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INQUIRY INTO THE CITY OF PERTH

PUBLIC HEARING - DAY 96

WEDNESDAY, 28 AUGUST 2019

INQUIRY PANEL:

COMMISSIONER ANTHONY (TONY) POWER

COUNSEL ASSISTING:

MS KATE ELLSON

MR NICHOLAS PARKINSON

COUNSEL APPEARING:

MR PETER van der SANDER (Ms Lisa-Michelle SCAFFIDI)

MR DARREN RENTON (Mr Gary STEVENSON)

MR ALAN SKINNER with MR PETER MARIOTTO (Mr Dimitrios LIMNIOS)

MR JOEL YELDON(Ms Janet DAVIDSON)

MR GERALD YIN (Mr Yit Kee YONG)

CAV. MARIA SARACINI and MR MARTIN TUOHY (MR Martin MILEHAM)

MR NICHOLAS MALONE (Mr Reece HARLEY)

.28/08/2019

HEARING COMMENCED AT 09.35 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 Ms Ellson, do you recall Ms Scaffidi?

MS ELLSON: I do, yes.

15 COMMISSIONER: Thank you. Ms Scaffidi, please come forward and take a seat in the witness box to my left.

MS Lisa-Michelle SCAFFIDI, recalled on former oath:

20 COMMISSIONER: Ms Scaffidi, you continue on your oath?---Yes.

Mr Yeldon, you have an application to make this morning?

25 MR YELDON: In fact there are two, Commissioner. There is the application for leave to appear and the application for my client, Janet Davidson, to be represented, and they are supported by the affidavit of Ms Emily Jane Kathleen Chappelow and I move for leave in respect of both.

30 COMMISSIONER: I have read the papers, Mr Yeldon. I will just hear from Ms Ellson whether there's any opposition.

MS ELLSON: There's no opposition, Commissioner.

35 COMMISSIONER: Thank you very much, Ms Ellson. In that case, Mr Yeldon, leave is granted.

MR YELDON: Thank you.

COMMISSIONER: Ms Ellson, are you ready to proceed?

40 MS ELLSON: I am, Commissioner.

COMMISSIONER: Thank you.

EXAMINATION-IN-CHIEF BY MS ELLSON.

45 Ms Scaffidi, on the last occasion, we were talking about a CEO Performance Review Committee meeting on Tuesday, 19 January 2016, do you recall

that?---Yes, I do.

And that's a committee meeting that you arranged?---It was arranged by the committee.

5

Committees are made up of people, Ms Scaffidi; you arranged the meeting?---I don't recall if I arranged the meeting or if the Chair arranged the meeting.

You'd arranged the meeting on 15 January, hadn't you, the one with Councillor McEvoy present?---That was via email, I think - yes.

You arranged it?---Yes.

And the CEO Performance Review Committee meeting had to occur after that meeting, didn't it, to formalise the agreements that had been reached at the meeting on 15 January?---The agreements weren't reached on 15 January but the committee meeting was arranged for the 19th.

To formalise?---To move forward on accepting that we needed to complete the process.

The process being the termination of Mr Stevenson's employment?---The process being acceptance of the CEO Performance Review, his statement and acceptance of his option 1.

25

That's not what happened though, is it?---I'm sorry, I don't understand the question.

That's not what happened though, is it?---I don't understand the question.

Mr Stevenson's employment was terminated, wasn't it?---We accepted option 1 as he had put to us under 8.5 of the contract.

And 8.5 of the contract allows the City to terminate a person for any reason?---Yes.

35

So Mr Stevenson's employment was terminated by the City?---We accepted option 1 as per his document.

Mr Stevenson's employment was terminated by the City, wasn't it?---Yes.

40

We were looking on the last occasion, at what appeared to be an agenda but was also described as minutes of the CEO Performance Review Committee meeting on 19 January 2016. Madam Associate, if you could bring up page 9.0171. Do you see there the agenda papers we were looking at on the last occasion, CEO Performance Review Committee meeting, 19 January 2016?---Yes.

45

Madam Associate, if you could turn the page, please, to 9.0173. Do you recall you

were present at the meeting and Ms Smith, your personal assistant, was taking the minutes?---Yes.

We have spoken about her taking the minutes?---Yes, we did.

5

Madam Associate, if you could turn the page, please, to 9.0174. We have spoken about "resolves" as opposed to "recommends"?---Yes, we did.

We have spoken about the three resolutions/recommendations on that page?---Yes.

10

Madam Associate, if you could turn, please, to 9.0175. We have spoken about these three recommendations/resolutions. There's a recommendation number 5 for "Mr Mileham to be appointed as Acting CEO for the City of Perth following the negotiated settlement", do you see that?---Yes.

15

The CEO Performance Review Committee's Terms of Reference did not include appointing an Acting CEO, did they?---My recollection is that we needed to have an Acting CEO in place and it was a next step.

20

That wasn't my question, Ms Scaffidi. The committee didn't have Terms of Reference allowing it to appoint an Acting CEO, did it?---I don't recall the Terms of Reference of the committee at this time.

25

Madam Associate, if you could take that down, please, and bring up 9.0145. Do you see there some Council minutes, 22 October 2015?---Yes.

They have been certified as being correct by you, or confirmed, I'm sorry?---Yes.

By yourself?---Mm hmm.

30

What do you do when you confirm minutes?---Read them.

And do what?---Sign them.

35

When you're confirming them, are you confirming that what's in the minutes is an accurate record of what occurred at the meeting?---Yes.

40

Madam Associate, if you could move, please, to page 9.0147. Do you see there you're present at the meeting on 22 October 2015?---Sorry, you said that I was present?

Yes, presiding?---Yes.

45

Madam Associate, if you could move, please, to 9.0148. Do you see there the Terms of Reference of the Performance Review Committee?---Okay.

There's nothing in there about appointing an Acting CEO, is there?---No.

That document can be taken down, please, Madam Associate. I don't have its TRIM, Commissioner, I'm sorry.

5 COMMISSIONER: That's all right

[9.45 am]

10 MS ELLSON: The CEO Performance Review Committee on 19 January 2016 didn't have the delegated authority to appoint an Acting or recommend that an Acting CEO be appointed, did it?---No.

That was another matter of procedure that wasn't followed correctly at the meeting, wasn't it?---Apparently.

15

It was?---Yes.

20 Ms Scaffidi, after - in fact, very shortly after the meeting on 19 January 2016, you organised with your WhatsApp team for a Special Council Meeting at a particular time, didn't you?---I don't recall. I'm happy to accept that.

You're happy to accept you did?---Yes.

25 Why?---Because you've got the WhatsApps and you wouldn't have said it otherwise.

Because you did it - - -?---You're telling me.

30 - - - or because I said it?---I'm accepting that you've said it.

I'm not asking you to accept what I say unless I ask you to. Madam Associate, if could provide the witness, please, with a bundle at 14.0069 to 14.0200, TRIM 13609. Ms Scaffidi, do you see there the extract of the WhatsApp chat 137-Team?---Correct.

35

This is the records of your team WhatsApp chats?---Correct.

If you could turn, please, to red numbered page 0137?---137?

40 Yes. The blue number at the bottom of the page will be 69?---Right.

If you look at the last message on the page at 19 January 2016, 1.36 pm?---Right.

45 We saw that the CEO Performance Review Committee met at 1.10 pm. You're now sending a message at 1.36 pm?---Right.

You did that because you wanted to arrange everything before you saw

Mr Stevenson, isn't that right?---Yes.

Don't turn the page, please, Ms Scaffidi, before I ask you to?---I'm sorry, I was seeing if it followed on.

5

Your message here reads:

10 *Please all remember to be here at 9.15 am tomorrow for an urgent Special Council Meeting at 9.30 am in the Council Chamber. James, Janet and I will join you all there on or just after 9.30 am. Be ready to go, please, in your seats. If Reece and Jemma arrive, you only heard about meeting Tuesday afternoon.*

Do you see that?---Yes, I do.

15

So you were arranging for members of your team to attend a Special Council Meeting in the morning at a particular time?---Yes.

20 So when you told the Inquiry that you don't tell adults what to do, that wasn't correct, was it? You have here?---This is - I'm not telling adults what to do, I am telling them there's a meeting, so I think there's a fundamental difference but I take your point.

25 You've just said you're telling them there's a meeting, you're also telling them to attend, aren't you?---Yes.

And you're telling them to attend at what time?---If they could be there at 9.15.

30 "Be ready to go, please, in your seats"; you're very firm about that?---Yes.

You wanted it done?---No, it was about not having to round up people who might be in bathrooms or something like that. It was about having them ready to proceed.

35 At the time that you allotted to it?---I beg your pardon?

At the time you allotted to it?---Yes.

40 Would you turn the page now, please, Ms Scaffidi, and read the message on the top which is not yours, the message underneath at 2 pm:

9.15 for 9.30 please. Can't be waiting around for ANYONE - in capital letters - THIS IS VERY IMPORTANT.

45 All in capital letters?---Yes.

So everyone being at the meeting at 9.15 was very important and you were

emphasising that for your team?---Yes.

"Can't be waiting around for anyone"?---Often people were late so it was a plea to be on time.

5

And you wanted the meeting on 20 January 2016, the Special Council Meeting, to proceed on time, didn't you?---That's professional and appropriate.

You can just close the WhatsApp for a moment, please, Ms Scaffidi?---Yes.

10

You wanted the meeting on 20 January 2016 to proceed on time?---Yes.

Because you wanted to terminate Mr Stevenson's employment on that day at that time?---Yes.

15

Ms Scaffidi, in telling your team, "If Reece and Jemma arrive, you only heard about meeting Tuesday afternoon", you were asking your team to be dishonest with them, weren't you?---I believe that the matter had - the matter had been discussed and that was agreed with the team.

20

By telling your team in your WhatsApp message, "If Reece and Jemma arrive, you only heard about meeting Tuesday afternoon", by saying that to your team, you were asking them to be dishonest with Reece and Jemma, with Mr Harley and Dr Green, weren't you?---No, I don't agree.

25

MR van der ZANDEN: Objection. Perhaps if this could be heard in the absence of the witness.

COMMISSIONER: Yes, of course. Thank you for that. Ms Scaffidi, my Associate will escort you from the hearing room. Thank you.

30

WITNESS WITHDREW

MR van der ZANDEN: This may be just my matter, Commissioner, but I'm trying to understand the date - it seems to me - - -

35

COMMISSIONER: Before you start, what is the nature of the objection to the last question?

MR van der ZANDEN: The objection is that it seems to proceed on a false premise.

40

COMMISSIONER: What's the false premise?

MR van der ZANDEN: As we quickly went through the WhatsApp messages, there seemed to be a reference to, the WhatsApp message was on the day before saying that the meeting's tomorrow, and then - - -

45

COMMISSIONER: So you are now looking at the WhatsApp message, at what time?

5 MR van der ZANDEN: Perhaps my friend can help me, what page we are looking for. I closed it up.

COMMISSIONER: That's all right, 137 is where this line of examination started.

10 MR van der ZANDEN: Yes. So there's a reference here on the 19th:

Please all remember to be here at 9.15 tomorrow.

15 COMMISSIONER: For the benefit of the transcript, you're referring to the WhatsApp message sent at 1.36

MR van der ZANDEN: Pm.

20 COMMISSIONER: That's right.

MR van der ZANDEN: And it says, "You only heard about meeting Tuesday afternoon." I'm not sure what day is the 19th and what day is the 18th but I'm assuming that they are hearing it - that seems to me to be a reference of "you're only hearing it now" i.e., by this message. I'm not sure if I've misunderstood the matter or not.

COMMISSIONER: Is that all you wish to say in your objection?

30 MR van der ZANDEN: Yes, it is, Commissioner.

COMMISSIONER: Thank you. Ms Ellson, what do you want to say about that, if anything?

35 MS ELLSON: Firstly, 19 January 2016 is a Tuesday and secondly, the question's been answered.

40 COMMISSIONER: That may be so but there is a different point being raised at the moment by Mr van der Zanden and even though the answer has been given, it would be helpful for me to hear your response to the objection.

MS ELLSON: Yes, Commissioner.

COMMISSIONER: In full.

45 MS ELLSON: The WhatsApp message is on a Tuesday, 19 January 2016. The reference, "If Reece and Jemma arrive, you only heard about meeting Tuesday afternoon", references Tuesday afternoon. The message is 1.36 pm. There is

evidence to suggest that Ms Scaffidi had notified the team at least that a meeting was necessary, or that a decision was going to be made and here, my question seeks to clarify whether or not she was asking her team members to be dishonest with Mr Harley and Dr Green.

5

COMMISSIONER: Even though it's not articulated this way that, it seems to me, is the gist of the objection. Am I right, Mr van der Zanden, that the question has an assumption that is wrong?

10 MR van der ZANDEN: Yes.

COMMISSIONER: And the assumption which you say is wrong is that Ms Scaffidi was asking her team to mislead the other two Councillors. That's, as I understand it, your objection, isn't it?

15

MR van der ZANDEN: My objection is it's been put to her - - -

COMMISSIONER: Have I misunderstood your objection?

20 MR van der ZANDEN: I don't think you have, Commissioner.

COMMISSIONER: That's what I would like to hear a response on, if I may, Ms Ellson. Why is that assumption not wrong?

25 MS ELLSON: The assumption that - I'm sorry, I didn't hear my friend properly, Commissioner. I do apologise.

COMMISSIONER: That's all right. If you look at the bottom line of the WhatsApp messages at page 137, you will see the phrase, "You only heard about meeting Tuesday afternoon." It is being put to Ms Scaffidi that by her asking her team members to take that position, she is inviting them to be dishonest. That's, as I understand it, the gist of the objection and you can see there's an assumption underpinning that.

35 MS ELLSON: Yes.

COMMISSIONER: That's what I would like to hear your response on. Is the assumption wrong or is it right?

40 MS ELLSON: It's wrong. I won't go any further with the line of questioning, Commissioner.

COMMISSIONER: Thank you, Ms Ellson. Madam Associate, would you please bring Ms Scaffidi back in. Thank you. Ms Scaffidi, please come back to the witness box

45

MS Lisa-Michelle SCAFFIDI, recalled on former oath:

COMMISSIONER: Ms Scaffidi, before I ask Ms Ellson to resume, I'm going to tell you what happened in your absence in the interests of transparency. As you know, your counsel raised an objection. The objection was heard and dealt with.
5 Your exclusion from the hearing room is no reflection on you?---Thank you.

Ms Ellson, are you ready to resume?

10 MS ELLSON: I am, yes, thank you, Commissioner.

COMMISSIONER: Thank you.

15 MS ELLSON: Ms Scaffidi, why did you ask your team members to say "you only heard about meeting Tuesday afternoon"?---I believe - my recollection is that that was the concurrence of the committee moving forward.

It was the concurrence of the - - -?---Concurrence thoughts of the committee, of the CEO Performance Review Committee.

20 What were your thoughts in relation to telling your team members "you only heard about meeting Tuesday afternoon"?---My recollection is we were very aware that Councillor Harley felt similarly about the views of Mr Stevenson that were held, and with regards to Jemma, it wasn't a personal thing so much as, she was so new that by her own admission, she had had limited dealing with Mr Stevenson

25 [10.00 am]

Ms Scaffidi, you and the CEO Performance Review Committee members met with Mr Stevenson on the morning of 20 January 2016, didn't you?---Yes.

30 You did that at 8.30 am?---Yes.

And that was the time that you had arrange with Mr Stevenson?---Correct.

35 You, Councillor Davidson and Councillor Limnios spoke to Mr Stevenson, or was it just you?---No, it was the three of us.

40 What did you say to Mr Stevenson?---I don't recall my opening statements to Mr Stevenson but I do recall within the conversation saying that there was acceptance of option 1 and that it was difficult for everybody, and not a very nice situation to occur. We - I also thanked him for his work on Local Government reform, as I believe he had worked on that issue well, but we did - I spoke of concerns about a couple of other issues and my recollection of one of those issues was the poor handling of the decampments at Heirisson Island, and that's really all
45 I remember.

You told Mr Stevenson that there would be a Special Council Meeting at 9.30 am,

didn't you?---I don't recall that exactly.

You told Mr Stevenson the CEO Committee had met yesterday?---Okay, yes, I will accept that.

5

And you offered Mr Stevenson a Deed of Settlement, didn't you?---Yes.

And he refused to sign that?---Yes.

10

This was the first time Mr Stevenson had been told that his employment was to be terminated, wasn't it?---Yes.

Mr Stevenson appeared taken aback by what you'd said, didn't he?---Well, I don't accept that because we were accepting his option 1.

15

This is the first time you had spoken to him about it, wasn't it?---Yes.

He appeared taken aback when you said it?---Disappointed.

20

He had had no notice that you were going to raise this with him, had he?---No.

And all of a sudden you were terminating his employment?---Correct.

25

Mr Stevenson describes himself as shattered; did he seem that way to you?---I said disappointed.

But it was what you wanted, wasn't it?---You're asking me to speak for myself?

30

Yes?---It was not a good working relationship for the City of Perth.

It was what you wanted, wasn't it?---I was accepting of the situation because it was, by his own admission and mine, not a good working relationship.

35

The situation was that you wanted to terminate Mr Stevenson's employment and that's what you did on 20 January 2016?---We accepted his option 1.

40

The situation was that you wanted to terminate Mr Stevenson's employment and that's what you did on 20 January 2016?---I believe we accepted option 1, which was termination by the City of Perth.

You wanted to terminate Mr Stevenson's employment and that's what you did on 20 January 2016?---Am I allowed to speak to this answer or you just want - - -

45

You have to answer the question, Ms Scaffidi?---I'm happy to answer the question but it's not - - -

You've tried twice - - -?---A yes or no.

- - - that's the third time I've asked it. Do it again, answer the question?---I will answer the question by saying I had been overwhelmed by the number of approaches I'd had from staff - - -

5

COMMISSIONER: That's not answer to the question, Ms Scaffidi?---Okay.

The question's a very simple one: did you want to terminate his employment?---Yes.

10

Thank you.

MS ELLSON: The Special Council Meeting was convened on 20 January 2016, shortly after 9.15, is that right?---Yes.

15

You attended the meeting?---Yes.

Council attended the meeting?---Yes.

20

And Council included the members of the CEO Performance Review Committee?---Correct.

You'd given Mr Stevenson notice of the meeting, during your meeting with him on the 20th at 8.30 am, hadn't you?---I don't recall.

25

Was the public given any notice of the meeting, Ms Scaffidi? They weren't, were they?---No.

Why not?---Because we had, in respect of confidentiality, kept the agenda between the Council.

30

It wasn't a confidential meeting, was it? Are you saying it was a confidential meeting?---Well, it was only the Councillors present and - I'm trying to think. I don't recall now if anyone else was present.

35

It didn't occur in the Council Chamber, did it?---Yes, it did.

There was no Governance present, was there?---I don't recall. I would have said I thought there was, but I don't recall.

40

And the usual minute taker didn't attend, did they?---I don't recall who the minute taker was now.

Madam Associate, if you could bring up 9.0207. Do you see here an agenda for a Special Council Meeting, 20 January 2016?---Correct.

45

Madam Associate, if you could turn to page 9.0209. Do you see there an agenda

or an order of business, Ms Scaffidi?---Yes.

On point 4, "Question time for the public", do you see that?---Yes.

5 So it's contemplated that this meeting was a public meeting?---Yes.

And yet, no public notice was given, was it?---No.

Is that because you were in a hurry?---No, I think it was an error.

10

You were taking shortcuts, weren't you, to get things done?---No.

Madam Associate, if you could turn the page, please, to 9.0210. Do you see there you've attended?---Yes.

15

And all of the other members of Council are present as well?---Yes.

And Ms Smith, your PA, is taking the minutes?---Yes, that's right.

20

There's no other members of the City present?---No.

And no members of Governance?---Correct.

And that was because you didn't tell Governance, wasn't it?---Correct.

25

And you didn't do that because you just wanted to get done what you wanted to get done?---No.

Isn't that right?---No.

30

You took a shortcut?---No.

To get things done?---Your words, not mine.

35

You were in a hurry?---No, I do not accept your premise or your comments that it was a shortcut or in a hurry. It was - - -

It wasn't prudent for you to exclude Governance, was it?---I accept that, it wasn't prudent.

40

But it was deliberate, wasn't it?---No, it wasn't deliberate, it was out of respect for confidentiality.

We have been through that when we were talking about the fact that Governance wasn't at the CEO Performance Review Committee meeting, either?---No, we didn't, we talked about it with reference to Angela Smith being the minute taker, not about Governance not being there. I don't recall that.

45

Ms Scaffidi, Governance weren't present because they weren't invited, that's right, isn't it?---That's correct, yes.

5 It has nothing to do with confidentiality, does it?---That was the view.

It has nothing to do with confidentiality, does it?---Sorry, can you just repeat the full question.

10 It has nothing to do - - -?---What has nothing to do?

Governance not being present has nothing to do with confidentiality, does it?---We established that on Monday, yes, I accept that.

15 It doesn't make sense, we established that as well; do you accept that?---I accept it was an error.

Do you accept it doesn't make sense for you to say Governance weren't present because of confidentiality?---We were wrong in thinking it, yes, I accept that.

20

I'm not asking you about "we", I'm asking you about you?---I was wrong in thinking it.

25 In thinking that Governance didn't need to be present because of the confidentiality reasons?---Yes, my error.

COMMISSIONER: Ms Scaffidi, I would have thought that of all people, Governance could be expected to respect confidentiality if they attended; am I wrong?---Commissioner, I accept that view in hindsight, yes.

30

MS ELLSON: They were excluded so you could get done what you needed to get done the way you wanted to get it done, isn't that right?---No. It wasn't done in a hurry or the other words you've described previously. It was a pre-agreed process.

35 That's not true, is it?---It is true.

Madam Associate, if you could turn the page, please, to 9.0211. Do you see there a resolution?---Yes.

40 It's proposed that, "Council endorse the minutes/recommendations of the CEO Performance Review Committee held on Tuesday, 19 January 2016", do you see that?---Yes.

45 Council members weren't given any papers upon which to base their decision, were they?---I don't recall.

Thank you, Madam Associate, that can come down. Madam Associate, if 9.0213

could be brought up, please. Minutes were taken by your personal assistant during the course of the meeting, weren't they? We have established that?---Sorry - okay, I'm not looking at anything?

5 Not yet?---Okay. Yes.

Do you see here some minutes that you have certified as confirmed?---Yes.

You've done that in February 2016?---Yes

10

[10.15 am]

Madam Associate, if you could turn the page, please, to 9.0215. 9.21, declare the meeting open?---Yes.

15

It's a little bit after the time you wanted, or a little bit before?---Yes.

It was a little bit after the time you wanted everyone in their seats, wasn't it?---9.21, yes.

20

You presided over the meeting?---Yes.

Madam Associate, if you could turn the page to 9.0216. Do you see here a Council resolution, "To go behind closed doors and discuss the item confidentially"?---Yes.

25

That's what happened?---Yes.

And it was resolved that, "Council endorse the minutes/recommendations of the CEO Performance Review Committee held on Tuesday, 19 January 2016"?---Yes.

30

It was contemplated that the minutes would be adopted by Council, is that right?---Yes.

And that was because the minutes set out the recommendations of the committee, is that right?---I just don't recall - the minutes were those five points?

35

Yes?---Yes.

I think there were six because there were two 3s. So you would expect Council to have the minutes of the meeting before them, wouldn't you?---My recollection is that they were on the table.

40

The minutes?---Yes, at their places.

45 Who put them there, do you know?---I don't remember.

Did you arrange for any other papers to be provided, other than the minutes?---I

don't remember.

5 The motion was moved by Councillor Davidson and seconded by Councillor Limnios, you voted in favour of endorsing the recommendations or the minutes of the CEO Performance Review Committee, isn't that right?---Correct.

10 Madam Associate, if you could turn to 9.0217. You re-opened the meeting and read the resolution at 9.35 am. The meeting was declared closed at 9.40 am. The minutes run for 19 minutes, would you accept that?---Yes.

15 During the meeting, you addressed the Council, didn't you, and told them what was happening?---I don't recall. I'm sure the audio is available.

15 Confidential items aren't recorded, are they?---Okay, thank you. Right. I don't recall what I said.

Confidential items aren't recorded, Ms Scaffidi, are they?---No.

20 You spoke at the meeting?---I don't recall what I said, other than perhaps just chairing it.

What did you say, chairing the meeting?---I would have opened the meeting, asked for the mover, the seconder, would have kept it procedural.

25 You told the Council that Mr Stevenson resigned during this meeting, didn't you?---I don't recall.

COMMISSIONER: Ms Scaffidi?---Yes.

30 If there's no audio recording of this meeting, then am I right in thinking that the only official record of it would be the minutes prepared by your personal assistant?---Yes.

35 And if Governance had been invited to attend and someone from Governance had made notes, then this Inquiry to have recourse to those notes as well?---Yes.

Thank you.

40 MS ELLSON: Commissioner.

45 Other than informing the meeting that Mr Stevenson resigned, there wasn't very much discussion about the matter, was there?---I don't really remember, I'm sorry, and I don't mean to keep saying I don't remember, it sounds boring, I accept that, but you know, I just don't remember the specifics.

This was the first time Council members had been advised that Mr Stevenson's employment was ending, wasn't it?---No, I don't agree with that.

5 Madam Associate, the document can be taken down, please. Ms Scaffidi, were you thanked by some members of Council for ending Mr Stevenson's employment?---I don't recall if I was thanked. I do recall people felt similarly about the poor working relationship.

Madam Associate, if you could provide the witness again, please, with the documents at 14.0069?---I've got it here, I think. It's here.

10 And the document bundle ends 14.0200, for the transcript, TRIM 13609. Do you have the extract of WhatsApp chat 137-Team, if you look at the front page, please, Ms Scaffidi?---137?

15 137-Team, red page 0069?---It's not the front page.

0069 in the red numbers?---Yes.

Is the front page?---Yes.

20 Would you please turn to page 14.0138, which is blue number 70?---Sorry, 139 or 137?

138.

25 COMMISSIONER: What counsel is using are the red numbers in the top right-hand corner?---Yes, I know that, thanks.

And when she talks about the blue numbers, she's talking about the blue numbers at the bottom of the page?---Thanks.

30

That's all right.

MS ELLSON: Ms Scaffidi, at the bottom of the page, do you see a message 1.18 pm, which is not yours?---Correct.

35

If you can turn, please, to page 0140, the chat continues from the 1.18 pm through until you go over to the page to 14.0140, which is where I'm asking you to look now?---140, yes.

40 2.17 pm, do you see there a message to the team from yourself?---Yes.

:

45 *Yes, no-one can comment at all, please. I'm doing media at 3.15. Please everyone, no comments or off the record discussions whatsoever .*

?---Correct.

Do you see that?---Yes.

5 Underneath 20 January 2016, 2.26 pm?---2.26, me?

This is your message?---Goes to the next page, right?

COMMISSIONER: Which page are we on?

10

MS ELLSON: It's 140 still, Commissioner.

COMMISSIONER: 140, thank you?---Yes, 140.

15 MS ELLSON: 14.0141, it goes over to the body of a message?---Correct.

You see that is your message?---Yes.

It says:

20

No, Jim. Please be assured it is termination, 8.5 termination for any reason, mutual consent. It's not a sacking but you need not speak.

Do you see that?---Yes.

25

There was some confusion amongst the Councillors, wasn't there, about what had happened to Mr Stevenson?---Well, yes.

30 And that was because they hadn't been told Mr Stevenson's employment was being terminated, was it?---No.

They had been told that he resigned?---No.

35 They had been told he was leaving?---They are not au fait with the contracts. They were told we had accepted option 1.

And other than the recommendation from the CEO Performance Review Committee recommending option 1 be accepted, they had no other information about what option 1 was, did they?---I don't recall.

40

Ms Scaffidi, just for the sake of completeness, there's another message there at 20 January 2016, 2.26 pm which is yours, isn't it?---2.26.34, yes.

45 And you're advising Councillors not to talk to the press?---No - which one - 2.26.34?

Yes?---I'm not advising them to not speak.

"Note: no chats"?---Where's that? Sorry, I can't see that.

I will read the message?---Okay, "Note", I've just seen it. Yes.

5

You're advising them not to speak and that's because you were going to?---I'm the spokesperson for the Council.

Yes. 20 January 2016, 2.27 pm, do you see that?---2.27.38 or 2.27.55?

10

2.27.38?---Right.

You see there a message that you had written?---Yes.

15

"Close it down", in capital letters?---Yes.

"Lily", in capital letters?---Yes.

20

"Read what I just said to Jim. It's a mutually agreed with consent termination effective immediately. Remember what we told you, he offered it as option 1"?---Yes.

By telling Council to, "Close it down", in capital letters, you were being very firm with them about asking questions of you, weren't you?---No. That's your interpretation.

25

You didn't want them to question you, you wanted them to accept what you were telling them?---No, that's your interpretation.

30

And that's how you ran the Special Council Meeting on 20 January 2016, wasn't it?---Incorrect.

The documents can be returned. Ms Scaffidi, please stop reading. On the day Mr Stevenson departed, you spoke to Ms Howells, isn't that right?---Yes, we did.

35

And you spoke to her in your office about what had happened with Mr Stevenson, didn't you?---I don't recall if it was me on my own or the committee.

But you spoke to Ms Howells in your office?---I recall Ms Howells - - -

40

And you spoke to Ms Howells about what happened to Mr Stevenson?---I don't recall the specifics.

And you said to Ms Howells that you were glad that he had gone, didn't you?---No, I don't believe I would have spoken like that to a Human Resources Manager.

45

You said to Ms Howells you should have done it sooner, didn't you?---I don't

accept her recollection. She's very close friends with Annaliese Battista and she had - - -

Ms Scaffidi, that's not responsive to the question?---Well, that's my response.

5

COMMISSIONER: Ms Scaffidi, this is not a time for you to be making submissions, this is a time for you to be answering questions. So listen to the question - - -?---I don't accept that conversation.

10 Don't interrupt me, please, Ms Scaffidi. Just listen to the question - - -?---I'm sorry.

- - - carefully and then answer the question?---Yes, I accept that

15 [10.30 am]

MS ELLSON: Ms Scaffidi, you said to Ms Howells that he was an extremely annoying individual, always complaining to the CCC, didn't you?---No.

20 You said to Ms Howells that he was always threatening you with the CCC, didn't you?---No, I would not have got into that detail with Ms Howells, for the reason I've already put on the audio.

25 You said he wasn't what they needed within the City, or what you needed within the City, didn't you?---No.

30 Ms Scaffidi, we have established that very early on you believed Mr Stevenson didn't have your back and he used the CCC as a veiled threat and you needed to know that the CEO had your back. We have also established that attempts should have been made, and you agreed, for matters to be resolved in-house, do you see that?---Do I see it?

35 Do you see that we have established that?---I don't accept we have established that, that is your premise. You're referring to collated comments on a Performance Review.

Ms Scaffidi, we have been through those, you don't resile from your evidence about those matters, do you?---I don't resile from my evidence, I have a very - - -

40 Thank you?--- - - - clear recollection of everything I've said but we were talking collated comments.

I will put my questions in a different way for you, Ms Scaffidi?---Thank you.

45 So they are clearer. Do you accept or reject the fact that by October 2015 you had an uncomfortable relationship with Mr Stevenson?---Yes, I do.

Yes, you do what, accept or reject that?---Accept it.

You accept that the relationship by October 2015 was unpleasant?---Yes.

5 You accept that by 10 October 2015, you had no plan to dismiss Mr Stevenson?---Yes.

10 Do you accept or reject that in October 2015 you learned Mr Stevenson had referred the results of the internal review to the CCC?---Yes. That was coincidental.

By the beginning of - it wasn't a coincidence, was it? A coincidence with what?

15 COMMISSIONER: This is precisely what I have been trying to get you to understand, Ms Scaffidi, for a long time now. As I said to you when you first started giving your evidence in this public hearing, your role is to listen to the questions and to answer the questions and yet again, you are not following my advice to you. I don't want to be issuing you with directions because that should not be necessary for someone in your position but if I have to, I will. What I
20 would like you to do is please avoid commentary on the questions. Just answer the questions you're asked. I know you have a point of view you want to get across, but in the course of counsel's questions, that is not your role. All right?---I accept that.

25 You understand what I've said to you?---But I've never been able to give my evidence.

Do you understand what I've said to you?---Yes.

30 Will you please follow my advice from this point on?---I'm doing my best but I feel that I'm not being allowed to give my evidence.

35 Ms Scaffidi, this is an Inquiry in which questions are being put to you, you are required to answer them. I will ensure that the process is fair. I have explained this to you before, more than once. I have also explained to you before, more than once, that you are represented here by your counsel. If your counsel feels that anything that is being asked of you is unfair or improper, he will object, as he did a moment ago. I heard that objection and I ruled on that objection, in your favour as it happens. So there is a process that needs to be followed; will you please follow
40 it from this point on?---I'm doing my best.

I hope you continue to. Please continue, Ms Ellson.

45 MS ELLSON: Commissioner.

Ms Scaffidi, do you accept or reject that by the beginning of October 2015 you had been through a CCC matter?---Do I accept - by what date?

By 5 October 2015?---Yes.

You had been through a CCC matter?---Correct.

5

You didn't want to go through it again?---It didn't bother me. Obviously, no-one likes going to those places because, you know, there's a perception it's a bad place, but not a preference to go back. You do what you do in a public role.

10 You were relieved when it was over, weren't you?---Of course.

And you accept that you expressed that relief to your fellow Council members in an email and in a WhatsApp to Mr Limnios?---Yes.

15 You asked for Mr Stevenson's review repeatedly, didn't you?---Mr Stevenson was asking me for the review.

Ms Scaffidi, do you accept or reject that you requested the review repeatedly from Mr Stevenson?---I reject.

20

You asked for the review to be given to you immediately, didn't you? You saw the emails - - -?---Sorry, just to clarify - - -

- - - where you asked for the review immediately?---Is this the responses to the review or the review to be undertaken?

25

You wanted what you thought was an external review?---The external review, sorry. I'm thinking the Performance Review. Yes, we went through that on Monday.

30

You requested the material from Mr Stevenson because you were concerned about what was in it, didn't you?---Not for myself.

You were?---For others that were in it.

35

You were concerned for yourself, Ms Scaffidi?---Yes. Happy to say yes, happy to say yes.

40 You were concerned for others, you told the Inquiry who they were. In October 2015 you were also concerned that Mr Stevenson was keeping it from you, isn't that right?---Yes.

And you sought legal advice about getting it, didn't you?---Yes.

45 You instructed your lawyers to obtain it?---Yes.

From Mr Stevenson and from the CCC?---Yes.

You did everything in your power to get your hands on the results of that internal review, didn't you?---Happy to accept those words, yes.

5 In the context of your requests, Mr Stevenson emphasised with you the importance of you having regard to due statutory process, didn't he?---Yes.

That didn't stop you though, did it?---We have been through the trail of emails, yes.

10

It didn't?---It didn't.

In WhatsApp messages on 28 November 2015, you refer to Mr Stevenson as someone who's never out to fully protect you, isn't that right?---Said from a governance perspective, yes.

15

You were still concerned as at November 2015 with obtaining the results of Mr Stevenson's review, weren't you?---Yes.

20 On 30 November, two days after you sent the WhatsApp message, you instructed your lawyers to ask Mr Stevenson to provide the results to you immediately, didn't you?---You showed me that on Monday, didn't you, but yes.

The same day, Mr Stevenson made his submission on his Performance Review and set out two options, didn't he?---Yes.

25

You talked to Mr Stevenson the same day about him not having your back, didn't you?---I don't recall that.

30 You didn't settle on option 1 with him then, did you?---The committee did not, no.

I'm asking you about you?---No.

You didn't yet have the internal review results, did you? This is by 30 November 2015?---There's a conflation here that I don't accept, but I'm happy to say yes.

35

No, you didn't or yes you did?---Sorry, just repeat the question.

By 30 November 2015 you didn't have the internal review results, did you?---No, I did not.

40

You instructed your lawyers to make further efforts to obtain the review from the City's lawyers, didn't you?---Yes.

45 You did everything you could think of to get this review, didn't you?---I did everything my lawyers were suggesting and I then instructed them accordingly.

And you did everything you could think of to get it?---As is my right as a citizen and the Lord Mayor.

So you accept my question?---Yes.

5

On 14 January 2016, Mr Stevenson gave it to you, didn't he?---Yes.

And your accommodation in New York was on the table?---My accommodation in New York was on the table?

10

The Bloomberg matter was part of the internal review results, wasn't it?---Yes.

So you knew at the moment you saw that review that Mr Stevenson had reported you to the CCC, didn't you?---I didn't think about it in that way but yes, it was his statutory obligation.

15

He had reported you to the CCC, hadn't he?---Yes.

So he didn't have your back, did he?---I don't accept the premise of the question and the use of that term in the question, no.

20

The veiled threat of reporting you to the CCC was no longer a threat, it was a reality for you, wasn't it?---The veiled threat was felt by others - - -

25

Ms Scaffidi, my question was - - -

COMMISSIONER: Ms Scaffidi, answer the question, please?---Sorry. Repeat the question.

30

MS ELLSON: The veiled threat of reporting you to the CCC was no longer a threat, was it, it was a reality?---Yes.

And it was for that reason that you mobilised Mr Limnios, Ms McEvoy and Ms Davidson to meet with you on the day Mr Stevenson had replied to you, wasn't it?---Categorically not.

35

And you did that the same evening you got an explanation from Mr Stevenson about why he left the review for you, didn't you?---I got what the same evening?

40

You organised or mobilised Councillor Davidson, Councillor McEvoy and Deputy Lord Mayor Limnios the same evening you got an explanation from Mr Stevenson about why he left the review for you?---I don't accept the conflation of the two issues, no.

45

You organised the meeting for 15 January 2016, didn't you?---Happy to accept that I did.

You all agreed to take Mr Stevenson up on option 1 at that stage, didn't you?---Yes, we did.

5 It was an easy option for you, wasn't it, Ms Scaffidi?---I don't accept the premise of the use of the word "easy", it was the option offered and it was the option accepted.

10 It was the only option open to you at that time, wasn't it?---In view of not just the Council but many staff's expressions to me, it was - - -

COMMISSIONER: Ms Scaffidi, please?--- - - - the option accepted.

Please, Ms Scaffidi?---I'm sorry.

15 It's as though I'm saying - - -?---It's just so hard to answer yes or no without giving - - -

20 You do not have to answer yes or no but what you do have to do is give a responsive answer to the question?---I'm trying to do that.

I think you need to try a bit harder. I'm being as fair to you as I can, Ms Scaffidi?---I know you are. I accept that.

25 Ms Ellson, please continue.

MS ELLSON: It was the only option open to you, wasn't it, option 1, really?---No, there were two options. We accepted option 1.

30 Mr Stevenson had offered two options but option 1 was your preferred option, wasn't it?---Yes.

And it was preferred because you could organise it quickly, isn't that right?---No

35 [10.45 am]

And that's what you did, isn't it?---It is what we did but we didn't do it quickly.

40 You did do it quickly, Ms Scaffidi, because on 14 January Mr Stevenson gave you this review. You organised a meeting - - -?---You're conflating two separate issues.

Listen to me?---I am.

45 Ms Scaffidi, on 14 January, Mr Stevenson gave you this review, on 15 January he replied to your request for further information about the review. That same evening, you had the first meeting in a number of meetings with respect to accepting Mr Stevenson's option 1. You had two further meetings at the first

possible opportunity so you could get things done, didn't you?---Yes, but I don't accept the premise you put.

5 By 15 January, not all members of Council had agreed on option 1, had they?---Correct.

By 15 January 2016, you hadn't spoken to Mr Stevenson about option 1, had you?---No.

10 You mobilised your WhatsApp team to get to a Special Council Meeting at 9.15 am on 20 January 2016, didn't you?---Yes.

And you were specific about the time and date?---Yes.

15 In the meantime, you had a CEO Performance Review Committee meeting on 19 January, didn't you?---Yes.

And that was rushed?---No.

20 Many procedures that would ordinarily be followed weren't, were they?---Errors made but not rushed.

And there were many errors, weren't there?---Is that a comment or a question?

25 It's a question?---I don't accept that. There were errors.

You had no regard for usual process in running the CEO Performance Review Committee meeting on 19 January 2016, did you?---No.

30 And you didn't because you wanted to formalise your decision in a hurry, didn't you?---No.

That decision had already been made by yourself, Mr Limnios, Ms McEvoy and Ms Davidson, isn't that right?---Yes.

35 You needed to get the matters formalised before you met with Mr Stevenson the next day at 8.30 am, didn't you?---Yes.

40 On 19 January, you didn't consult the other Council members about what you were doing, did you?---I believe we did. There were phone calls.

The next day at 8.30 you met with Mr Stevenson, didn't you?---Yes.

45 That was the first time you had raised option 1 with him?---No, he'd raised option 1 with us. We accepted option 1 from him.

It was the first time you discussed terminating his employment with him though,

wasn't it?---Yes.

Had a Special Council Meeting at 9.21 am on the 20th, didn't you?---Yes.

5 And again, there was no Governance present?---Correct.

And there were many errors in the process, weren't there?---Yes.

And that happened because you were in a hurry to get it done?---No.

10

Other than the agenda papers, there were no papers for Council members, were there?---I don't accept that. I am of the view that there were the copies of the reviews there but I don't recall exactly.

15 So you think there were other papers?---Yes, I do.

And it was at that meeting on 20 January 2016 that you told Council that Mr Stevenson's employment was to be terminated?---Yes.

20 Did you tell Council he was resigning?---I don't recall the exact words that were used.

Council members, other than those in the CEO Performance Review Committee, knew nothing of Mr Stevenson's departure before the Special Council Meeting on 20 January 2016, did they?---I don't know.

25

You weren't honest with them about it, were you?---I don't accept that premise. I may well have explained what had occurred, I just don't remember.

30 Ms Scaffidi, the truth of this matter is that you mobilised the CEO Performance Review Committee, Councillor McEvoy and then the Council, to terminate Mr Stevenson because he had reported you to the CCC, isn't it?---Absolutely not.

35 You found out that he had and he was gone, Ms Scaffidi, within a week?---This is an agenda.

And there's a weekend in there?---No.

40 Ms Scaffidi, do you remember what happened to the minutes of the Special Council Meeting?---The minutes of the Special Council Meeting? No, I don't.

After they were taken, you forgot about them, didn't you?---I don't recall because the minutes would have been with the minute taker.

45 COMMISSIONER: Ms Ellson, are you referring to the minutes of 20 January meeting?

MS ELLSON: Yes. I'm sorry, to be clear, I am. Thank you, Commissioner.

Ms Scaffidi, the minutes of 20 January 2016 were forgotten about by you, weren't they?---I don't know. I've forgotten about in what way - - -

5

Madam Associate, if you could bring up, please, 14. - apologies, Commissioner, I've lost my page reference.

COMMISSIONER: No apology necessary.

10

MS ELLSON: While my very capable instructor is looking for a page reference, Ms Scaffidi, I can ask you some other questions. Are you familiar with the City's Code of Conduct?---Yes.

15

You have to be as the Lord Mayor, don't you?---Yes.

Madam Associate, if you could bring up, please, 14.0211. Do you see there, "Policy 10.1. Code of Conduct, City of Perth Policy Manual"?---Yes.

20

You recognise this as the City's Code of Conduct?---Yes.

Madam Associate, could you please move to 14.0215, "2.3. Rules of conduct principles", there's a reference there to the Regulations?---Yes.

25

And to conflicts of interest?---Yes.

Do you see there?---Yes.

30

I will start with 3.1, Ms Scaffidi. With respect to Mr Blades and his attendance at the meeting at which his quote was discussed for the Performance Review of Mr Stevenson, there was a risk that there would be a perceived conflict of interest, wasn't there?---I don't agree.

35

If there were, Mr Blades should never have attended that meeting, should he?---If there were, yes.

Yes, he shouldn't?---Shouldn't have, yes.

40

Ms Scaffidi, the Local Government Rules of Conduct Regulations are imported into the Code of Conduct at paragraph (g) here?---Same page?

Yes?---Yes.

45

Paragraph (b), "Act with honesty and integrity"?---Yes.

Do you consider your conduct toward the other Elected Members, including the members of the CEO Performance Review Committee, was honest?---I do.

It wasn't though, was it?---Your premise is the connection to the CCC matter, I just don't accept that at all. It was the timing.

5 It's the time that makes it true, isn't it, Ms Scaffidi?---No, the timing suits the agenda I feel has been at play from the beginning.

Ms Scaffidi - - -

10 COMMISSIONER: Ms Scaffidi - - -

MS ELLSON: That is not my question?---No, I do not - - -

15 COMMISSIONER: Pause, counsel. Ms Scaffidi, just pause for a moment, please?---Yes. I do remember your instructions.

I know you do. Ms Ellson, please ask the question again and I'm sure Ms Scaffidi will confine herself to answering the question.

20 MS ELLSON: Thank you, Commissioner.

The timing reveals the truth, Ms Scaffidi, doesn't it?---No.

25 It's not a coincidence, is it, Ms Scaffidi?---It is a coincidence.

Ms Scaffidi, paragraph (g), Local Government Rules of Conduct Regulations 2007, paragraph (g)?---Yes.

30 "Treat others with respect and fairness", do you see that?---Correct.

If you recall, we went through some WhatsApp messages and you agreed that you had been making fun of Mr Harley?---Yes.

35 That wasn't treating him with respect and fairness, was it?---Correct.

And with respect to Dr Green, excluding her from coffee dates and telling others to do the same, that wasn't treating her with respect or fairness either, was it?---I didn't exclude her from them. I accept that it wasn't fair but I will speak about my version at some point.

40 Ms Scaffidi, I'm asking you to answer the question?---I'm answering the question, it wasn't fair, but I will reply one day.

45 COMMISSIONER: Are you moving on to a different topic now, Ms Ellson?

MS ELLSON: I have one more question on this one, Commissioner.

COMMISSIONER: Very well.

MS ELLSON: It is on a different subject.

5 COMMISSIONER: Very well, please ask it.

MS ELLSON: Madam Associate, if you could bring up, please, 14.1037.

10 Ms Scaffidi, in not being honest - if you weren't honest, I'm sorry, with your Council members about the reason for Mr Stevenson's termination, you were in breach of the Code of Conduct, weren't you?---Yes.

15 In accepting that you didn't treat Mr Harley with fairness and respect, you were in breach of the Code of Conduct, weren't you?---It's a two-way street, yes.

In accepting in part that you weren't fair toward Dr Green, you were in breach of the Code of Conduct, weren't you?---I accept that.

20 Madam Associate, thank you for bringing up 1037, TRIM 13516. Ms Scaffidi, do you see on the screen the minutes from a Special Council Meeting, 20 January 2016?---Yes.

25 Madam Associate, if you could move to page 14.1039. You see there that you attended this meeting?---Yes.

And you declared it open at 9.21 am?---Yes.

30 I'm sorry, Commissioner, this is not the correct document. Madam Associate, if you could pull that down, please.

COMMISSIONER: Ms Ellson, just while you're at that point, I am mindful of my obligation to be fair to everyone, including the witness and Ms Scaffidi has now been in the witness box for an hour and a half. That's quite a long time.

35 MS ELLSON: Yes.

COMMISSIONER: So I propose to take a 15 minute adjournment to give Ms Scaffidi an opportunity to stretch her legs and collect her thoughts?---And I need the bathroom, thank you.

40 And the bathroom if necessary?---Thank you.

I will adjourn now for 15 minutes.

45 **WITNESS WITHDREW**

(Short adjournment)

HEARING RECOMMENCED AT 11.16 AM.

MS Lisa-Michelle SCAFFIDI, recalled on former oath:

5

COMMISSIONER: Yes, Ms Ellson.

MS ELLSON: Commissioner.

10 Ms Scaffidi, it wasn't fair to Dr Green or Mr Harley to exclude them from your WhatsApp team, was it?---No.

And in excluding them in that way, you breached the Code of Conduct, didn't you?---Yes.

15

Madam Associate, if you could bring up 14.1327. Ms Scaffidi, do you see here CEO Performance Review Committee minutes, dated 7 March 2017, and 8 March 2017, do you see that?---Yes.

20 Madam Associate, if you could turn the page, please, to 14.1329. This is TRIM 13518. Do you see on this page, Ms Scaffidi, you as a member in attendance?---Yes.

And there's a motion moved by yourself?---Yes.

25

That:

*The minutes of the meeting of the CEO Performance Review
Committee meeting held on 28 October 2014 and 19 January 2016 be
confirmed as a true and correct record.*

30

Do you see that ?---Yes.

35 The 28 October 2014 minutes should have been confirmed earlier, shouldn't they?---Is 14 incorrect there, or is that correct? I'm sorry, yes, that should have been, yes.

Ms Scaffidi, I'm at the motion?---Yes, I see it.

40 28 October 2014, do you see that?---Yes, I see it. It is a typo or is it correct, 14?

I don't know, these are your minutes?---Yes. I've just seen that now but yes, I accept.

45 If 28 October 2014 is correct, those minutes should have been confirmed at the 19 January 2016 meeting, shouldn't they?---Yes.

If 28 October 2015 were correct, those minutes should have been confirmed at the 19 January 2016 meeting, shouldn't they?---Yes.

And that's a requirement under the Act, isn't it?---Yes.

5

And you were aware of that at the time on 7 or 8 March 2017?---Yes.

I have no more questions for Ms Scaffidi at this time, Commissioner.

10 COMMISSIONER: Thank you. Mr Skinner, do you have an application to make?

MR SKINNER: Sir, I have no application to make but I just wanted to bring to the Commission's attention, sir, that there was a letter sent last night.

15

COMMISSIONER: I read it and now is not the time to bring it to my attention. I'm familiar with it, thank you.

MR SKINNER: Thank you very much. On the basis of that, I have no questions for Ms Scaffidi but I do want to point out once again that I believe there has been -
--

COMMISSIONER: Mr Skinner, this has been dealt with previously. Now is not the time. If you have no application to make, I will move to the next counsel.
25 Thank you.

MR SKINNER: With the greatest of respect, sir - - -

COMMISSIONER: Mr Skinner, if you want to raise this matter, I will deal with it
30 privately in a short while.

MR SKINNER: Thank you very much, sir.

COMMISSIONER: Thank you.
35

MS ELLSON: Commissioner, do you wish to hear from Mr van der Zanden?

COMMISSIONER: I will be moving down the table.

40 MS ELLSON: I see.

COMMISSIONER: In what I consider to be the appropriate order. Mr Yeldon, do you have an application to make?

45 MR YELDON: I would like to ask one question by way of re-examination?

COMMISSIONER: It's an Inquiry so there's no re-examination, it's examination.

MR YELDON: Jolly good.

5 COMMISSIONER: And before you do ask the one question, under the Practice Directions, Mr Yeldon, you have to identify the topic.

MR YELDON: Yes.

10 COMMISSIONER: And the way in which the advance the purpose of this Inquiry. Ms Ellson.

MS ELLSON: Yes. I wonder if Ms Scaffidi should be present, Commissioner?

15 COMMISSIONER: Thank you. Madam Associate, would you please escort Ms Scaffidi from the hearing room.

WITNESS WITHDREW.

20 COMMISSIONER: Just a moment, Mr Yeldon.

MR YELDON: Thank you, Commissioner.

COMMISSIONER: Yes, Mr Yeldon.

25 MR YELDON: The witness was asked questions about why it was on a minute paper that an Acting CEO had to be appointed, does the Commissioner recall?

COMMISSIONER: I do.

30 MR YELDON: And the witness said, "My recollection is we needed an Acting CEO", they were her words, and I want to ask her why she had that recollection.

COMMISSIONER: Yes, thank you. Take a seat. Ms Ellson, do you have a position on that?

35 MS ELLSON: I'm not sure that the question is going to advance the interests of the my learned friend's client at all. The CEO was being terminated.

40 COMMISSIONER: I can see how the question might assist the Inquiry, so I'm going to permit it but I'm going to deal with any other applications in Ms Scaffidi's absence. So I'm going to permit that question, Mr Yeldon.

MR YELDON: Thank you.

45 COMMISSIONER: Thank you, just take a seat.

MR RENTON: Commissioner, I have no application on behalf of Mr Stevenson

to ask any questions.

COMMISSIONER: Thank you very much, Mr Renton. Mr van der Zanden, last but not least

5

MR van der ZANDEN: Yes, thank you, Commissioner. I have no application but pending anything that might arise from Mr Yeldon's question. So I have no application at this time.

10 COMMISSIONER: So you have an application pending?

MR van der ZANDEN: No, I don't, but obviously if something arises from Mr Yeldon's question, I understand that then I might be permitted further to make an application at that time.

15

COMMISSIONER: If I consider that there's a need for that, I will certainly consider that application

MR van der ZANDEN: Thank you, Commissioner.

20

COMMISSIONER: Thank you. Madam Associate, would you please bring Ms Scaffidi back into the hearing room. Ms Scaffidi, please return to your seat in the witness box.

25 **MS Lisa-Michelle SCAFFIDI, recalled on former oath:**

COMMISSIONER: Ms Scaffidi, let me again say to you that your exclusion from the hearing room is no reflection on you?---I understand.

30 Thank you. There will be one question for you on one matter from Mr Yeldon. There will be no other questions at this point in time. Mr Yeldon.

MR YELDON: Yes

35 EXAMINATION BY MR YELDON

Do you recall being asked by Counsel Assisting a question about why it was an Acting CEO had to be appointed?---Yes.

40 Earlier in this morning?---Yes.

And in answer you said, and I think these are your direct words?---Yes.

"My recollection is we needed an Acting CEO", do you recall that?---Yes.

45

And this is my question: why is it that you think you have that recollection?---One would expect an organisation of that size to have a person acting in the capacity,

which was always the case when the CEO was not present.

And there's no other reason?---No.

5 I have no further questions.

COMMISSIONER: Thank you, Mr Yeldon. Under the Practice Directions, Ms Ellson, I turn to you now to see if you have any questions arising out of that.

10 MS ELLSON: I do not, Commissioner.

COMMISSIONER: Thank you. Mr van der Zanden, I have not come specifically to you because I assumed you would have risen if you had an application

15 MR van der ZANDEN: Yes. I don't have an application, thank you, Commissioner.

COMMISSIONER: Thank you. Ms Scaffidi, it then remains for me to thank you for your assistance today. That will complete your evidence for today?---Thank
20 you.

What I propose to do now is adjourn for - Ms Ellson?

MS ELLSON: I don't wish to speak, Commissioner.
25

COMMISSIONER: I propose to adjourn for five minutes and then I will hear, in private, what Mr Skinner may wish to say to me.

MS ELLSON: Commissioner.
30

COMMISSIONER: I will adjourn now for five minutes.

WITNESS WITHDREW

35 (Short adjournment)

HEARING RECOMMENCED AT 12.11 PM

MR SKINNER: I do apologise, sir. Should the application be made in relation to
40 Mr Mariotto?

COMMISSIONER: I was going to call on counsel in a moment.

MR SKINNER: Thank you, sir. I do apologise.
45

COMMISSIONER: That's all right, Mr Skinner. Ms Ellson, do you recall Mr Yong?

MS ELLSON: Yes, I do.

5 COMMISSIONER: Thank you. Mr Yong, please come forward and take a seat in the witness box to my left.

MR Yit Kee YONG, recalled on former affirmation:

10 COMMISSIONER: You remain under your oath from yesterday?---Yes, I do.
Are there new applications?

15 MR SKINNER: I do apologise, sir. We did file an application in relation to both Mr Mariotto and myself appearing, so we would seek leave if possible, sir.

COMMISSIONER: Thank you. Ms Ellson, is there any opposition to that?

COMMISSIONER: In that case, leave is granted to the both of you.

20 MR SKINNER: May it please you.

COMMISSIONER: Mr van der Zanden?

25 MR van der ZANDEN: May it please you, Commissioner, Ms Scaffidi applies for leave to appear for the evidence of Mr Yong.

COMMISSIONER: Yes, and you apply for leave to represent her?

30 MR van der ZANDEN: Yes, I do, thank you.

COMMISSIONER: Is there any opposition, Ms Ellson?

MS ELLSON: No, Commissioner.

35 COMMISSIONER: Leave it granted. Are there no other applications?

MR RENTON: Commissioner, I'll make my continued application in relation to Mr Stevenson.

40 COMMISSIONER: Yes, I take that as read.

MR YELDON: Yes, I make my continued application in respect of Ms Davidson.

45 COMMISSIONER: Thank you. Ms Ellson, are you ready to proceed?

MS ELLSON: I am, yes.

COMMISSIONER: Thank you.

EXAMINATION-IN-CHIEF BY MS ELLSON.

5 Mr Yong, I want to talk to you now about the appointment of Mr Mileham as the permanent CEO. Do you recall Mr Mileham was appointed Acting CEO on 20 January 2016?---Yes, I can recall that.

10 Do you recall the circumstances in which his appointment occurred, as Acting CEO?---As Acting CEO on 20 January 2016 after Special Council Meeting.

And that was the Special Council Meeting where you had discussed Mr Stevenson's exit?---That's correct, yes.

15 What involvement, if any, did you have in the process to recruit a permanent CEO to replace Mr Stevenson?---As Councillor, as a Council member, following the recommendation from the CEO Performance Review Committee's recommendation.

20 To do what? Appoint a permanent person?---At Council meeting.

Did you attend a presentation given by Mr Mileham and another person who were competing for the position of CEO?---Can't really recall if I attended that presentation.

25 Does that mean it's possible?---Possible.

30 What makes you say that it's possible? What's your memory?---I recall this briefing session for all Councillors and senior staff to attend briefing session and Mr Mileham express his view or presentation or briefing on his future mission, similar to that effect.

[12.15 pm]

35 Was there a PowerPoint presentation?---I can't recall whether it's PowerPoint. It's mostly on verbal presentation.

40 Madam Associate, if you could provide the witness, please, with the bundle of documents, 9.0672-9.0679. While that's happening, Mr Yong, were you given a grid or a piece of paper to make some notes on for what you've described as a briefing session where Mr Mileham discussed the future mission?---Not that I'm aware of, there's a grid.

45 You used the word "grid" there; were you given an interview grid?---I can't recall receive anything.

COMMISSIONER: Mr Yong, I'm finding it very hard to hear what you're saying

sometimes. Would you please speak up for my benefit?---Yes. Please, I do have sore throat at the moment.

Do the best you can then, thank you?---I will.

5

MS ELLSON: Mr Yong, you're showing me page number 9.0671. I need you to turn to the page. I would like to check each page and tell me whether your handwriting appears on any of them.

10 MR YIN: Could I please have a copy of this?

MS ELLSON: Madam Associate.

MR YIN: Thank you.

15

COMMISSIONER: You can rely on the efficiency of my Associate, Mr Yin?---I don't recognise any of my handwriting on this document.

Thank you. Madam Associate, the documents can be returned.

20

COMMISSIONER: That was a short-lived pleasure, Mr Yin.

MR YIN: I don't think I even saw what was in them.

25 MS ELLSON: Mr Yong, you mentioned a Council meeting where you relied on the recommendation to appoint a CEO. Do you recall being asked for your opinion about whether or not Mr Mileham should be appointed before you attended the Council meeting?---As far as I can recall, is during that so-called briefing session for all Councillors and senior staff. That's the only session with
30 Mr Mileham.

Were you asked for your opinion about whether or not Mr Mileham should be appointed during the briefing session you describe?

35 MR YELDON: Objection. Appointed to what? The question's unclear, in my submission. To what position? I'm not following the effect of that question because the word "appointed" doesn't have a destination.

COMMISSIONER: You're representing - - -

40

MR YELDON: Ms Davidson.

COMMISSIONER: - - - Ms Davidson, aren't you?

45 MR YELDON: Yes, but I'm following the issue of the appointment of Mr Mileham.

COMMISSIONER: Ms Ellson, do you wish to respond to the objection?

MS ELLSON: No. I can certainly rephrase it.

5 MR YELDON: Thank you.

COMMISSIONER: Thank you.

10 MS ELLSON: Mr Yong, at the briefing session you say you attended, were you asked for your opinion about whether or not Mr Mileham should be appointed to the position of CEO?---I can recall that we were given an opportunity to speak.

You can or you can't?---We can.

15 What did you say?---I was observing and listening to the presentation. I can't recall that I made any comment.

20 Were you given the opportunity at the briefing session you describe to ask questions of Mr Mileham?---Yes, I believe we were given an opportunity to ask questions.

Did you ask any?---I can't recall that I asked any questions.

25 You've said that you remember Mr Mileham expressing his view about his future mission. Did you also hear from the female applicant?---Most likely there is - there are, there were.

30 Why do you say most likely?---Is on a different occasion, on a different date, different time, different - not on the same date with Mr Mileham giving the presentation at the briefing session.

Do you remember or are you guessing?---I can briefly recall that there's a female doing a presentation but I don't remember who she is and what's her name.

35 I don't need to ask you about those things, Mr Yong, but I do need to know whether, during her presentation, you were given the opportunity to ask questions?---Yes, we were. All Councillors given an opportunity to ask questions.

40 Did you ask any?---No, I was just listening and observing the presentation.

Were you asked for your opinion about her suitability for the position of CEO?---No.

45 But you were for Mr Mileham - you said you were for Mr Mileham, is that right?---Yes, that's right.

You said all Councillors were given the opportunity. Can you tell me who

attended the briefing session you recall Mr Mileham giving the presentation in?---I can't recall who attended but usually - - -

5 I don't need you to guess, Mr Yong?---I can't recall which Councillor. Usually there's a minutes of who attended that meeting.

Was it a formal meeting?---Not formal, it was a briefing session just to discuss future direction for the City.

10 Can you tell me who attended the presentation you remember being given by a female applicant?---I can't recall.

15 Mr Yong, do you remember attending a Special Council Meeting on 1 September 2016 where a recommendation was made to Council to appoint Mr Mileham to the position of CEO?---Most likely I did attend.

Can you tell me what your memory is of your attendance at that meeting?---The 1 September you mentioned, 1 September 2016?

20 That's the date I gave you?---My recollection is appointment of Mr Mileham, confirmation of Mr Mileham as the CEO appointment.

25 What did you consider to make your decision?---During that meeting - minutes of meeting will usually include confidential attached document at the back of that meeting for all Councillors to consider and recommendation by officers of the City and the CEO Performance Review Committee's recommendation will be included in that comment.

30 Anything else?---That's what I can recall.

Madam Associate, could the witness please be shown 9.0791. 17416, Commissioner.

35 COMMISSIONER: Thank you.

MS ELLSON: Do you see there Council minutes, 1 September 2016, confirmed - - -?---Yes.

40 On 20 September 2016, do you see that?---Yes, I can see it.

Madam Associate, if you could bring up page 9.0793. You see there among, "Councillors present", your name?---Yes.

45 The meeting was declared open at 5.02 pm, do you see that?---Yes, I do.

Mr Yong, do you recall there being discussion among Councillors about Mr Mileham's appointment to the position as CEO at this meeting?---I can't recall

exactly what transpired during that meeting.

Was the meeting closed?---For sensitive, confidential matters, usually Council will
- the Presiding Member will be deciding to close that meeting.

5

So if Mr Mileham's appointment to the position of CEO were discussed, you
would expect the meeting to be closed to the public?---Yes.

Did Mr Mileham leave the meeting?---As far as I can recall, yes, he did.

10

You would expect that to occur because Mr Mileham has an interest or a financial
interest in the outcome of the item?---Yes

[12.30 pm]

15

Madam Associate, if you could turn, please, to page 9.0794. There's an item here,
Mr Yong, "Matters for which the meeting may be closed", do you see that?---Yes.

And, "A confidential item with respect to the appointment of a Chief Executive
Officer", do you see that?---Yes.

20

And there's a note:

*The Council agreed that there would be no discussion on confidential
item. Therefore, it was not deemed necessary to close the meeting.*

25

Does this help you to remember whether or not there were discussions about
Mr Mileham's appointment at the meeting on 1 September 2016?---I can't recall on
that date.

30

The meeting note says, "Council agreed there would be no discussion", can you
tell me about that?---I'm not aware of why a meeting note was put on this minute.

Before the meeting on 1 September 2016, had you agreed with other members of
Council that Mr Mileham was the most appropriate applicant for the position of
CEO?---Do you mean have I agreed with other Council members?

35

Yes?---Prior to 1 September? I can't recall whether I have agreed with them but I
agreed that CEO appointment for Mr Mileham while reading this prior to the
meeting.

40

You agreed prior to the meeting, did you?---I read and agreed to what had been
presented to me on that agenda prior to the meeting.

I see. So based on what you were given in terms of the paperwork for the meeting
on 1 September 2016?---Yes.

45

That was what you based your opinion on?---On the documents provided, yes.

Do you see there Mr Mileham left the meeting at 5.04 pm?---Yes.

5 Madam Associate, if you could turn the page, please, 9.0795. Do you see there what looks like a report from Corporate Services to Council with respect - I'm sorry, a record of the minutes pertaining to the appointment of the Chief Executive Officer?---Yes, I see it.

10 And the committee recommendation to the Council was the same as that recommended by the officers, do you see that?---Yes, I do.

The recommendation by the officers was contained in a report provided to you, was it?---It would have been attached, usually in that confidential document, yes.

15 The motion moved by Councillor Davidson, seconded by Councillor Limnios reads that:

20 *In accordance with the section of the Local Government Act by absolute majority accepts the CEO Recruitment Committee's recommendation to appoint the preferred candidate as detailed in confidential Schedule 1 to the position of Chief Executive Officer for a period of five years under the contract of employment for a Chief Executive Officer.*

25 Do you see that?---Yes.

30 Did you have the contract of employment before you when you decided to vote on the motion?---I can't recall whether it's been attached in the confidential document or come later.

The second part of the motion put here reads:

35 *Subject to the completion of satisfactory reference checks, approves the CEO Recruitment Committee to negotiate the terms of the contract provisions.*

Do you see that?---Yes, I do.

40 Does that appear to you that the contract for Mr Mileham or the appointment of the preferred candidate as is set out here, had not yet been settled?---Yes, with the condition number 2, it's not been settled.

45 And that the reference checks for the preferred candidate had not yet been completed, you would agree with that?---Yes.

The Local Government Act imposes obligations on Councils before they can

appoint a CEO, doesn't it?---Sorry, what's the question again, sorry?

5 The Local Government Act imposes obligations on Councils before they can appoint a CEO, doesn't it?---Actually the Act imposes certain regulation and rules, yes.

With respect to appointing a CEO, can you tell me what those obligations are?---Do you mean obligation by the Council?

10 Yes?---As far as I can say is, whether the Council can appoint, externally appoint or internally engage - internally appoint a CEO.

Sorry, it?---Externally engage a consultant to appoint or select a CEO or internally, the Council to decide to appoint a CEO.

15 Are you aware of what obligations Council has before appointing a Chief Executive Officer in terms of qualifications of the person to be appointed. Madam Associate, if I could turn up, please, section 5.36 or page 148 of the Local Government Act. 5.36(2). Do you see here, Mr Yong, a section which reads:

20 *A person is not to be employed in the position of CEO unless the Council: (a), believes that the person is suitably qualified for the position.*

25 Do you see that?---Yes.

Do you accept that's an obligation imposed by the Local Government Act on Council?---(No audible response).

30 Were you aware of your obligation to be so satisfied on 1 September 2016?---At that time, yes, I'm satisfied with the appointment of CEO.

35 My question was, were you aware of your obligation under the Local Government Act to form a belief that the person is suitably qualified for the position? You were aware?---I was not aware at that time.

40 You should have been though, shouldn't you?---Yes. At that time I thought I should have gained more knowledge on the Local Government and that's the reason why I decided to sign up, to do my Diploma in Local Government, to gain more knowledge on this aspect.

You accept that you had an obligation to form a belief that the person was suitably qualified for the position before a CEO was appointed, don't you?---Yes.

45 That didn't happen, did it?---Do you mean at that time I do not agree with appointment of CEO? At that time, yes, I do agree with appointment of the CEO as suitable appointment.

COMMISSIONER: Ms Ellson, you may need to articulate the question more fully for Mr Yong.

5 MS ELLSON: Yes.

Mr Yong, you could not be satisfied that the preferred candidate was suitably qualified for the position because the reference checks had not yet been done, isn't that right?---Yes, the second condition had not been done yet.

10

Madam Associate, could you turn, please, to page 149, the next page, please. I ask you to consider paragraph (b) at the top of the page, please, where it says, and I will read from subsection (2):

15

A person is not to be employed in the position of CEO unless the Council: (b), is satisfied with the provisions of the proposed employment contract.

Do you see that?---On the top, subsection (3)?

20

No, (b). Above (3) there's a (b).

COMMISSIONER: Top of the page, Mr Yong?---(b), "Is satisfied with the provisions of the proposed employment contract", yes.

25

MS ELLSON: Do you see that?---I see that.

Were you aware of that obligation on 1 September 2016?---I was not aware at that time, in 2016.

30

And you should have been aware?---Yes.

Mr Yong, you could not have been satisfied with the provisions of the proposed employment contract because it hadn't been fully negotiated, could you?---Yes, that's right.

35

Therefore, your decision to support the motion was a wrong one, wasn't it?---My decision was made based on the document provided, including the confidential document and I'm satisfied at that time.

40

Without knowing your obligations?---Without knowing this, subsection (b).

Just to complete looking at these documents, Mr Yong, Madam Associate, 9.0796. You were in the right document, Madam Associate, just not at the right Bates page.

45

COMMISSIONER: So you're referring to 9.0796, Ms Ellson?

MS ELLSON: Yes, I am.

Do you see there 5.05 pm, Mr Mileham returned to the meeting?---Yes.

5

We had already seen that he left at 5.04 pm, so there was one minute where Mr Mileham was absent?---Yes.

The close of the meeting was at the time Mr Mileham returned, do you see that?---Yes.

10

So you would agree that there was no discussion about the papers that were provided to you at the meeting?---I can say that, there's no discussion, based on the minutes.

15

Madam Associate, if you could turn up, please, 9.0797. Do you see there confidential schedule 1, referring to the confidential item or the minute 334 of 16?---Yes.

20

Could you turn the page, please, Madam Associate. Do you see here what purports to be a report of a Human Resources Officer with respect to the appointment of the Chief Executive Officer?---Yes.

[12.45 pm]

25

And if we turn the page, please, Madam Associate, to 9.0799, do you see there, "Financial implications", a heading halfway down the page?---Yes.

And, "Contract provisions", do you see that?---Yes.

30

Do you see the salary band set by the Salaries and Allowances Tribunal and the Band 1 has been nominated and the package is between \$247,896 and \$375,774, do you see that?---Yes, I do.

35

As at 1 September 2016, what was your understanding about how much a CEO could be paid when looking at the Salary and Allowance Tribunal bands?---I have no idea.

The contract provisions here, underneath, specify that, "Total remuneration package proposed, \$364,450", do you see that?---Yes.

40

Do you agree that figure is within Band 1 that I've just taken you to?---364, yes, within that Band.

45

In making your decision, did you read the report and have reference to these two pieces of information provided by the officer?---Yes, I would have read it but at that time, I don't know what is Band 1 or Band 2 but it's make decision by the

officer to the Council.

Looking at this now, what do you think the Chief Executive Officer was going to be paid?---If looking at this document, would be \$364,450 as the total
5 remuneration.

Madam Associate, if you could turn the page, please, to 9.0800. Do you see here, Mr Yong, comments that the reference checks were yet to be completed?---Yes.

10 And the recommendations that were ultimately passed by Council?---Yes.

Madam Associate, 9.0801, just the first page, please. Do you see here, "Confidential schedule 1" appears to be an application for the position by Mr Mileham?---Yes.

15 Do you recognise this as part of the confidential schedule that you had regard to?---Yes, it would have been part of that confidential document with Council meeting.

20 Madam Associate, if you could turn, please, to 9.0810. Do you see here what appears to be a curriculum vitae of Mr Mileham?---Yes, I can see it.

And it's identified as part of a confidential schedule attached to the application?---Yes.

25 Do you see that?---Yes.

That document can be taken down, please, Madam Associate. In hindsight, Mr Yong, do you agree that you should have had regard to the negotiated terms of the contract for Mr Mileham before making your decision about whether or not to appoint him to the position of CEO?---Except on the condition number 2, in hindsight, yes.

35 You mentioned that you had seen the contract of employment, do you remember that, earlier in your evidence this afternoon?---Yes.

Can you tell me more about the circumstances in which you had seen it?---I can't recall in which circumstances that document came through. Most likely would be after that Council meeting.

40 What makes you say that?---If I'm not mistaken my memory, I think Councillor Limnios at that time requested that document to be provided to all Councillors.

Sorry, Commissioner, the confidential schedules are a bother to me.

45 COMMISSIONER: There's no need to apologise, Ms Ellson.

MS ELLSON: Mr Yong, I will just ask you now, please, to be shown 9.0857. Do you see here an employment contract?---Yes.

5 TRIM 17424. Was the contract you described seeing, a signed contract?---Can't really recall whether that document provided was signed or unsigned.

10 Madam Associate, the document can be removed, please. Mr Yong, I would like to talk you to now about the Grand Central Hotel. During your time, and I'm talking about your whole time as a Councillor, did you know whether or not the Lord Mayor had a financial interest or an interest in the property at all?---During my term, yes, she has a financial interest in Grand Central Hotel.

Your whole term you knew that?---Not the beginning of my term in 2013.

15 Did you find out quite shortly after you were appointed about it?---Should be some items for considering during Council that make me aware that she has interest in Grand Central Hotel.

20 You were a member of the Planning Committee, were you, or not?---I was a Planning Committee member from 2015, October onwards.

25 Do you recall a Council meeting on 17 March 2015?---I would have attended a meeting, most likely, yes. Was it a Council meeting or Planning Committee meeting?

I said Council?---Council, yes.

30 Madam Associate, could you please bring up 27.0501. You see here some Council minutes, 17 March 2015?---Yes.

Madam Associate, if you could turn to 27.0504. Do you see there under "Councillors present", your name?---Yes.

35 Madam Associate, if you could turn, please, to page 27.0507. Do you see there, Mr Yong, an item dealing with, "The proposed principles of new City Planning Scheme No 2, planning provisions and policy, Heritage assessments and registrations"?---Yes, I can see it.

40 Do you see there that the City maintains a municipal heritage inventory. I think I've referred to that as a City Heritage Register?---Yes.

Madam Associate, could you turn, please, to page 27.0513. Do you see here, in the middle, Mr Yong, a paragraph which says:

45 *In accordance with the above - which was a discussion about interim heritage assessments - the City has prepared a list of heritage places that have been identified for further investigation on the basis that they*

are - it says "have" - a construction date prior to 1940 and have been classified by the National Trust and/or where the Heritage Council has determined that the places does not meet the threshold for entry into the State Register.

5

Do you see that? There's reference to a confidential schedule?---Yes, I can see that.

:

10

The assessments and results of consultation will be presented to Council for a decision on whether the possible registration should progress to formal owner consultation in accordance with the requirements.

15

Do you see that?---Yes.

So it was contemplated, was it, at this time, that properties identified for assessment would require formal consultation for affected owners?---Yes.

20

If, Madam Associate, you could please turn to page 27.0514. The Planning Committee recommendation was for Council to note the Draft Heritage and Registrations Planning Policy to be presented relating to the draft planning regulations, do you see that?---Yes, I can see it.

25

And secondly:

To approve further assessment and consultation with affected landowners of these properties detailed in the confidential schedule.

30

Do you see that?---Yes.

But Council determined to refer the matter back to the Planning Committee, do you see that?---Yes.

35

And the motion was moved that, "Council refer consideration of the report back to the Planning Committee", and you voted in favour of that?---Yes, I did.

40

Why did you vote in favour of sending the matter back to the Planning Committee?---At the time I was in the Planning Committee and my understanding is for the Planning Committee to have a better look into that item before refer back to Council for consideration.

45

The officers in the Planning section of the City are experienced in matters of heritage assessment and planning, aren't they?---I believe they are.

[1.00 pm]

And the Planning Committee acts on the recommendations of those officers, doesn't it?---Most of the time, yes.

5 And in this case, the Planning Committee had recommended further assessment and consultation with affected landowners, but you referred it back to committee?---My recollection is at that time for item number 2, to refer back to the committee and let the officers to consult with the landowner.

10 Why did it need to go back to the Planning Committee for there to be further consultation with the owner when further consultation was going to occur if Council adopted the recommendation made by the Planning Committee itself?---I can't recall what had actually transpired during that time.

15 It makes no sense, does it, Mr Yong?---There must be a reason for that item to refer back to committee. There must have been some discussion during Council meeting.

COMMISSIONER: But come back to counsel's question: does it make sense to
20 you?---Not really.

Ms Ellson, would this be a convenient time?

MS ELLSON: Yes.

25 COMMISSIONER: I will adjourn the Inquiry to 2.15.

WITNESS WITHDREW

30 **(Luncheon Adjournment)**

35

40

45

HEARING RECOMMENCED AT 2.16 PM

MR Yit Kee YONG, recalled on former affirmation:

5 COMMISSIONER: Yes, Ms Saraceni.

MS SARACENI: Commissioner, I have a preliminary matter seeking to appear for Mr Mileham, the former CEO of the City of Perth for this public hearing, and any extension to it, and given the little bit I heard just before lunch, it may be that
10 this witness and some of the information he has could impact on Mr Mileham.

COMMISSIONER: Thank you, Ms Saraceni. Ms Ellson, is there any objection?

MS ELLSON: No.
15

COMMISSIONER: Thank you. Ms Saraceni, you have leave.

MS SARACENI: Thank you, sir. Just for completeness, sir, there's no room on the rear Bar table so I'm sitting here, if that is of no objection to you.
20

COMMISSIONER: Ms Saraceni, I've heard you coughing at the back of the hearing room, I'm sure that Mr Yin has an extraordinarily strong constitution and will withstand illness at all costs.

25 MR YIN: I will enjoy the company, sir.

MS SARACENI: Thank you, sir.

COMMISSIONER: Yes, Ms Ellson, please continue.
30

MS ELLSON: Yes. Madam Associate, if you could bring up 27.0515. Mr Yong, where Council's resolution differs from the recommendation of the committee, it's required that written reasons be given, isn't that true?---My understanding, yes, we have to give a reason.
35

If you could speak up a little bit, please, Mr Yong?---My understanding - - -

I heard your answer, I will ask the next question. At the top of the page there, do you see a reason relating to the motion that we were talking about before
40 lunch?---Yes.

Do you see there:

45 *Council were concerned that consultation with the people affected or potentially affected had not taken place and therefore agreed that the item should be referred back to the Planning Committee for further consideration.*

Do you see that?---Yes, I do.

5 So you accept then there was no other reason for the matter, or for Council to disagree with the committee's recommendation, other than for consultation with the people affected to take place?---That was the reason given, yes, I agree.

10 Just for the sake of completeness, confidential schedule 11, which was referred to earlier in the evidence, Madam Associate, appears at page 27.0518. Do you see there a list of properties and among them, towards the bottom, the Grand Central Hotel?---Yes.

15 That was one of the properties being considered in the Council meeting?---That's correct, yes.

Mr Yong, did you vote in the way you did at this meeting as a result of any discussions you had with the Lord Mayor?---No.

20 Did you vote along team lines?---I vote based on the information given, or at the Council meeting minutes.

You based your vote on the documentation?---Yes.

25 The effect of the resolution was to delay assessment of the properties, wasn't it?---No, I do not agree.

30 Madam Associate, if you could bring up 27.0514. Number 2, the recommendation was for "Council to approve further assessment and consultation", do you see that?---Number 2, yes, I see that.

So it's correct to think then that the assessment would not occur until Council had agreed with that recommendation, do you accept that?---Sorry, could you repeat that question again.

35 So it's correct to think then that assessment would not occur until Council agreed with this recommendation, do you accept that?---Yes.

40 So effectively assessment was delayed, do you accept that?---Effectively was actually delayed.

Did you vote in the interests of the owners of the property, Mr Yong?---I vote in the interests of the information given by the Council and the landowners is not only limited to one landowner, there's a list of other landowners.

45 Did you vote in the interests of the owners of the properties?

COMMISSIONER: It might assist Mr Yong answer the question if you indicated

which properties you are referring to, Ms Ellson.

5 MS ELLSON: Madam Associate, 27.0518. Do you see there a list of properties, Mr Yong?---Yes, list of all the properties. We are deciding matters based on the list of the item attached.

And you voted in the interests of the owners of the properties on this list?---That's my understanding, yes.

10 That included the owners of the Grand Central Hotel, didn't it?---It would have effectually, yes, including the Grand Central Hotel owners.

15 The document can be taken down, Madam Associate. You were a member of Planning Committee in September 2016, weren't you?---Yes, 2016, I was in Planning Committee.

And the matter concerning the Grand Central Hotel came before you on 13 September 2016?---Which matter?

20 The matter concerning the Grand Central Hotel's potential Heritage Listing came before you on 13 September 2016?---Yes.

25 Madam Associate, if you could bring up 27.1035. Do you see here some Planning Committee minutes dated 13 September 2016?---Yes.

Madam Associate, if you could turn to page 27.1038. Do you see here records of attendance at the meeting and you're included?---Yes.

30 Madam Associate, if you could turn to page 27.1039. Do you see here a matter for which the meeting may be closed includes, "Proposed entry of the Grand Central Hotel in Wellington Street", do you see that?---Yes.

35 Do you have a memory of a deputation or someone that spoke to the meeting about the possible inclusion of the Grand Central Hotel on the Heritage Register during this meeting?---Can't recall, for this item.

Madam Associate, if you could bring up 27.1040. Do you see there a deputation at 5.37 pm by a Mr Simpson?---Yes.

40 And this is occurring with respect to agenda item, "Proposed entry of Grand Central Hotel on the Heritage List", do you see that?---Yes.

45 And it appears from the minutes that Mr Simpson spoke for two minutes, do you see that?---Yes, I do.

What did Mr Simpson speak about?---I can't remember right now, really sorry.

Madam Associate, if you could bring up 27.1042, please. Two paragraphs:

As noted in Part 1.3 of Council resolution 5 April 2016 this is part of the Officer's report.

5

Do you recognise that?---Yes.

And:

10

It appears that the Grand Central Hotel and two other properties were considered in April 2016 to require further Heritage Assessment, including some internal site inspections prior to progressing to the Heritage Listing process.

15

Do you see that?---Yes.

The results of the internal site inspections had become available for two of the properties, but the Grand Central Hotel was not included in the report at Council's meeting on 19 July 2016 because there was an additional Heritage Assessment that was going to be prepared, do you see that?---Yes.

20

Madam Associate, could you turn the page, please, to 27.1043. Mr Yong, do you see in the middle of the page, "This report", being the officer's report:

25

Provides a recommendation to Council regarding the inclusion of the Grand Central Hotel based upon the findings of three Heritage assessments.

Do you see that?---Yes.

30

And there's a State Heritage Officer's assessment of the place, a draft City of Perth Heritage Assessment?---Yes.

And a complete Heritage Assessment undertaken by an independent Heritage consultant, do you see that?---Yes.

35

And those things are attached in three schedules?---Yes.

Madam Associate, if you could turn to page 27.1050. Do you see here Schedule 3?---Yes.

40

That appears to be a State Heritage Office document, does it?---Yes, it looks - - -

Madam Associate, 27.1057. Schedule 4, "A Heritage Place Assessment", this is something done by the City of Perth experts, is it?---My understanding, yes

45

[2.30 pm]

And Schedule 5, 27.1064. Do you see there a report from a business by the name of Griffiths Architects?---Yes, I can see it.

5 Do you recognise that as the complete Heritage Assessment undertaken by the independent heritage consultant?---Yes, I think so, yes.

Madam Associate, if could return, please, to page 27.1043. Underneath number 3, Mr Yong, the independent Heritage Report referred to above, was not undertaken for motor house and Wiluna Flats, do you see that?---Yes.

So that was something over and above what had happened for the other properties, isn't it?---Yes.

15 Underneath this paragraph it says:

The extra Heritage Assessment was commissioned to ensure that an independent and full assessment of the place was obtained, given the recent media attention that the possible Heritage Listing of the place had attracted.

Do you see that?---Yes.

Can you give any context to that comment? Do you know anything about that media attention and this property?---I was not aware at that time.

Madam Associate, if you could turn to page 27.1046. Under the heading, "Findings of Heritage Assessments", do you see that, Mr Yong?---Yes.

30 :

The findings of all three Heritage Assessments agree that the Grand Central Hotel meets the threshold for entry on the Heritage List.

35 Do you see that?---Yes.

27.1047, please, Madam Associate, under the heading, "Owner consultation", do you see there?---Yes.

40 It says:

Following the report considered by Council at its meeting held on 17 March 2015, the owner was invited to comment on the possible Heritage Listing and on the previous Heritage Assessment prepared by the State Heritage Office.

45

Do you see that?---Yes.

And Schedule 3 is a reference to the State Heritage Office report that we have just seen?---Yes.

5 In response to this communication, the owner wrote to the City stating that they did not support possible Heritage Listing and there's a reference there to Schedule 6?---Yes.

10 Madam Associate, if you could turn up 27.1085. You see there, Mr Yong, it's not marked as a confidential Schedule 6. The City's TRIM reference is to that document. It says, "Central City Pty Ltd, 6 July 2015"?---Yes.

27.1086, do you see there this is a letter signed by Mr Scaffidi?---Yes.

15 The managing Director of Central City Pty Ltd, do you see that?---I can see that.

And among Mr Scaffidi's remarks he says:

20 *I object and recommend that the City of Perth do not include the property onto its proposed Register. We also wish to advise that we will be lodging a Development Application for the total redevelopment of the property in the very short-term.*

Do you see that?---Yes, I do.

25 Back to 27.1047, please, Madam Associate. Under the heading, "Owner consultation" again, Mr Yong, you see there the owner's comments were included in the report considered by Council at its meeting held on 5 April 2016, do you see that?---Yes, I do.

30 So there's nothing new in there from the owners since 5 April 2016 because those comments were considered in April, do you accept that?---Yes.

Underneath heading, "Deemed provisions or requirements":

35 *Should Council resolve that the Grand Central Hotel be included on the Heritage List, further consultation will be undertaken with each owner and occupier of the place. A copy of the draft Heritage Place Assessment will be provided and the owner and occupier will have a period of 21 days to make a submission on the proposal.*

40

Do you see that?---Yes.

So further consultation with the owners was proposed to be conducted by the officers, wasn't it?---Yes.

45

:

Following the close of the submission period, officers will report back to Council.

Do you see that?---Yes.

5

:

At this time Council may consider the draft Heritage Place Assessment and any submission received as part of making a final decision on the proposed Heritage Listing.

10

Do you see that?---Yes.

Madam Associate, 27.1048. Under the heading, "Comments", Mr Yong, again the officer says:

15

Further consultation will be undertaken with the owner and occupier prior to Council making its final decision on the proposed Heritage Listing.

20

Do you see that?---Yes.

And the officer's recommendation was for "Council to propose to include the Grand Central Hotel on the understanding that the owner and occupier would be given 21 days to make a submission", do you see that?---Yes, I can.

25

And the officers were going to report back to Council with the results, do you see that?---Yes.

The Planning Committee agreed to defer the item, Mr Yong, do you see that?---Yes.

30

Underneath the reason:

The Planning Committee considered it appropriate to defer the item and expressed a desire for City of Perth officers and the property owner to consider matters associated with the proportional registration of the building as outlined by the property owner's representative.

35

Do you see that?---Yes.

40

So what happened, Mr Yong?---Was moved to refer back.

Because?---Because the reason given at the bottom of that page, where it's recorded, I believe, was consistent with the comment by the officers which - further consultation will be undertaken by the officers to deal with the owners.

45

Mr Yong, it happened because Mr Simpson came along, Mr Simpson representing the property owner, and talked to you for two minutes and suggested that there might be a possibility that the property could be proportionally registered, and you agreed with that, didn't you?---What do you mean by "proportionally registered"?

5

I didn't hear Mr Simpson and the item is a confidential one, so no-one else can hear Mr Simpson. Do you understand what proportional registration means?---No, I do not.

10 So you don't know why you voted in the way you did on this item, is that right?---I know I voted because I want to defer this item back to the committee for further investigation.

Further consultation?---Consultation.

15

Mr Yong, that doesn't make - Mr Yong, the property was going to be the subject of further consultation, we have been through that. In the officers' report they repeatedly mention that further consultation was going to take place. Why did you decide to vote to defer the matter back to a committee for the purposes of further consultation when that was going to occur? Why defer it back to the committee?---At that time I was sitting in the committee and I thought, was consistent with the comment from the officers which they require more time.

20

They recommended the matter go to Council - - -?---Council.

25

- - - Mr Yong, didn't they?---Yes.

It didn't recommend it go back to the Planning Committee?---That's correct.

30

You did?---Was moved by Councillor McEvoy, seconded by me and was approved by all three committee members.

You seconded the motion, Mr Yong, didn't you?---Yes, I did.

35

But you didn't know what proportional registration meant. Did you hear Mr - I withdraw that question. Did you hear Mr Simpson speak of proportional registration?---I can't recall that conversation.

40

If you did, you wouldn't have understood him?---If I did, I would have understood him.

You would have?---Yes.

45

So what is proportional registration?---My understanding is not full registration, will be partial.

So on the basis of a two minute address by Mr Simpson, on behalf of the owners of

this property, you voted so that proportional registration could be considered for this property when there was no mention at all in the officer's report, or any of the expert reports attached to it, of proportional registration, do you agree with that?---I would have agreed with that, yes.

5

COMMISSIONER: Mr Yong, I'm having some difficulty with your evidence, I'm afraid and I have to, in fairness, ask you some questions. I want you to look very closely at the parts of this page on the screen in front of you that I'm going to direct your attention to, all right?---I'm reading it.

10

Yes, good. You told me a moment ago that you voted in favour of the motion for the reason given at the bottom of the page, do you remember saying that?---Yes.

15 And then you told me a short while later, when you were asked for the first time about the meaning of "proportional registration", that you did not know what that meant; do you remember giving me that evidence?---Yes.

20 The difficulty I have is how you could say that the reason given at the bottom of this page was the reason for you voting the way you did when you did not understand what the meaning of "proportional registration" was when just asked about it a few moments ago?---My understanding at that time was - when Counsel Assisting was mentioning about Mr Simpson raised the words of proportionate registration, I ask - I raised it. I did not remember the conversation was raised by Mr Simpson.

25

You also said to me you did not understand what proportional registration meant, that was your evidence?---Yes, I do not - - -

30 In answer to a very simple question?---Yes.

30

And later on, after that question was asked and answered, you were again asked by Counsel Assisting, did you know the meaning of "proportional registration" and on that occasion you came up with a meaning?---Yes, I came up on my personal - - -

35 Was that a guess at it?---Yes, I was guessing of that meaning.

So is it the case that you do not, as you have said in your evidence, know what proportional registration is?---Yes, I do not know.

40 How could that be a reason for you voting the way you did?---Yes, a mistake. I was voting along with the committee.

45 So the reason given at the bottom of this page was not the reason that you voted the way you did then, is that right?---As far as I can recall, at that Planning Committee meeting, I voted on the reason was given.

But how could that be if you didn't know what that reason meant? Mr Yong, if

you did not vote for that reason, now is the time to tell me about it?---I couldn't actually recall what I had during that meeting.

5 So are you saying to me you don't know the reason why you voted the way you did?---No, I mean I don't recall actually what was said during that meeting and I voted - I would have voted based on what was - - -

[2.45 pm]

10 Don't tell me what you would have done, tell me what you remember, please?---I'm trying to recall.

If you don't remember, then just say that?---Yes, I don't remember.

15 M'mm?---I don't remember.

So you don't remember why you voted the way you did, is that what your evidence is?---No. I don't remember actual, what had happened during that meeting but I would have - - -

20 Don't tell me what you would have done, tell me what you remember doing?

MS ELLSON: Madam Associate, could you please take down the page on the screen.

25 COMMISSIONER: Let's go back to basics. You don't dispute you voted the way you did, do you? You don't dispute that, do you? In other words, you're not challenging the accuracy of this record, are you?---I can't remember actually whether this record is recorded correctly. I voted along with - - -

30 Assume for the moment that the record accurately records you voting the way you did. I want you to assume that, okay? Are you now telling me, assuming that fact, that you do not now remember why you voted the way you did?---Sorry, Commissioner.

35 I will ask the question again, if I need to. Are you now telling me, assuming that the record accurately reflects you voted the way you did, that you cannot now remember the reason for doing that?---The reason for me doing it is, voted along with the other Councillors on the committee.

40 So you voted the same way as the other Councillors. Can you tell me why you did that?---I recall during that meeting the Chair of the Planning Committee commented some issue, after listening. Then she raised that, to move that item to be deferred, and I go along with that.

45 That was your reason for doing it, was it?---Yes.

Ms Ellson.

MS ELLSON: Mr Yong, you didn't vote on the merits of the matter, did you?---In hindsight, yes.

5

You didn't vote in the interests of the City, did you?---Yes.

You voted in the interests of the owners of the property?---No.

10 The effect of your decision was to defer the property going onto or there being a Council decision about whether or not the property go onto the Heritage Register, isn't that right?---No.

15 There was a delay because it went back to the officers?---By looking at the document, it was delayed.

20 Because of the delay, the property was unprotected, wasn't it?---My understanding is, when it was delayed for listing of Heritage, the owner would have - would not have the benefit of all the Heritage grant incentive of bonus ratio, and all these benefits given a heritage rate, a heritage rate reduction with all this benefit.

25 So there was also a risk that the property could be demolished without Council considering the matter closely, isn't there?---There's a possible but the item, if demolish - for demolishing, they have to come through Council for permit to demolish the building.

30 There's different rules for Heritage Listed properties than there are for properties that aren't on the Heritage List, isn't there?---What do you mean by different rules? If they were to demolish the building - - -

Heritage Listed properties are conserved, aren't they?---They are conserve but if the owner would like to demolish it, they would still have to come through the Council or committee to have the building demolished.

35 And Heritage Listed properties are protected, aren't they?---Yes.

So if a property is not on the Heritage Register, it's not protected in that way, is it?---It's not protected in that way.

40 Mr Yong, do you remember the item coming back to Planning Committee?---I recall most likely, yes.

So you don't remember but that's most likely, is that what you're saying?---Yes, most likely, yes, coming back to Council.

45

If the witness could please be shown document 27.1143, TRIM 19697.

COMMISSIONER: Thank you.

MS ELLSON: I'm sorry, I've been inconsistent with the TRIM numbers, Commissioner.

5

COMMISSIONER: That's all right, you've got a lot of paper to manage.

MS ELLSON: Do you see there minutes from the Planning Committee, 15 November 2016 and the note that says that should be 25 October 2016?---Yes.

10

And they are signed, 6/12/16?---Yes.

Do you see here a - sorry, at 27.1146, please, Madam Associate. Do you see here, Mr Yong, "Members in attendance", and you are among them?---Yes, I am.

15

Madam Associate, 27.1147, item 11, "Proposed entry of Grand Central Hotel" remains in confidential item?---Yes.

27.1148, please, Madam Associate. Do you see here a reference to the proposed entry of the Grand Central Hotel on the Heritage List or the CPS 2 Heritage List?---Yes.

20

And there's a reference to your deferral of the item?---Yes.

25 Madam Associate, 27.1149. In the middle of this page:

This report requests Council to initiate this process, following which the City will formally consult with the owner, undertake any other consultation considered appropriate, and consider any submissions received by the owner and occupier. Should the place be entered on the Heritage List, any impacts of Heritage Listing on development will be determined and negotiated through the Development Application process.

30

35 Do you see that?---Yes.

Going back to page 27.1148, the officer says:

It should be noted that in accordance with the City of Perth standard procedures, further consultation between officers and the landowner in relation to identifying specific zones, cultural heritage, significance of a place that is being considered for Heritage Listing, is not usually undertaken at this point in the Heritage Listing process.

40

45 Do you see that?---Yes.

Do you accept that this is new information the officer is providing in their

report?---I would think so, yes.

27.1149:

5 *As far as officers are aware to date, all such consultation has occurred after a property is Heritage Listed.*

Do you see that?---Yes.

10 Do you accept that's a new piece of information that wasn't in the report previously?---Not comparing with side by side, most likely, yes, there's a difference between the previous report.

To be fair to you, Mr Yong, 27.1148, the officer says:

15

The following information has been included subsequent to the Planning Committee's recommendation at its meeting held on 13 September 2016.

20 Do you see that?---Yes.

So it's new information?---Thank you.

25 27.1150, please, Madam Associate. Do you see there a reference to the results of internal site inspections, motor house and Wiluna Flats and it says, "The Grand Central Hotel"?---You said the second last paragraph?

The last paragraph?---"The result of" - - -

30 Repeats the information I took you to with respect to the September meeting, do you accept that?---It looks similar, yes, I accept that.

27.1156, please, Madam Associate. Do you see there a motion moved by Councillor McEvoy and seconded by you?---Yes.

35

To:

40 *Propose to include the Grand Central Hotel on the Heritage List and give the affected owner and occupier a description of the place, the reasons for the proposed entry and 21 days to make a submission on the proposal.*

Do you see that?---Yes.

45 And underneath a second part of the motion notes that the officers will report back to Council, do you see that?---Yes.

That's in the same form as the recommendation the officer made to you - - -?---In September.

- - - on 13 September 2016, do you accept that?---Yes, it looks similar.

5

And nothing had changed, had it?---No, not that I'm aware of.

And yet, on this occasion, you voted in favour of the motion?---Yes.

10 Why didn't you do that in September? The page can come down, Madam Associate?---In September, as I mentioned to the Commissioner, that the Chair or the Councillor of that Planning Committee has raised the issue to defer the item back to officer and at that time I go along with that and on hindsight, I should have approved that item in September.

15

And you got the opportunity to do that in October 2016, and you did it? You got the opportunity to - - -?---Then I did it in October, yes.

20 Was it because other Councillors had turned up to the meeting?---Not that I'm aware of, no.

They had though, hadn't they?---By just now looking at that document, yes. I think so, Councillor Green attended that meeting.

25 That's not your memory, that's what you read off the last page I showed you, isn't it?---Yes. I can't recall which Councillors attended.

Madam Associate, 27.1146. You see there, "Observers", Councillor Limnios and Councillor Green?---Yes.

30

Did you talk to them about the item before you voted on it?---No.

Do you have a memory of them attending?---I have no memory of speaking to them before attending that meeting.

35

Do you remember them attending?---No.

40 Did they attend because they had concerns about the way in which the Grand Central Hotel was being dealt with?---I do not know what's the reason they are attending

[3.00 pm]

45 Did you feel as though you should consider your vote more closely because they were there?---No.

You did, didn't you?---No, I do not know why they were there. They had not

discussed with me why or what item they were there to observe.

5 Councillor Limnios and Councillor Green weren't part of your group or your team, were they?---As we discussed from yesterday, you described the meaning of "team" as the WhatsApp group team.

They were not part of that team?---They were not part of. I think Councillor Limnios was part of the - - -

10 Not by October 2016 though?---Okay. I'm not aware of that.

You felt as though you needed to make the right decision in this meeting because Councillor Limnios and Councillor Green came along, didn't you?---No.

15 You voted on the merits of the matter on this occasion, didn't you?---In hindsight, no, I did not.

You didn't vote on the merits?---Yes, I voted along with the committee, with the other two committee members.

20

So on this occasion you didn't think about your vote either?---I'm sorry, I was talking about the September one. This is October one, yes, I voted on the merit of this matter in October, yes.

25 And you did that because you felt pressure because other members not in your team, had come along to the meeting, didn't you?---No, that's not true.

On this occasion, on 25 October 2016, you knew you had to do the right thing?---Yes.

30

The document can be taken down, please, Madam Associate.

35 COMMISSIONER: Was one of the reasons why you felt you had to do the right thing because Councillor Limnios and Councillor Green were there to watch what you were doing?---They were there to watch.

Listen to my question, please, carefully. On this occasion, in October, did you think you had to do the right thing because Councillors Limnios and Green were there to watch what you were doing?---No.

40

MS ELLSON: Madam Associate, if I could ask you, please, to bring up 9.1007. I'm just going back to the topic of the appointment of Mr Mileham as CEO, Mr Yong. If you recall your evidence earlier today, you indicated that at some point you saw a contract; do you remember giving that evidence?---Yes. I don't know which time.

45

I'm moving on. Do you see here Council meeting minutes, 14 March 2017, signed

11 April 2017?---I would have received a copy, yes.

Do you see that?---Yes.

5 Madam Associate, 9.1009. This is TRIM 17442.

COMMISSIONER: Thank you.

MS ELLSON: See there a list of people present at the meeting?---Yes.

10

And you're the last one mentioned there?---Yes.

You see here an item on 9.1011, please, Madam Associate. Do you see here a confidential item 13.20 and 13.20A and B, "CEO probation review", do you see that?---Yes.

15

It doesn't say anything else?---No.

Madam Associate, if you could bring up, please, 9.1018. This is TRIM 17442 also. I say that because sometimes the confidential schedules have different TRIM numbers.

20

COMMISSIONER: Thank you.

25 MS ELLSON: Do you see here an employment contract made on 21 September 2016 between the City of Perth and Mr Mileham?---Yes.

Madam Associate, if you could bring up, please, page 9.1029. Do you see there this is a signed copy of the contract of employment between Mr Mileham and the City, do you see that?---Yes.

30

Turning back to the minutes, 14 March 2017 at 9.1011. There's no mention of the contract of employment being potentially included in the papers?---No mention.

35 To page 9.1013. There's a motion to amend which was put and lost and a primary motion which was moved by Councillor Davidson that the Council - sorry, the motion that was put and lost was for the Council to note the initial probationary period and extend the probationary period, do you see that?---Yes.

40 The primary motion was put and carried, do you see that?---Yes.

We move back to page 9.1012 and the primary motion was that "Council approves the satisfactory conclusion of the review period of six months for Mr Mileham, CEO", do you see that?---Yes.

45

There's nothing in here that you've seen concerning Mr Mileham's contract, is there?---No.

So you accept that you weren't asked to approve, endorse or consider the contract at this meeting, would you accept that?---Yes. Was not mentioned, yes, I agree.

5 Thank you, Madam Associate, the document can be taken down. Mr Yong, do you recall the Code of Conduct being amended to insert provisions concerning bullying behaviour?---Can't recall actual matters. They would have - they may have this item come through Council.

10 So you have a memory of it coming through Council?---A brief memory.

What is your best memory?---The item came through Council for consideration. I think there are quite a few items. There was inclusion of certain rules. I can't recall what was the item but I recall there were a few items to be included.

15

I see. Madam Associate, if you could bring up, please, 15.0939, TRIM 23317. Do you see there some Ordinary Council Meeting minutes from 6 June 2017, approved for release by Mr Mileham?---Yes.

20 Madam Associate, if you could bring up, please, page 15.0997. Do you see here in red, Mr Yong, Part 6, "Bullying and inappropriate behaviour. 6.1. Bullying"?---Yes.

25 And there's an explanation of that and then in a grey box, there's some definitions?---Yes.

Does this help you remember why Council was being asked to consider this item?---No, I do not know why it was being brought forward.

30 Did you experience any bullying during your time as a Councillor?---No, not in my personal experience.

Do you know if any other Council members did?---Not that I'm aware of.

35 Did anyone ever speak to you about any of your behaviour - anyone being anyone in the Administration or the Lord Mayor?---No, not that I can recall. No.

40 Madam Associate, the document can be removed, please. Mr Yong, can you tell me about the introduction of something called the CEO Inbox?---As far as I can recall, was introduced by the CEO for - on my understanding is for the purpose of easy access or consolidating into one communication.

Why?---I do not know why but that's the CEO decision at that time.

45 It was introduced by Mr Mileham, wasn't it?---I believe so, yes.

You were aware as to whether Mr Mileham was experiencing difficulties with

Elected Members contacting members of the Administration directly?---No, Mr Mileham has - as far as I'm concerned, he has asked one-to-one, face-to-face meeting with him at his office.

5 Did you participate in some of those with him?---Yes, I did, in the presence of the CEO, myself and the Governance Manager, I recall, I had a meeting with him.

Were they useful for had you?---To me it is very useful.

10 Why?---Because I can express my view and vision for the City and whether it's right to do it that way, the CEO can give me some advice, together with the Manager of Governance present as well.

15 Is that not something you could do before Mr Mileham introduced the one-on-ones?---I was new in Council, so I do not have opportunity when I was first elected, so I thought this is a good opportunity for me.

20 So as time went on during your terms, you didn't feel as though you could speak to anyone about your views on the City, before Mr Mileham introduced the one-on-ones?---Yes. I do not have that opportunity with the previous CEO.

He was only around for a period of months before you - after you, I'm sorry, wasn't he though?---Yes, short period of time

25 [3.15 pm]

30 So was there a period of time during Mr Mileham's acting period and appointment period when you felt you couldn't talk to anyone about your wishes for the City?---During which period? During acting, during Mr Mileham's period acting?

35 During Mr Mileham's acting as CEO, and by acting, I will include being the CEO, so during Mr Mileham's term, let's put it that way, was there a time there where you didn't think you could speak to anyone about your wishes for the City?---I can speak to - I feel I can speak to anyone but with the introduction of this, I feel that I have the opportunity, face-to-face with the CEO more openly.

I have no more questions for you, Mr Yong.

40 COMMISSIONER: Thank you, Ms Ellson. Mr Renton, do you have an application?

MR RENTON: I do not, thank you, Commissioner.

45 COMMISSIONER: Thank you. Mr Yeldon, do you have an application?

MR YELDON: Not on this occasion, thank you, Commissioner.

COMMISSIONER: Thank you. Mr Skinner, do you have an application?

MR SKINNER: Not at all, sir. Thank you very much.

5 COMMISSIONER: Thank you. Mr van der Zanden, do you have an application?

MR van der ZANDEN: No, I don't, thank you, Commissioner.

COMMISSIONER: Thank you. Ms Saraceni, do you have an application?

10

MS SARACENI: No, sir.

COMMISSIONER: Mr Yin, do you have one?

15 MR YIN: I do, sir. It probably needs to be heard in the absence of the witness.

COMMISSIONER: Thank you very much. Mr Yong, my Associate will escort you outside the hearing room for the time being. Thank you.

20

WITNESS WITHDREW.

COMMISSIONER: Yes, Mr Yin.

25 MR YIN: The first area relates to some questions Mr Yong was asked yesterday afternoon about participating in the Lester Blades survey. I think he agreed he did in June 2013 and I want to explore with Mr Yong whether or not he did actually participate in that, given his date of election wasn't until later that year, because he agreed that he spoke to someone and he gave grades to Mr Stevenson in June 2013.

30

COMMISSIONER: Is that the only area?

35 MR YIN: The second area relates to his answers today about the Grand Central Hotel on 13 September. It was put to him that he didn't vote in the interests of the City, to which he agreed. His evidence before that was that he went along with other Councillors, mainly the Chair, Councillor McEvoy, and that he didn't know what proportional registration means. I propose to ask him whether he had formed a view whether Councillor McEvoy was acting in the best interests of the City, given that his decision was based on following those witnesses. I would just hate it
40 to be left in a state where he's given that he didn't act in the best interests of the City, but he followed other Councillors.

COMMISSIONER: I understand the submission, thank you.

45 MR YIN: The third area relates to questions he was asked about the Grand Central Hotel being demolished in the absence of a Heritage Listing. I want to ask him whether the fact that a property is being considered for Heritage Listing is a

factor that would be taken into account before a building can be demolished.
Those are the three areas.

5 COMMISSIONER: Thank you. Ms Ellson, are you in a position to respond to that application?

MS ELLSON: With respect to point 1 my friend raises, I have no objection but I understand that the topic can be covered with one question, rather than an exploratory series of questions as my friend suggested.

10 COMMISSIONER: What do you say the one question is?

MS ELLSON: "Mr Yong, were you a Councillor in June 2013?"

15 COMMISSIONER: If nothing's going to be made of it at the end of the day, then perhaps it can be dealt with on that basis.

MS ELLSON: Commissioner.

20 COMMISSIONER: You would be content with that, wouldn't you, Mr Yin?

MR YIN: I wouldn't be because we are still stuck with the state of evidence where he has given evidence that he participating in the review.

25 COMMISSIONER: Very well.

MS ELLSON: I see, Commissioner. Asking the witness with respect to the second topic to go into the mind of the Chairperson of the committee when Mr Yong's evidence is that he went along with others, and he voted with the Chair of the committee, in my view won't assist the Inquiry.

COMMISSIONER: Mr Yin's submission is a bit broader than that though.

MS ELLSON: I see.

35 MR YIN: Mr Yong's state of mind - - -

COMMISSIONER: You don't need to explain to me, Mr Yin, I get it.

40 MS ELLSON: And thirdly, Commissioner, I have no objection to the third question.

COMMISSIONER: Thank you. Mr Yin, I'm going to give you leave to ask a sufficient number of questions on all three topics.

45 MR YIN: Thank you, sir.

COMMISSIONER: Madam Associate, would you please bring Mr Yong back into the hearing room. Mr Yong, please resume your seat in the witness box.

MR Yit Kee YONG, recalled on former affirmation:

5

COMMISSIONER: Mr Yong, in your absence, your counsel, Mr Yin, made an application to question you on three topics. Having heard his application and the response to it, I am of the view that he should be entitled to ask you questions on all three topics. Mr Yin, when you're ready to proceed.

10

EXAMINED BY MR YIN.

Mr Yong, do you recall yesterday afternoon you were asked some questions about a Lester Blades survey from June 2013?---Yes, I do.

15

Do you recall when you were actually elected to Council?---I was elected October 2013.

Bearing that in mind, did you actually participate in the Lester Blades survey in June 2013, which is four months earlier?---Not that I can recall if I have participated in 2013.

20

Could you have participated if you weren't a member of Council?---No.

Thank you. So were you mistaken yesterday when you said you had spoken to someone in June 2013?---It was not 2013.

25

Thank you. The second area is today Counsel Assisting asked you about the Grand Central Hotel and you agreed with a proposition that you didn't vote in the best interests of the City, do you recall that?---Yes.

30

Do you recall also saying that you went along with other Councillors, specifically the Chair, being Councillor McEvoy who had raised something?---Yes, I did.

Had you formed a view at that stage whether Councillor McEvoy was acting in the best interests of the City?---That was my belief, that she was - yes, she was senior in the Council, I was junior. I thought - - -

35

Had you formed a view whether she was acting in the best interests of the City?---I formed a view, yes.

40

Finally, you were asked some questions about the Grand Central Hotel being able to be demolished without a Heritage Listing, do you recall being asked that?---Yes.

Is the fact that a property is being considered for Heritage Listing something that would be taken into account in deciding whether to grant a demolition licence?---I'm sorry, could you repeat that question?

45

Is the fact that a property is being considered for Heritage Listing a factor to be taken into account in determining whether to grant a demolition licence?---I believe so, yes.

5

Thank you. Those are my questions.

COMMISSIONER: Thank you, Mr Yin. Ms Ellson, do you have any questions arising?

10

MS ELLSON: No, nothing arising, Commissioner.

COMMISSIONER: Thank you. In that case, Mr Yong, I thank you for your assistance today. If there is nothing else that I need to deal with, I will adjourn for a short time so that the next witness can be organised and then called. Thank you.

15

WITNESS WITHDREW

(Short adjournment).

20

HEARING RECOMMENCED AT 3.33 PM.

COMMISSIONER: I will have the witness called first.

25

MS SARACENI: Commissioner, before you do so, there's a very brief preliminary point. I have spoken to my friend about it. When I sought leave earlier today, I omitted to seek leave for my instructing solicitor, Martin Tuohy to appear for this public hearing and any extension to it and I understand my friend doesn't object to that.

30

COMMISSIONER: I will deal with applications in a moment, Ms Saraceni.

MS SARACENI: I'm sorry.

35

COMMISSIONER: Thank you for letting me know. Ms Ellson, you call your next witness?

MS ELLSON: I call Martin Mileham.

40

COMMISSIONER: Thank you. Mr Mileham, please come forward and take a seat in the witness box to my left. Do you wish to be sworn an oath or do you wish to make an affirmation.

MR MILEHAM: Oath.

45

COMMISSIONER: Thank you, Madam Associate.

MR Martin Nicholas MILEHAM, sworn:

COMMISSIONER: Thank you, Mr Mileham, please take a seat. Ms Saraceni, I will now hear your application, thank you.

5

MS SARACENI: I apologise for that, sir. I was premature.

COMMISSIONER: Not at all.

10 MS SARACENI: Earlier when I sought leave for myself, I omitted to seek leave for my instructing solicitor, Martin Tuohy for his attendance to represent Mr Mileham in his public hearing, and any extension to it.

15 COMMISSIONER: I can't imagine there will be any opposition to you and Mr Tuohy appearing on behalf of Mr Mileham at this hearing.

MS ELLSON: You're right, Commissioner, there's not.

COMMISSIONER: Thank you, Ms Ellson. Mr Renton?

20

MR RENTON: Commissioner, I seek continued leave to represent Mr Stevenson.

COMMISSIONER: Yes. Is there any opposition to that, Ms Ellson?

25 MS ELLSON: No, Commissioner.

COMMISSIONER: There's not?

30 MS ELLSON: Mr Stevenson is not going to be the subject of any evidence with Mr Mileham.

COMMISSIONER: Yes.

MR RENTON: That assists me very much, Commissioner.

35

COMMISSIONER: I thought it might. Hence my quizzical question.

MR RENTON: In that case, I will take my leave for today.

40 COMMISSIONER: Thank you very much, Mr Renton. Mr Yeldon.

MR YELDON: May I renew my application on behalf of Ms Davidson, Commissioner?

45 COMMISSIONER: Yes, thank you. Is there any opposition to that, Ms Ellson?

MS ELLSON: No, Commissioner.

COMMISSIONER: Very well. Leave is granted.

5 MR SKINNER: And similarly, sir, if I could renew my application on behalf
Councillor Limnios.

COMMISSIONER: Thank you, Mr Skinner. Is there any opposition, Ms Ellson?

10 MS ELLSON: No, Commissioner.

COMMISSIONER: Thank you. In that case, leave is granted.

MR SKINNER: Thank you, sir.

15 COMMISSIONER: Mr Malone, a new face at the Bar table.

MR MALONE: It is, Commissioner. May I please the Commission, I appear on
behalf of Councillor Harley.

20 COMMISSIONER: You seek leave to anyway.

MR MALONE: I do.

COMMISSIONER: Is there any opposition, Ms Ellson?

25 MS ELLSON: No, Commissioner.

COMMISSIONER: Excellent. Leave is granted.

30 MR MALONE: Thank you.

COMMISSIONER: Are you ready to proceed, Ms Ellson?

MS ELLSON: I am, Commissioner, yes.

35 COMMISSIONER: Please do.

EXAMINATION-IN-CHIEF BY MS ELLSON.

40 Mr Mileham, I would like to talk to you about what happened on 20 January 2016
with respect to you being asked to act as CEO for the City of Perth. Is it correct
that you were called into the Lord Mayor's office in the morning?---I believe that is
correct, yes.

45 And who called you in there?---I'm not sure who called me in. I was in a meeting,
as I recall, with the Directors on the committee room floor and I was called to the
Lord Mayor's office, I cannot recall by whom.

And you were asked to become Acting CEO?---Yes - can I clarify? I was asked if I would be willing to.

5 And you agreed?---Yes, subject to a couple of conditions.

What were those?---That my acceptance of that would not be contributory to the termination of the current CEO.

10 Others?---I asked a question, probably not a condition. I asked a question if I were to refuse, what would Council resolve to do? The answer I was given was that they would appoint an external person to act as CEO. The word I think used was parachute in - I may be incorrect in that but that's the impression I took - therefore, the choice was I accept it or there would be another person appointed, not a
15 Director at the time, nor a staff member at the time.

You've given some evidence before the Inquiry before today and in particular, you have described the City of Perth and the way it was for you at the time you accepted the offer to become Acting CEO as a poison chalice, do you agree with that?---Yes.
20

Can you describe for me what you mean?---I used the term the first time in discussing the matter with my wife, as I do discuss such career things with my family, and I made the comment that given my view of the things that had occurred
25 at the City over the three previous years I had been there, it was likely that taking the role of the CEO would be a poison chalice, meaning that it was difficult - a difficult role. That was reinforced by my conversations I'd had with the head of the Public Sector Commission prior to that.

30 You said that you, in using that term, had taken into account things that had been happening in there in the three years before you thought of it in that way; what had been happening?---Predominantly I'd observed what I would call external forces, that meaning media, adverse media, revolving around matters nothing to do with the Administration but more to do with Council. I would say predominantly
35 external factors of putting pressure upon the City's Administration via the political processes that were swirling around the Council at the time.

Anything specifically?---I recall there was a level of animosity toward the Council from the media. It appeared that their reporting - it appeared to be quite negative.
40 There had been political statements that the Mayor should stand down or stand aside. I believe the Opposition of the day put that as a plank in their platform, that they would remove her or Council once elected. So these matters were in my mind at the time.

45 When saying "at the time", you're talking about 20 January 2016?---If that's the day that the meeting was, I'm assuming that's the correct date, yes.

So anything internal, Mr Mileham, that made you say that the City of Perth was a poison chalice?---No, not the Administration per se. We had - the City had replaced a long standing CEO, a long standing CEO had resigned.

5 Mr Edwards?---Frank Edwards. The former CEO had obviously had his contract curtailed, that was a concern to me. I would put that as the most concerning matter on that particular morning, to me.

10 You said "not in Administration", what about in Council?---I recognised, as I say, that there were - there was debate in Council that at times could become acrimonious, shall we say, no more than that, probably.

15 Was there a division amongst the Councillors as at 20 January 2016, from your point of view, that you could see?---At that point, I don't think it was immediately apparent there was any severe schism. However, there were clearly divergent views on several matters. It would appear that there was not a complete meeting of the minds of Council at times.

20 You acted in the CEO role position for a number of months before it was advertised, didn't you?---Yes.

And you applied for the role, didn't you?---Yes.

25 Why did you decide to apply at the time?---I felt I was the right person for the job.

Did you also feel that you had a reasonable relationship with the Lord Mayor?---I felt I had a reasonable relationship with Council.

30 My question was, did you feel as though you had a reasonable relationship with the Lord Mayor?---By inclusion with Council, yes, up to a point, as is the norm.

One of the roles of the CEO is to liaise with the Lord Mayor, isn't it?---Yes.

35 And were you, did you think, able to do that effectively before you decided to apply for the role?---I believed I could do that effectively, yes.

Did you have any difficulties with the Lord Mayor before you decided to apply for the role?---Could you define "difficulties"?

40 Any you could think of, Mr Mileham?---We disagreed on some matters.

Did that cause you any problems in doing your work?---No.

45 Mr Mileham, do you recall a telephone conversation you had with Ms Scaffidi on 26 July 2016 wherein she spoke to you about the CEO's position?---Could you repeat the date?

26 July 2016?---I believe I've been shown a diary note to that effect

[3.45 pm]

5 Do you recall without looking at it now, what happened?---I don't recall the conversation without - with a great deal of clarity. I remember some parts of it, I remember the subject matter but not necessarily its sequence, nor the time.

10 Tell me what it is that you remember in sequence, as best you can?---To the best of my recollection, and I can't recall whether the call to her was a return of her call or her call to me, was regarding the request from the Lord Mayor that a person be granted Keys to the City.

15 Sorry, keys?---Keys to the City which is a honour bestowed on people that have done a particular service to the City.

20 And what happened?---I opined that the person that the Lord Mayor believed should be offered the Keys to the City was not an appropriate person to have the Keys to the City offered to.

Did you make that known to the Lord Mayor?---Yes.

25 What happened after that?---She disagreed with me and the conversation ebbed and flowed. I retained my position and she hers and at the completion of the call neither - I don't believe either of us had shifted our view.

30 Is that all you can remember?---I think the Lord Mayor made some commentary about - no, I can't remember because I would have to refer to my note that I wrote at the time.

It is a note you wrote at the time?---I believe I wrote a note the following day.

35 Madam Associate, if you could bring up 9.1151. Do you recognise this document, Mr Mileham, as a note you made on 27 July?---It certainly looks like one.

And appears to relate to an outgoing call, 7.44 am on 26 July, do you see that?---Yes.

40 Is this a note you made that you've just referred to with respect to the conversation we have been talking about on 26 July?---Yes.

I would like you to talk to me in some detail, if you can, about what you've recorded at point 2. Can you read out what it says, please, slowly?---:

45 *"A strong CEO" and "the next CEO" will do this sort of thing and will keep me fully informed, e.g., who is commencing work and when, why, et cetera, (e.g., new manager in economic development).*

Did you hear the Lord Mayor say the words you've put into inverted commas?---That's why they are in quotes, I would imagine. I would have put them in quotes at the time as a direct quote.

5

What did you think when you heard the Lord Mayor say "a strong CEO"?---Could you repeat the question?

10 What did you think when you heard the Lord Mayor say "a strong CEO"?---I can't recall having any particular thought about it, I just felt they were words that resonated and put them in quotes.

"The next CEO"?---Mm hmm.

15 Did you consider that had something to do with your potential appointment to the role?---I believe it had something to do with the next CEO.

COMMISSIONER: What's the answer to counsel's question?---Could you repeat the question, please, counsel?

20

MS ELLSON: Did you believe they had something to do with your appointment to the position?---No, I didn't take it as a direct reference to me.

25 But you were hoping to be the next CEO, weren't you?---I had applied for the role, I hoped to be successful. I guess that's a fair comment.

30 "Will do this sort of thing and will keep me fully informed", do you consider the Lord Mayor was directing you to conduct yourself in a way that aligned - that meant that you followed along with her wishes?---Sorry, could you repeat the question, I didn't understand it.

Did you consider the Lord Mayor was telling you to do what she told you?---No, I considered that the Lord Mayor was giving me her opinion, that a CEO would act in a particular way.

35

"A strong CEO"?---Her view of a strong CEO, her words.

That's what she said to you?---M'mm.

40 And "the next CEO" would behave in a particular way?---M'mm.

And that way was the way that she was talking to you on the phone?---Yes, point 2, I think, fairly records, to the best of my recollection, what I took from the discussion.

45

Some other things happened during the call, Mr Mileham, what were they?---I can't recall the call. The notes are there, I read them here saying what they say. Is

there a specific question around that?

Specifically, Mr Mileham, you say at point 7:

5 *At the end of the call I believed my application for CEO would not receive fair review."*

?---Mm hmm.

10 And that:

Any substantive role was at risk.

15 Do you see that?---Yes. That's incorrect, my writing is quite poor there. That "my substantive at risk", yes.

So did you consider that your role as Director was at risk?---At that time, that was my immediate feeling at that time, I believe, yes.

20 Based on what happened during this call?---Well, the call was quite - not confronting, that's not the correct word. Adversarial, I'd call it. I did not back down, the Lord Mayor did not back down. Given that the CEO had been terminated by a unanimous vote of Council, I had that in mind when this call occurred.

25 And you believed that as a result of this same call, which you describe as adversarial, your application wouldn't have a fair review, isn't that right?---Well, the note says I believed it at that time, on the 27th when it was recorded.

30 Is your answer yes?---Sorry, could you repeat the question.

You considered that they end of the call, you didn't believe your application for CEO would receive a fair review, isn't that right?---Would not receive fair review, yes.

35 That document can be taken down, please, Madam Associate. I apologise, Madam Associate, if it could be put up again, please. Do you see point 3, Mr Mileham:

This and issues like it are a test for you.

40 Do you see that?---Yes.

Do you consider the Lord Mayor was testing whether or not you would agree with her?---No, it said the issues were a test.

45 What about the issues?---Which issues?

The issues that were a test?---"This and issues like it"; well, Keys to the City was the issue at play in the discussion.

5 So how you handled that was a test for you, would you agree with that?---Yes.

And it was a test to see whether or not you could be the CEO, wasn't it?---You would have to ask the Lord Mayor that.

10 I'm asking you, what did you think?---I thought, as I said, I believed that it may - my comment is there.

15 Which one?---I'm relying on the note, the contemporaneous note from - I believe it's 2016 which is some three-odd years ago, that at that time, I felt that the nature of the call was adversarial and it impacted on my potential to be appointed.

As the CEO?---Or to retain my job as a Director.

20 COMMISSIONER: Can I just clarify one thing with you, please, Mr Mileham. If you look at this handwritten note that you made, at paragraph numbered 3 where it says, "This and issues like it are a test for you", that reads to me as though it is something which the Lord Mayor said to you, am I right, or am I wrong?---I would assume so, Commissioner. I didn't put it in quotes, but I'm assuming that - I put in quotes the things that the Lord Mayor said.

25 That following on what's in paragraph 2, the way I read that, and again tell me if I'm right or wrong, please, it seems that the reference to "issues" in paragraph numbered 3 is a reference to what appears in the preceding paragraph numbered 2, is that right, or have I got that wrong?---I would assume so, Commissioner. I think the reference, by recollection, is about keeping the Lord Mayor fully informed in
30 that liaison role, i.e., who's commencing work and when, why, et cetera, new managers, et cetera.

Thank you, Mr Mileham.

35 MS ELLSON: Mr Mileham, underneath that, at point 4, it says:

People are still slouching about and not dressing well, i.e., your fault.

?---Mm hmm.

40 Did you consider the Lord Mayor was blaming you because people in the Administration or at Council weren't dressing well?---I believe - my best recollection of that is the "your fault" quote is my own construction.

45 You said before that the words in quotes were the Lord Mayor's words?---Yes, but it's a pretty hastily drafted note and as you've seen, "This and issues like it" is not in quotes, so you would have to forgive me for the inexactitude of the quotation

marks.

5 But to answer my question, Mr Mileham, did you consider that the Lord Mayor was blaming you because people weren't dressing well at Council?---My recollection is that the inference was that I had some role to play in improving the presentation of staff presentation.

Is the answer to my question, yes?---Could you repeat the question then?

10 Did you consider that the Lord Mayor was blaming you because people weren't dressing well at Council?---No, I didn't consider she was blaming me.

You drew an inference that that was the case?---I drew an inference that she felt I was partly to blame. That's my recollection.

15 You didn't write "partly your fault", you wrote "your fault"?---No. As I've said, the note was dashed off rather hastily, as can be seen by the writing.

20 And yet, you made quite a lengthy note?---Yes.

And you thought about writing it?---Yes.

Your next point you say:

25 *I asked, "What happened to your message of thanks for support and it never being forgotten.*

30 What was the message of support that the Lord Mayor gave you that she was never going to forget?---I can't recall the exact offer of support. I am speculating it was due to the difficulties the Lord Mayor had had with the media and that - - -

35 I don't want you to speculate, Mr Mileham?---Okay. Then I don't know, because I would need to see the timing of the opening of the library to understand that. I believe there were some issues with the media where I had ensured that she did not get run over, basically, being chased by the media.

How does that relate to a message of support that the Lord Mayor gave you?---Again, I can't recall so I would have to speculate so - - -

40 Don't do that?---No.

45 Mr Mileham, I can't read the next line, so perhaps you can help me, "Of the support still", I can't read that word or the next one?---Which one is it, sorry, which number?

After, "It never being forgotten", the words are "of the support still" something, something?---That's terrible writing, I can't even read it, "No response was given."

I'm assuming that the point was, I countered the argument that this needed - any relationship needed to be based on my advice and the taking of it or not, but there was no response. So I can't recall the context and I cannot read my own writing

5 [4.00 pm]

COMMISSIONER: Is the word on the last line "unstintingly"?---"Of the support still unstintingly" - it may well be, Commissioner. I don't really understand the - even reading this, I don't understand what I've written there, to be frank.

10

MS ELLSON: Is it your understanding that the Lord Mayor was fishing to find out whether or not you still supported her?---Could you repeat the question?

I withdraw the question. Were you talking to the Lord Mayor about her messages of support for you?---I can't recall, I would have to speculate.

15

You mentioned the opening of the library, Mr Mileham. To assist you, it opened on 1 March 2016?---Mm hmm.

Does that help you to place things into context?---Yes, I think it does. If this is 27/7/16 and the opening date was March 16, that's correct?

20

I?---Yes. In that particular instance, whilst I was acting, the Lord Mayor had attended the opening of the library, which was our first capital works program for something like 40 years, since the City's first capital, or major capital works since the Concert Hall. We were very proud of the building. The Lord Mayor opened it. A journalist confronted her and chased her across the terrace and her driver had to pull her out of the way of a bus, she was nearly run over. I was waiting to have a meeting with the Lord Mayor in the office and I have a recollection of this, she came into the office and was hysterical and in tears and we calmed her down. I certainly found that she was in a great deal of distress and helped to, with the staff, to calm her down and I believe she went home after that. So that was a particular issue which brought into stark form the persecution, for want of a better term, that she felt she was having from the press and the fact that I had been there to assist her, I think she took as a show of support.

25

30

35

Did you show support to the Lord Mayor in other ways between March 2016 and July 2016?---I liaised with her, I don't know if that's support. I endeavoured to stay out of the business that was her business, which was the ongoing matters that were in front of the SAT and other places.

40

Why did you ask the Lord Mayor what happened to her message, and thanks for support during this phone call where she's talking about a strong CEO and the next CEO, why did you do that?---My recollection is I was disappointed that my advice, given in good faith, was being dismissed.

45

And that's how you felt?---Yes. Perhaps a bit miffed would be a good term.

5 And it was done in such a way that at the end of the call you believed your application for the CEO and in fact your substantive position might be at risk?---At the time, based on what I had seen and the summary dismissal of a CEO, I felt that could be a real possibility.

10 The note can be taken down now, Madam Associate. Do you recall your first round interview, Mr Mileham? Do you recall when it was?---First round interview? No, I'm afraid I can't.

Madam Associate, could you provide a paper copy of the document, please, at 9.0457, TRIM 17387?---Thank you.

15 Mr Mileham, do you see there a list of interviews for Chief Executive Officer position?---Mm hmm.

Do you see your name next to Tuesday, 16 August, 10.15 am?---Mm hmm.

20 Does that help you remember that you had an interview for the position of Chief Executive Officer on Tuesday, 16 August at 10.15 am?---I can't see any year on that so no, it doesn't help me much.

25 You only applied for the Chief Executive Officer position of the City in 2016, is that right?---Correct, but it doesn't help me recall the interview, no, and I don't recall it.

Ms Howells, the Manager of Human Resources, has given evidence that that's the schedule for the interviews?---I accept that, yes.

30 You accept the date?---Mm hmm.

35 The document can be returned, Madam Associate?---Can I ask a question of you? I've never seen that - I'm pretty certain I've never seen that document before today, just to make the comment.

That wasn't my question, Mr Mileham?---No, no. I was interested in, if that's the inference.

40 Mr Mileham, did you make requests from the Executive Leadership Group to help you prepare for your interview?---I may have done.

What makes you say you may have done?---I can't recall whether I did or I didn't. It wouldn't be impossible that I did ask that.

45 Why wouldn't it be impossible?---I don't recall the exact circumstance, nor the meeting sequences, but I do recall having discussions with Executive Leadership Group about timelining our achievements as a team during my period as CEO, and

I can't recall whether that was when I was acting or when I was substantive.

What's that got to do with asking them to help you prepare for your interview?---Well, I don't recall that I did that.

5

If you did, that wouldn't have been an appropriate use of the ELG's time, would it?---I don't agree with that, no.

They had other things to do, Mr Mileham, didn't they?---Always.

10

And they shouldn't be asked to help an internal candidate prepare for an interview, should they?---I don't think they were asked to help, but I don't recall.

If they had been asked to help, they shouldn't have been asked to help by an internal candidate specifically, should they?---What do you define as "help"?

15

Any help for you to prepare for your interview as Acting CEO?---I think it would be appropriate to ask for information from them that I could include in my application.

20

That's not an appropriate use of their time, is it?---I believe it could be.

Mr Mileham, I will show you a document at 9.0246, Madam Associate. Do you see here, Mr Mileham, just after the end of the first paragraph or so, a message forwarded, "From: Martin Mileham, date: 23 August 2016. CEO appointment process", do you see that?---Yes.

25

"Dear ELG", do you recognise this as an email you sent to the Executive Leadership Group on 23 August 2016?---It certainly looks like one.

30

You say:

Dear ELG, as you know, I will go into interview for the above for the last time, I trust, next Monday. As part of my prep I would appreciate it, if you wish, if you would provide me with your - repeat, your - single most operational imperative and your single most desired strategic objective for the zero to five year horizon.

35

Do you see that?---Yes.

40

:

A few words under, one, operational imperative and two, strategic objective as a statement of intent or target would be great.

45

Do you see that?---Yes.

Do you consider that's quite a complex task for someone in the ELG to undertake?---No.

It's quite a specific one though, isn't it?---Specific.

5

You've asked them to provide you with help for your interview, isn't that right?---No.

:

10

As you know, I will go into interview for the above for the last time, I trust, next Monday. As part of my prep I would appreciate it if it...

15 You've asked them to help you as part of your preparation, haven't you?---No. I don't say, "Please help me" or, "Please provide", I've said here, "As part of my prep, I would appreciate it, if you wish, if you were to provide me with your - repeat, your - single most important operational imperative and your single most desired strategic objective." So to me, recalling that, "a few words as a statement of intent or target would be great" so my expectation clearly is a few words, not a
20 treatise or a very great deal of work but certainly a top of the head, top of the mind I would have thought, view.

You didn't just leave your request floating in the ether, did you, Mr Mileham? You had your personal assistant follow it up with the ELG?---I can't recall.

25

Madam Associate, could you turn up page 9.0245. You see there at the bottom a message from Alison Sunderland, ELG?---Mm hmm.

Alison Sunderland is who, to you?---She was the acting personal assistant to me.

30

You see there an email that Ms Sunderland has written to the ELG:

Hi all, reminder, as per Martin's email, can you please provide the below information. Thank you to those who already have.

35

Do you see that?---Mm hmm.

So you would accept that you asked your PA to follow it up on 24 August 2016?---I don't know whether I did ask her to follow it up or not.

40

She wouldn't have done so unless you'd asked her though, would she?---She may have done. She would have had an action list.

And that action list is created by you?---No, she would have had her own action list, based on my instructions.

45

She wouldn't have known that you had asked the ELG to do this, unless you told

her, would she?---She may have been present in the meeting, I can't recall, or she may have seen the email on the outward, as my PAs do. I can't recall.

5 It's more likely than not that your PA is following this up on 24 August 2016 because you've asked her to, isn't it?---I can't comment on the probability.

That email can be taken down, please, Madam Associate.

10 COMMISSIONER: I propose to adjourn shortly, Ms Ellson, so please let me know when it would be convenient for you for me to do that.

MS ELLSON: One more question before I change topics.

15 COMMISSIONER: Yes, of course.

MS ELLSON: Mr Mileham, did you ask people in the Design Team to help you create a graphic for use in your second round interview?---I can't recall asking for that, no

20 [4.15 pm]

If you had, that wouldn't be an appropriate use of the City's resources, would it?---I can't recall asking for it and I don't recall the outputs, if there were some. My question is, would it be inappropriate? Yes, if I asked - - -

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It's not your question, Mr Mileham, it's mine, and my question was, if you had asked the Design Team to create a graphic for you for use in your second round interview, that would not have been an appropriate use of the City's resources, would it?---I disagree.

30

I will just ask you to be shown, please, a document at 9.0718. This appears to be a tail end of an email chain, the last email of which being an email from you to Ms Sunderland dated 29 August 2016, do you see that?---Mm hmm.

35 The subject being, "Hashtag soft copy, third try"?---Mm hmm.

Madam Associate, if you move to page 9.0717 and just to the bottom of the page, please, Madam Associate. Further up, if you can. You see there an email from your personal assistant to Mr Griffin, Sue Gazia and Ms Battista?---Mm hmm.

40

:

Hi Jake, as discussed, kind regards, Alison Sunderland.

45 ?---Mm hmm.

Do you recognise this as a request Ms Sunderland is making on your behalf to Jake

Griffin of the Design Team at the City of Perth?---I'm assuming that's correct.

5 Madam Associate, if you could turn, please, to 9.0719. Do you see this as hashtag 1, a graphic that you had asked the Design Team to create for your use in your second round interview with the City of Perth?---The use of it was incidental to my interview, yes. Hashtag 1 was the adoption, while I was Acting CEO, of our target. I wanted to use that in my interview anyway.

10 And you'd asked the Design Team to help you with it for the purposes of your interview?---No, it was for the purposes of establishing a hashtag 1 objective while I was Acting CEO, that I hoped to carry forward into the substantive role.

And you used it in your interview?---I did.

15 The document can be taken down. I'm going to change subject matter now, Commissioner.

20 COMMISSIONER: Very well. In that case, I will take that opportunity to adjourn the proceedings for the day to 10 am tomorrow morning.

WITNESS WITHDREW

**AT 4.19 PM THE MATTER WAS ADJOURNED
UNTIL THURSDAY, 29 AUGUST 2019**

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