postal address, if they wanted to correspondence with Mr Takemori and that would go straight to you?---And level 16.

Postal address though?---Postal address.

25

Postal address?---Yes.

30 So the City of Perth had no means of contacting Mr Takemori if they used his postal address or his company's postal address because it would go straight to you?---Yes.

35 Mr Yong, I'm just going to ask you a blunt question here: you deliberately made sure that Mr Takemori was kept in the dark about these forms, didn't you?---Not with that letter that he agreed, that I get him to sign and agreed with the companies on the letter.

40 This critical letter now that you remembered this morning, you say if that exists that means that question I put to you is, the answer to that is no, you weren't keeping him in the dark?---That's right.

Would you agree with me at least that you were keeping the City of Perth in the dark about contacting him?---Yes.

45 And that was deliberately so, wasn't it?---Yes.

Why? Why would you be deliberately trying to keep the City of Perth in the dark from contacting Mr Takemori?---Although I have no intention at all, I shouldn't

have filled the form, but in this case it's a reason to be provided to you is City of Perth unable to verify him.

Sorry?---The City of Perth was unable to verify him.

5

Yes, I know. The question is not going to go away. Why did you deliberately keep the City of Perth in the dark regarding contacting him? You've already agreed that you did, I want to ask you now why you deliberately did that?---I answered the question, so City of Perth could not verify him.

10

That's right?---As Osaka Gas director.

Yes, and you've told us you deliberately did that and now I'm asking you why. Why did you deliberately make sure that the City of Perth would have great difficulty contacting him?---Because there is no address for him so they can't contact him.

15

Yes, that's right, and I want to know why it is that you deliberately did that with respect to all these forms?---So that he's not aware.

20

And why was it that you did not want to make him aware of the fact that his companies had nominated 16 people to vote on their behalf?---He wouldn't know who he appointed, the nominees, but he agreed for me to nominate two persons on the roll.

25

So what then was the problem with the City of Perth contacting him?---No problem.

So why then did you deliberately keep the City of Perth in the dark? Mr Yong, if the truth doesn't look good for you, then I'm afraid that's the case?---So that he doesn't know, so that's not aware. That's the way I should answer.

30

So he's not aware and so the City of Perth is unaware about contacting him?---Yes, unaware - - -

35

Why were you doing all of this? Why the subterfuge? Do you know what that word means?---If you can - - -

Why the secrecy? Why the concealment? Why not give the contact details for the nominees, contact details for Mr Takemori, why?---Is just an omission on the form.

40

I know that, I know all that, and I would like to know why?---I don't know what answer you want me to answer - to say.

45

I want the truthful answer. I've been asking you for the last, nearly two and a half days just for truthful answers, Mr Yong, that's all?---Is for City of Perth not to

contact him.

And why?---So that I can benefit.

5 Sorry, so you can benefit?---If you want me to say, is that for me - - -

I don't want you to say anything, I just want you to tell the truth?---Because the form was left omission and City of Perth can't contact him, then making him not aware.

10

Yes, and the question I've got for you is why? Why did do you that?---How you want me to answer? Address and contact details not there, City of Perth can't contact him, there's omission. What else do you want me to say? They can't contact him, the ballot paper is not going to him.

15

That's right, the ballot papers aren't going to him?---Yes.

Any correspondence that the City of Perth wants to have with him is not going to go to him?---Yes.

20

If they wanted to call him to confirm the nominees, they wouldn't be able do that?---M'mm.

25 And if he allowed you to nominate whoever you wanted, why wouldn't Mr Takemori be entitled to be informed of that?---He is entitled to, I just didn't - - -

But he couldn't be because there was no way of contacting him unless the City of Perth - - -?---Googled Osaka Gas, it pop up on the contact details.

30

Yes, but they would go by the details on these forms?---Yes, it's just an omission.

The details on the forms, all the contact would be with you?---Yes.

35 So I'm just asking you why?---My answer - - -

Why did you set it up in that way?---There's no other way I can think of. It's simple omission and it's not compulsory. If compulsory, we would have completed everything but it's not compulsory, we just leave it blank, that's it. We didn't think of anything else.

40

"We didn't think"?---I didn't think.

You didn't think of anything?---Yes.

45

But you did not want to think of anything else, did you?---We fill in the necessary but if there is compulsory section, we would have, compulsory, but it's in case of

emergency, so we thought - - -

5 No, it's not. It doesn't say that. Where does it say that? It says, "In case of enquiries". If we could go to either 952 or 953, please, Madam Associate. There's nothing "emergency" about it, it's in case of enquiries?---I'm sorry, it's not. It's in case of enquiries.

10 Why shouldn't the City of Perth contact Mr Takemori in case they had an enquiry?---Yes. It's my mistake for not putting address on it, is omission.

15 But you've told us it was a deliberate omission, so that's why I want to know why it was a deliberate omission by you with respect to each of these eight forms, not to complete those details?---So the City of Perth cannot contact them without their address.

20 Sorry?---The City of Perth could not contact them.

25 Yes, I know all that and I want to know why you deliberately did not fill in those details. Mr Yong, I don't know how many times I've asked that question now?---My understanding is, it's not compulsory so didn't fill it in.

Is that your reason?---Yes.

30 Your reason is that you deliberately did not fill them in?---With this - - -

35 So why was that?---Whether it is intentionally deliberate or not deliberate, it was not filled in and making difficulties to the City of Perth

[10.45 am]

40 Mr Yong, you did not want the City of Perth to be contacting Mr Takemori, isn't that right?---By looking at this form, yes.

45 Not by looking at the form, that was your intention, wasn't it?---Yes.

You didn't want the City of Perth contacting Mr Takemori because if they did, you were concerned about what Mr Takemori might say?---No.

Then why?---I would have the letter to show if they ask.

50 The letter?---The letter that Takemori signed.

Are you talking about the letter with all these companies?---Yes.

55 To say they had a proprietary interest?---That he agreed and he's aware. So there's no concern for me to worry about City of Perth contacting Takemori.

You see, you are assuring us that you would have a copy of that letter?---Yes, you need to give me some time. I need to see which folder and find out for you.

5 And if it's not there, does that mean the letter has never existed?---If you allow me time to go through that folder, my folder, I will find it for you.

And if it's not there, that means that the letter never existed?---Yes.

10 Yes?---Yes. It existed, it definitely existed. It's in existence.

Because I can tell you now, Mr Takemori gave no evidence about signing - -  
-?---He - - -

15 Let me finish - signing any letter or any document other than those eight forms that I'm in the process of taking you through?---Okay, but - - -

So Mr Yong, do you want to carefully consider the evidence you've given regarding this letter?---If you give me time, I will go through folder by folder.

20 Would you like some time to consider your position with respect to this letter?---No.

Would you like a break so you can consider this in a less stressful situation?---I maintain that there's a letter.

25 I'm giving you an opportunity, Mr Yong?---I maintain that there is a letter.

Okay.

30 COMMISSIONER: Mr Urquhart, I'm going to give Mr Yong some time to consider the existence of this letter now and I do it for another reason as well: there are presently a number of legal representatives for various persons in the back of the court room and it might be wise to make a not before direction. Can you give me an indication of how much longer you think you might be? .

35 MR URQUHART: I will have to allow for what my learned friend has told me regarding an application, that's Ms Stanton, so not before quarter to 12, sir.

40 COMMISSIONER: In that case, I will make a direction that those persons who are to give evidence at the next public hearing, and their legal representatives, do not need to be present before noon. I say noon because I'm allowing some extra time for questioning and that always seems to eventuate. I will now adjourn for 15 minutes. Mr Yong, in that time, I do not want you to make contact with anyone outside of this Inquiry?---Yes.

45 You, of course, may speak to your legal representatives?---I can speak to my legal  
- - -

But I do want you to think very carefully, please, about what you are being questioned about now and in particular, the letter. Do you understand me?---Yes, sir.

5

Thank you. I will adjourn now for 15 minutes.

**WITNESS WITHDREW**

10

(Short adjournment)

15

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HEARING RECOMMENCED AT 11.12 AM

**MR Yit Kee YONG, recalled on former oath:**

5 COMMISSIONER: Yes, Mr Urquhart.

MR URQUHART: Thank you very much, Commissioner.

Mr Yong, were you able to speak to your lawyers over the break?---Yes, I did.

10

Of course, I'm not going to ask you about anything you discussed with them, however, do you still now maintain that there was this letter that Mr Takemori signed which said, to the effect that the eight companies had a proprietary interest with that floor at St Georges Terrace?---I maintain that there is such a letter signed.

15

Signed by Mr Takemori?---Signed by Takemori.

Which listed the eight companies of Osaka, being Osaka Gas Pty Ltd and the seven subsidiary companies?---Yes.

20

And then the letter also said words to the effect of, "These eight companies hold a lease or a legal instrument" - - -?---To that effect, yes.

To the effect that they have a proprietary right over, was it level 16, 108 St Georges Terrace, Perth?---The content of the letter, yes, remain what you have said.

25

Did you sign that letter?---No.

30

Only he?---Yes.

Did it say anything else about nomination of individuals to be representatives of the company or companies?---No.

35

And you say you got him to sign that letter so that it did prove that each of these eight companies had a proprietary interest?---Yes.

Yes?---Legal interest, yes.

40

Bearing in mind, I've told you - remember, I told that Mr Takemori's evidence, that he understood there was only one lease in the name of the parent company. That was his evidence and it's since been confirmed by the Inquiry from Osaka Gas lawyers that that is the case. So you're saying that Mr Takemori signed a document that had false information in it?---I can't confirm what he signed

45

document, but I confirm that my letter - - -

[11.15 am]

Sorry, you can't?---I can't confirm that he has declared but I can confirm that what he has signed on that A4 document.

5 Are you saying that he read the document?---The document I prepared?

Yes?---Yes, he read it.

He read it, and then he signed it?---Yes, and dated it.

10

And dated it?---I believe there's a date.

What I'm saying to you, if that's the contents of the letter, he signed something that had some false information on it?---You mean he signed the document with false information?

15

Yes, because it is false information because his recollection was that only the parent company had the lease to level 16, 108 St Georges Terrace or had a proprietary interest?---That is his recollection.

20

Yes, and in fact it seems to be correct. So you're saying this letter - what exactly did it say, because you drafted it? What did the letter say? Was it citing that section from the Local Government Act?---I did not specifically put on the specific section of the Local Government Act but is, "I", name, address "hereby confirm that the following companies of this address", I think 108 St Georges Terrace "confirm the company has", something like legal rights or legal instrument "and companies listed below", and he signed it.

25

So legal rights or legal instrument, what do you mean by that?---Legal rights to occupy what level of St Georges Terrace.

30

Legal rights to occupy?---Occupy, legal rights. Yes, I can show you the wording of that letter.

But you know the provisions of the Local Government Act, don't you, that relate to this? A legal right wouldn't be sufficient, would it?---Legal right or legal instrument?

35

I'm going to read out to you the relevant section of the Local Government Act. Sir, this is 4.31(1C):

40

*A person - and this instance a person means a company - a person occupies rateable property if, and only if the person has a right of continuous occupation under a lease, tenancy agreement or other legal instrument.*

45

?---Legal instrument, yes, that's the words.

Legal instrument is:

*A formally executed written document that is legally enforceable.*

5

Okay?---Yes.

10 So you're saying that this letter just simply confirmed that these eight companies, had a what, a proprietary interest or a right to occupy that floor?---My understanding, yes, that letter would have spelt out the terms.

15 What, like that, that say "continuous occupation under a lease, tenancy agreement or other legal instrument" or did it say something else?---Would have the right legal instrument to occupy the property address.

15

Sorry, what are you saying the letter said? Did it actually say exactly that?---Not exactly following the section of that Local Government Act but to that effect, that he has right to continuing to occupy.

20 Continuing to occupy, yes, "under a lease, tenancy agreement or other legal instrument"?---The actual writing of the words would have a similar effect to what you have said.

25 Similar, okay, and the purpose of this letter was to establish that these eight companies could nominate two nominees?---Not relying on this letter to have legal right to have the lease but the letter was to show him and he understand that these companies listed below, the eight companies, he fully aware that these companies has the legal and continuing rights to occupy.

30 Whose benefit was this letter for, yours or his?---It's benefit for him to understand the nature of what he's signing and benefit on me that I'm not just simply giving him the green form to sign.

35 So this letter was for you just as much as it was for him? You wanted to protect yourself?---And him as well.

And him as well?---Yes.

40 So who kept the letter?---Two copies, one given to him and one, I kept one.

You kept a hard copy?---I printed two copies for him to sign, one for him, one for me.

45 So he signed a copy for you?---Yes, at the same time that at the signed the green form.

Are you saying now he signed two of these letters?---Yes, because one is original

to him, one is to me.

Why didn't you say that earlier? You were only referring to one letter?---The same content, but two copies.

5

Yes, I know, but why did you only say he signed a letter?---Okay. My explanation is a letter, two copies.

So he signed a letter twice?---Twice.

10

So you've got a copy?---I've got a copy.

You've got a hard copy?---I've got a hard copy.

15

So it's not on your computer, you've got a hard copy signed by him?---As well.

You have?---Yes.

Where's that?---In my office.

20

In your office, in your computer or you kept a hard copy?---Hard copy.

Hard copy where?---In my office.

25

Hard copy signed by him?---Yes.

You're sure about that?---I'm sure.

30

Because previously you have given evidence about a copy, an unsigned copy being in your computer. You never mentioned that you actually had a signed, hard copy of this letter?---I recall that before going to meet him I prepared that letter on computer but after signing - after I print out two copies, brought to him, together with the green form, he sign it, give it back to me. I gave him one copy.

35

Mr Yong, when did you remember that you actually had a signed hard copy of this letter? When did you first remember that?---No, prior to the break I say we have a copy.

40

Yes, and we were talking about your computer and how an investigator was going back with you to your office and you will search your computer and open up the file?---Yes.

And find the unsigned copy of the letter?---Yes.

45

You never said, "There's no need to do that because I've got a hard copy that's been signed"?---Yes.

You never said that though?---Yes, I didn't say that.

5 Why not?---Just during the break, I recall that when I prepared it in the computer, gave it to him, signed copy, brought back to the office. I have given him one and kept one.

So now there will be an unsigned computer copy, soft copy in your computer and a hard copy that's been signed in a file, in a physical file somewhere?---Yes.

10 COMMISSIONER: I assume that you kept the hard copy because you considered it to be important?---That's correct.

15 In which case, when you got the notice to produce, why didn't you give it to the Inquiry?---The notice of Inquiry would have a date.

That's not my question. When you got the notice to produce documents, why didn't you give that letter, which you thought to be important, to the Inquiry?---At that point, I don't think it's an important, document signed by Takemori, because everything is on a board, but now when you brought it to the attention that it's inconsistent to what Takemori what have said, it became important to me. I thought at that point in time, it's not important document because there's no issue.

20 Is that all you want to say to me?---Yes, Commissioner, and what Takemori said surprised me when he said the form given to him, his understanding is assessment of my performance in the City, and this document would have make it important now.

25 Didn't you think this document was always important?---Is important to a sense that - - -

30 Didn't you think this document was always important?---Yes.

In that case, why wouldn't you produce an important document like this to the Inquiry when you were given a notice to produce documents?---The date required by the Inquiry, is it from 15 to 18? 2015 to 2018?

Yes, when you were a Perth City Councillor?---Perth City Council.

40 And you know and knew then when you got the notice, that you were elected to that position, didn't you?---2015-2017.

Yes?---Yes, I'm elected to that position during that time.

45 Was it not obvious to you that documents like this, as you describe it, an important document like this relevant to your election, would be a document which the Inquiry would like to see?---Yes.

So why didn't you produce it?---I did not produce during that time frame.

I know you didn't, but why didn't you?---The only reason I can say is, it was not produced prior to the deadline given on the notice.

5

So you knew about it but you didn't produce it, is what you're telling me?---No, the notice to produce timeframe was - the deadline was passed when I found that document after.

10 You are a lawyer, Mr Yong, did it occur to you that even though the timeframe had passed, it was a document that should still be produced to the Inquiry?---Should still produce.

[11.30 am]

15

So we come back to my question, why didn't you produce it?---The date that required to produce a document, my understanding of that notice is 2015 to 2018.

We have been through this?---The date - - -

20

Yes, we have been through this, Mr Yong?---I'm not sure about the date of that letter, whether it would fall within the timeframe, whether it would have been falling within that timeframe or not.

25 I'm happy to go through it with you again, but you agreed with me just a moment that you were aware at the time that you got the notice that you were elected to the position of Councillor and that you knew therefore that a matter relevant to your election was relevant to the Inquiry. So, why didn't you produce it? Let me ask you this: did you not produce it because it didn't exist?---Did exist?

30

Think very carefully about your answer to my question: did you not produce it because it did not exist?---Did I not produce because it not existed? So you're saying that there's no such document?

35 I'm asking you a question. Is a reason why you did not produce this letter because the letter did not exist, is that a reason why you did not produce it? That's all I'm asking you?---It exists, there's a letter.

Mr Urquhart.

40

MR URQUHART: Thank you, sir.

45 As you're aware and that you have agreed, Mr Yong, there's eight of these nomination forms that were signed by Mr Takemori. I just want to take you now to two that were signed towards the end of May of 2016 and dated at least by the nominees. The first one, Madam Associate, is 8.0973, TRIM number, sir, 13850.

COMMISSIONER: Thank you.

MR URQUHART: This is for Osaka Gas Ichthys Pty Ltd, is that your handwriting, first line?---It looks similar to.

5

Similar to yours?---To my signing, my letters, my handwriting.

Or is it your brother's? Just because he's an identical twin doesn't necessarily mean he has identical handwriting, does it? Is it your handwriting or your brother's?---This look more like my brother rather than my handwriting.

10

How many of these forms did he complete for you?---If I'm not mistaken, should be eight of Osaka Gas company.

15 He completed all of the names, did he, for these forms?---On these eight forms.

How many? This is the second one now that you think it's your brother's handwriting, were there more? I don't want to necessarily go through each and every one. Do you know how many?---Of the Osaka Gas, he fill out all the eight forms.

20

All the eight forms?---With the names.

25 With the names and the Australian Company Number?---ACN.

25

And you completed out the rest of the details on there, except when the nominees and Mr Takemori filled in the details, is that right?---Yes.

30 Did your mother or your sister or your then girlfriend help with this?---No.

30

Are you sure about that?---Sure.

So the bottom half of that page, that's your handwriting then?---Yes.

35 Are you sure? Have a look at that 16, see, "Level 16", that 16, are you sure that's your handwriting?---My one is 6116, East Perth.

40 Yes, but I'm going now to the 16 above that where it says "Level", the box where it says, "Level"?---Yes.

40

Someone else has written that, haven't they?---That's my brother's handwriting on the 16, 108.

45 Yes, because his 1 is different to your 1, isn't it? He does a little inflection at the top, do you see that?---Yes.

45

So he's filled out a little bit more than just the title of the company and the

Australian Company Number, at least for this one, hasn't he?---Yes.

5 If we go over the page to 974, thank you, Madam Associate. This is one of two of these eight forms where, Mr Yong, you have completed the person's address as to where the voting papers will be sent, do you see that?---Yes.

That's your handwriting, isn't it?---Yes.

10 Mr Yit, who was he? Who's Francis Yit?---Family friends.

Were all these people family friends or friends of yours?---Friends or family friends.

15 Can I ask why it was on this occasion you actually wrote Mr Yit's residential address?---My recollection is after we received the advice from City of Perth it's not right to put PO Box addresses, I immediately, when signing up, change it to the residential address.

20 So it was the City of Perth who forced your hand and made you make these changes, is that right?---Yes, they say Governance is not right, don't do that. So I follow instruction and thought about it, it's not right.

25 But of course, prior to that, your preference was that the voting papers and indeed, all correspondence would go straight to your post office box address, wasn't it?---Yes. So mistake learned, changing immediately when found out.

We see there that Mr Yit has signed this 23 May 2016, do you see that about halfway down?---The date?

30 Yes?---23 May.

Yes. Do you see, "Name of authorised person: Keiji Takemori" at the bottom of the page on the left-hand side, do you see that?---Yes.

35 Whose handwriting is that?---Which one?

The handwriting, "Keiji Takemori", down the bottom of the page, left-hand side?---That would be my brother's handwriting.

40 That's your brother's handwriting? Because when you've written Keiji Takemori, you've used upper case, you've used capital letters, haven't you?---Yes.

45 And also when you've written "director" you've used capital letters, haven't you?---Usually, yes.

But in this instance here, it's lower case?---Yes.

So it's your brother's?---This one in this case is my brother's.

And the date, 23/5/16, whose handwriting is that?---It looks like mine.

5 It looks like yours?---Yes.

Why have you put that date, 23 May 2016, because Mr Takemori didn't sign this document on that date, did he?---No.

10 So why have you put that date?---Same as the nominee's date.

So my question to you is, is that because you wanted to make it look like Mr Takemori had authorised Mr Yit to be the nominee of this company?---At that point the intention was to show consistency.

15

Yes, and to make it look like he had authorised this nominee?---Whether on the date or not he has signed it, he will have authorised the nominee.

But it makes it look like he had authorised?---Yes.

20

And the reason why you did that? Why did do you that, because your evidence is he had already given you permission to get whoever you wanted, so why did you have to put a false date as to when he signed the document?---At that point in time when filling out the date, the intention was, we have the authority from

25

Mr Takemori.

Yes, we have established all that. Yes?---And the date was left for us to complete.

30

Yes?---While I believe he's still as director during that time when this form was completed.

He was what, sorry?---He was still the director of the company.

35

He was what director, I don't understand?---The director of Osaka Gas.

He was still the director of Osaka Gas?---Yes.

So why didn't you put the same date - why didn't you put the correct date down?---When Mr Takemori signed this - - -

40

Look at me now. There's no point looking at the documents, they won't give you the answer. Why? Mr Takemori signed these forms on 6 March of 2016. You knew where he was on 23 May 2016, didn't you?---Yes.

45

He had gone back to Japan by then, hadn't he?---Yes.

He went to Japan in April of 2016, didn't he?---I didn't know which day he went

back.

But it was certainly some time in April, wasn't it?---He didn't tell me which day he comes, so I'm not aware.

5

But it was some time in April, wasn't it?---You mean he went back?

Yes?---I'm not aware which date he - - -

10 But it was before 23 May, wasn't it?---No, definitely not the date, because making it consistent with what the nominee's - - -

I'm just asking you and establishing from you, you knew as of 23 May 2016 Mr Takemori and his family had left Perth and had gone back to live in

15

Japan?---Okay.

That was the case, wasn't it? You were aware of that, weren't you? Don't look at the form, it's not going to give you the answer?---I'm not aware when - which date he went - - -

20

Not date but by 23 May he had gone back to Japan, hadn't he?---I have no idea which day.

He left Perth permanently shortly after he signed those nomination forms, didn't he?---To tell the truth, I don't know which date he left.

25

Getting back to this question - it's not going to go away now though, I'm going to come back to it - why was it that you put 23 May 2016 there as the date he signed the document?---Making it - just put a date, whatever the date the nominee has put on.

30

Yes, to make it look like he had authorised the nominee?---Yes.

But there was no need for you to do that because he had already given you permission?---Yes.

35

So why did you have to put the same date?---Because the form given to first nominee to sign, by the time - the time that they sign the date on - Keiji Takemori was left blank, I do not know what was the date to be filled in, so I just make it easier, just follow the top.

40

It wasn't 23 May, was it?---It wasn't.

You would have been able to find out and recall that it was in early March of 2016?---Yes, I would have.

45

You would have had an entry in your diary or something, wouldn't have you? You

being a much younger person than me, you would have had electronically somewhere, wouldn't have you?---I would have.

5 You would have been able to quite easily see that it was 6 March 2016, yes?---You're right.

But you chose 23 May - - -?---To be consistent with the - - -

10 Yes, to make it look like it was the same day that Mr Yit had signed it, yes?---Yes.

And again, to give the impression that Mr Takemori was present when Mr Yit signed it. It gives the impression of that, doesn't it?---By looking at this, you get the impression

15 [11.45 am]

And that's why you deliberately wrote that date in, 23 May 2016?---Yes.

20 But there was no need for you to create such an impression because, as you said to us, Mr Takemori had given you permission to get whoever you wanted?---Yes. I should put all the dates the same when he signed the document.

25 Mr Takemori never gave you permission to get nominees to vote on behalf of any of the eight companies that he was a director of, isn't that the case?---No.

Very quickly, 975, thank you, Madam Associate. This is exactly the same thing again, isn't it, with the dates? I gather Aline Yit is Mr Yit's wife, is that right?---Yes, Mrs Yit.

30 Sorry?---On the front top left corner, "Second nominee: Mrs Yit."

Yes, that's right. It's his wife, she signed it on the same date as her husband, hasn't she, 23 May 2016?---Yes.

35 It's the case, isn't it, you had heard that questions were being asked by this stage by the City of Perth staff as to the number of times your work post office box address was appearing on the electoral rolls, is that right? That's why you had to put the 1 Pegler Street address?---That's right.

40 Did you go and approach the Yits to be nominees or did your brother do that?---I did.

You did, did you? As you can see there, still no email address or contact number for Mr Takemori, do you see that?---Yes.

45

I'm now going to show you an extract from the owners occupiers City of Perth electoral roll before those changes were made. Madam Associate, this is 8.0758.

Do you see that? Row after row of voters on the owners occupiers roll having the address of PO Box 6116, East Perth, WA, 6892, do you see that?---Yes.

5 And also to the right-hand side of that page, the various companies. Right in the middle of that page we have three of your immediate family, don't we, Angie Yong, Lilly Yong and indeed, yourself, Yit Kee Yong, do you see that?---Yes.

Also all having the PO Box 6116 address?---Yes.

10 To the right-hand side of that PO Box address, it's blank, isn't it? Do you see that?---Sorry, on the centre?

Yes, in the centre?---Of Angie and Lilly Yong?

15 Yes, for Angie Yong, Lilly Yong and Yit Kee Yong, it's blank; is that because the three of you sought to be silent electors?---Yes.

20 There's 29 names there that have, apart from you and your mother and sister, 29 names that all have where their ballot papers were to go to if no changes were made, to PO Box 6116, East Perth, WA, 6892. I've counted it up, you can count them up if you want to as well but I've counted 29 names?---Okay.

25 And these are all people that you've got to be nominees for the various companies that appear on the right-hand side of that page, is that right?---It would look right.

Starting with Bell Vista Pty Ltd and down the page, do you see all that?---Bell Vista, yes.

30 So if the electoral roll details remain like that, then the 32 ballot papers, that is 29 of the others and then three for your family, including yourself, for the 2017 elections would have been sent to that PO Box, 6116 address, do you agree?---Yes.

If we now go to, Madam Associate, 8.0768. Incidentally, the TRIM number for that, sir, is 12458.

35 COMMISSIONER: Thank you.

MR URQUHART: For that document and for this one, it is TRIM number 12457.

40 COMMISSIONER: Thank you.

MR URQUHART: This is a total of 16 voters on the owner occupiers electoral roll before the changes were made by the City of Perth that had a post office box 862, Victoria Park, WA, 6979?---Yes.

45 Again, are these all nominees that you got for various companies?---Yes.

In this instance, once more if those changes hadn't been made by the City of Perth, their ballot papers for the forthcoming election would have gone to a post office box that they had no access to?---Yes.

5 But you did, you had access?---Yes.

A total of 16 there. So that's how I get that number of 45 that I mentioned to you yesterday?---Yes.

10 Madam Associate, you can take that down, thank you. Do you recall making a request to the City of Perth to make you a silent voter on the owners and occupiers roll?---It would have been quite some time ago, can't remember which date or - - -

Yes, but do you recall doing that?---Yes.

15

If we have a look at 8.0654 now, thank you, Madam Associate. Is that the statutory declaration that you had to swear?---Yes.

And it's dated at the bottom left-hand side, 3 February 2015?---Yes.

20

Was that the date that you made that declaration?---I would assume, yes, correct.

I need to ask you that?---Yes.

25 Because other dates that we have looked at haven't been the correct ones but that is the correct date?---Yes.

Thank you. You've declared:

30

*I apply to become a silent elector on the owners and occupiers roll. I believe that publication of my address would place my safety at risk. I request that my name and address be omitted from the register and from rolls.*

35 Why did you make that request?---To make the name suppressed from the roll.

Yes, why did you make that request? What was your reason?---The reason was given in the statutory declaration and - - -

40 I can see that, because you believe it would place your safety at risk, but was that the real reason?---It was the reason.

That was the reason?---Yes.

45 Had you ever been threatened or had your safety placed at risk whilst you were a Councillor?---While first running for Council, it's the first time running as a Councillor and running for Council will be going into politics. So as my first time

going into politics I'm unaware and not sure what would happen if my personal details been disclosed.

5 But my question was, had you been threatened or your safety put at risk prior to you completing this statutory declaration?---Not during my time as Councillor.

You were worried that once you were elected, that that could be the case?---Yes.

10 You were elected in 2013, weren't you?---Yes.

You've made this statutory declaration in February 2015, 16 months later?---Because I'm not aware there is such a system that we can put name suppressed on the roll.

15 When you say "we", who do you mean by "we"?---We means the family members who can vote in the Local Government election.

Because is it the case that your mother and sister made the same request at about the same time?---Yes.

20 If we look at 656, please, Madam Associate. The TRIM number for that previous document at 654, sir, was 12447.

COMMISSIONER: Thank you.

25 MR URQUHART: This next one is 12448.

COMMISSIONER: Thank you.

30 MR URQUHART: That's written almost exactly the same as yours and signed just two days later?---Yes.

If we can just now look at 8.1107. You will find here, there's the one from your mother?---Yes.

35 Which is on the same date as the one from your sister?---Yes.

40 Which was the same day as you and I think - did you all sign it on the same day? No, your sister signed her two days after you and your mother signed yours. In fact, you signed a stat dec at the same time as your mother, didn't you, because it's witnessed by the same person, Matthew Keating, can you remember that? You both signed it at the same time before the same person?---Yes.

45 So what address was it that you wanted to be silent?---The address supposedly to be silent on the electoral roll?

[12 noon]

5 The answer's not there - in fact, it might well be. Yes, you can have a look at the screen this time and see if you can find the answer there. I'm letting you do it on this occasion. There you are, what address was it that you and your mother and your sister wanted silent on the electoral roll?---The reason can be - - -

10 There's a big clue there on the screen, isn't there?---There are two addresses the electoral roll can send to. One is the ballot paper was sent to the home address.

15 What address did you want silent on the electoral roll? You can have a look at the screen. I'm actually giving you permission to look at the screen there?---It's not stated in the stat dec 123.

20 No, but there is an address there, isn't there?---But what's the point in silent there, it's the PO Box address.

Yes. Is that the one you wanted silent?---It should be silent the home address.

25 Did you want the PO Box address silent as well?---No.

No?---It should be to silent the home address.

30 The question is, did you want the PO Box address silent as well?---No.

35 Are you sure about that? Are you sure about that, Mr Yong?---If a person is concerned about his safety, why he want to silent the postal address? It should be silent his home address.

40 Mr Yong, are you sure about that, that you didn't want the post office box as not appearing on the electoral roll?---To me, it's a logical request for home address to be silent.

45 We have heard some things that might not necessarily be logical over the last couple of days. I'm asking you about this. Did you want the post office box address not appearing on the electoral roll as well?---Never come across my mind for PO Box to be - - -

50 Never came across your mind?---Yes, because logically would be home address to be silent, if you are concerned about your safety.

Yes, but you see, it came across your mother's mind, did it not?---I seek your - - -

55 Sorry?---I seek your guidance in how they come across.

60 What did your mum say to you as to why she wanted to be a silent elector on the electoral roll?---I believe public my address would place my safety at risk, being

related to Councillor Yong.

Sorry?---Number 2, stated at number 2, "Publication of my address would place safety at risk being related to Cr Yong."

5

And your mother had concerns about her safety?---When I first ran - - -

Had your mother expressed concerns to you about her safety as a consequence of you being a Councillor of the City of Perth?---No, it should be the other way.

10

When I become Councillor I'm afraid that my position will affect her safety.

Her stat dec reads the same as your sister's:

15

*I believe that publication of my address would place my safety at risk being related to Cr Yong.*

But she never said that to you, did she?---She did not say it but her home address is the same as my home address.

20

I realise that?---So if I live together with them, then it will affect them.

Mr Yong, when your mother discussed the evidence that she gave at the private hearing, did she tell you about her answers that she gave when she was questioned?---No.

25

No?---No.

She didn't, so you don't know what she said?---I don't know.

30

Now I've got this opportunity of reading out to you what she said, okay?---For me? Okay, I'm listening.

Madam Associate, that can come down off the screen because Mr Yong seems to want to look at it all the time. I want you to concentrate on me now and I'm going to read it out. Sir, this is at page 75 from the hearing day, 5 March 2019.

35

COMMISSIONER: Thank you.

MR URQUHART: She was asked:

40

*And you also applied, Ms Yong, to be a silent elector, is that right?---Yes.*

*Why did you do that?---Because I thought - just have it there because keep on seeing my address there, maybe it doesn't look so good, so just have it silent.*

45

*Sorry, so it doesn't look so good to see your address on the Register all the time?---Yes.*

*And that's why you - - -?---Just have it silent.  
What reason did you give to the City for why you wanted to be a silent  
elector?---I can't remember.*

5 The address that she was referring to, Mr Yong, was the PO Box address, so that was her reason why. Isn't that the reason why you, your mother and your sister applied to be silent electors, because you did not want your names connected to the PO Box address 6116?---No.

10 No? You see, that's your mother's explanation as to why she sought to be a silent voter?---No, is - - -

That's her explanation on oath. Doesn't that same explanation apply to you?---No, logically you would silent your home address, why you want to silent your postal address?  
15

That's the explanation given by your mother, because you see, she was also asked this, at the bottom of that same page, sir, 75:

20 *And have you ever feared for your safety as a consequence of Keith Yong being a Councillor of the City of Perth?---No.  
And so if you stated on a statutory declaration that you feared for your safety, that would have been incorrect?---Yes, I guess so.*

25 So, Mr Yong, I will give you now another opportunity, because you have changed your evidence when pressed on matters, so I am pressing you on this and my question of you is that your mother is correct as to the reason why you, her and your sister applied to be silent voters, and that is because you did not want your names on the electoral rolls being associated with PO Box 6116?---I do not agree.

30

Are you sure you want to maintain that?---I want to maintain that.

I will also remind you now that when your sister gave evidence at the private hearing, she too said that she didn't fear for her safety because of the fact that she was related to you?---When I signing this statutory declaration, I don't want to get them involve what I'm doing here, for their safety, so that's the reason why I'm signing that statutory declaration.  
35

Really?---So that the home address should be silent.  
40

You've explained all of that and I'm giving you an opportunity now, in light of what your mother's evidence was. I'm giving you an opportunity of reflecting on whether that answer you've just given is a truthful one?---They don't have safety concern.  
45

They don't, so they both admitted swearing false statutory declarations, okay?---Yes.

So what was the real reason why it was decided by the three of you at or about the same time to apply to be silent voters?---As I said, from the beginning when I sign this, I'm going into politics, it's the first time.

5

So you're maintaining your first version, are you? You want to stick by that?---That's my statutory declaration and I maintain that because that's the truth.

Your mother and sister have admitted swearing false statutory declarations and your mother has stated the reason why she sought to be a silent voter and that was so that her name was not associated with the PO Box 6116 address, okay?---Why you say - - -

10

Are you asking me why she would do that?---Yes, but - - -

15

Do you want me to explain why she would do that?---No, I don't, I'm just curious.

I'm curious now as to why she gave that evidence that's contrary to yours because I'm going to suggest to you that her evidence is the truth. It is the truth, that is why the three of you sought to become silent voters?---After I - - -

20

This is February 2015, before you embarked on an intensive campaign to get as many voters on to the owners occupiers roll, with the PO Box 6116 address, okay? We can have a look at those electoral roll forms because we can see the dates on the far right-hand side as to when those people were nominated. We can see that for most of them, if not all, it's after the date that you and your brother and sister had become silent voters. I'm going to say your intent was not to have the PO Box 6116 address appearing on the electoral roll. As it transpired, it didn't work out like that because that address still appeared but wasn't that your intent in February of 2015?---No.

25

30

No?---It was the intent - - -

Even though that's what your mother said the intent was insofar as she was concerned?---To keep the PO Box silent?

35

Yes?---How - - -

Because she didn't want it appearing so often. Do you want me to read it out again?---You already read it.

40

Do you want me to read it out to you again?---No, you've already read it once. After signing that stat dec and - - -

Mr Yong, if you're going to repeat what you've said previously, that's fine. If you maintain that version that you've given, I'll - - - I maintain from the beginning is the same, that silent voter's address should be home address.

45

I'm just giving you, in fairness to you, the opportunity of re-evaluating your evidence in light of the evidence that your mother gave, which you were not aware of until now. That's your mother's sworn evidence, so she had a different intention to what you had, is that right?---Her intention in signing that, whatever she's sworn is her statement but my statement is - - -

5  
10 Yes. The question simply is, she had a different intention to you?---Yes. Logically, why would you silent a PO Box? If you silent, home address.

10 Mr Yong, if you want me to tell you why it would be logical for you and your mother and your sister to have no connection to the PO Box 6116, East Perth, I will tell you and you can see if you agree with me or not. Do you want me to tell you? It's perfectly logical from the explanation given by your mother as to the reason why and that is, she didn't want the Yong name appearing alongside a post office box address for numerous other voters. It's entirely logical?---Okay

[12.15 pm]

20 You see? That's logical, isn't it. If in fact the reason why you were getting nearly 50 voters sent to your post office box addresses belonging to your family, it would be logical for you and other members of the family to distance themselves from that post office box if in fact the intention was to not forward on those ballot papers to those people, but to actually use it yourselves. Do you agree that's logical if it's looked at in that light?---If you look at from what people will perceive, it's a perception.

25 Sorry?---It's a perception that people will look at it that way but my true intention was not that way. My true intention - - -

30 So you keep saying, Mr Yong, so you keep saying. What other methods did you use to get people to enrol to vote, apart from having nominees for companies that you were either associated with or you knew of people who were associated with them? What other methods did you use?---There are two ways, one is a green form, one is a yellow form.

35 So the yellow form, did you use the yellow form? How did you use the yellow form to get people to enrol to vote?---The yellow form is for individuals.

40 Yes. How did you use the yellow form to get people to enrol to vote?---They have to own a property - - -

I know that, but how did you get the form to them and how did you encourage them to fill out the form and potentially vote for you? How did you do that?---The yellow form?

45 Yes?---By hand.

By hand, where? Where would you hand out these yellow forms?---I can't recall but majority of it is the green forms but - - -

5 I know. Where would you hand out the yellow forms to these people, what locations? On the street?---No.

At their houses?---No.

10 Where would you do it?---Usually is close friend and relative.

So. Where would you do that? You've said not at their houses, not on the street, where would you do that?---By giving them the form.

15 Yes, where would you be giving them the forms? What locations did you give them the forms?---Meeting them.

Meeting them where?---At their house.

20 I thought you said a moment ago you didn't do it at their houses, but okay, their houses. Where else?---I have a limited recollection of the yellow forms.

Don't worry, we will narrow it down. How about Council House, anywhere in Council House?---For signing of yellow form?

25

Yes, or just handing it out to them? Council House, ever do it there, top floor?---I can't recall.

What's on the top floor?---Top floor is Lord Mayor's office.

30

And?---Reception suite.

Where's the Council dining room?---Level 9.

35 That's not the top floor?---Not on the top floor.

I wouldn't know, I've never been there. So level 9, Council dining room - and I'm unlikely to get an invite. Council dining room, level 9, have you handed out yellow enrolment forms to guests of yours in the Council dining room?---I can't

40

recall. Can you - - -

Well, somebody can recall you doing that. So you've had your guests to the Council dining room and then you've handed out the yellow voting enrolment forms to each of them after they have eaten. These are the ones yellow in colour, the ones for residents?---No.

45

Does that help jog your memory? Did you ever do that?---No.

Or you can't recall?---I can't recall I did it.

5 A fellow Councillor of yours has given evidence before the Inquiry of seeing you do exactly that in 2017, before the October elections that year?---No.

After your dinner, you handed your guests bright yellow coloured enrolment forms?---No.

10 No? You don't recall or you're now saying it definitely did not happen?---Definitely did not happen.

It definitely did not happen now? So it's gone from a case of you don't recall to it definitely did not happen?---If they are corporate, majority is using green forms.

15 They have to be individual to take the yellow form so it's hard for me think. Giving out yellow form is quite - - -

It's quite what?---Not my practice. I usually use green forms.

20 Yes, but you've told us you used yellow forms?---Those are for family members and friends.

25 Did you have family friends and relatives to the Council dining room? You've already told us that you did, so was there an occasion when, at the end of the dinner, as you were leaving or you were about to leave, you handed them the yellow enrolment forms?---No. No.

30 No? There wouldn't be anything wrong with that, would there?---Nothing wrong but I can't recall that I gave them yellow form.

Or would there? Would there something wrong with it now that I've taken you through the Council Policy that was in place regarding the use of the dining room? Having looked at the Council Policy, that would be - - -?---For the dining room?

35 Yes. That would be not just a breach but a pretty serious breach of it, wouldn't it?---For giving out forms?

Yes, for inviting people to a free meal?---Yes.

40 And then handing out enrolment forms?---Yes. Why?

Why? Are you asking me why would you do that?---I wouldn't do that.

Why wouldn't you do that?---Because it's not proper.

45 Not proper?---To be giving out forms.

But Mr Yong, we spent a good part of a day going through improper things that you did regarding nominees for companies, didn't we?---Yes.

5 So didn't you also do this?---If they were to complete the yellow form and give it to me I would have recollection but I don't recall that I have given yellow forms.

No, just giving them out for them to fill out?---No.

10 You definitely didn't do that?---No.

Because it would be improper?---Yes.

15 You were soundly beaten in the 2017 elections, weren't you?---I was beaten in 2017 election.

Soundly beaten? Have a look. Madam Associate, 8.0928 and 929, please. Unfortunately, it's on two pages but there were - do you remember it being a vast number of candidates?---Yes.

20 You can see at the top there, Mr Hasluck was appointed, can you see there, with 11.55 per cent of the votes?---Yes.

25 And then Mr Linnios was also successful, we know that because there's a date written on the expiry of the term and it's 2021. Then if we go to 929, please, Lexi Barton, was another successful candidate, do you see there?---Yes.

And finally Mr Reece Harley, was also successful. They all got above 10 per cent of the vote, did you notice that?---Yes.

30 So if we go back to your results at 928 - incidentally, sir, TRIM number - sorry, sir, I don't have it. 313 apparently, sir.

COMMISSIONER: Thank you.

35 MR URQUHART: You're the fourth name there, you got 6.37 per cent of the votes. You got 1218 votes, do you see that? So there were 16 candidates and you came eighth?---Yes.

40 So it wasn't very successful, was it?---No.

Did you always think it was going to be hard to be re-elected in 2017?---Yes.

45 You didn't really conduct yourself in a very appropriate manner in trying to get extra votes for yourself, would you agree with that?---Yes.

Do you remember declaring after you were elected in October 2013, do you remember making a declaration as a Councillor when you were sworn in?---Yes.

Do you remember declaring you would "faithfully, honestly and with integrity fulfil the duties of your office"?---Yes.

5 Did you adhere to that declaration at all times, Mr Yong?---No.

Thank you, sir.

10 COMMISSIONER: Thank you, Mr Urquhart. Ms Stanton, do you have an application? .

15 MS STANTON: What I seek, Commissioner, is a five minute indulgence because just in relation to the last area - penultimate area, I would benefit from having an opportunity to get some instructions before I make any application to you.

COMMISSIONER: Before I come back to you, Mr Skinner, do you have an application to make? .

20 MR SKINNER: I have no application to make, thank you very much, sir.

COMMISSIONER: Mr Urquhart, do you have anything to say about the request for a five minute adjournment? .

25 MR URQUHART: Is that for the purpose of my learned friend obtaining instruction from her client or from her instructing solicitor? .

COMMISSIONER: Ms Stanton?

30 MS STANTON: I'm seeking permission to talk to him about an area of his evidence that I'm not in a position to deal with, without those instructions or consider without those instructions.

35 COMMISSIONER: It has not been the practice of this Inquiry to allow that to happen on the basis that competent counsel are briefed and do not need to do so.

40 MS STANTON: I appreciate the practice, Commissioner, but this is a situation in which broad subject headings have been provided to counsel and a great deal of preparation in relation to those has been undertaken, but as you appreciate, it's rather different to a situation in which there might be pleadings, for example, so that every single area of cross-examination has been traversed. So that's the basis on which I make the application.

45 COMMISSIONER: Thank you, Ms Stanton. Mr Urquhart, now that you know what the instructions are?

MR URQUHART: My submission, sir, is that the practice that has remained up until now should remain so. My learned friend, if she wishes to ask questions of

Mr Yong, then she can make a tactical decision as to whether she wants to ask certain questions or not.

5 COMMISSIONER: Thank you, Mr Urquhart. Ms Stanton, that is also my view.

MS STANTON: Very well, Commissioner. In that case, I don't have any application to make, sir.

[12.30 pm]

10 COMMISSIONER: Very well. In that case, Mr Yong, I will adjourn shortly for a short time to allow other counsel to establish themselves at the Bar table but in the meantime, you are aware that you are now going to leave this hearing room and go with one or more investigators from the Inquiry to your law firm's offices, where  
15 you will assist them and provide them with a copy of the letter about which you have given evidence earlier today?---Yes, Commissioner.

You should understand that they will require access to a soft copy and of course, to the hard copy which you have told me you have kept on file. You should also give  
20 them access to your computer system so they can establish when the soft copy was created, if there is one. After you leave this hearing room and during your travel to the law office, I do not want you to use any device which you have on you to communicate with any other person, whether in writing or orally, do you understand me?---Yes.

25 I will now adjourn the Inquiry pro tem.

**WITNESS WITHDREW**

30 (Short adjournment).

35

40

45

HEARING RECOMMENCED AT 12.39 PM

COMMISSIONER: Mr Urquhart, I will have you call your first witness for this session of the public hearings and then I will hear the applications for leave.

5

MR URQUHART: Thank you very much, sir. So the next witness for this part of the hearings, which is to do with the 2015 application for a convenience store at the Adagio Apartments is Judith Sabina McEvoy. I notice that Ms McEvoy is in the back of the court. I sir, I also make a further application and that is that there be an order for witnesses out of court with respect to the following two witnesses, and they will be James Adamos and Margaret Smith.

10

COMMISSIONER: Thank you.

15

I will direct that Mr Adamos and Ms Smith absent themselves and remain outside of the hearing room for the duration of Ms McEvoy's testimony.

MR URQUHART: Out of the abundance of caution, sir, with respect to those who remain in the public gallery, the reason for the order for witnesses out of court is so that Mr Adamos and Ms Smith don't have the opportunity to hear any evidence and it therefore means that nothing regarding the evidence should be conveyed to them secondhand.

20

COMMISSIONER: Yes. I am confident that having heard you say that, Mr Urquhart, that others who remain in the hearing room will not convey what is heard in this hearing room to those outside of the hearing room.

25

MR URQUHART: Yes. Thank you, sir.

30

COMMISSIONER: Thank you. Ms McEvoy, would you please come forward and take a seat in the witness box to my left? Ms McEvoy, do you wish to take the oath or make an affirmation?

MS McEVOY: I will take the oath.

35

COMMISSIONER: Thank you. Madam Associate

**MS Judith Sabina McEVOY:**

40

COMMISSIONER: Thank you. Please take a seat, Ms McEvoy.

Mr McGowan.

MR MCGOWAN: May it please, you Commissioner, I appear on behalf of the Ms McEvoy and seek leave to appear in accordance with our formal application made 5 August 2019 in accordance with Practice Directions 6 and 7.

45

COMMISSIONER: Thank you. I have read the application and the supporting affidavit, Mr McGowan. Mr Urquhart, is there any objection?

5 MR URQUHART: No, there's not, thank you, sir.

COMMISSIONER: In that case leave is granted for today's hearing and any extension of today's hearing.

10 MR McGOWAN: Yes. Thank you, Commissioner.

COMMISSIONER: Yes, Mr Skinner.

15 MR SKINNER: Sir, I believe I have already made my application for the 5th, 6th and 7th, so I believe I've already been granted leave. I believe that order has been made, sir.

COMMISSIONER: You are right.

20 MR SKINNER: Thank you very much, sir.

COMMISSIONER: Mr Yeldon.

25 MR YELDON: May it please you, Commissioner, I appear on the application by Janet Davidson made under Practice Direction 7 for leave to appear. It's supported by the affidavit of Emily Jane Kathleen Chappelow sworn 6 August 2019 and I move for leave.

30 COMMISSIONER: Yes. I have read the application and the supporting affidavit. Mr Urquhart, is there any objection?

MR URQUHART: No, there's not, sir.

35 COMMISSIONER: In that case, leave is granted for today's hearing and any extension of it. Thank you.

MR YELDON: I'm much obliged.

COMMISSIONER: Mr McDonald.

40 MR McDONALD: May it please you, Commissioner, I appear for Councillor Harley. You should before you an affidavit that Councillor Harley's sworn 2 August 2019. Councillor Harley was intimately involved in the decision-making process with the Adagio Apartments, both in his capacity as a Councillor on the Council and on the Planning Committee.

45 COMMISSIONER: Mr McDonald, forgive me for cutting you short.

MR McDONALD: Sure.

COMMISSIONER: But I've read the application and the supporting affidavit. I will just see if there's any objection. Is there any objection, Mr Urquhart?

5

MR URQUHART: Sir, there's no objection.

COMMISSIONER: In that case, leave is granted for today's hearing and any extension of it.

10

MR McDONALD: Thank you, Commissioner.

COMMISSIONER: Thank you. Mr French.

15

MR FRENCH: Commissioner, I appear for Mr Butler. We have made an application for leave for him to be appear and be represented and that's supported by the affidavit of Mr Chu dated 5 August 2019.

COMMISSIONER: Thank you, Mr French. I have read the application and the affidavit. Mr Urquhart, is there any objection?

20

MR URQUHART: There's no objection, sir.

COMMISSIONER: Thank you. In that case, leave is granted for today's hearing and any extension of it.

25

MR HOOD: Apologies, Commissioner. I seek leave to appear for Mr Adamos. My name is Christopher Hood. You should have an application and affidavit sworn on 5 August 2019.

30

COMMISSIONER: Last but not least, Mr Hood. Of course. I have read your application and supporting affidavit. Is there any reason to object to this, Mr Urquhart?

35

MR URQUHART: No, there's not, thank you, sir.

COMMISSIONER: Thank you. In that case, leave is granted for today's hearing and any extension of it, Mr Hood.

40

MR HOOD: Thank you, Commissioner.

COMMISSIONER: Mr Urquhart.

[12.45 pm]

45

MR URQUHART: Thank you, sir.

Ms McEvoy, do you prefer Ms or Mrs?---Ms. It's been a long time since I was Mrs.

Ms McEvoy, you became a City of Perth Councillor in 1997?---That's right.

5

And you were successful in a number of elections after that?---I have been, yes.

Before you lost the October 2017 election?---That's right.

10 Before that, you contested, by my calculations, five Local Government elections?---It would have been approximately, yes.

And been elected every time?---Yes.

15 So by 2017 you had been in Local Government for 20 years?---Yes.

Were you the longest serving Councillor as at that time in 2017?---Yes, I was.

20 It would be fair to say then, you had a good knowledge of the politics of Local Government?---It's always going to happen, isn't it? Yes.

25 Obviously, by the number of campaigns that you had contested, you would be the most experienced political campaigner of all the Councillors, maybe with the exception of Councillor Butler?---Probably fairly experienced, yes, having done that many campaigns.

Because Councillor Butler had been a Councillor for the City of Subiaco, hadn't he?---Right, of course, yes.

30 But in so far as the City of Perth was concerned, you were the most experienced?---That's right, yes.

And you, together with Councillor Davidson, because she was elected in 1998, just a year after you?---That's right, there was one year difference between our timing.

35

Ms McEvoy, you were on the Planning Committee in 2015?---Yes, I was.

40 How long had you been on the Planning Committee up until then?---Look, I think I had been on the Planning Committee probably for at least half of my time in Council, yes.

Did you enjoy being on the Planning Committee?---Yes.

45 Did the staff who assessed the Development Applications seem to know what they were doing generally?---Yes, they always did.

The Manager of Development Approvals in 2015 was a lady by the name of

Margaret Smith?---That's correct.

What was your opinion of her capabilities?---I thought Margaret was always very capable.

5

Then there was a Kathy Lees, she was a senior planning officer in 2015; do you have a recollection of her?---Look, I do recall particularly the name but it's not - I don't recall her, looking at her.

10 Do you recall the reports that she prepared?---Yes, for that one, yes, there had been a lot of reports.

And your assessment of those reports, were they prepared in a competent manner?---Yes, absolutely.

15

And her recommendations seemed sound?---Yes.

20 Given your vast experience on the Planning Committee, I just want to give you a scenario. It's just an hypothetical. So the Planning Directorate has recommended that the Development Application be approved by Council with conditions?---Yes.

The Planning Committee unanimously recommends the application with conditions be approved by Council?---Yes.

25 Those conditions have addressed any legitimate concerns raised by those who have objected to the application?---That's right.

30 Based on those facts, would you more likely vote for or against the approval of the application at the Council meeting?---Well, if I recall, it might have been sent back to the Planning Committee, am I right?

I'm just talking about a scenario now, I'm not going to a specific example yet?---Right, okay.

35 But I'm giving you a scenario that no doubt you would have dealt with dozens and dozens and dozens of times on the Planning Committee?---We did on the Planning Committee. The Planning Committee was fortunately where a recommendation could be fleshed out and talked about but at the end of the day, it went to Council.

40 Yes, but based on those facts that I've given you, without referencing a particular item, just based on those facts, would you more likely vote for or against the approval of the application at the Council meeting?---If we felt it was right in theory, yes, for it.

45 Would that happen in the vast majority of cases?---It would happen in the vast majority of cases.

Up towards the high 90 per cents, would that be about right?---Yes, that would be pretty right.

5 Why is that. Why then would there be such a high proportion of recommendations being approved by Council?---Because they were correct and we agreed with them and we looked into it and we decided that it was right for approval.

10 In that same scenario that I've given you, should the way a Councillor vote be determined by whether it was an election year or not?---I wouldn't have thought so, no.

So is that a firm no or - - -?---No, it wouldn't be something that comes into it, no.

15 If it was an election year, should the fact that a vote to approve the application might lose the Councillor votes - - -?---No.

That shouldn't have a bearing on how the Councillor casts their vote, should it?---No.

20 Why is that?---Why should it? You don't make decisions at Planning Committee and Council on the number of votes you're going to get, I wouldn't think anyway.

25 Because in those circumstances the Councillor would be acting in their own interests, wouldn't they, rather than on the merits of the application?---That's right.

It's a no-brainer really, isn't it?---Absolutely.

30 Can you recall an occasion when you did not vote for a Development Application that an officer recommendation had been made for approval?---That I did not vote for approval?

Yes?---Not at this stage. There was one many years ago but not at this stage, no.

35 So there was one many years, which one are you referring to there?---There was a refusal, it was at the top end of Wellington Street.

So you voted against - - -?---Yes.

40 - - - the recommendation?---At that stage. It was many years ago.

Were you in the minority there with Council?---No, I think it possibly would have been unanimous on that one.

45 Possibly unanimous?---M'mm.

Any others?---Not that I can think of, not that I recall.

Except for?---Except for?

You were advised by your lawyers, were you not, as to what area or what matter I would be questioning you about today?---No, not really.

5

No, not really?---Well, I knew - I read it on the ABC it would be about 90 Terrace Road.

Yes, the Adagio Apartment complex?---Yes, that's right.

10

You can recall how you voted on that one, can you not?---I can, yes.

You voted against - - -?---That's right.

15

- - - the recommendation?---I did vote against the recommendation.

By the officer. So that's one example?---Yes.

Then there's the other example that you referred to many years ago?---M'mm.

20

Any others?---Not that I can recall, no.

Unlikely to be any others?---As I say, I don't recall any others. There may be, there may not be, I don't know.

25

I would suggest to you that those two that you do remember, they would be the only times when not just you have voted against the recommendation, but in fact the majority of the Council had?---Yes, that would be right.

30

So two in the 20 years that you were Councillor?---Yes, that's right.

And not just when you were on the Planning Committee but as on Council, would have you dealt with hundreds of these planning applications over that 20 years?---There would be many, yes.

35

Many hundreds?---There would be hundreds, yes.

The application for the convenience store at the Adagio Apartments in 2015?---Mm hmm.

40

You were aware I was going to ask some questions about that?---I guessed that would happen, yes.

Have you gone through any material you've had at your disposal to refresh your memory about that matter?---I have looked at the Planning Committee minutes, yes.

45

You've had a look at those, yes. Anything else?---No.

Would you like me to give you a bit of a summary of the matter?---Yes, absolutely.

5 The Adagio Apartments, you're already aware - - -?---Yes.

- - - are on 90 Terrace Road?---Absolutely.

Here in the City of Perth?---Yes.

10

And they are luxury apartments, are they not?---Yes.

24 storeys, does that sound about right to you?---Yes, that would be about right.

15

With over 100 apartments?---Yes.

With as many as 200 or more residents if it was fully occupied?---It would be, yes.

It as got unobstructed views of the Swan River and South Perth?---That's right.

20

Because the only thing between it and the river is Langley Park?---Langley Park, yes.

And that's unlikely ever to be developed?---That's right.

25

Then there was a Development Application lodged with the City of Perth in November 2014 for a convenience shop and alfresco area?---Yes.

On the ground floor of the Adagio Apartments complex?---That's right.

30

Does that all sound about right?---Correct.

And then there were objections by a vocal group of residents who lived in the apartments?---Yes.

35

Because they were concerned about amenities?---Yes.

Such as security, parking, traffic access, noise, amenity issues in general as well?---Yes.

40

Even though the City's Planning Directorate approved the application with conditions, and it was initially supported by the Planning Committee, it was ultimately defeated by Council, is that your recollection?---Yes, ultimately, but it went to Planning, it went to Council. It was referred back to Planning - - -

45

Yes, I'm just giving a bit of a summary?---Okay.

We will go into a bit more detail in due course?---Okay, and the second time it came back to Planning, I think - - -

5 I can promise you, I'm not just going to sit down after I've done this summary?---No.

10 There will be some more questions. The convenience store proprietors, after Council rejected the application, then applied to the State Administrative Tribunal, didn't they?---Yes.

To have the decision overturned?---Correct.

15 And eventually the Council agreed that the CEO of the City of Perth was to negotiate and execute a consent order in SAT?---Right.

In November of 2016 that ultimately happens, does that sound about right?---That sounds about right.

20 You may not be aware of this but that was at significant cost financially and emotionally to the proprietors of the store and the owner of the premises who wanted to lease the premises out to the shop owners?---It wasn't aware of that, no.

25 So we will look now then - I know you've already had a look at them but I just want to take you through to the Planning Committee minutes from 27 January of 2015?---Right.

Madam Associate, they start at 21.0095. Again, sir, I won't have the TRIM numbers for any of these documents.

30 COMMISSIONER: That's quite all right.

35 MR URQUHART: Ms McEvoy, I've just shown you that page to indicate that we are talking about the correct minutes from the correct Planning Committee meeting of 27 January?---Yes.

And if we can go now over to page 0096, thank you, the second page. We can just confirm there who was in attendance. So there was Councillor Butler, Councillor McEvoy, yourself of course, and Councillor Harley?---Yes.

40 You were the three Planning Committee members at the time?---That's right, yes.

Then also, halfway down the page, "Guests and deputations", we see a Ms Michelle Noble, resident of 90 Terrace Road, East Perth?---Yes, correct.

45 Am I right in saying that you saw and heard from Ms Noble a number of times during the course of this year?---You're very correct, yes.

Because she was the spokesperson?---Correct.

For those who were objecting to the opening of this convenience store, yes?---Yes.

5 There were also five members of the public and one member of the media. So there weren't too many people in the public gallery, were there?---No.

So if we go now to 107, please, Madam Associate. This is of the same document, Ms McEvoy, and this is just at the end of the report, okay?---Yes.

10

I just want to take you to what the conclusion says right at the bottom of that page?---Yes.

:

15

*The establishment of a local shop within the subject commercial tenancy is consistent with the intent of the CPS 2 -*

20 Which is City of Perth Town Planning Scheme No 2, is that right?---Yes, that's correct.

:

25

*- and the Terrace Road Design Policy.*

?---Yes.

Then over the page to 108:

30

*It will serve the needs of local residents and visitors to the area. The applicant has responded to a number of the concerns raised and has modified the proposal accordingly. It is considered that subject to appropriate conditions, the local shop is unlikely to have a significant impact on the amenity of the residential use area and can therefore be supported.*

35

?---Mm hmm.

40 The reason why I mentioned and asked you about Ms Kathy Lees a few moments ago is that she was the officer who prepared this report?---Okay.

And the subsequent reports as well. Then the Planning Committee, you will see there:

45

*Agreed to amend the officer recommendation to include an additional Part 1.5.*

?---Yes.

Do you see that? So that was done and then it was moved by your two other Councillors and seconded that:

5

*Council approves the application subject to -*

And we can see five conditions listed there on that page?---That's right.

10 Then if we go to 0109 now on the next page, there is a paragraph 2:

*Notes that a review of the street parking restrictions in front of the tenancy with a view to providing two short-term parking bays will be undertaken.*

15

So the motion was put and carried?---Yes.

And as you can see there, carried unanimously?---Yes, by the three of us on the Planning Committee, yes.

20

On the Planning Committee?---Yes,

[1.00 pm]

25 The reason, you will see that:

*The Planning Committee considered the inclusion of the Part 1.5 to the officer recommendation addresses concerns regarding the proposed signage for the development.*

30

?---That's correct.

So as of 27 January then, you and your other Councillors on the Planning Committee were content to approve the recommendation, subject to those matters that appeared there?---Yes.

35

And indeed, so at this point in time, it's like many other hundreds of applications you had dealt with at the Planning Committee?---Yes.

40 Where the officer recommendation is recommended for approval by Council?---Mm hmm.

With conditions?---Yes.

45 And then am I right in saying that in the vast majority of cases, if the Planning Committee recommends for approval the Planning Application, then in the vast majority of cases, the Council does as well?---Yes, that normally happens.

So at this point in time, it's going through the processes like most of all the others?---Yes.

- 5 I just might deal then with the Ordinary Council Meeting on 3 February 2015. So this is just one week later?---Okay, yes.

Have you had an opportunity of looking at this material as well?---I don't think I have.

10

You were aware though that the matter went back from Council to - - -?---Yes, I recall that it went to Planning and it went back to Council and then it went back to Planning, so that's what I recall.

- 15 This was the Council meeting that sent it back to Planning?---Yes.

So we go now to 0133, that's 21.0133 and again, what's more this is confirmation that we are talking about the right minutes and the right Council meeting?---Yes.

- 20 And then we go over the page now, thank you, Madam Associate, to 134, we can see who was in attendance?---Yes.

It seems everyone was there save and except for the Lord Mayor?---Yes.

- 25 Because the Deputy Lord Mayor was presiding?---Presiding.

Councillor Butler and of course you can see, you were there as well as Councillors present?---Yes.

- 30 Thank you. If we can go now to - just before we do that, before we move on, we can see on this occasion there are 21 members of the public present. Do you see, "Observers"?---Yes.

- 35 That's unusual, isn't it, to get that number of the members of the public?---Not necessarily. We have had occasions where there's a group of people will protest.

And this was one such group, wasn't it?---Yes, it was.

- 40 These were people who were turning up who were very strident in their opposition to this convenience store, would that be fair to say?---Yes, it was. They were quite adamant that they were against it.

Very adamant?---Yes.

- 45 So if we go now to 145, please, Madam Associate, and again we are just going to the minutes that had the report and then the conclusion. So 0145, now the conclusion, "The establishment of a local shop" - in fact, we see there it is almost

word for word to the conclusion that was before the - - -?---Planning Committee.

Planning Committee?---Yes.

5 Which is hardly surprising, is it?---Yes, same - would be the same.

Then we can see the Planning Committee recommendation was that unanimous decision that had been made that the Council approves, together with the five conditions, 1.1 through to 1.5 and the other matter in paragraph 2 which we have  
10 already gone through?---Yes.

So maybe we can then go to the next page which is 0146 and there the motion was to refer back to the Planning Committee, moved by Councillor Davidson and seconded by yourself?---Yes.

15 And the votes, a little bit further down, are recorded as follows and it was unanimous?---Yes.

And the reason was:

20 *In light of the petition received in relation to this report, Council agreed that the item should be referred back to the Planning Committee for further consideration.*

25 ?---Right.

Indeed, can you remember receiving the petition that day?---I don't recall it now but I know there was a petition, yes.

30 I will see if it will help with your memory if we can just go now, Madam Associate, to 0120 and this is a memo that was distributed to all Councillors by the Chief Executive Officer on the day of this meeting, and you will see there, addressed to Lord Mayor and Councillors:

35 *A petition containing 205 signatures has been received from Michelle Noble on behalf of residents, workers and visitors to the area in and around 890 Terrace Road, East Perth in relation to the Planning Application.*

40 ?---Yes.

It continues:

45 *The petition raises objection to the application for the proposed use of the tenancy as a local shop and associated signage.*

Then it goes on to say it will be tabled for receipt at the Council meeting to be held

later that day, and that's exactly what happened?---Mm hmm.

5 Just before we break for lunch, Ms McEvoy, can I ask whether you have a recollection of talking to any of your fellow Councillors about this matter before the meeting?---Look, before the Council meeting or before this - where this was lodged at the Council meeting?

10 Before the Council meeting, did you have any discussions?---I don't recall that we would have had but there was probably some discussion about it, yes.

15 Would I be right in saying it would be fair to say that Councillor Davidson would have approached you about the motion that she was going to be putting forward?---It probably would have been mentioned to me because through the Planning, I had been involved in it.

20 Yes, and she also needed someone second that as well?---Yes, and I was happy to second it.

25 And you were happy to second it, what, based on the petition?---Yes.

30 Sir, that might be a convenient time.

COMMISSIONER: Thank you. I will adjourn the Inquiry to 2.15 pm.

35 **WITNESS WITHDREW**

**(Luncheon Adjournment)**

40

35

40

45

HEARING RECOMMENCED AT 2.16 PM.

**MS Judith Sabina McEVOY, recalled on former oath:**

5

COMMISSIONER: Yes, Mr Urquhart.

MR URQUHART: Yes, thank you very much, Commissioner.

10 Ms McEvoy, just before lunch we were going through what took place at the Ordinary Council Meeting on 3 February of 2015?---Yes.

There was that reference to a petition?---Yes.

15 And then I showed you the memo from the Chief Executive Officer at the time?---Yes.

And referring to the petition and it was going to be tabled at the meeting that evening?---Yes.

20

I do want to take you just to the first page of that petition. Madam Associate, if we could get up 21.0242. I will show you the first page. There's 18 or 19 pages but the typing at the top of each page is identical?---Right.

25 So that's why I want to take you to that. We are just using the first page as an example?---Okay.

So there we are, there's the memo that we just had a look at?---Yes.

30 And 242. Thank you, Madam Associate. This is the very first page of that petition?---Yes.

I just want to concentrate though on the typing that appears there, rather than the signatures:

35

40 *To the Lord Mayor and Councillors of the City of Perth, we, the undersigned do respectfully request that the Council not approve the application for the proposed use of tenancy at lot 890 Terrace Road, East Perth as a local shop due to the adverse impact to the residents in and around the subject site and detrimental to the Terrace Road streetscape, Langley Park and the foreshore arising from.*

Then, five points are raised there?---Yes.

45 I can just give you a short opportunity to have a look at those, if you would like, Ms McEvoy, because I want to ask you something about those?---Yes.

Have you had an opportunity of looking at those?---Yes.

5 Ms McEvoy, we have heard evidence from planning officers who have said that those matters had already been addressed by them in their report and in their recommendation?---Yes.

And the imposition of those further conditions that I've shown you?---Mm hmm.

10 Okay?---Mm hmm.

So with that in mind, the Council still determined that the matter should go back to the Planning Committee?---Right.

15 That's right, isn't it?---Yes, that's right.

Even though these matters that had been raised by the petition had all already been addressed?---Yes.

20 In those circumstances, was it necessary to take it back to the Planning Committee?---It's very hard to, you know, fleece things out in a Council meeting, you can't do that. So it was probably better to go back to the committee room where it could be discussed and a decision be made to go back to the Council. I think that was what was happening.

25 If we now go to the Planning Committee minutes from 17 February 2015, so this is two weeks after the Ordinary Council Meeting?---Yes.

30 Madam Associate, we can find the minutes at 21.0214, thank you. So that's just confirmation that it's the right page, the right minutes we are talking about?---Yes.

If we can go to 216, we can see who was in attendance?---It's the same three.

The same three again?---Yes.

35 And this time, Ms Michelle Noble again?---Yes.

In the guests and deputations and 12 members of the public, and also a Mr Ian Rogers from Borrello Legal. He was actually the lawyer for - - -?---For the - yes.

40 - - - the applicants?---Yes.

You can remember that, can you?---Yes, I can.

45 We go now to page 228, if we can. This was part of the report from the planning officers?---Right.

And we can see there that there was a conclusion and then there's a subheading,

"Additional information"?---Yes.

And this refers to the petition. See there:

5                    *Against approval of the proposed local shop was tabled at the Council meeting on 3 February 2015 .*

?---Yes.

10    :

*The petition contained a total of 205 signatures comprised of -*

and it gives a breakdown, 85, 39 and 81?---Yes.

15

Incidentally, it also had a signature from someone from the USA?---Really? I didn't notice that.

20

No. Not particularly relevant, his view, would it?---Not unless he had an apartment there and came out every now and again, but no.

But he gave a US address, I think it might have been in Colorado somewhere?---Yes.

25

I'm looking at my instructing solicitor but he's not going to nod as to whether I'm right or wrong but I don't suppose it really matters. In any event, it continues at page 228:

30

*The petition is based on the adverse impact to the residents in and around the subject site and detrimental to the Terrace Road streetscape, Langley Park and the foreshore arising from -*

And then it lists those five matters that were raised in the petition, do you see that?---Yes.

35

You see, this is the one I was getting at with you at a little earlier. You see the first paragraph there on 229, Madam Associate, if we can go there. Under that italics number 5?---Number 5.

40

Yes:

*The issues raised in the petition are generally reflected in the submissions received during the advertising period. These issues have been addressed under the, "Comments" section of this report.*

45

This is what I'm saying, these are matters that the planning officers had already considered and addressed. Then down at the bottom of the page we see there:

*Part 1.5 of the officer recommendation has been amended as follows."*

?---Yes.

5

So there, there was an amendment to signs and alterations to the transparency of window glazing?---Yes.

And in addition, a new part. Yet another condition was imposed, do you see that:

10

*No shop fit-out, including shelving, storage or cabinets being located within 1 metre of clear glazed shop windows.*

?---Yes, I remember that.

15

Then over the page now - at the bottom there, we will just continue - sorry, Madam Associate, 229:

20

*It is considered these amendments address the concerns relating to valid planning considerations raised within the petition.*

?---Yes, I've read that.

Then over the page, 230:

25

*The officer therefore makes the recommendation that the Council approves the application.*

Then with those six conditions, do you see that?---Yes, I see that.

30

Then paragraph 2 notes:

35

*A review of the street parking restrictions in front of the tenancy with a view to providing two short-term parking bays will be undertaken.*

So obviously the planning officer carefully considered everything, would you agree with that?---Yes, but we still have the right to have a look at things more deeper.

40

Yes, but for most of these planning applications, you do look at it and then you agree with the officer's recommendation?---Okay, on this occasion we didn't.

No, one of two in your 20 years?---Yes, that's right.

45

As a Councillor?---Mm hmm.

Because there it was moved by Councillor Harley and seconded by you that the

application be declined?---Yes.

:

5 *Due to amenity concerns which would have adverse impacts on the affected adjoining owners of the proposed tenancy use.*

?---That's right. That was the decision.

10 These amenity concerns which had been addressed by the planning officers and were reflected in those additional conditions, okay?---Right.

But you decided to not to accept the officer recommendation?---Yes, that's right.

15 For the second time in your 20 years as a Councillor, yes, is that right?---Well, from what I recall over the years, it could have been others, but that's two that I remember, yes.

20 You remember two but I suggest to you there wouldn't be any others, because you would remember them, because these stand out like sore thumbs, don't they?---Yes, possibly could. I think there's been refusals on other smaller matters at some stages but I'm not going to - I can't go into it, I can't remember. I can't recall.

25 So had you discussed with Councillor Harley that he was going to put forward this alternative motion before the meeting?---No, it wouldn't have been before the meeting. It would perhaps be at the meeting.

At the meeting?---Yes.

30

So he wouldn't have approached you before the meeting?---Not that I recall. We are not the greatest of mates, Councillor Harley and myself.

35 Yes, I was going to ask you that. So why were you joining forces on this one?---Well, we all felt the same because at the end of the day it was unanimous.

You didn't all feel the same?---Councillor Butler.

40 Have a look at page 231 now?---Yes, Councillor Butler voted against it.

Councillor Butler voted against it?---Yes, that's right.

Councillor Butler was in the same alignment as you though, wasn't he?---Well, you could say that.

45

I'm saying that, wouldn't you agree with me?---Yes, but that doesn't come into - it as not whether we are in an alignment, it comes into the decision that's to be made.

Yes, but Councillor Butler was in the same alignment as you at the time, wasn't he?---Yes.

5 So he was against it?---That's right. He was Chair of the Planning so he might have felt that he didn't support it at that stage.

He certainly didn't because he was against it?---Mm hmm.

10 But you and Councillor Harley were for defeating this application. So not just suggesting further conditions, but just you were recommending to the Council that it declines the application outright?---Yes, that's right.

15 So kill it?---Well, if that's the way you put it. It then still had to go to a Council meeting so it was up to everybody else to make a decision.

But you knew what everybody else was going to do?---Well, we hopeful.

20 Didn't you?---I would be hopeful that they would support an amendment we put up.

What would be the point of making the amendment if it wasn't going to be supported at Council?---Yes.

25 So you knew - you had a fair idea that when this motion was put up that it was going to be passed at Council?---I would have thought that everybody would support it, yes.

30 And why was that?---No particular reason. It was a popular decision in the end.

That's what it was, isn't it? It was just a popular decision, a popular decision not based on the merits of the application?---It was totally the amenity situation for Terrace Road, Langley Park and for that area. That was my decision and that was how I put my decision

35 [2.30 pm]

40 And it was a popular decision, and it was a decision not based to the merits of the application, was it?---No, not in the end because it went to SAT.

Yes. Aren't you supposed to make decisions on the merits of the matter before you?---Well, you would but as I say, we have the ability to be able to change our views on it. It's not just held hard and fast on that. As Councillors we can - - -

45 Doesn't the legislation require you to decide matters on the merits?---Yes, that's on the scheme and everything, yes.

So that was ignored in this instance, wasn't it?---Well, I wouldn't say it was ignored. You might say it was ignored but I thought it was fairly well thought out.

5 How would you describe it then? If the matter wasn't based on the merits of the application, then the legislation which requires you consider matters on their merits, was ignored?---That's your view of things.

10 Can you offer another explanation as to what happened here, because you've agreed with me that it wasn't determined on the merits of the application. So therefore, the merits of the application were ignored. Okay, let's say disregarded?---Disregarded.

How about that?---Amenity still comes into it. There will be - - -

15 Is that a better word for it - I just want to stay with this - it was disregarded?---Yes, it was disregarded because we changed it from an approval to a refusal so yes, you're right, it was disregarded.

20 Because of the objections of the residents?---That would have come into it, yes.

Isn't that the only reason?---I wouldn't have thought so but that was definitely a main reason. When you've got 250 people objecting to something going into their apartments, you've got to look at it.

25 It wasn't 200. There was the breakdown of who were actually in the apartments?---Right.

There was 205 signatures?---Yes.

30 Bearing in mind that you were on the Planning Committee earlier in the month which approved the application?---Yes.

You were aware then of objections that had been raised by residents?---Mm hmm.

35 And then the 205 signature petition, did that swing it?---There had been many of them at the Planning Committee meetings as well in person, so - - -

Yes, there were some at the first Planning Committee meeting?---Yes.

40 But that didn't have an impact on the Planning Committee determining the matter on its merits, did it?---No.

45 No, so something changed which led the Council not to determine the matter on its merits and that was the petition, was it?---Well, that would have been part of it, yes, but it was definitely - as I said earlier, my decision was on the amenity of the area and I totally agree with what - the decision that I made.

So you changed your mind?---Yes.

One significant reason for you changing your mind was the petition?---Well, it was the plea from all the people.

5

Was that one?---Yes, that could have been one of the decisions, yes.

Any others?---No, not really.

10 That was it, okay. If we can have a look now at the Ordinary Council Meeting and, Madam Associate, we can find that at 21.0342. Once again, this is the cover page just to confirm this is the meeting we are talking about, 24 February?---Yes, that's right.

15 If we can just go now to the next page that appears in this document, it's not the next page of the Council because normally I've shown you that to see who's in attendance but if we go to this page which is 0343, which is page 6, we can see that there was a vote taken and we can see that all nine Councillors were present?---That's right.

20

Including the Lord Mayor?---Yes.

Then I want to draw your attention to this, what appears in paragraph numbered 2 at the top of the page?---Yes.

25

:

30 *A petition containing 290 signatures had been received from Mr Ian Rogers on behalf of interested parties in and around 890 Terrace Road, East Perth, in relation to the Planning Application.*

Then there's another sentence and then the final sentence, three lines up:

35 *The petition supports the application for proposed use of tenancy as a local shop and associated signage. The petition is attached as Schedule 18."*

?---Yes.

40 It was moved unanimously that the petition would be received, do you see that?---Yes.

45 So now we have got a petition from 290 people now. Not all were residents of the City of Perth but there were a substantial number. So you had 205 on one side, 290 on the other; what about this petition, did that change your view?---No, it didn't.

Why not?---Was that at the final Council meeting?

Yes, at the final Council meeting?---No, it didn't change my view.

5 Why was that?---I don't recall. Why would it?

We had a 205 signature petition which had played a large part in changing your mind not to approve the application?---Right.

10 Now we have got a 290 signature petition which says, "We want the shop" and you ignored or disregarded it?---Yes, that's right.

15 So I'm just seeking an explanation as to why?---No idea. I don't recall the petition coming in from them. I only recall at that meeting, at the back there was a lot of people in hoodies waving placards.

In the back? So this is people power?---Yes, absolutely.

20 Which led to the popular decision?---No, it didn't because the decision had been made then. This was during the meeting.

During the meeting, the vote hadn't been taken yet, had it?---No.

25 So they were waving placards and that had an impact then, obviously, on the popular decision that was made?---They didn't have an impact on the decision but they had a very big impact on the night.

Same thing, isn't it?---No.

30 What's the difference between not having an impact on the decision but having a major impact on the night?---It's just, they had an impact on the night, we had never seen that before.

35 And therefore on the decision?---No, I'm not saying that but it wouldn't have helped their cause that particular night.

Who were these people?---They were the people - the applicants.

40 They were for?---M'mm.

I see. So because they had the placards, that did not help them at all?---No.

45 I see?---Well, it had never been seen in a Council meeting before, black hoodies, placards and filming people.

Should that play a part in the decision by the - - -?---I think it was disgraceful.

Was the shop owner and the proprietor of the store doing that?---I don't know who it was. There was people that were put there by the owners or whatever.

5 It was prepared by the owners, are you saying?---Oh absolutely, yes.

It was, was it?---Yes, yes.

10 How do you know that?---If you see what they were holding up and they were intimidating people.

How do you know that, that it was prepared by the shop owners?---Well, you could see with the - anyway, they were - - -

15 Please explain, Ms McEvoy, why you came to the conclusion that these protestors had been organised by either the owner of the premises or the proprietors of the shop?---Well, they certainly weren't organised by anybody else in Council or the owners of the units.

20 What made you think it was organised by the owner of the premises or the shop proprietors?---It was just the way they handled themselves during the meeting. People don't come to a Council meeting with black hoodies on, waving placards and photographing people.

25 I fully agree with you but I want to know why it was that you drew the conclusion that this had been organised by the applicants?---Well, they were calling out slogans as well for the shop to be passed.

30 How did you know that these had been organised by the applicants?---Who else is going to organise a group like that to come into Council?

So it was assumption that you made?---Yes, it was and it was a fairly correct assumption at that stage.

35 Why was it a correct assumption?---Well, I - you know, you would have to be there to believe what happened.

Were these people saying - shouting out, "We have been sent by" - - -?---No, they weren't, but they were shouting - - -

40 Mr Altintas, did they, or Mr Bkoor, or Mr Qaraleh, did they shout out those names?---No, they didn't but the placards said they wanted the shop there.

And what's wrong with that?---Really?

45 What's wrong with them saying they wanted the shop there?---Sitting there the way they were and holding up - no, I don't think you've ever been to a Council meeting.

I can say I haven't been to the dining room and I haven't been to a Council meeting either, yes. In any event, so?---So anyway, at the end of the day it was refused.

5 But that's not deciding the matter on its merits, is it?---That wasn't taken - that was at the Council meeting on the night. We had already put up the motion to refuse the shop, so that decision was made.

10 Can you see why people might be cross at the Council's attitude to this?---I don't think so.

Really?---No.

Really?---No, I don't, apart from the applicant.

15 This was a Planning Application that had complied with all the planning requirements. It complied with the law?---Yes.

20 And we had a Council disregarding that and also disregarding, on your own admission, disregarding considering the matter on its merits?---Okay.

Why shouldn't people be up in arms about that?---That's up to the people.

Why shouldn't they be?---If they want to be up in arms, they can be up in arms.

25 They had every right to be, didn't they?---Yes.

But you held that against them?---Yes, in that instance, as I say.

30 If we can go now to page 359 of the minutes. So this is the final section of the report?---Yes.

It just confirms that you have been saying?---Yes.

35 It was there in black and white to every single Councillor?---That's right.

The second paragraph there:

40 *It is considered that appropriate conditions can be imposed to address other valid planning considerations raised by submitters. Subject to these conditions, a local shop is unlikely to have a significant impact on the amenity of the residential use area and can therefore be supported.*

45 Then it refers to two more recommendations of conditions?---Yes.

But this is the sentence - isn't this the sentence that created a serious problem for the Council in rejecting this application? It reads:

*It is considered that these amendments address the concerns relating to valid planning considerations raised within the petition.*

5 ?---Yes.

You accepted that, didn't you?---I accepted that, yes. That would be the reason it ended up the SAT.

10 That meant that there was no legal impediment to the approval of the application, didn't it? If that was correct, that meant there was no legal impediment?---Well, I still say that we had - we were able to do that on amenity.

15 That's not the question. The question was, there was no legal impediment to the approval of the application, was there?---No, not along that line.

20 And you also knew in your many, many years as a Councillor and your experience on the Planning Committee that if the matter went to review to the State Administrative Tribunal, the State Administrative Tribunal would determine the matter only on the basis as to whether all valid planning considerations had been adhered to?---That's right, but at that stage you don't know it's going to go to SAT.

25 I see. So it was going to be up to the applicants to incur the costs, both financially and emotionally, of taking the matter to SAT if they wanted the decision of the Council overturned?---That's what happened.

Yes, that's what happened. Is that an entirely reasonable position for the Council to take?---Well, I'm still quite happy with that decision that I made.

30 Is that an entirely reasonable decision for Council to take?---Yes, I think - - -

35 That they will vote against a Development Application that had complied with all the legal requirements and that if the applicants wanted that decision by the Council overturned, they had to go through SAT, is that it?---That's it.

And that's a fair process for you, is it?---At the end of the day, yes.

You think that's a fair process?---Yes, I think it is.

40 You think that's entirely reasonable for the Council to do?---I felt at the time, yes.

Why?---As I say, it all came back to the amenity of the area and that was all that was the issue

45 [2.45 pm]

How many times has the Council voted in that way, voted to reject an application,

be it for planning or whatever, knowing - in your case, knowing that if it went to review on SAT, that the Council's decision would be overturned? How many times has Council done that with you partaking in the proceedings?---I have no idea. You've probably got more idea than what I have.

5

No, I'm asking you?---I don't know.

This is one of those few questions that I don't know the answer to?---Really?

10 Yes, so you're going to help us?---I've got no idea.

How many times?---I don't know, I've got no idea.

Once?---Well, as I've said to you, those two that I've mentioned before.

15

Two?---Yes.

Two?---But there could be others and I don't recall.

20 There could be others?---They were major ones.

This was a major one, wasn't it?---Yes, it was.

25 Did you discuss how you would vote with any of your fellow Councillors before this meeting?---We probably did have a discussion when it was from an approval to a refusal.

Because, I will just put on the record now that at the bottom of the page there, it was a unanimous vote?---That's right.

30

Nine/nil?---Yes.

So were you concerned at all that this matter might be taken to SAT for review?---Not at the time.

35

Why not?---Well, why should it? We'd made a decision and it went through as that decision.

40 Before you voted, did you consider the adverse consequences on anyone should you vote against the application?---What do you mean "the adverse complications", with the shop owner?

Yes, the adverse consequences?---Consequences.

45 With anyone?---No.

Did you consider them?---No.

The emotional consequences?---No.

The financial consequences?---No.

5

Nothing?---No.

10 But I'm right in saying you considered the perceived adverse consequences for the adjoining apartments' owners in your decision to vote no?---That would have come into it with the petition, yes, it would have been; lots of correspondence in regard to it.

15 I gather from your evidence though that by you voting against the application, you hadn't come to the conclusion that the City officers from Planning had got it wrong in their recommendation?---No, they dealt on its merits, planning.

Yes, which is exactly what Council's supposed do under the provisions of the Local Government Act?---Yes, that's right.

20 So why didn't Council do that?---Because we felt because of the amenity, that that's the reason we chose it.

So you ignore the legislation?---The amenity is actually - would be in this document, but further back.

25

But you ignore the legislation that requires you to consider an application such as this on its merits?---We did consider it on its merits and we didn't think the merits were good enough.

30 Why was it that this was just one of those two matters in which you voted against the recommendation? What was the reason for that?---Well, the reason - as I say, at the end of the day, the reason was the amenity for these people in these units. It wasn't the amenity of what they were wanting around Langley Park, around their units, over towards the river and that. It wasn't something that they - - -

35

Ms McEvoy, this local shop wasn't just to be for the exclusive use of those people who lived in Adagio Apartments, was it?---No.

It was to be for the general public?---Yes.

40

Anyone using Langley Park, yes? Anyone who lived up the road, yes?---There was about four or five of them within a short distance.

45 That might be so but that's not a relevant consideration to take into account, is it?---No.

When you're considering the matter on its merits, do you agree with that?---Yes.

The inevitable happened, didn't it, because the matter did go to SAT?---Yes, it did.

5 And then Council moved a motion, didn't they, that the Chief Executive Officer was to negotiate on behalf of the City?---Yes.

For a consent order at SAT?---Yes.

10 Isn't that right?---Yes.

Because word had emerged during the mediation proceedings that the SAT member considering the matter was going to, in all likelihood, allow the review?---M'mm.

15 So what you had predicted would happen, actually happened?---M'mm.

Do you agree with that?---Yes.

20 I just want to find my notes which indicates the costs to everybody as a result of those SAT proceedings?---Right. About \$50,000.

Sorry?---About 50.

25 \$50,000 for SAT, for the City?---M'mm.

Someone else has given that figure?---Really?

Yes?---That's just off the top of my head. I don't recall the absolute figure.

30 We have been able to calculate, that is the Inquiry, as at July of 2015, and the matter went on for some months after that, that there were \$8,475 in planning consultant fees incurred by the City and \$18,307.16 on legal fees. They were the costs incurred by the City?---Yes.

35 And that was two months before the negotiations began?---Right.

So you might well be right, it was probably considerably more than that?---M'mm.

40 But whatever money was spent by the City, it was at least \$26,000?---M'mm.

Was that money well spent?---Well, I wouldn't think so but as you say, I thought that - we were aware that this might happen.

45 Yes, and I would have thought then, in those circumstances, that however unpopular the decision might be to the residents of Adagio, that the Council should have approved the application?---Later, before the SAT?

No, when it came before Council?---Oh right. Well, it didn't.

I know that, but it should have approved it, shouldn't it?---You're saying that, the I'm saying I stick by what we did.

5

You can answer however you want. I'm putting to you that the Council should have approved it, you're saying no?---No, and we didn't.

10 I know that. As at 20 August 2015, the legal fees for the applicants - these are the premises owner and the shop proprietors - came to \$36,874.64?---Right.

There would have been more fees incurred whilst negotiations continued?---M'mm.

15 So tens of thousands of dollars, Ms McEvoy?---M'mm.

So that was the cost to them to get the decision by the Council reviewed?---Right.

20 Do you agree? Are you saying they had to bear those costs if they wanted the Council to make the decision that it should have made in the first place?---Not necessarily, but the decision was made in the first place and that's what happened.

25 As you've already told us, you agreed with me if they wanted the decision changed, they would have to go through SAT and that's what would happen, the decision would be changed?---Well, that's the normal process when it's gone to - if it goes to SAT, that's the process. So that's what happened.

30 But this is the situation different to where the Council has made a decision on the merits and someone's sought a review. In this instance here, you at least knew, and I would hope your fellow Councillors knew, that if what the planning officers was saying was correct and this complied with all the planning requirements, then it should have been approved, like all the many hundreds of others that you had approved, yes?---Yes, if you say so.

35 I'm asking you whether you agree with me?---Not really because I wouldn't have made this decision if I did.

40 It comes back to this, why was it that you made that decision?---The reason we made that decision, me in particular and most of the others, was on an amenity basis. That's quite clear. It was definitely an amenity and that's what my decision was.

45 And what other reason was there?---An amenity issue - you're saying that we had these 300 people file a petition, there was some lobbying from the locals around that area, yes.

2015, what happens - this is an odd year this is happening - what happens every

odd year in the City of Perth?---I don't know.

Have a think?---Every odd year?

5 Every odd year?---There's elections.

Yes?---Yes, that's right.

10 What benefit was there to the Councillors who were contesting the elections that year to vote against this application?---I don't - you know, I don't think that you could take credence on that.

15 What benefit was there for the Councillors who were contesting the elections that year by voting no?---There would be no issues for them if they were - that's not what comes into something like that.

It might not be but what benefit would there be for them voting no?---I don't know.

20 It's obvious, isn't it?---What?

You've told us this was a decision based not on the merits of the application but because it was a popular decision?---It was an amenity decision.

25 No, they were your words, it was a popular decision?---I didn't say that.

I'm sorry.

COMMISSIONER: Ms McEvoy?---Yes.

30 You did say ?---Did I? Sorry. I've forgotten what - so it was a popular decision.

35 MR URQUHART: It was a popular decision. We have heard from a very disgruntled staff member from the City of Perth describe it exactly like that?---A staff member?

Yes, he said it was a popular decision and he was most cross about it because it wasn't a decision based on the merits of the application, and you - that's why I took note of it when you said it was a popular decision?---Well - - -

40 Okay?---Yes.

So what benefit was there to the Councillors who were contesting the election later that year for making this popular decision?---I have no idea. I don't know who was even running. It may have helped them, it may not.

45 Of course it would help them, wouldn't it, if it was a popular decision? It was going to help them, wasn't it? Wasn't it?---I don't think so, but anyway.

No, you don't think this would help them? Really?---It may.

It may?---It may.

5

Ms McEvoy, have you read the reports about this Inquiry having access to several million documents?---Yes.

All the Councillors' emails as well?---Yes.

10

Okay?---Yes.

So every single document's been looked at?---Yes.

15

So I'm going to ask you again - - -?---So one of them says - - -

No, wait. You clearly saw this decision to reject this application as a very big positive for those Councillors who had to be contesting the elections in October of that year, isn't that right?---I wasn't one of those Councillors, I don't think.

20

No, but you held that view, didn't you?---It might have been a view that I held, yes.

Was it?---Probably. Yes, it was. I mean, anything like that does help when you get a lot of feedback.

25

Let's look at who was coming up for re-election that year. You say you don't know?---No, I can't recall off the top of my head.

The Lord Mayor?---Right, yes.

30

She was in your alignment?---Yes.

She was in your alignment?---The Lord Mayoral election, yes.

35

She was in your alignment?---You call it alignment, yes.

I thought on a previous occasion we agreed with that word?---Yes.

Would you like to - I'm not going to say "team" because you didn't like team previously?---No, I don't like caucus.

40

So I said alignment?---Yes.

And that's what we agreed with last time?---Okay.

45

Can we stick with "alignment"?---"Alignment" it is, yes.

So the Lord Mayor was part of your alignment?---Yes.

She was coming up for re-election?---M'mm.

5 The Deputy Lord Mayor, Rob Butler, he was part of your alignment, wasn't he?---Yes. He was coming up for re-election.

Councillor Adamos?---Yes.

10 He was part of your alignment?---Yes.

He was coming up for re-election?---Right.

And Councillor Davidson?---Right.

15 Staunchly in that alignment, wasn't she?---Yes.

So she was coming up for re-election as well?---Oh right.

20 And then - but wait, there's more?---Oh right.

Councillor Chen?---Oh really?

25 She too was coming up for re-election, another member of your alignment?---Oh right.

Isn't she?---Yes. That must have been a good year for alignments.

30 Did that factor play a part in the way this matter was dealt with?---No, it didn't at the time.

Are you sure about that?---I'm sure of it.

35 [3.00 pm]

40

45

You did not consider the ramifications at the poll in October if the Council approved the application?---No.

Not at all?---No.

5

Never crossed your mind?---No.

Do you recall having a conversation with Councillor Adamos, after the meeting, so this was after the Council meeting in which the application was rejected?---In the first Council meeting after it was rejected?

10

The first Council meeting, the matter was referred back?---Yes.

This is the Council meeting at which the vote was taken nine/nil?---This one here?

15

This one there?---Yes.

Up there on 24 February 2015?---Right.

Do you remember having a conversation with Councillor Adamos - - -?---I could have.

20

- - - on the floor of the room?---On the Council floor?

Yes, after the meeting had adjourned?---Right. That's an unusual place to have a conversation.

25

Do you recall having a conversation with him?---I may have done, I don't recall it.

It may have been near the public gallery?---Right, okay. So up towards - yes, yes.

30

You may well have?---I may well have, yes. I don't know.

There were a lot of supporters there as well?---M'mm.

35

Of the people who didn't want the local shop to go ahead, wasn't there?---Yes.

Was there a bit of back-slapping going on and congratulations?---Could have been, I don't remember.

40

Michelle Noble?---Well, possibly. She led the run on it, so - - -

You had been become quite friendly with Ms Noble by this stage, hadn't you?---Not friendly. I wouldn't go and have coffee with her, but we had emails backwards and forwards.

45

You wouldn't catch up with her?---No, I don't think so.

5 We will come back to that in a moment. I will say to you that you said words to this to Councillor Adamos, "If this goes to SAT, then it would likely be approved but at least the public gallery has seen us refuse the application"?---I don't recall saying that, unless somebody's heard it and relayed it to you.

Somebody certainly has overheard it and has given that evidence on oath?---Oh right, okay.

10 And your evidence has at least been consistent with the first half of that remark, "If this goes to SAT then it would likely be approved"?---M'mm.

So you may well have said something like that?---I may have, but the back-slapping bit I didn't - - -

15 No, we have moved on from there?---Right.

"But at least the public gallery has seen us refuse the application"?---I definitely don't remember saying that, saying it in the Council chamber, no.

20 But you might well have?---Could have. If you've got it there, I must have.

This is the evidence of another - - -?---Councillor.

25 - - - staff member?---Oh, it's another staff member.

Yes, who you regard very highly?---Right.

30 Who remembers it because she too, unlike the other staff member I told you about, was not very happy - - -?---No.

- - - with this decision made by Council and you can understand that, can't you?---Yes, I can understand that.

35 So - - -?---Where do we go from here?

She's got a clear recollection of it, you don't know whether you said that or not?---I don't have any recollection of saying that in the Council chamber.

40 But you may well have said something like that?---But I may well have said it.

But that's not a valid reason for refusing the application, was it, that, "At least the public gallery has seen us oppose it"?---No, no.

45 I don't know if we got from the minutes when this Council meeting finished, but they start at 6 o'clock, don't they?---They do, yes.

They normally wind up in two hours?---Yes, usually by 7. Normally the staff will have bets how long after 7 o'clock, so it's - - -

5 So it looks like you sent this - you sent an email just after 8 pm?---Right.

To Michelle Noble on the same night?---Right.

Of this Ordinary Council Meeting, do you remember doing that?---No, I can't.

10 If we can have a look, Madam Associate, at 21.1156. Do you have any reason why you might be sending her an email?---She would have been at the meeting so I don't know why I sent her one that night.

No. So don't know why?---So this is it?

15

Let's have a look. This is your email to her on Tuesday, 24 February at 8.08 pm, do you see that about one quarter of the way down?---I must have just got home.

:

20

*Hi Michelle, I trust you're as pleased as I was with the outcome tonight.*

Do you see that?---Yes.

25 :

*I want to compliment you on the effort you've put in to your submission and petition and such wonderful back-up you had at the meeting. As Lisa said, and I believe it is the largest support group I've seen in 17 years on Council. It will be interesting to see if they go to SAT.*

30

?---Yes.

35 "Kind regards, Judy McEvoy." So why would it be interesting to see if the applicants go to SAT?---Well, that's probably the only way they could have changed it to an approval.

With all the costs involved, yes? Yes?---Yes.

40 Were you just hoping that they wouldn't take it to SAT?---No, not necessarily. I thought that they might.

And you knew that if they did - - -?---There would be costs involved.

45 Yes, and more importantly, almost inevitably, the decision by Council would be overturned?---Well, you never quite know. Sometimes they uphold it.

But almost inevitably?---Well, yes.

5 Because if the planning officers had been right that all valid planning requirements had been complied, if they were right about that and you knew that because it was in the report?---M'mm.

It would be overturned?---Yes.

10 The decision would be overturned and we are talking about planning officers who you regarded as competent - - -?---Yes.

- - - people, very competent people?---Yes.

15 Then Ms Noble sends you a response. We can the end of it just at the top of that page there?---Yes.

So if we go to 21.1155, the page before, thank you, Madam Associate?---Yes.

20 There we go?---Yes.

She talks about it "being a great result for our beautiful streetscape", et cetera, et cetera. Then at the bottom of the paragraph, at the bottom of that page, she seems to share your view:

25 *As you saw last night, we have a very passionate but placard-free group of people.*

?---Yes.

30 So distinguishing between those hooded thugs who had the placards?---Yes.

You respond to that, less than an hour later, if you just go up the page there:

35 *Thank you, Michelle. Yes, it was great to have a chat. I looked for your phone number on the petition but not there. As you would have seen at meeting, I was very correct in what I said - not very me - but the line has to be toed. My number is [REDACTED]*

?---Yes.

40 And then she exchanges a telephone number with you at the top of the page there?---Yes.

So did you both catch up?---No, we didn't actually.

45 Did you have a chat at least?---Possibly would have spoken on the phone, yes.

Could I just go back now to what your email was to her?---Yes.

Second line there:

5                    *I was very correct in what I said - not very me - but the line has to be  
                         toed.*

What did you mean by that?---What I said in the first one, what I keep going back  
to, it's the decision that was made on amenity. That's what I keep saying.

10

But "the line has to be toed", what line were you toeing?---I don't know.

Nor do I, and that's why I'm asking you. It's the second question I've asked you  
that I haven't had the answer to?---Might have had my car towed away.

15

What line had to be toed, though?---The line that we - what we decided in that  
approval, that was the line we had to stick with and keep going with.

Why was that?---Because that's we had decided, all of us.

20

And the reason why you decided that is because your alignment didn't want to  
alienate 200 or more votes at the elections come October, isn't that the  
reason?---No, that wouldn't have come into it at the very start of it, I can assure  
you.

25

What about at the very end of it?---Could have been, yes.

It was, wasn't it? It was, wasn't it?---Yes.

30

That was a dominant reason?---No.

For voting no, or a reason?---It definitely wasn't a dominant reason. It might have  
been a single reason at the end of the day.

35

Yes, and that's an entirely irrelevant reason to take into account - - -?---Yes.

- - - isn't it, as we established at the start of your evidence?---Yes, we have talked  
about that.

40

Yes, entirely inappropriate?---Mm hmm.

And wrong?---Right.

I just want to show you another email that you sent at or about the time of this  
Ordinary Council Meeting. Do you remember sending an email to anybody  
else?---No.

45

I don't suppose you do?---No, I don't. I bet there was millions and I knew you'd have a field day with my computer, because I keep everything.

5 Have you read the email that you sent to Mr Adamos after this meeting?---No, not  
- - -

You haven't seen that one?---I haven't - no, I haven't seen that one.

10 You sent that email that Ms Noble - - -?---Sent me.

- - - had sent to you about being "thrilled at last night's result", we had a look at that moment ago?---Yes.

15 So you sent that on to Councillor Adamos?---Possibly.

Who was coming up for re-election in October?---Yes.

20 Any reason why you would do that?---He was there as one of the Councillors that made the decision.

Okay?---I would have thought that was - - -

25 You don't remember what you typed in as well?---Probably typed in, "It would be good for his election" or something.

Spot on?---Did I?

30 1153, thank you, Madam Associate. I've got a feeling that you might have had a look at this email before and you were rather hoping we hadn't found it amongst the several million?---No.

No?---I knew you'd find everything in there. Anybody that didn't find everything in my computer, there would be something wrong.

35 Here we go. 1153, thank you, Madam Associate. There we go, at the very top?---"Thought you might like this, you'll be in like Flynn from this building", yes.

40 Read it all out in its entirety, you missed a bit?---Right.

You missed a bit. I will read it out for you:

*Thought you may like this, you will be in like Flynn in October! From this building. JM.*

45 Judy McEvoy. There you go?---That was February, the elections weren't until October.

You're still saying though to him, "You'll be in like Flynn in October"?---Yes.

So you were thinking about the elections come October?---Yes.

5

Weren't you? So it was a consideration of some significance, wasn't it, the fact that all - five of your alignment were coming up for re-election?---Yes, that's right, yes.

10 That played a factor in this, didn't it?---Well, I would say not originally, it didn't, no.

Not originally but by the time it came to vote, it certainly did?---Yes.

15 Because I agree with you, it certainly didn't come into play originally?---No.

Because you approved the application?---Yes, that's right.

20 At the end though, once you saw the swell of public dissent, at least from the Adagio Apartment owners?---Yes.

And you see there you're sending an email to a Councillor telling him he's going to be "in like Flynn" in October?---Did I send it to everybody else or just him?

25 I don't know. That was going to be my next question. Did you send it to anybody else?---I have no idea.

There's no record of that, so why did Jim Adamos get the privilege?---Because he's a nice person.

30

Nice person, right. Can I ask you this though, why did you not send it from your City of Perth email address? Do you see that [REDACTED]?---Because it was at home probably.

35 At home?---M'mm.

Why then send it to his private address, and Ms McEvoy, I can assure you that there is a suppression order in place on these sort of contact details, so these email addresses can't be reported?---Right. It doesn't worry me

40

[3.15 pm]

You sent it to his private email address?---Yes.

45 Any reason for that?---Not particularly. No, there's no reason. We quite often used to send emails within our private ones.

Ms McEvoy we are now going to show you some footage?---Oh no.

Are you taking this matter seriously or not?---Yes, I am but when you say footage, I imagine TV footage or something.

5

If you'll wait, I will explain. It's not a laughing matter at all?---No.

This is footage that was taken of the three men who made this application. This is footage from their private hearing testimony?---Right.

10

Okay?---Yes.

You've already told us that you didn't pay any regard to the financial or emotional impact that this decision of Council would have if you were to reject this application?---Right.

15

That's the reason why I asked you that?---Okay.

I want you now to have a look at this?---This is of the beanies and the placards?

20

No. Why would you think that?---You said the footage from the - - -

This is the footage of those who applied to have this development approval?---Right.

25

These are the applicants?---Yes.

Who gave evidence at private hearings last year before this Inquiry about this matter?---I see.

30

Okay?---Right, I'm with you.

You seem fixated with men in hoods?---Well, that was a fact on the night, so anyway.

35

But these three men who made the application, are you saying they were there dressed in hoods on the night?---I don't know if it was them, I've got no idea if it was them. There was people supporting them that were there.

40

Madam Associate, the first one is TRIM 21964. It is Mr Qaraleh and if you just bear with me for one moment whilst I find the file. Sir, this is some video of private hearings from 18 December of last year.

COMMISSIONER: Thank you.

45

MR URQUHART: This is Mr Qaraleh's evidence and Mr Qaraleh was one of the proprietors of the shop?---So can I just ask, did they give their testimony in the

Inquiry?

How about you just watch and you'll see?---Yes.

5 Thank you, Madam Associate.

(Video played to the court).

10 Mr Qaraleh is an immigrant to this country, Ms McEvoy. He hasn't had the same benefits you and I have had in our lives?---Right.

He made a pertinent remark there in his evidence, did he not?---No, I couldn't hear.

15 "This country has law and the law should serve everyone"?---Right. I couldn't hear it terribly well.

I can assure you that's what he said?---Yes.

20 He also said that he had had a heart attack as a result?---Yes.

And separated from his wife because his wife had said to him:

25 *You can't even operate a business and it's not going to be successful and you shouldn't have chosen the supermarket to be in this area.*

And that's when he said:

30 *And I told her, this is really good area and this country has law and the law should serve everyone.*

?---Okay.

35 A pertinent comment, wasn't it?---Was he the owner of the shop?

Does it really matter?---Right. I'm just wondering.

40 It doesn't matter really, does it, but if you want to know, yes, he was one of the owners of the shop?---He was one of the owners.

Did you recognise him as being one of those hooded men in the back of that hearing room - - ?---Could have been.

45 Of the Council room. Could have been? Really, that man?---Could have been, would have been, yes. I don't know.

"This country has law and the law should serve everyone", quote, unquote?---Yes,

I heard you say that.

But the law was ignored by the Council on this occasion, wasn't it?---I don't believe so.

5

Well, you've already agreed that it was - you've agreed it was disregarded?---It was what was put up that we overrode, yes.

10 Sir, that was at pages 13 and 14 of the transcript from 18 December 2018?---Thank you.

The next passage is TRIM number 21965. This is the some evidence that Mr Altintas gave. He was the owner of the premises where the shop was to be. Incidentally, this area had been zoned as a commercial tenancy?---Yes.

15

You're aware of that?---I fully realise that. We were all made aware of that.

Sir, this evidence commences at page 24, line 25 of the transcript from 18 December 2018.

20

COMMISSIONER: Thank you.

(Video played to the court.)

25 [3.30 pm]

MR URQUHART: Sir, I do apologise, that was at pages 29 through to 30 of the transcript, not 25 as I previously advised.

30 COMMISSIONER: Thank you.

MR URQUHART: Unfortunately, Ms McEvoy, for some of that evidence we had some sort of noise going on in the background of the court room and it was very difficult to hear?---Actually, it was very difficult to hear.

35

That's all right, I've got the transcript here. I can take you to the more salient points - - -?---Right.

40 Of what Mr Altintas was saying, which is spelt incidentally for the transcript, A-l-t-i-n-t-a-s. Bottom of page 29, sir:

*Someone doesn't do that with your right, they should be penalised.*

45 He was talking about someone not being transparent. He was referring to - - -?---The City of Perth.

- - - the Council not being transparent. You can see the argument he was making

there, can't you?---Yes.

There's some merit to it, isn't there?---Well - - -

5 Do you agree there's some merit to that argument?---I don't think so, no.

You don't?---No.

10 He also referred to "a poor man having a heart attack" and that was Mr Qaraleh?---Yes.

Who we heard before, having had a heart attack?---Yes.

15 He asks, rhetorically of course, "Why should they lose their family", he's referring to the break-up that Mr Qaraleh had with his wife, that Mr Qaraleh also referred to in his evidence?---Yes.

20 "Why should they lose their business?" They were relevant questions to ask, aren't they? Aren't they?---Yes. Had they lost their business at that stage?

Yes. They got the approval but by then, yes, the shop was closed up by September 2016?---Okay.

25 They had been run into the ground with this lengthy process that had taken a considerable length of time?---They were trading for some time because I know - - -

Yes:

30 *If City of Perth does this, it's not transparent. When we going to turn? When am I going to - who am I going to believe?*

Now - - -?---Yes, I'm listening to what you're saying.

35 But the City of Perth wasn't being transparent here, was it, because Council voted not on the merits of the application, but on what was, in your words, a popular decision?---No, an amenity.

40 A popular decision which you sent a message to Councillor Adamos that he will be "in like Flynn in October"?---Yes.

Do you at least agree with him with this when he finished off by saying this:

45 *I want that trust back again. If someone's guilty, they should pay or they should be questions that shouldn't -*

Then he continues:

*These things shouldn't happen to next generation or next people or next tenant.*

5 Do you at least agree with him on that?---Well, what he's saying, yes. I'm not sure how far down the track this was, whether he was still trading or whether the business was closed.

10 He's talking about this whole process, this whole process in which a matter wasn't dealt with on its merits?---Okay.

15 And he's saying he "just hopes it doesn't happen to the next generation, next people or next tenant"; you would hope that too, wouldn't you?---Well, you would hope a lot of things.

15 Would you make this same decision again if you were on Council?---If I felt in the right - it was the right decision to make at the right time, maybe, yes.

20 This is the whole thing, it was the right decision to make at the right time because it would appease those people who could be potential voters come the election later that year?---That wasn't what it set out to be. That's your view of it.

25 But that's how I interpret what you said there about the right decision at the right time?---Okay.

25 Because it was the right decision at the right time because as you told Councillor Adamos, he would be in like Flynn?---Yes, that's right.

30 From these residents. Then, later on down the track, if the applicants want to incur the costs of a SAT review, then they will have to pay for it but at least the Council would look good in front of the people who were objecting. That was your view, wasn't it?---If you say so, yes.

35 The third passage we are going to take you to, Ms McEvoy, is TRIM number 21967, sir, and this is going to be at page - still from 18 December 2018, the evidence at page 55 and it's the evidence from Mr Bkoor, who was the fellow proprietor as well - there were two, of the shop. It commences at 55, line 35. Thank you, Madam Associate TRIM number 21976.

40 (Video played to the court).

That was from the second proprietor?---That was the one we watched first, wasn't it?

45 No?---That was a second recording?

Yes. The first recording was one of the two shop proprietors?---Right, yes.

The second recording was the owner of the premises and the third recording was the second shop proprietor?---Right.

5 And they all recounted the considerable emotional and financial stress that they went through as a result of this matter. Ms McEvoy, if exactly the same situation arose again, and I understand you're not on Council any more, but if the exact same situation would arise again, where there was a Development Application that had ticked off all the planning requirements, which therefore meant if Council  
10 rejected the Development Application, it would be approved, or that decision would be overturned by the SAT if it went on review, would you still vote in the same way as you did with respect to this matter?---Look, in hindsight, you would have to weigh it all up. I'm not there and never will be again

15 [3.45 pm]

I know that, that's why I prefaced the question on that basis?---I don't know, you would have to decide at the time with something that came to you.

20 Are you still saying that there would be circumstances in which you would reject - - -?---There may be.

I hadn't finished the question - that you would reject a Development Application that had complied with all the relevant planning requirements and that therefore  
25 there was no legal impediment to approving the application, you'd say there would be still be circumstances in which you would reject it?---Never say never. There could be a circumstance come. It won't come with me because I won't be there, but you never know.

30 And that the only way that decision by Council to be overturned is for the applicants to incur the costs of proceedings in SAT?---I can't talk for them.

I'm putting to you in this hypothetical that I'm putting to you, are you saying that's the only recourse they have to - - -?---It might not necessarily be the same type of  
35 thing again. You're saying would you refuse an application?

If the Council rejected a Planning Application, Planning Approval, if they rejected it outright, the only recourse the applicants have to getting that application  
40 approved would be to go through SAT?---Yes.

So that's the only way they could do it?---That's right.

So you're saying then with respect to a Planning Application that complied with all the planning requirements, and in this case he had actually addressed the concerns  
45 raised by objectors?---Mm hmm.

And that therefore there was no legal impediment for the application to be

approved, thereby meaning it would inevitably, let's say, almost inevitably - -  
-?---Put before SAT.

5 Before SAT and SAT would overturn the Council decision and you would still say  
that you would - you may well not approve the application?---You may look at the  
whole scenario.

But what's the point?---Well, you never know.

10 You never know what?---Well, you don't know - I don't know what is foreseen that  
may come up. I don't know what it's going to be but what I'm saying, you can  
never say never because something may come up that needs to be on a refusal.

15 So on that basis, you feel perfectly entitled to reject the application?---I won't have  
that opportunity but - - -

Just hypothetically?---Right. Yes.

20 I'm suggesting to you, Ms McEvoy, that you're just attempting to defend the  
indefensible and that what the Council did with respect to that particular  
application was entirely inappropriate. It was entirely inappropriate, wasn't  
it?---You may say that, I don't - still don't believe that's what - - -

25 You don't believe it was so and that it was all about votes?---No, I don't believe it  
was about votes. You're putting words in my mouth.

30 Isn't it the case, because I'm going to put your own words into your own mouth in a  
minute, like I've just done with your email to Councillor Adamos. So you're  
saying they are my words, not yours?---Well, they were put in writing, yes, so yes.

Do you want to see what else you put in writing regarding this matter and let's see  
whether you agree with me whether it was your words or whether it's my words.  
So now we get to the exchange of emails on 22 September?---Yes.

35 Of 2015. We are one month out from the elections?---Yes.

And it's the same day in which Council ultimately decided to unanimously approve  
a motion that the CEO was to negotiate a consent order with SAT?---Right.

40 Regarding this matter, okay?---Mm hmm.

Can you recall that Ms Noble was still sending her emails regularly?---Oh yes.

45 To Councillors, even up until that very day, 22 September?---I don't remember the  
dates but yes, they were coming in.

We are going to now look at, Madam Associate, 21.1180. Sir, I actually have a

TRIM number for this, 20489.

COMMISSIONER: Thank you.

5 MR URQUHART: So 1180. Right at the very bottom of that email - we have to start from the bottom, Ms McEvoy, and work our way up. It's from Ms Noble and she had sent this email to the Lord Mayor?---Right.

Her City of Perth address. We see there at the bottom, "Good morning, Mayor Scaffidi", she's missed out the word "Lord", but never mind:

*At tonight's meeting Council is going to consider options for taking this matter forward. We have -*

15 Then she goes on, as you may well recall, with a lengthy email, voicing her objections?---Yes.

It's not really relevant for what I'm trying to get at here?---No.

20 Then the Lord Mayor sends an email to most of the other Councillors. I will just start there halfway up the page, 22 September 2015 at 7.11 am:

*FYI below. This puts us in a very difficult position. Very hard to vote against as clearly our fav CEO has been handling this another way. He mentioned it in such a way last week that led me to believe residents were across it but I now see they are not. We will keep you posted. We don't need this right now, Lisa.*

Any idea why she was saying that "we don't need this right now"?---No, I don't. Probably coming up to the election, wasn't it?

Exactly, yes, because - - -?---Because I've put it here.

Yes, you've responded that same morning on 22 September, 10.02 am:

*My comment - very inappropriate that it's coming up election time!!! I am disgusted with the whole process. JM.*

40 So it was very inappropriate, wasn't it, it was coming up for election time?---And I wasn't even up for election.

Yes?---Yes.

But you were saying it was very inappropriate?---Yes.

45 The reason why it was very inappropriate that it's coming up for election time is that five members of your alignment - - -?---Yes.

- - - were coming up for re-election?---Were coming up.

Yes?---So this is an update on SAT? Yes.

5

So again, the residents weren't very happy again?---Afterwards, this was after the -  
- -

This is 22 September?---Okay, so it's well after.

10

And the Council went and voted unanimously for the consent order?---Right, and they kept coming back with things.

You were stating, "It's very inappropriate that it's coming up election time", so what did you mean by that?---I don't know. I was about to ask you the same thing.

15

Come on, Ms McEvoy, you know?---It may have been the SAT decision. That's the only thing that I can see.

20

Yes, "Very inappropriate time that it's coming up election", that the residents are now finding out - - -  
?---Yes.

- - - that the City is going to - - -?---Overrule it.

25

Well, the City is going to allow its CEO to negotiate a consent order which would allow the local shop to go ahead?---Okay.

So that's the reason why it was very inappropriate coming up to election time because the votes that your alignment was expecting may not materialise now, isn't that right?---Could be, yes.

30

Not could be, but it is?---I can't speak for them, but yes.

35

I'm talking about speaking for yourself:

*My comment - very inappropriate that it's coming up election time.*

?---Yes.

40

You now know why you were saying that?---Well, yes.

Which was? I want to hear it from you?---Because the SAT - the overriding of the SAT decision.

45

No, overriding of the Council decision by SAT?---Yes.

Which would disappoint and annoy many of the residents who were singing your praises back in February?---Right.

5 Isn't that right, because I can tell you, you certainly didn't send an email to Councillor Adamos stating he was going to be in like Flynn on 22 September?---No. I did send one?

10 No, you didn't. I can assure you, you didn't because the circumstances had changed, hadn't it?---Oh, I see what you mean. I sent that original one though.

Yes, back in February?---Yes, that's right.

But things had changed now, hadn't they?---Yes.

15 Incidentally, I've just counted up the number of Councillors you sent this email to. You sent it to the Lord Mayor and then six others?---Yes.

20 So my maths is never good, Ms McEvoy, but six plus one and then you, that equals eight?---Okay, so I must have left one out.

Yes. Who did you leave out?---I don't know.

25 Have a look, you'll be able to work it out?---Okay. Adamos, Butler, Limnios, Chen, Yong - - -

I will give you a clue, it's a Councillor you said earlier on that you didn't get on very well with?---Reece Harley.

30 Yes?---That's funny.

Yes, why didn't you include him?---I don't know.

Come on?---Must have been a flick of the switch.

35 You know why, don't you? You know why, don't you?---No.

You know why you didn't send him that email?---I didn't particularly like him.

40 Yes, that's why he was excluded?---Yes.

Wasn't he?---Yes, that's right.

45 Would I be right in saying that he was excluded when the Lord Mayor sent her email through?---He could quite possibly have been.

Yes, quite possibly. If we go to 21.1179 now?---What have we got here?

We had a rather large alignment at this stage, didn't we?---I can't remember.

Because there was an alignment of eight, wasn't there?---Yes.

5 Don't look at the screen at the moment but there was an alignment of eight?---Yes, there was too, and that one's still not there.

Yes, that's right. I want to go now to Mr Butler, he's weighed in with his comments?---Yes.

10

And he's sent this email and it's the one that's shaded in blue on that page?---Yes.

At 1179. He sent this through 51 minutes after yours and he says:

15

*Hi, the timing is not good?? Discussion at the briefing should happen.*

Et cetera, and then he goes through what he believes should follow. I want to concentrate on the "timing is not good", he was referring to the fact that this is all coming up with the election looming, wasn't he?---Must have been.

20

You see, why would it be relevant, the fact that there was an election coming up, if in fact that wasn't an important consideration taken by the Council in rejecting this application back in February?---What do you mean, in respect to the SAT decision coming up before the - - -

25

No?---No?

You know what I mean, don't you?---No, I don't.

30

If the decision by the Council to reject this application - - -?---Yes, months before.

Yes, if that decision was not influenced by the fact that there was an election coming up?---M'mm.

35

Why were you making a reference to the election coming up with your email on 22 September?---I didn't - that's the previous one you had up, was it?

Yes. Do you want to go back to that?---No, it doesn't matter. Yes, well, I obviously made that comment, didn't I?

40

And why did you make that comment?---Because the Council election was coming up in October.

45

And the votes in that election could be impacted by the fact that residents that you did have on side were now turning against you?---Could say that.

That's what I am saying, I'm saying whether you agree with that. Yes?---What?

Do you agree with that?---No, not really, no.

5 So you just thought you'd just throw that in, that comment?---M'mm. You know, you're going back to - I don't think that that would make a difference to the people that live in the City. If they wanted to vote for somebody in an election, I feel that they would vote for somebody. I'm pretty sure that the outcome of this wasn't going to be greatly moved for them

10 [4.00 pm]

You thought that though the day after the vote to reject this application because you told Councillor Adamos that he would be in like Flynn in October, from the residents?---Yes.

15

So you thought that?---Yes.

20 That was in February, and we are now in September, you're now saying that because the decision by the Council is going to be overturned by SAT, by consent of the City, it's very inappropriate that it's coming up election time?---Okay, yes.

It's pretty easy to put two and two together, isn't it?---Yes, I know what an outsider would, yes.

25 You now know what it looks like?---And I wasn't even up for election, I keep saying that.

I know that, that's fine. You now know what it looks like?---Yes.

30 And it looks like that because that is in fact the situation, wasn't it?---I still say no.

You still say no?---No.

35 Even after I've taken you to these emails?---Yes, even though you've taken me through everything like this.

You still maintain the fact that there was an election coming up in October was not an important factor that the Council took into consideration to reject?---No.

40 No?---I know it might surprise you but, you know, I just - it would have been a small factor and as I say, when they lost that and they got the shock, I don't think that would say to those residents, you don't vote for those people that, you know, that tried to help you.

45 So it's a small factor now, is that all? A small factor?---Yes.

A small factor - - ?---There's a lot more voters in the City of Perth than just from

the Adagio.

A small factor that would have Councillor Adamos in like Flynn?---He would have got in any way.

5

Ms McEvoy, that's all the question I have for you.

MR URQUHART: Thank you, Mr Urquhart. Mr McGowan, do you have an application to make?

10

MR McGOWAN: No, I don't Commissioner.

COMMISSIONER: Thank you. Mr Skinner, do you have an application to make?

15

MR SKINNER: Not at all, thank you very much, sir.

COMMISSIONER: Mr Hood, what about you?

20

MR HOOD: No, I don't, thank you, sir.

COMMISSIONER: Mr Yeldon?

MR YELDON: No, sir.

25

COMMISSIONER: Mr McDonald?

MR McDONALD: No, Commissioner.

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COMMISSIONER: Mr French?

MR FRENCH: No, Commissioner.

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COMMISSIONER: That's a clean sweep then. In that case I propose to adjourn these proceedings to - what time would suit you tomorrow morning, Mr Urquhart?

MR URQUHART: Sir, did you want to adjourn now or shall we start with the next witness?

40

COMMISSIONER: I think we should adjourn now, Mr Urquhart.

45

MR URQUHART: Thank you sir. In that case, ideally I would like it to be 9 o'clock, although I think that's going to cause some administrative difficulties. I'm just waiting for someone to nod their head in agreement. I think we had better err on the side of caution, sir and just make it 9.30, unless the Commissioner is of the view that we can start at 9. I understand there's some administrative difficulties starting that early.

COMMISSIONER: Nothing is insurmountable, Mr Urquhart. I will check with the other counsel. Mr McGowan, would you be amenable to a 9 am start?

5 MR MCGOWAN: I have no trouble with that, Commissioner.

COMMISSIONER: Thank you. Mr Skinner?

MR SKINNER: Certainly, sir, no problem at all.

10

COMMISSIONER: Thank you. Mr Hood?

MR HOOD: Yes, sir, that's fine.

15 COMMISSIONER: Mr Yeldon.

MR YELDON: Sir, I'm the spanner in the works. I won't be able to be here until 9.30.

20 COMMISSIONER: You might see a different kind of alignment now, Mr Yeldon.

MR YELDON: Yes, I'm sorry.

25 MR URQUHART: If my learned friend's only here for matters relating to Adagio, we won't be getting to the matters relating to Adagio by 9.30, so that should be okay, or it will be okay.

MR YELDON: If Counsel Assisting won't raise any matter, then I'm not prejudiced.

30

COMMISSIONER: I'm sure you can take him at his word.

MR YELDON: Yes.

35 COMMISSIONER: Mr McDonald?

MR McDONALD: No problem, Commissioner.

COMMISSIONER: Mr French?

40

MR FRENCH: No issue, Commissioner.

COMMISSIONER: Thank you. In that case, I will adjourn the proceeding until 9 am tomorrow morning. Thank you.

45

**AT 4.04 PM THE MATTER WAS ADJOURNED  
UNTIL THURSDAY, 8 AUGUST 2019**