

# **EPIQ AUSTRALIA PTY LTD**

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**INQUIRY INTO THE CITY OF PERTH**

**PUBLIC HEARING - DAY 97**

**THURSDAY, 29 AUGUST 2019**

**INQUIRY PANEL:**

**COMMISSIONER ANTHONY (TONY) POWER**

**COUNSEL ASSISTING:**

**MS KATE ELLSON**

**COUNSEL APPEARING:**

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

**MR TOBIAS BARRIE (Ms Judith McEVOY)**

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

**MR JASON O'MEARA ( Mr Reece HARLEY)**

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

.29/08/2019

HEARING COMMENCED AT 10.04 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, you of course recall Mr Mileham?

MS ELLSON: I do.

**MR Martin Nicholas MILEHAM, recalled on former oath:**

15

COMMISSIONER: Are there any new applications this morning?

20 MR BARRIE: Commissioner, my name is Barrie. I seek leave to appear on behalf of Ms Judith McEvoy. We have previously submitted an application, sir, on 5 August. I seek leave to appear for the purpose of today and for the continuation of this hearing relevant to Ms McEvoy.

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

25 MS ELLSON: As I understand it, Commissioner, grants of leave are given to interests in witnesses, not the entirety of the hearing.

COMMISSIONER: That's right.

30 MR BARRIE: Commissioner, I should have made that very clear: it is only for the purpose of matters in relation to Ms McEvoy, matters in which she has a direct or substantial interest and that's consistent with the letter we received from the Inquiry this morning, sir.

35 COMMISSIONER: Mr Barrie, I will give you leave to appear on this hearing today, and any extension of it.

MR BARRIE: Thank you.

40 MR O'MEARA: Commissioner, I seek leave to appear on behalf of the Mr Reece Harley.

COMMISSIONER: You're Mr O'Meara?

45 MR O'MEARA: Yes, Commissioner, relying on the application of 27 August 2019.

COMMISSIONER: Yes. Is there any objection, Ms Ellson?

MS ELLSON: No, Commissioner.

5 COMMISSIONER: Leave is granted.

MR O'MEARA: Thank you.

10 MR SKINNER: I would seek the continuation. We have had leave, but to the extent necessary, I would seek an extension of that through to today for this witness.

15 COMMISSIONER: Thank you for the courtesy, Mr Skinner, but it's not necessary.

MR SKINNER: Thank you very much, sir.

20 COMMISSIONER: Mr Yeldon, there's no need to stand up, neither you, Ms Saraceni. Thank you. Ms Ellson, are you ready to proceed?

MS ELLSON: I am, Commissioner, yes.

COMMISSIONER: Thank you, please do.

25 EXAMINATION-IN-CHIEF BY MS ELLSON.

30 Mr Mileham, following up on some questions I asked you yesterday afternoon about your request for the Design Team to assist you in the creation of a graphic for the use in your second round interview, was that something you created yourself?---Yes.

35 And so you asked the Design Team to help you refine that, did you?---Yes. I created it on my computer on a Word package. I had no graphics package on my machine and I asked it be put into a format I could print. It was a concept that I had come up with some time earlier that I wished to apply to the City's goals.

40 Thank you, Mr Mileham. I would like to move now to your contract of employment. Did you negotiate that with the CEO Recruitment Committee?---My contract? Negotiate? I don't believe there was a great deal of negotiation that I recall. The contract was in a form presented to me by, to the best of my recollection, Manager of HR. I don't recall requesting any changes to it.

45 Did you discuss the content of it with the Lord Mayor?---I don't recall discussing the content of the contract head document, no.

Of the contract what document?---Head document, as opposed - - -

What do you mean "head"?---I believe there are parts of it that are not part of what I would call the boilerplate contract, the standard form.

5 The schedules are you talking about?---The KPIs, et cetera, were I think specific to the contract.

Those were things that were settled later on though, weren't they?---I believe so, to the best of my recollection.

10 So just to focus your mind on the contract and its schedules?---Mm hmm.

The terms of the contract were in the body of the contract and some additional conditions were in the schedules to the contract, do you recall that? For example, your salary?---Yes. I don't recall the actual construction, I recall those matters were addressed in the documents.

15 Did you settle your salary with members of the CEO Recruitment Committee?---I never questioned that. It was offered and accepted, I recall. It's specified by the Salary and Allowances Tribunal at a maximum.

20 So you were aware that there was a maximum at the time you signed the contract?---I was aware that it was limited by the SAT, yes, Salary and Allowances Tribunal.

25 At the time you signed the contract, did you know what that amount was?---I believe I did, yes.

Is that because you'd seen the report of Ms Howells annexed to some Council papers?---I can't recall how I came to know the figure.

30 You said the contract or the salary was offered and accepted?---M'mm.

Who offered it?---It was in the contract form that I was asked to sign.

35 Did you have some discussions with any members of the CEO Recruitment Committee about what your salary could be?---I don't recall having any discussions, no.

40 You would expect to, wouldn't you?---No, I don't think I did. I can't recall any.

Salary is one of the most important things for employment, isn't it?---It's an important thing, not the most important thing.

45 I said one of the most important things, it is, isn't it?---It's one of the important things, yes.

So it makes sense for you to discuss that with members of the CEO Recruitment

Committee, wouldn't it?---I wouldn't speculate on that.

I'm asking you to say that it would make sense for you to discuss your salary with members of the Recruitment Committee, wouldn't it?---No.

5

Do you expect the Inquiry to accept that you signed a contract with a salary in it, without talking to anyone about what you would be paid?---It was in the contract offer, I found it acceptable.

10 You didn't talk to anyone about what you would be paid?---I didn't find it a problem because I wasn't interested predominantly in the salary.

It was a lot of money though, wasn't it, Mr Mileham?---It was an appropriate salary for the position.

15

It was a lot of money, wasn't it, Mr Mileham?---A lot of money? Compared to what?

20 \$379,000 is a lot of money for anyone, isn't it?---Not for a CEO of a large corporation, no.

It's a lot of money, isn't it, Mr Mileham?---It's an appropriate salary. It's, I believe, a fair reward for the position.

25 Did you sign your contract of employment?---Yes, I believe I did.

And you did that in front of someone?---No, I don't believe so. I can't recall. I don't think it was witnessed.

30 Was the Lord Mayor present when you signed the contract of employment?---I don't believe so, but I can't recall.

Did you read the document before you signed it?---Yes.

35 Had the Lord Mayor already signed it when you signed it?---I can't recall.

You didn't just accept a contract of employment that was given to you by the Manager of Human Resources, did you, Mr Mileham?---I may have asked about certain clauses.

40

Who did you ask?---I don't recall. I said I may have, I don't recall actually asking about it. I do recall that it was a fairly brief process

[10.15 am]

45

Mr Mileham, you attended a Council meeting on 1 September 2016, did you?---I don't recall it but I may have.

Madam Associate, if you could bring up, please, 9.0791, TRIM 17416.

COMMISSIONER: Thank you.

5

MS ELLSON: You see here some minutes that have been certified as correct dated 1 September 2016?---Mm hmm.

10 Relating to a Council meeting. Madam Associate, if you could bring up page 9.0793. Do you see here you were in attendance at the meeting?---Mm hmm.

I'm sorry, Madam Associate, if you could turn the page, please, to 9.0794. Do you see here, Mr Mileham, an item 333/16?---Mm hmm.

15 Potential confidential item concerning your appointment?---Yes.

And there's a Confidential Schedule 334/16?---Yes.

20 Were you provided with the Confidential Schedule with any agenda papers for this meeting?---I can't recall whether I had access to that Confidential Schedule.

25 Is that usual, not necessarily the fact that it's yours, but in practice is it usual for you to have access as an employee attending these meetings, to the agenda papers, including Confidential Schedules?---At times I didn't have access to Confidential Schedules, as I recall. Sometimes that was by reason of administrative issues but -  
--

30 And you can't recall if you had access to this Schedule?---No. I would say it would be unlikely.

At 5.04 pm, the minutes indicate that you disclosed a financial interest and left the meeting, do you see that?---Yes.

35 9.0796, please, Madam Associate. You see here, Mr Mileham, that you've returned to the meeting at 5.05 pm?---Yes.

And the meeting was closed after that?---Yes.

40 Madam Associate, back to 9.0794, please. There's a meeting note, here, Mr Mileham that, "Council agreed there would be no discussion on the confidential item and it wasn't deemed necessary to close the meeting", do you see that?---Yes.

45 Do you have any insight into the circumstances in which that occurred?---I'm assuming that happened when I was out of the room, so not really.

Did you wonder why you were only out of the room for a minute?---I can't recall

wondering why, no.

5 Was it unusual for you to be out of the room for a minute for a matter to be discussed in your absence?---It was the first time that had been the case, that I had needed to be out - well, not the first time perhaps, but certainly an unusual occurrence. I had been never been appointed by the City of Perth as a CEO before.

10 Were you present when the motion - I withdraw that question and move to 9.0795 so you can see what I'm talking about, Mr Mileham?---Thank you.

You weren't present then for the motion that was moved?---I would assume not but there's no timing on it.

15 Madam Associate, if you could move to 9.0798, please. Do you see here, Mr Mileham, a report from Human Resources dated 31 August 2016?---The date is 31, the minutes are 1 September, yes.

Have you seen this report before?---I'm not sure.

20 Does looking at it now assist you?---No.

Madam Associate, if you could turn to page 9.0799. Do you see here some information in relation to salary bands?---Mm hmm.

25 Set by the Salaries and Allowance Tribunal?---Yes.

And there's a Band 1 referred to there?---Yes.

30 Indicating that a remuneration package between \$247,896, to \$375,774 would be set?---Yes.

You referred to the fact that there was a maximum set by the Salaries and Allowances Tribunal?---Yes.

35 Do you consider that the \$375,774 would have applied at the time you were appointed?---If that's the correct number.

40 Did you consider that you could rely on the Manager of Human Resources to provide Council with the correct information?---I would hope so.

You could, couldn't you?---I would hope so. "Relied" might be a bit too strong a word, mistakes do occur.

45 The contract provisions set out here, Mr Mileham, are for a five year term. Did you accept a contract for a five year term?---I recall I did.

With a six month review period?---Yes.

With a remuneration package breakdown resulting in total remuneration total package, \$364,450?---Yes.

5 Did you accept a contract for that amount?---That was my understanding.

Before you signed the contract, did you have an understanding that you would be paid a total remuneration package of \$364,450?---That's my recollection.

10 Can you tell me how you came to form that view?---Not really, no.

You just know you thought it?---I recall that figure, 365 is a number that is in my head. There was some debate about valuations of things like car allowances because they weren't black and white dollar figures, they had to be calculated.

15

Who was that debate with?---That debate was had with the former CEO and other Directors. I think there was some dispute about how you would value a car bay and it was difficult to value apparently, according to Corporate Services.

20 So that debate did not concern your contract specifically?---There was discussion around what the value was. I wasn't overly concerned about how it was arrived at.

25 There was discussion over the value of your own contract, was there?---No. As I said, the Directors and the Director of Corporate Services had, in setting contracts, and coming to a number for car allowances and parking under the City of Perth building had arrived at a figure. I think that was discussed from time to time generally.

30 And the car allowance for you that you expected was \$25,000, is that right?---That's what was there and I'm assuming that's the number that was on offer, yes.

35 Do you accept from reading this, that as at 1 September 2016 your salary or your total remuneration package should not have been above \$375,774?---That would appear to be the facts, yes.

Do you know how much you were paid, Mr Mileham?---I couldn't tell you exactly now.

40 Do you know what the total remuneration package was that you signed up for?---I can't recall, no.

Was it above \$375,774?---I don't believe so.

45 If it was, that would be wrong, wouldn't it?---If the City had actually paid above the maximum, that would be a mistake.

It's not about the cash in hand result though, is it, Mr Mileham?---What do - - -

The substance of the Salary and Allowances Tribunal rules relate to a total remuneration package?---Gross figure, yes.

5

Yes. Not all of the amount within the total remuneration package has to be paid, does it?---I don't know.

It includes non-mandatory superannuation payments, doesn't it?---The SAT figure?

10

Yes?---I don't know.

Did you know as at 1 September 2016?---I do know I did not elect to take a non-mandatory super contribution.

15

I'm not saying that you did, Mr Mileham. What I'm saying is, did you know that the Salary and Allowances Tribunal band width included non-mandatory superannuation payments as at 1 September 2016?---I didn't know that. I had assumed, I think, that it was a gross figure payable, made up of whatever componentry was within it, but it was a gross figure.

20

Not all of which would end up in your pocket, necessarily?---No, it's prior to tax and the car allowance is, for want of a better term, a guess. For example, a car allowance could be taken as cash. I believe the former CEO took that allowance as cash, purchased his own vehicle. I elected rather to take a hybrid vehicle and reduce the cost to the City.

25

At the end of the day, Mr Mileham, the bottom line is that the total remuneration package given to you, the gross figure, cannot exceed the maximum in the band width, being the gross figure determined by the Salaries and Allowances Tribunal, can it?---I would assume that the amount actually paid should not exceed the gross figure.

30

You keep saying "the amount paid", Mr Mileham?---M'mm.

35

I'm talking to you about a gross figure?---Yes.

Not all parts of the gross figure are necessarily given to an employee, do you see what I'm saying? Non-mandatory superannuation payments aren't necessarily paid, do you accept that?---Yes.

40

So do you accept that within the band width of the Salaries and Allowances Tribunal payments, there are some payments which are not actually paid but which are included in the band width?---I'm not entirely sure I understand what you're saying. Can you repeat the question?

45

Do you accept that there are some payments which fall within the Salaries and

Allowances Tribunal band width which are not actually paid to an employee but which form part of the numbers?---I find that a little illogical but you may have a view. I don't know understand really what the point is

5 [10.30 am]

COMMISSIONER: Mr Mileham, if you look at the page in front of you?---Mm hmm.

10 And you look at the bottom of that page under the heading, "Contract provisions"?---Mm hmm.

You will see there a breakup of numbers?---Mm hmm.

15 Do you see that?---Yes.

Car allowance is one of them and you can see the figure which sits to the right of it is \$25,000?---Yes.

20 If you took the car allowance and were not paid that in cash, would you accept that that would still be part of the salary within the band width about which counsel is speaking?---Yes, it would perform, yes, part of the calculation of that figure, a total remuneration package.

25 That's what counsel's asking you about?---Okay. I understand, thank you.

Ms Ellson.

MS ELLSON: Thank you, Commissioner.

30

Mr Mileham, you were paid above the maximum of \$375 - I withdraw that. You signed a contract which specified a total remuneration package above \$375,774, didn't you?---I can't recall.

35 What were you paid, Mr Mileham?---I believe I was paid under the figure, under the cap. As I said, I elected not to take non-compulsory super contribution, which therefore made the gross figure less than the cap.

40 Who offered you the non-compulsory super figure?---As I recall, it was happenstance that I elected not to take the non-essential or non-compulsory super component, but - - -

That wasn't my question, Mr Mileham?---I was going to complete the answer.

45 I asked you, who offered you the non-compulsory superannuation - - -?---Who? Yes?---The City.

Who in the City?---Well, Michelle Howells, I imagine, as Manager, HR, compiled the contract form and it was offered to me.

5 You had nothing to do with negotiating the salary in your contract, is that right?---I didn't negotiate the salary, I accepted what was offered.

The offer that was made by the City, that was made by the Lord Mayor, wasn't it, on behalf of the City?---The Lord Mayor doesn't offer the salary, the Council offers the salary. The Lord Mayor's a representative of the City.

The Lord Mayor is part of the Council?---Yes, she's the spokesperson for the City.

15 She's the leader of the Council though, isn't she?---I don't know, is she?

Mr Mileham, really?---Under the Act, the Lord Mayor or Mayor or President is the spokesperson for the City.

20 And as that, she's the leader of the Council, isn't she?---I would have to see the Act. I don't recall it saying that they are the leader of Council. It may be in there, but what does "leader" mean, to define the term?

25 Mr Mileham, I don't want to get into that with you. The question I'm asking you is about who offered you non-compulsory superannuation?---Well, the City via the Manager, HR. I don't believe the Lord Mayor ever mentioned a dollar figure to me.

30 Mr Mileham, you didn't negotiate the terms of your contract with anyone in Council, is that what you're saying?---I discussed it with the Manager, HR. What you need to understand - - -

You said Council settled the contract, Mr Mileham?---Pardon me?

35 You said Council settled the contract, Mr Mileham. Are you saying you had no interactions with anyone on Council about any terms of your contract?---About the dollar value, no, none. KPIs, yes; dollar value, no.

40 The dollar value magically appeared, did it?---Not by magic, no, by a calculation by the Manager of HR. I have never actually negotiated a salary figure with any employer, to be frank.

Madam Associate, could you please bring up the City of Perth Act, section 10(1)(d)?---City of Perth Act or Local Government Act?

45 City of Perth Act, Madam Associate. I'm sorry, just while that's happening, I can read to Mr Mileham. Mr Mileham, the City of Perth Act, section 10 (1)(d) reads:

*The role of the Lord Mayor is as follows: (d), to provide leadership and guidance to the City of Perth Council.*

- 5 Do you understand that?---Mm hmm.
- 10 You were aware of that as at 1 September 2016?---Yes, in fact I - - -
- 15 You've always been aware of that?--- - - - I oversaw the implementation of the Act, yes.
- 20 You've always been aware that the Lord Mayor is the leader of Council, haven't you?---No, it says "provide leadership."
- 25 Mr Mileham, I don't want to engage in an exercise of semantics with you. I'm asking you a question?---Mm hmm.
- 30 You've always known that the Lord Mayor is the leader of the Council, haven't you?---I've always known that the Act says that she will provide leadership, exact words.
- 35 And you understand that in doing so, she leads the Council. It's a simple question, Mr Mileham?---If by "leadership" and "leader" you equate the same words, yes.
- 40 And Council you considered were settling your contract of employment?---Yes.
- 45 Who was going to sign your contract of employment?---The spokesperson for the City, the representative, legal representative of the City.
- 50 Who? Who is that?---The Lord Mayor executes documents on behalf of Council. She has that - she or he has that job.
- 55 In exercising a document, that includes your contract of employment?---Mm hmm.
- 60 You have to say a word for the transcript, you can't say "mm hmm"?---Pardon me. What was the question then? I didn't hear a question.
- 65 Executing a document on behalf of the Council includes your contract of employment, doesn't it?---Yes, I'm the sole - the CEO is the sole employee of Council - sole appointment, should I say, of Council.
- 70 And you knew the Lord Mayor would have to sign your contract of employment in September 2016?---That would be the protocol, yes, subject to a decision of Council.
- 75 I will get to that a bit later, Mr Mileham. Knowing that the Lord Mayor was going to execute your contract of employment on behalf of the Council, who you said were responsible for settling your contract, is it your evidence that you had

absolutely no discussions with the Lord Mayor about what was in the document you were both executing?---No, I didn't say that. I said the dollar value was not discussed.

5 What did you discuss?---I believe we discussed KPIs. I also believe that most of the contract was seen at "boilerplate" and standard. I don't know that it varied significantly from the former CEO's contract, I didn't compare the two.

10 You didn't raise a question with the Lord Mayor about your salary at the time you signed the document with her?---Don't recall, no. I don't believe I did but I can't recall.

15 Before you signed your contract, did you check it for any possible errors?---I read it. Whether that's a thorough check is another matter.

Did you wonder if the salary you were signing up for was correct?---No, I did not.

20 Mr Mileham, you've signed documents before - sorry, before 22 September 2016, had you executed any documents for the City or been involved in the execution of any documents for the City?---Possibly.

You don't remember?---I've been involved in a lot of documents, I can't recall each one.

25 Had you ever signed a document to which the common seal was affixed before 22 September 2016?---Don't recall doing so, may have.

30 Do you know what is required for the common seal to be affixed?---I couldn't tell you the parameters but there is a threshold that I understand that requires the seal.

35 In September 2016, specifically as at 22 September 2016 - Madam Associate, I'm sorry, that document can be taken down - did you have an appreciation of what was required to execute a document requiring the common seal?---I didn't have a full personal understanding, I took advice on that most times.

40 Mr Mileham, I would like to show you a document now at 9.0857, Madam Associate. Do you see here an employment contract made on 21 September 2016 between the City of Perth and yourself?---I see page 1 of it dated 21 September 2016, yes.

Do you recognise this as the first page of a contract of employment that you signed as CEO of the City of Perth?---I'm accepting it is.

45 Madam Associate, could you turn, please, to 9.0869. Do you see there, Mr Mileham, a total annual remuneration of \$379,950?---Mm hmm.

Do you accept that figure is above \$375,774?---Yes.

So you accept that it's above the maximum payable as total remuneration under the Salaries and Allowances Tribunal band?---Sorry, could you repeat the question? I didn't quite hear you.

5

So you accept that it's above the maximum total remuneration payable under the Salaries and Allowances Tribunal band?---\$379,950 is above that figure, yes.

10 Mr Mileham, were you aware that that figure was above the Salaries and Allowances Tribunal band width at the time you executed your contract?---I don't recall reading that page. I recall not accepting the employer contribution, therefore, that was about \$15,000 less.

15 If you didn't read the page, Mr Mileham, how did you know \$15,500 made any difference?---I didn't say I didn't read the page, I said I don't recall reading the page. My best recollection is that I saw that as a combination maximum, I didn't necessary see it as the actual remuneration package because it had components that you wouldn't necessarily take. It also refers to the motor vehicle allowance, if taken as payment, attracting a further 2375 super, which I can't see there identified.  
20 So I think it's not a very accurate rendition of the package.

Mr Mileham, you're very good with words. You can see, "Total annual remuneration" is written there?---Yes.

25 At \$379,950 per annum?---Yes

[10.45 am]

30 You've accepted that you had an expectation that your total remuneration package would be \$364,450, didn't you?---I had an expectation it wouldn't exceed the cap, that's for sure, somewhere between - - -

And the cap was \$375,774, wasn't it?---That's the figure that was in the documentation you've showed me, yes.

35

And the figure that you're looking at here is \$379,950, which exceeds the cap?---Yes, but I was not paid that figure.

40 You are aware that total remuneration is not to exceed what you've described as the cap, you were aware of that in September 2016?---Yes, and my understanding is that it did not.

You should not have accepted a total annual remuneration package of \$379,950 per annum because it exceeded the cap, should you?---And I did not accept it.

45

Mr Mileham, you signed a contract with total annual remuneration here of \$379,950, didn't you?---If that was the figure in the signed and executed document,

that was the package described. As I say, my actual remuneration was not that figure.

5 COMMISSIONER: When you signed this contract - - -?---I signed that contract - - -

Mr Mileham, just pause for a moment?---Yes.

10 When you signed this contract, did you know that you were signing a document that gave rise to legally enforceable rights?---Yes.

Ms Ellson.

15 MS ELLSON: Mr Mileham, one of those rights included the ability for you to take up an offer to have - for your employer to contribute \$15,500 per annum to superannuation, on your behalf, didn't it?---So the offer, yes. There was an offer. The acceptance was different.

20 You accepted an offer of \$379,950 per annum as a total annual remuneration package, didn't you?---In effect, I accepted an offer minus the non-employer contribution, non-statutory.

25 Yes, and you had the right therefore to take up the offer of a total annual remuneration package of \$379,950 per annum, didn't you?---It would appear that I had that right but didn't exercise it.

Mr Mileham, did you discuss the non-statutory employer contribution figure of \$15,500 with the Lord Mayor?---No, not that I recall.

30 Did she offer it to you?---Not personally, no.

She did offer it to you?---No.

35 You said "not personally", it implies that she did in some way?---Okay. The implications therefore I will dispel: she did not offer it to me verbally or in any other form than in this contract. So if the Lord Mayor is the leader of Council and the sole executor of the contract, I suppose you could argue that but I took this as an offer from Council.

40 It was an offer from Council and the Lord Mayor made it?---My recollection is any discussions I had on the contract were predominantly, if not in total, with Michelle Howells from HR.

It was an offer from Council and the Lord Mayor made it?---Pardon?

45

It was an offer from Council?---Yes.

And the Lord Mayor made it?---I don't think she constructed it, I think the offer was constructed by HR.

5 Ultimately, you and the Lord Mayor were responsible for executing this contract, weren't you?---Yes - well, we were the signatories.

The Council made the offer?---Mm hmm.

10 The Lord Mayor executed the contract on behalf of the Council, that's right?---Mm hmm.

And you accepted the offer and signed the contract?---I signed this contract, yes.

15 And accepted Council's offer?---Barring the employer contribution, non-statutory, yes.

You didn't take that up but you accepted it as a potential payment, didn't you?---The potential was there. Clearly that would have been a breach.

20 You accept that it's a breach?---No. I said if it had been taken up, that would have been an issue, I believe.

That makes no difference, does it, Mr Mileham?---It does to me.

25 Do you fully appreciate the way in which the Salaries and Allowances Tribunal construct its band width?---Do I fully appreciate? No.

30 So you assumed that if you wouldn't take up the offer of \$15,500, it would be okay to accept this offer?---That was certainly my view.

Did you ask anyone for advice about that?---I recall a discussion with the Director, Corporate Services where the figure was discussed and we noted that my salary gross was under the cap.

35 Did you speak about it with the Manager of Governance, Mr Ridgwell?---Don't recall doing so.

In hindsight, do you think you should have?---With Mr Ridgwell?

40 Yes?---No, I discussed it with the Director, Corporate Services, to whom Manager, HR reported. I believe the City had picked that up at some point and the discussion was had but the discussion I recall with the Director of Corporate Services was, as there was no actual payment above the cap, there was no issue.

45 Can you see now, Mr Mileham, that that advice was wrong?---I don't know if it's wrong. It may well be. It may be that advice I had that the actual gross payment was the key, not the offer, that may be incorrect, I don't know.

Madam Associate, if you could turn, please, to 9.1233.

COMMISSIONER: Before we leave this document, I just have one question.

5

MS ELLSON: Yes, Commissioner.

COMMISSIONER: I will come back to that later, thank you.

10 MS ELLSON: Madam Associate, could you turn up, please, 9.1233. Do you see here the Government Gazetted determination of the Salaries and Allowances Tribunal?---Mm hmm.

15 Madam Associate, could you turn, please, to 9.1241. I know it's quite small, if you need it enlarged, please ask me, Mr Mileham?---Mm hmm.

But do you see under the heading, "General", "Typical components of the total reward package"?---Yes.

20 "Include", paragraph (m):

*Superannuation (all mandatory and non-mandatory employer superannuation contributions).*

25 Do you see that?---(m), yes.

And there's some exclusions there?---Yes.

30 And they don't include any non-mandatory employer superannuation contributions?---Exclusions - - -

COMMISSIONER: Mr Mileham, would you like the page enlarged?---I'm just trying to see the section for exclusions. Could you point me to it, please?

35 MS ELLSON: It's paragraph 4?---Okay. Yes.

Then you see under there, "Local Government classification, Local Government band classification"?---Yes.

40 And you see there, "Band 1"?---Yes.

That's the same band width that you saw in the report of Human Resources earlier, isn't it?---Yes.

45 With a maximum of \$375,774?---Mm hmm.

Which, on the reading of this, includes all mandatory and non-mandatory employer

superannuation contributions, do you see that?---Yes.

5 Madam Associate, you can take that down, please. Do you accept then, Mr Mileham, that the total package offered to you of \$379,950 was in excess of the total reward package permissible?---If you'd taken up all the components, it would exceed the number, yes.

It does?---That mathematics on the page adds up to that number, yes.

10 That number was a number offered to you by Council?---Which I did not accept.

Mr Mileham, you accepted the possibility or the offer to be paid a total annual remuneration package of \$379,950?---I signed a contract in which that offer was made.

15 That offer was made by Council to you?---Yes.

And executed on behalf of Council by the Lord Mayor?---Yes.

20 You accepted, therefore, an offer by the Lord Mayor on behalf of Council to receive a total annual remuneration package in excess of that permissible, didn't you?---The offer I accepted was for about 365 because it didn't include - I didn't take up one of the components of the offer. Perhaps that's not clear.

25 Mr Mileham, you've accepted that the offer was for you to receive potentially \$379,950 per annum, you just accepted that?---But my understanding of a contract offer and acceptance is an offer and acceptance are interrelated.

30 Mr Mileham, we have been through that. We have been through that already?---Okay.

I'm asking you to accept the fundamental point that \$379,950 is above \$375,774; it's obvious, isn't it?---That's self-evident.

35 Were you aware of that at the time you signed the contract, Mr Mileham?---Aware of what, could you clarify?

40 Aware of the fact that \$379,950 was above \$375,774?---I can't say whether I was aware of it as I had no intention of taking up the non-mandatory super. I had calculated in my own head that I would be receiving around 365 gross.

COMMISSIONER: Was the contract varied to make allowance for that?---Sir, I don't think the document was amended, no.

45 There's a provision in 17.2 of the contract that allows for a variation. That appears on page 9.0866; Madam Associate, would you please bring it up. You can see about one-third of the way down the page clause 17.2. I will just give you a

moment to read that to yourself?---Yes.

Are you aware of any such document being executed by you and the Lord Mayor?---No.

5

Ms Ellson.

MS ELLSON: Mr Mileham, do you accept that you should have known that \$379,950 was above \$375,774 at the time you signed the contract?---I should have known? I believe I did know

10

[11.00 am]

And you signed the contract anyway?---I signed the document, yes.

15

Turning now, please, to 9.0868. While that's happening, Mr Mileham, do you accept that it was wrong of you to sign the contract to accept the offer of total annual remuneration of \$379,950?---Do I accept it was wrong?

20

In hindsight?---In hindsight? It's inaccurate. It's not an entirely clear document.

And it's wrong also because the figure of total annual remuneration offered to you is above the maximum band width allowed for by the Salaries and Allowances Tribunal, isn't it?---It would appear that the document is inaccurate.

25

It's not the document's fault, is it, Mr Mileham, it's yours?---I signed the document that had inaccuracies in it.

30

And in hindsight, you wouldn't do it again?---In hindsight, I wouldn't sign a document with inaccuracies in it.

It's not inaccurate, Mr Mileham, the offer is clear, isn't it?---No, it's not to me frankly, no. As I said, I don't really comprehend the asterisk and the double asterisk which puts provisos over the terms on offer. It appeared to me on reading those that they were optional. It could be said that the figure of 379 would tell you that it's above the cap so that you're unable to accept all of them. My understanding was by not accepting the non-mandatory component, I did not exceed the cap and I was never paid above the cap.

35

40 So would you like to see some improvements in the way the contract is drafted?---Certainly. That would help.

Mr Mileham, do you know when you signed your contract of employment?---September/October, I'm not entirely sure of the date.

45

There's no date on this page, is there?---No.

Do you recognise your signature on this page?---Yes.

Do you see that as a signature on a page entitled, "Employment contract" with the City of Perth crest?---Yes.

5

Do you recognise this as the signing page for your employment contract?---Yes.

Mr Mileham, there was a witness to your signature, is that right?---That's right.

10 Was that person present when you signed the document?---Yes.

Did you sign the document in the presence of the Lord Mayor?---No, I don't think so.

15 Did you sign the document before or after her?---I don't recall.

Do you see a common seal affixed to the document?---No.

There should be one though, shouldn't there?---I don't know.

20

Mr Mileham, the document says:

*The common seal of the City of Perth was affixed by authority of a resolution of the Council in the presence of the Lord Mayor, signed by the employee in the presence of a witness.*

25

Do you see that?---Mm hmm.

30 It contemplates necessarily that the common seal was affixed by authority of a resolution of the Council in the presence of the Lord Mayor, doesn't it?---Yes.

Therefore, you would expect to see the common seal on this page because the Lord Mayor's signature appears on the page, wouldn't you?---Yes. The notation would lead you to that conclusion but there may not be the necessity for it.

35

It is a requirement, isn't it?---I don't know, is it?

40 Did you know in September whether or not it was?---Given that the seal affixing is only reserved for certain documents and there had been errors in the past where the seal was affixed for no reason, that had been a matter of some confusion amongst Governance staff and it was clarified later.

45 There was a policy regarding the circumstances in which the common seal - or contracts or documents could be signed by particular members of the Council, wasn't there?---Sorry, could you repeat the question?

There was a policy which guided you about which documents could be signed or

which documents needed the common seal, wasn't there?---Yes.

5 That policy did not allow for the Lord Mayor to sign a contract on behalf of the Council without a common seal, didn't it?---I don't know. You would have to point me to the policy settings. I relied upon Corporate Services for that advice.

10 What advice did you seek from Corporate Services in relation to signing your contract?---The provision to me of the contract document and its process of signing.

From whom did you seek that advice?---My recollection is that the contract was provided to me by the Manager of HR and I executed it and returned it.

15 Mr Mileham, upon what advice did you sign the contract of employment?---To the best of my recollection, the contract was provided to me in the office by the Manager, HR, I signed it and returned it to HR, to the best of my recollection.

20 And you don't know whether the Lord Mayor had signed it first?---No, I don't know that, no.

Madam Associate, I would ask you to bring up 9.1453, please. You see here a cover sheet from the City of Perth Policy Manual?---Mm hmm.

25 Madam Associate, could you turn, please, to page 1464. Do you see here a table, Mr Mileham, setting out the, "City of Perth common seal and document signing authorities"?---Mm hmm.

30 Under paragraph numbered 10, "Contracts and legal instruments including contract variations", relating to particular things?---Yes.

Do you see next to that there's a tick, "Common seal. Execution by signature only" cross, "Lord Mayor ", do you see that?---Mm hmm."

35 Do you consider then that your contract of employment required the common seal?---I'm sorry, could you repeat the question.

Do you consider then that your contract of employment required the common seal?

40 COMMISSIONER: In fairness to Mr Mileham, Ms Ellson, he should be given a chance to digest this document properly. There's quite a lot in it. Tell me when you've done that, please, Mr Mileham?---Thank you. "Common seal only to be applied where received in a document prepared by an external party." I can't see in there a specific reference to employment contract.

45 MS ELLSON: "Contracts and legal instruments" including - - -?---"Contract variations related to procurement contracts, service agreements, Heritage agreements, acquittal of planning conditions and maintenance of the public realm"

and the heading is, "Common seal only" underlined "to be applied where specified in a document prepared by an external party." I took that to - I understand that to mean what it says.

5 In your contract of employment, it specified that the common seal was affixed in the presence of the Lord Mayor, didn't it. I think that might be not required, a bit of, shall we say, left over from a draft but again, if we can go back to that, can I ask a question? Have I understood correctly the heading, "Common seal only to be applied where specified in a document prepared by an external party" - - -

10 COMMISSIONER: Mr Mileham, it's not for you to ask questions?---Okay, thank you.

15 MS ELLSON: Do you accept that the common seal needed to be affixed to your contract of employment?---No, I don't.

MS SARACENI: Well - - -

20 COMMISSIONER: Should this objection be heard in the absence of the witness, Ms Saraceni?

MS SARACENI: It probably would be beneficial, sir.

25 COMMISSIONER: Thank you, Ms Saraceni. Mr Mileham, it's no reflection on you but I'm going you to be taken out of the hearing room.

#### **WITNESS WITHDREW**

30 COMMISSIONER: Yes, Ms Saraceni.

35 MS SARACENI: Two points, Commissioner, one in relation to the currency of this version of the Policy Manual at the relevant time is something that, in my submission, should be made clear. I was trying to read the fine print but it's not clear to me if it was the right one, given that the witness has already made comment or given some evidence in relation to, there had been a change.

COMMISSIONER: I understand the point.

40 MS SARACENI: The second point, Commissioner, the witness was giving evidence then in relation to ", "A document prepared by an external party." I don't recall any evidence or questioning as to who prepared this employment contract, whether it was prepared internally by the City of Perth, HR persons, by the external HR recruitment persons or anyone else. So perhaps that could be made clear, otherwise my client's at a disadvantage. It's unfair to be - he's saying  
45 external party and I'm not sure it's clear who prepared that document.

COMMISSIONER: So your objection is that the groundwork for this question

has not yet been laid?

MS SARACENI: Yes, sir.

5 COMMISSIONER: I understand that. Ms Ellson, is that something which can be remedied?

MS ELLSON: Yes, it is.

10 COMMISSIONER: Thank you. Madam Associate, would you please bring Mr Mileham back into the hearing room. Mr Mileham, please resume your seat in the witness box

**MR Martin Nicholas MILEHAM, recalled on former oath:**

15

COMMISSIONER: Mr Mileham, in your absence, as you know, your counsel made an objection. I heard it and ruled in her favour. So Ms Ellson will continue now with her questions of you?---Sir, may I request a break in a few minutes. I have to take some medication.

20

I propose to take the morning break at 11.30, would that be sufficient?---Yes, thank you.

Ms Ellson.

25

MS ELLSON: Madam Associate, if you could bring up, please, 9.1457. Do you see here, Mr Mileham, this policy document was last amended on 9 August 2016, do you see that. 20.7, the last amendment to this document?---Yes.

30

We are looking at a different part. Do you accept that this is a document that existed in September 2016, based on what you see there?---It would appear so.

Turning back to 9.1464. You raised a question with respect to the shaded portion here, "Common seal only to be applied where specified in a document prepared by an external party"?---Mm hmm.

35

Do you know who had prepared your contract of employment?---I believe that was prepared by HR.

40

So they are internal?---M'mm.

"Contracts and legal instruments including contract variations", going back to that then, knowing what you know now?---M'mm.

45

Do you consider that the common seal had to be affixed to the document?---No. My reading of that is, not required

[11.15 am]

Thank you, Madam Associate. Mr Mileham, are you aware of the Local Government Act requirements with respect to the execution of documents?---Not  
5 in detail.

Madam Associate, if you could please bring up section 9.49A of the Local Government Act, page 354 in my version. Mr Mileham, do you see here  
10 subsection (1):

*A document is duly executed by a Local Government if the common seal of the Local Government is affixed to it in accordance with subsections (2) and (3); or, it is signed on behalf of the Local Government.*

15 Do you see that?---Point 1?

Yes?---Yes.

20 :

*The common seal of a Local Government is not to be affixed to any document except as authorised by the Local Government.*

25 Do you see that?---Yes.

Do you consider that the policy that I've taken you to authorises the seal to be affixed to your contract?---It allows it.

30 The use of the words, "The common seal of the City of Perth was affixed by authority of a resolution of the Council in the presence of", the Lord Mayor has signed it, require it, don't they?---The words on the contract?

35 The words on the contract require it?---No, they don't.

Madam Associate, that document can be taken down. I'm going to change topics now, Commissioner.

40 COMMISSIONER: If you are going to change topics now, although I had indicated that I would take the morning adjournment at 11.30, now might be a more suitable time. I will adjourn now for 15 minutes.

**WITNESS WITHDREW**

45 (Short adjournment)

HEARING RECOMMENCED AT 11.38 AM.

**MR Martin Nicholas MILEHAM, recalled on former oath:**

5 COMMISSIONER: Yes, Ms Ellson.

MS ELLSON: Thank you, Commissioner.

10 Mr Mileham, can you tell me what the benefit is to the City of Perth to have buildings entered on to the City's CPS 2 Heritage Register?---To have buildings entered on to?

15 Yes?---I guess the optimal best outcome for a building being listed on the Heritage List would be that we have, for want of a better term, a happy owner and the happy City in that the owner is happy for that building to be listed, that that owner then becomes eligible to request and receive Heritage Grants.

Focus on happy City, Mr Mileham?---Okay.

20 Because I asked you about the benefits to the City?---Yes, I will get to that.

I'm asking you about the benefits to the City?---Okay.

25 So please focus your mind on the City, not the owner?---Okay. The benefits to the City will be the retention of heritage places which add to the cultural - retain cultural fabric where appropriate, and they also would hopefully assist in the remediation of heritage buildings that may have some disrepair due to the fact that they are often difficult to maintain. For example, a good example of the benefit to the City of a Heritage Listing would be Brookfield Place where a specific Heritage  
30 Agreement was entered into and plot ratios were granted to enable that project to go ahead with the retention of key historic buildings, and I think everyone would agree, Brookfield Place is a fairly reasonable outcome of that approach.

35 Can you see any other benefits to the City in having buildings entered on to the CPS 2 register?---As I've said, it's about the retention of character of cultural memory, of the identity of the City, perhaps retaining exemplars of particular types of uses that have since gone out of fashion, so to speak, and help coming generations understand the history of their City.

40 And those things that you've mentioned are important to West Australian citizens, do you think?---To many.

45 Can you tell me, Mr Mileham, what detriment flows to an owner of a property, whose property is listed on the CPS 2 register?---Depending on the level of significance of the Heritage Listing, it could well mean total prohibition of development or amendment, modification of the building, right through to even potential demolition of a building, but a requirement for some level of

interpretation to be included in the new development. So it's a wide gamut of possible outcomes.

5 Would it be fair to say that additional restrictions in terms of renovations is placed upon owners when their property is on the list?---Restrictions may not be the correct word, probably additional compliance requirements.

10 And specific rules apply to the use of signs on buildings entered on to the Heritage Register, don't they?---There is a signage policy in the City that has a series of categories and they apply according to a whole bunch of parameters. Heritage can be one of them taken into account.

15 When we are talking about the level of significance and the potential detriment to an owner of having their property listed on the Heritage List, what levels of significance are there?---I don't profess to be an expert on the actual charter but it ranges through moderate, so from nothing to moderate to high. Often people misconstrue heritage to mean old. One might argue, for example, QV1 has heritage value because it's designed in modern style by a world famous Australian architect, Harry Seidler, so that may not be necessarily considered as a high level heritage building, but I believe it should be eligible. So it's a combination of elements. Could you repeat the question so I get it right, to answer your question?

20 When you're talking about the fact that detriment to an owner depends upon the level of significance, what are the levels of significance?---Okay. Potential detriment could be that a building, example, Edith Cowan's house up the road there, must be retained in entirety if a developer wishes to redevelop that site. That detriment can be offset with plot ratios bonuses and plot ratio transfer, and grants.

30 What other potential detriments flow, depending on a property's level of significance, or what are the levels of significance? I'm trying to understand?---Okay.

35 Maybe if you gave me an example of a moderate level of significance and a high example?---Moderate may be - I think it's Wentworth House - no, that would probably be high, Wentworth House in Havelock Street, potentially. It's a largely intact heritage building. There are some buildings throughout the City that would be moderate because they have been substantially modified later in time. That said, that's not necessarily - a building that's been substantially modified could be taken back to its original heritage condition, therefore it may be considered moderate but there would be potential to turn it into a much more strong heritage case, depending on how you approach it. So it's a fairly qualitative process in a lot of ways, in identifying moderacy and high. It will depend, for example, on who lived there, who built it, who the architect was, what it represented, those sorts of things.

[11.45 am]

5 Is a potential detriment to an owner of a building which is entered on to the CPS 2 Heritage Register a reduction in the value of the building?---It's hard to say. It depends entirely - not entirely, it depends a lot on the market of the day and the aspirations of the owners.

10 I'm not talking about putting yourself in the place of someone trying to sell it, I'm talking about the potential detriment which flows to an owner?---I think there's a perception that a Heritage Listing could constrain the development potential of a site.

15 And that flows necessarily on to potential resale value?---Potential. Whether it's correct or not is another matter.

20 Mr Mileham, in your work as the Director of Planning for the City of Perth, did you from time to time consider matters concerning the Grand Central Hotel?---That property was occasionally looked at, yes.

25 In 2014, were you aware of any political reasons or politics surrounding the Grand Central Hotel?---No politics, no. That said, to the best of my recollection is that there was some discussion around that building and the whys and wherefores of listing or otherwise. I recall that even some staff who had been at the City longer than I did not understand the full discussions that had gone before.

Mr Mileham, do you know who Sheree Morrison and Robert Farley are?---Yes.

30 Who are they?---Robert Farley I believe is currently Acting Director, who, when I was a Director of Planning, he was a Planning - Sustainable City Planning Manager, I think was the correct title and Sheree would have reported to Noel who reported to Robert. In fact Sheree reported to Robert.

35 You mentioned there were some discussions with respect to politics surrounding the building; who were those discussions between?---I'm not aware of any discussions. I was aware of discussions about the building and in the material I've seen there was an email, that I hadn't recalled until it was shown to me, from Sheree talking about politics, although I wasn't sure what she meant.

40 I'm going to ask you about that in more detail, Mr Mileham. If we could be shown, Madam Associate, please, for completeness, 27.0450, TRIM 19631.

COMMISSIONER: Thank you.

45 MS ELLSON: Do you see there an email from Jane Devine to Sheree Morrison, 22 January 2014?---Yes.

It refers to some photos?---Mm hmm.

It indicates it's forwarded?---Mm hmm.

5 Madam Associate, could you turn the page, please, 27.0449. Do you see there an email from Sheree Morrison to Robert Farley, 23 January 2014?---Mm hmm.

Forwarded?---Yes.

10 4.58 pm. Madam Associate, if you could turn, please, to 27.0448. Do you see an email from Mr Farley to yourself, copying Samantha Ferguson?---Yes.

Mr Farley is writing to you with a summary of the email trail and the issue?---Yes.

15 Suggesting that you need some direction from the CEO?---Mm hmm.

Do you have a memory about what that was?---About - sorry, could you clarify what "that" was?

20 What the matter was that you required direction from the CEO, then Mr Stevenson, about?---I'm assuming it is the summary subject which is the ad hoc nomination from the member of the public, requesting listing of that building.

25 Can you tell me whether the City had any processes in place in January 2014 to deal with nominations by the public for buildings?---To the best of my recollection, I don't think there was a real clear policy direction in relation to buildings being nominated by individuals. However - no, I don't recall if there was any policy that was really in place at that time about third party or external nominations.

30 You said "however", did you have another idea?---No, I was just recalling that we did work oncoming up with a series of guidelines how that might work, but that went over a period of time.

35 Is it correct to think a member of the public asked for the City to consider the Grand Central Hotel for heritage listing in City Planning Scheme in 2014?---Sorry, could you repeat the question? I didn't hear the first couple of bits.

40 Is it correct to think that a member of the public had asked the City to consider entering the Grand Central Hotel on the Heritage Register in 2014?---It would appear that email is that member of the public asking an officer in the City.

45 And did that give rise to some difficulties in the Administration because there wasn't a clear policy?---Well, Robert has asked for guidance because I believe he was unsure how to deal with, what I would call an ad hoc nomination out of the blue from a member of the public.

Were you sure?---Was I sure? No, not entirely.

Did you obtain advice from Mr Stevenson or direction from him?---I may have. I don't recall having had a specific discussion about that matter with him. I may  
5 have.

Looking back, Madam Associate, on the email on 27.0449, in relation to the background of the place, under the heading there?---Mm hmm.

10 :

*The building is owned by Joe Scaffidi, is included in the draft MHI 2000 level 2, but was not adopted as part of the final MHI.*

15 Can you tell me what that means?---Well, the ownership is clear. The fact that it's included in the draft Municipal Heritage Inventory of 2000 as a level 2, i.e., not top, not bottom, but was not adopted as part of the final Municipal Heritage Inventory, in other words, it didn't make it on the list, I assume.

20 Why do you assume that?---Well, it's saying it was not adopted as part of the final MHI, so I'm assuming it didn't get on to the Municipal Heritage Inventory, based on that information.

I see. "The building was proposed to be included in the Barrack Street Conservation Area as well." It says it here, to help you, Mr Mileham "but was excluded for various reasons"?---Third point, thank you:

*Was proposed to be included in the Barrack Street Conservation Area but was excluded for various reasons.*

30

Yes.

:

35 *It was also included in a list of places to be individually assessed for Scheme Registration. However, the place was excluded from the list by the Planning Committee.*

40 Does the Scheme Registration have anything to do with the Heritage Register?---The CPS 2 has a Heritage List within it, it refers to heritage places, yes.

So the reference here to "Scheme Registration" is CPS 2 registration?---I believe so, the Planning Scheme, yes.

45

"But it was excluded from the list by the Planning Committee", do you see that?---That's the statement of the officer, yes.

And it says here:

5                    *There is no record of why the place was not on the list presented to the Council. Sheree spoke with Callum and advised that it was taken off the list by Planning Committee for political reasons.*

Do you see that?---"Taken off the list by Planning Committee for political reasons" that would appear to say, yes.

10

We are talking about events in 2014?---I don't believe so.

The email's dated January 2014; could the events have taken place in 2013?---What, the taking off for political reasons?

15

Yes?---I don't believe so. I can't recall but I don't believe so. I think it would have been earlier than that.

Can you tell me what the political reasons were?---No.

20

Can you offer any insight as the Director of Planning at this time, about that?---It's clear the officer had concerns. You would probably have to ask her because she's written to Rob with those inclusions. I don't understand her concerns.

25    Because the Scaffidis had an interest in the property, is it?---Well, that's what - she hasn't said "because" but she's said, "Background: it is owned by Joe Scaffidi", so I'm assuming that's of relevance to her.

30    As the Director of Planning, do you make that connection?---It's not relevant in heritage matters, no.

What's not relevant?---The ownership.

35    Ownership is relevant though, isn't it, the views of the owners?---The actual ownership isn't, the views are.

40    Madam Associate, that document can be taken down, please. Mr Mileham, are you familiar with the signage policy with respect to potential Heritage Listed places?---Not with the detail. I'm cognisant of the signage policy in general terms. Whilst Director of Planning, I did help renew it and review it.

45    When did you do that?---I can't put an actual date or timeframe on it, but it was a subject that was in play for some time and I think the City Architect was the principal author of a lot of the changed policies. We had to update the policies, particularly in respect to variable messaging signage, which was an emergent technology. So signage companies were moving away from static signs towards variable messaging and our policies weren't up-to-date with the technology.

Madam Associate, could I please have document 27.3515 on the screen. I'm jumping ahead several years in time, Mr Mileham?---Ah-ha.

5 You see here a City of Perth City Planning Scheme No 2, Planning Policy Manual?---Mm hmm.

A section 4.6 related to signs?---Yes.

10 Madam Associate, if you could turn the page to 27.3516. You see here version number?---Yes.

This appears to be a version as at 17 March 2015, do you see that?---Yes.

15 Madam Associate, could you turn, please, to page 27.3526. The fourth dot point, Mr Mileham, says:

20 *Any documentation regarding a building's heritage significance should be used as a guide to assess the suitability of the proposed sign. Particular regard should be given to the sign's design, materials, style and method of attachment to the building. For signs on Heritage Buildings, see section 11.*

Do you see that?---Yes.

25

[12 noon]

Do you regard this as a general principle with respect to the consideration of any sign?---Yes, it's a general policy setting, yes.

30

Madam Associate, if you could skip, please, to 27.3541. The TRIM for this, Commissioner, is 23612.

COMMISSIONER: Thank you.

35

MS ELLSON: Under the heading, "Signs on Heritage Buildings and Places", do you see that?---Yes.

:

40

*The design and placement of signs on or near Heritage Buildings and Places requires careful consideration to be compatible with and not detract the heritage significance of the building in place."*

45 ?---"Or place."

Sorry, yes, "or place":

5 *In some cases, new signs of a very traditional character are most appropriate, whereas in others, signs should be clearly contemporary in design. Opportunities for placement of signs and acceptable media may be more limited than in other situations.*

Do you see that?---Yes.

10 Do you take that to mean that signage to be placed on Heritage Registered buildings comes under closer scrutiny than signage to be placed on any other buildings?---I wouldn't call it closer, I would call it different.

More particular?---Requires careful consideration, as the policy says.

15 And the underpinning rationale for that is the preservation of the heritage character of the building, is that right?---Yes. Obviously it's multi faceted, that's one facet.

20 What are the others?---As an architect, I probably might have a more Catholic view, so to speak, in respect to what's appropriate for a Heritage building. The policy was updated in 2015 because I think there was a perception that it had to be an olde worlde sign for an olde worlde building. We were trying to get the message out that interpretation was what we were about, not imitation. So careful consideration could include, you know, a radical design that was actually showing a progressive re-use of a heritage space. So "careful consideration" are the  
25 operative terms.

Mr Mileham, are you able to comment upon the application of this policy to signs?---Am I able to comment? In what respect?

30 On the application of the policy to - - -?---Signs in general?

- - - particular signs?---Particular or in general?

35 If I showed you a sign, would you be able to apply the provisions of this policy and determine whether or not the sign should be approved?---I could venture an opinion.

40 What would your opinion be based on?---Combination of policy and my own training.

Training in what?---Architecture.

45 And your experience in policy in what respect?---In having helped put this policy together. It was led by the City Architect.

And you have professional experience in architecture?---Yes, I do. I designed the Forrest Place and City Station precinct many years ago. That's my claim to fame

in the City, until it was recently partially demolished.

And you've also spent many years as the Director of Planning in the City, haven't you?---About three years.

5

Madam Associate, that document can be removed. Mr Mileham, I would like you to be shown now a document at 27.0579 - I'm sorry, let's start at 0578. Do you see here in the photograph, Mr Mileham, a red and a white box?---A red and a white dotted line box.

10

Yes?---Mm hmm.

And they appear to be potential locations for signage, do they?---"Figure 4 - site, photo of subject banner sign proximity to existing billboard sign", so I'm assuming the perspective one is on the building and the other one is the existing.

15

So you assume which one is existing and which one is - - -?---The one on the left is the existing, I'm assuming.

20

And the one on the right?---Banner sign. I'm not sure based on that, what's what, what's existing and what isn't. It may be photoshopped, I'm not sure.

I see. There's a distance there, 25 metres apart?---Mm hmm.

25

Madam Associate, if you turn the page, 27.0579. Do you see here the dimensions on the right-hand side?---Mm hmm.

Do you take that to be the dimensions of the sign in the picture on the left?---It doesn't seem a very good rendition of those dimensions but if it is, I would accept that.

30

Do you accept that this is a large banner sign?---Yes.

If this property were on the City's Heritage Register, would this sign be permissible, and I'm talking about October 2015?---It depends on a lot of things whether it would be permissible. The recommendation would likely want a sign of that nature to be modified in some way, in size perhaps. Council may or may not accept the recommendation.

35

40

Of whom?---Me as Director and the CEO recommending on my behalf at that time, as a Director.

No need for something like this to go to Council, whether it's on a Heritage List or not, is there, or a Heritage Register?---No need?

45

No requirement?---Probably not.

In October 2015, just so the transcript's clear?---Sorry?

5 In October 2015, there wasn't a requirement for it to go to Council?---I'm not aware of a requirement. To the best of my recollection there would be no requirement to take it to Council.

10 Thank you, Madam Associate, the document can be removed. Madam Associate, could you please put up the document at - I'm sorry, Commissioner, I need another moment.

COMMISSIONER: There's no need to apologise.

15 MS ELLSON: Madam Associate, if you could please bring up 27.1462. Do you see here, Mr Mileham, some pictures of some signs and ticks and various comments?---Mm hmm.

20 Do you take the ticks - I withdraw the question and back up a little bit. Do you see there a stamp, "Development Approvals Unit - application accepted. 18 October 2016"?---Yes.

Do you consider that the policy that we went to would apply to this property if it were listed on the Heritage List at that time?---Yes.

25 The indications of ticks here, do you consider those to be ticks of approval?---This would have been done by the unit. I'm assuming they have ticked and crossed according to their meaning, their usual meaning.

30 As someone who's used to looking at plans, Mr Mileham, does it appear as though those shaded areas have been approved?---Which shaded areas, the - - -

The red ones?---Red?

35 The red ones with the ticks?---It's not red here. So we have got, "Area B, not supported" and then the other areas are all supported, the upper one with a reduction, it would appear.

40 Do you consider that a different decision would have been made in relation to these potential signs, or these signs, if this property had been registered on the City's Heritage Register?---It wouldn't be an absolute. It may or may not have made a difference. By that, I would have to look at the policy again to refresh my memory in respect to heritage requirements. There are requirements in the Signage Policy for the percentage of coverage on a wall that a sign occupies and their alignment with architectural elements, such as fenestration or any extant architectural features. Size isn't the only thing that matters in signage.

45 In your mind, what shaded areas are called into question based on those things you just raised?---Sign A looks to be supported by the officer but with a reduction in

size and content, as the note said.

If the building were on the Heritage List, do you consider that decision may have been different?---It may not have been.

5

What about sign B in the centre?---Sign?

B?---C?

10

B?---B.

In the centre?---I'm sorry, I'm a bit - I believe B is on the canopy. I don't believe a Heritage Listing would make a great deal of difference to the size or location of that sign, but I would need to refer to the policy settings and do a proper analysis.

15

Would it be fair to say that a person asked to assess sign A and B would have had to have regard to the policy that we have been to already?---They would have to have regard to it, yes.

20

And that would be something to be done in addition to the ordinary course of approvals - sorry, the ordinary course of consideration?---A non-Heritage Listed building, yes. There would be a different - how can I put it - a different series of assessments.

25

A different set of requirements, an additional set of requirements?---Well, the policy settings would require specific consideration. I think it says "careful consideration", not that we didn't carefully consider every signage application.

30

Those considerations are over and above anything for properties who aren't on the Heritage Register, aren't they?---They are different. They probably put a limited palette, shall we say, at the disposal of the signmaker, or a different palette.

And the end user of the sign?---Yes, whomever would be putting up the signage.

35

An example would be - I'm trying to think of one to give an example of what would be a clear failure, would be someone putting a hexagonal sign on a round box that overlaps the building's edges and destroys the massing of the building in some way, visually, say.

That would be an additional hurdle because of the heritage, the building is what it is?---Yes, but the entire Signage Policy is aimed at retaining the architectural integrity of the building on which it sits.

40

Going back to the picture, Mr Mileham, can you tell me whether or not in your view the signs in the windows under C - labelled C?---Mm hmm.

45

Would be approved if this building were Heritage Listed?---Yes, I believe so. This is 379 which was a former coffee palace and there may have been some signage

similar to that in the time it was used in that capacity. So that probably could be appropriate. The Signage Policy at that ground level is all about also maintaining street activation and visibility, so we wouldn't allow a window to be blocked out, but it allows some signage in it

5

[12.15 pm]

Whether or not it was on the Heritage List?---Yes.

10 What about sign H?---On the canopy?

It appears to be?---Yes. I'm not sure why the officer's not supporting B but supporting H. That, to me - it may be the potential contradiction of the B to C windows, I'm not sure. I would have to ask the officers.

15

Or a crowding of the space?---Perhaps.

Madam Associate, could you turn, please, to 27.1463. You see here a D, E and G?---Yes.

20

Can you tell me whether or not E would be supported for a building on the Heritage List, or Heritage Register I'm going to say?---Location may not be an issue. Content and style of construction may be, a different parameter may apply. I don't think it would be prohibited, necessarily.

25

27.1464, please, Madam Associate. You see here, Mr Mileham, a sign B?---B, yes.

On the left-hand side?---Yes, I do.

30

Can you tell me whether or not, if this property were Heritage Listed, that would be approved?---Again, depending on the officer's view and final content, I would have to ask, but it's possible it could be - or it could be recommended for approval. In this particular building, the colonnading would have been removed in about 1930, so there would be some consideration of what an art deco sign might look like, for example.

35

The property we have been looking at is a property that Ms Scaffidi has an interest in, isn't it?---I understand so, based on the documentation I've been shown.

40

Thank you, Madam Associate, that document can be taken down. In March 2017, did variable third party signs need to be considered by Council?---March?

2017?---The revised policy was - can you remind me of the date of the revised policy, please?

45

March 2015?---I can't recall, I would have to check. To the best of my

recollection, I don't think there was a requirement for any signage to go to Council. However, officers tended to err on the side of caution in presenting matters to Council, particularly around variable messaging signage, because of its impacts on the environment.

5

I see. Before a Council considers a matter, such as a sign, if it were to, it would need to go through Planning Committee?---It would - it depends on the delegation available to the Manager of Planning. There could be an approval granted by a Manager of Planning under the delegation. It may not need to go to Planning Committee. As I understand it, I may be corrected on that, but my understanding was certain matters can be approved on delegation, if they are of a minor nature. For example, if someone said, "I want to change the spelling on my sign", we wouldn't take that to committee.

10

15

You would be very busy if you did?---Yes.

Mr Mileham, I would like you to consider some agenda papers for me, please, and help me to understand some information that's included in them. Madam Associate, if you could bring up page 27.1539. Do you see here a notice of meeting, 7 March 2017?---Mm hmm.

20

Agenda papers for a Planning Committee meeting?---Mm hmm.

Reports 8.3, 379 Wellington Street, "Proposed third party variable content wall sign", do you see that?---Yes.

25

If you turn the page, please, to 27.1547. We have skipped ahead another year for you, Mr Mileham, but I'm hoping you can help me with understanding the final paragraph or parts of it:

30

*Council at its meeting held 22 November 2016 resolved to include the subject building in the CPS 2 Heritage List in accordance with -*

And there's some regulations referred to?---Mm hmm.

35

:

*Council's resolution noted the requirement for consultation with the landowner with the matter to be determined at a future meeting. As the proposed listing has not been referred back to Council for consideration as yet, the status of the listing is not considered to be seriously entertained at this stage. Therefore, the heritage related provisions of the policy are not relevant to the assessment and determination of the proposed sign in this case.*

40

45

Do you see that?---Mm hmm.

Can you tell me - actually, I will move ahead and show you a picture. 27.1550. There's a photograph there of an APN sign connected in the documents to 379 Wellington Street, "showing conversion of existing sign to include variable content", do you see that?---Yes.

5

Going back to 1547, can you explain to me, Mr Mileham, why the status of the listing was not considered to be seriously entertained at that stage?---I'd probably disagree with that. I mean, it is being entertained.

10 But this says "not seriously entertained"?---M'mm.

You can't offer any insight into that?---If you could show me the author of the report, I might be able to.

15 Madam Associate, 27.1542. File reference 2016553. "Reporting unit: Development Approvals, with the Directorate: Planning and Development"?---So Development Approvals reporting unit would be the Manager of Development Approvals, I would imagine, and I would take her view as being correct.

20 Can you tell me why, in the circumstances outlined in this paragraph, it's correct that the status of the listing is not considered to be seriously entertained, even though there was a proposed listing on foot?---You would probably have to ask the Manager of Approvals. She, and at the time I believe that was Margaret Smith, would have had a better understanding of that reasoning than I. She is a qualified  
25 planner, I am not.

As the Chief Executive Officer of the City at the time, you can't offer any insight into that?---It's the advice of the officer. I would have to question the specific advice of the officer in that respect and understand why it's not seriously  
30 entertained. I would have considered it's entertained. "Seriously" may have a planning matter - planning definition I'm unaware of. Generally speaking, "seriously entertained" is a way of describing matters that have been seriously entertained and are imminent to be implemented.

35 And this was not?---According to the officer. I rarely, if ever, would question Margaret Smith because I believe she was one of the best, most knowledgeable persons on these subjects in the State.

And it goes on to say:

40

*Therefore, the heritage related provisions of the policy are not relevant to the assessment and determination of the proposed sign.*

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

45

And you would agree with Ms Smith's assessment, given that you've described her or described yourself as rarely, if ever, questioning her?---I was very reliant on her

advice and again, without asking the question specifically, I would say the advice was well made.

5 Do you recall the variable sign going through Council, Mr Mileham?---I can't say I specifically recall it, no.

To be fair to you, Mr Mileham, I will bring up the document at 27.1597, TRIM 122.

10 COMMISSIONER: Thank you.

MS ELLSON: You see here Ordinary Council minutes, 14 March 2017?---Yes.

15 Madam Associate, 27.1599. Presiding, Lord Mayor, yourself here present as CEO?---Yes.

27.1602. There's declarations or disclosures in terms of members' interests?---Yes.

20 Of Lord Mayor in this proposed third party variable content wall sign, and yourself as CEO probation review?---Yes.

Madam Associate, if we move, please, to 27.1666, "Heritage impact statement, proposed digital sign, 379 Wellington Street, Akara Hotel", do you see that?---Yes.

25 27.1668, please, Madam Associate, "Compliance with the City of Perth's sign policy", do you see that?---Yes.

30 Skipping ahead, please, Madam Associate, to 27.1670. Clause 6.8, "Does not permit animated or variable signs on a Heritage Place in a Heritage Area"?---Mm hmm.

Skipping over to the page at 8.20, 1671. Do you see here clause 8.20:

35 *Details refusal of animated or variable content signage on a place on a Heritage List or in a Heritage Area. Qualified permission for places adjacent to Heritage Places or areas.*

Do you see that?---Yes

40 [12.30 pm]

45 So at this time the policy was very clear about variable content signs, is that right? What was the rationale behind that?---The rationale of prohibiting or the policy recommending refusal on heritage buildings, is that the question?

Yes?---To the best of my recollection it was the appropriateness of an animated or high tech sign on a heritage building, it may be difficult to reconcile the two. I'm

not sure what the "qualified permission for places adjacent to Heritage Places or areas" is, so there may be some narrative there about that.

5 It's correct to think that the City had moved to effectively restrict quite strictly the use of variable sign content on heritage buildings?---Mm hmm.

As well as heritage buildings, or specifically, as well as heritage buildings adjacent to Heritage Areas?---Yes, all buildings actually, to try to manage the emergent proliferation of animated signage.

10 In the interests of transparency, Mr Mileham, at 27.1604 there's a motion moved by Council. Do you see there, it's moved by Councillor McEvoy?---Mm hmm.

15 Seconded by Councillor Yong:

*The proposed sign does not comply with the signs.*

Over the page, 27.1605:

20 *Variable content signs only be considered for approval where they face or are in the public space.*

Et cetera?---Yes.

25 And the effect of the resolution is to refuse the placement of the variable sign on the Akara, is that right?---Yes.

Thank you. The Lord Mayor returned to the meeting at 6.12 pm after that was done?---Yes.

30 Looking at the Council papers, Mr Mileham, and thinking again about Ms Smith's remarks in her report, was there some disagreement or discussion between the Administration in itself, about heritage properties and signage at around March 2017?---I can't recall any specific discussions at that time.

35 Any differences of opinion which were prominent?---I can't recall. There may have been.

40 Madam Associate, that document can be taken down, thank you. Mr Mileham, did the Lord Mayor ever intervene in matters concerning the Administration and the Grand Central Hotel?---Define "intervene" please.

Think about what you think it means?---Okay. Did she communicate about the place with the officers?

45 Yes?---I believe she did.

When?---I can't recall exactly, whether - and certainly if there were verbal ones, I'm not aware of them.

5 With who?---I believe there's the record showing emails between two officers and the Lord Mayor, at least.

10 Did you consider it was appropriate for her to communicate with the officers about a property in which she had a financial interest?---I was not comfortable with that, no.

15 Did you do anything about it?---I can't recall exactly. The communications, I recall, included the CEO at the time. I may have discussed it with him. The CEO had a view - the former CEO had a view that communications between officers and Councillors was not prohibited, but obviously there needs to be a line drawn in some matters.

And this would be one of those matters?---I would suggest it would be best if they didn't communicate on that matter.

20 Why not?---An officer may construe communication in one way, in an inappropriate way. They may see that as a veiled instruction or otherwise - they may, I don't know.

25 It wouldn't be appropriate or it's not appropriate for the Lord Mayor to instruct an officer in relation to a matter in which they have a financial interest, is it?---It wouldn't be for anyone to instruct a member of my Administration, no.

30 What about making an enquiry, something seemingly so inoffensive, do you still feel not comfortable?---The issue I have with communication is its visibility, transparency and what's done with it. It's not so much the communication in itself but how you manage it.

That didn't quite answer my question?---Okay. Could you repeat the question?

35 Communication with an officer by a Lord Mayor about a matter in which they have a financial interest, would you be comfortable what that?---I would recommend against it.

40 Is that because - you tell me why?---There may be no intent but it would be you would, one would wish to be at arm's length from those, that sort of communication. That's why I set up a generic email address in the Planning Directorate.

45 We will get to that, Mr Mileham. Turning our minds back to the Lord Mayor and her property, contacting officers and asking them about the property in which she had a financial interest, raised a possible conflict of interest, didn't it?---As I've said, the perception of, potential perception of.

And that should be avoided?---It would be wise.

5 You've mentioned some emails, Mr Mileham. I will take you to some, the tail end of which begin on 27.0706. Do you see here an email from Ms Scaffidi to Mr Lee, subject, "Query", dated 12 January 2016?---Mm hmm.

:

10 *Hi Eugene, hope you are well and your 2016 has started well. It's been brought to my attention that you visited 379 Wellington Street today. Can I ask why and if the visit was instigated by yourselves? If so, why?*

15 Do you see that?---Yes.

Do you consider that to be appropriate for the Lord Mayor at this time, given her interest in 379 Wellington Street?---I don't think that's a wise email.

20 There's a signature from Mr Lee above the email, isn't it, 27.0706?---Yes.

COMMISSIONER: Mr Mileham, do you think it's unwise because it's inappropriate?---On the face of it, it's not inappropriate but it could give rise to an inappropriate action or outcome.

25 Thank you.

MS ELLSON: What would those outcomes be?---It would be speculation but as I say, on the face of it, it depends on how the officer receives it.

30 Let's have a look how Mr Lee received it. 27.0705, January 2016 at 4.20 pm, Mr Lee wrote:

35 *Hi Lord Mayor, it's been a busy start to the year and I trust you had a good break.*

Over the page, 27.0706, Mr Lee sets out a number of things concerning the activities of the City with respect to the Lord Mayor's property, do you see that?---Yes, I do.

40 Thinking about the two questions that the Lord Mayor asked, do you consider that Mr Lee made an effort to specifically answer the Lord Mayor's questions?---He trusts the information is of assistance, yes.

45 Do you consider that to be an inappropriate outcome?---It's not what I would call best practice. It's attempting to be helpful, apparently, but could give rise to a perception.

Of?---Perhaps too close a relationship between the officer and the Lord Mayor.

5 COMMISSIONER: That's the problem, isn't it? If you look at this response from Mr Lee, it might be a response to the Lord Mayor with some lack of clarity in Mr Lee's mind about in which capacity he's responding to the Lord Mayor, do you agree?---He should be clear whether it's a building owner or a member of the Council, and that's not clear.

10 Or the Lord Mayor indeed?---Yes.

Isn't that the problem with this sort of communication from the Lord Mayor?---Yes.

15 Thank you.

MS ELLSON: The City has in place procedures for dealing with the owners of buildings, doesn't it?---Mm hmm.

20 And Mr Lee wasn't following the procedures at this time?---No, that wouldn't be a prescribed procedure to communicate directly with the Lord Mayor as an officer, in that space.

25 Do you consider that that happened because the Lord Mayor raised her request with him directly?---That was the trigger, apparently.

The next email I would like you to look at, Mr Mileham, is at 27.0705. Do you see here, Mr Mileham, a further request from the Lord Mayor to Mr Lee, copying in yourself and Mr Stevenson and Gary Sugget, and Kay Collinson, do you see that?---Yes.

30 Are you aware that Kay Collinson worked for the owners of the Grand Central Hotel, is that right?---No, I'm not aware.

35 You don't know?---No, I don't.

So you don't know who that person is?---No, I don't.

40 And Gary Sugget, do you know who that person is?---No.

But the Lord Mayor has involved you in the conversation?---Mm hmm.

So you've become involved in her queries about her hotel?---Yes.

45 As has Mr Stevenson?---Yes.

:

5                   *Thanks, Eugene. There was already a cafe there in the beginning. If the CoP checks their records it was already there. Can you do that? Please update me. I don't believe a change of use is therefore warranted.*

Do you see there that the Lord Mayor is providing instruction to Mr Lee with respect to her property?---She's requesting an update, yes

10   [12.45 pm]

And she's doing that and including people that you don't know about?---That looks to be the case.

15   In doing so, she has also included the response by Mr Lee into the email?---Mm hmm.

So she may have disclosed confidential information, do you think?---I don't know whether it was confidential. She's given information to other people.

20

COMMISSIONER: If we just stay with this email for the moment though, Mr Mileham, you can see the last sentence which reads:

*I don't believe a change of use is therefore warranted.*

25

That's more than a request for an update, that's the giving of an opinion, isn't it?---That's correct.

30   And you can see that this email is signed by the Lord Mayor as the Lord Mayor, not as the property owner?---The owner.

That's right. That expression of opinion by her as the Lord Mayor, do you see there's a problem with that or not?---To a relatively junior officer, it's problematic.

35   Why?---The officer may take that to mean that he needs to find a certain outcome.

Thank you, Mr Mileham.

40   MS ELLSON: If I can return to page 27.0716. Working chronologically, the next email in time appears to be on 12 January 2016 at 5.12 pm where you write:

*Eugene, thanks and noted.*

45   Do you see that?---Mm hmm.

Were you going to help Mr Lee do anything that the Lord Mayor had asked him to do?---No.

Here you've acknowledged your presence, I suppose, in the process, is that right?---Yes.

5 Going back to 27.0705, the next email chronologically is at the top of the page. Mr Lee responds to the Lord Mayor, copies in Mr Stevenson, Mr Sugget, Ms Collinson and yourself?---Mm hmm.

:

10

*Hi Lord Mayor, I will discuss this further with Margaret Smith in Approvals, to confirm whether a change of use approval is required. Once I have more information, I will get back to you.*

15 Do you see that?---Yes.

Mr Lee is acting on instruction from the Lord Mayor by discussing the matter with Ms Smith, isn't he?---He's taking an action that's not the direction of his line manager.

20

And helping the Lord Mayor in her capacity as Lord Mayor if we think about the signatures on the emails and the questions that have been asked?---In his view, apparently.

25 He's addressed her as, "Hi Lord Mayor"?---Correct.

So it's logical that he's helping her in her capacity as Lord Mayor, isn't it?---That's what Eugene appears to have written.

30 You accept that's what he's doing?---I don't know whether it's help, but he's certainly writing do the Lord Mayor on a matter related to her building that she is part owner on.

35 In her capacity as Lord Mayor?---He's acknowledged that and she's acknowledged that.

The next email chronologically is 27.0715. The very bottom of the page, from Ms Scaffidi to yourself?---M'mm.

40 Copying in Mr Lee and Mr Stevenson?---Mm hmm.

No longer, or not referring to Mr Sugget or Ms Collinson, do you see that?---Mm hmm.

45 Over the page at 27.0716, Ms Scaffidi provides some information:

*Joe has a file when it was the Young Women's Club when Cooper &*

*Oxley, followed by a refurb was done by Windtide.*

Do you see that?---Yes.

5 :

*At the time the cafe opened into the grassed area that is now Taka Cafe. Was opened by Natrass.*

10 Do you see here Ms Scaffidi, in her capacity as Lord Mayor, is providing information to yourself relating to specifics of her ownership of her property?---Yes.

15 The next email, please, Madam Associate, 27.0715. Mr Lee has sent or forwarded the email to Ms Smith, do you see that?---Mm hmm.

So Mr Lee has taken the actions we were talking about to involve Ms Smith in the matter, isn't that right?---Mm hmm.

20 He hasn't done that, apparently with the involvement of his line manager?---No.

And he's brought to the attention of Ms Smith, yet another officer of the City, the questions or the information supplied by the Lord Mayor, that's right, isn't it?---It would appear to be.

25

That's not the usual process with respect to the way owners of properties are handled by the City of Perth, is it?---No.

30 Above that, Mr Mileham, there's yet another email from Ms Smith to the Lord Mayor, copying Mr Lee and yourself, do you see that?---Yes.

That's some days later, 19 January 2016 at 5.53 pm. Ms Smith provides some detailed information to Ms Scaffidi?---Mm hmm.

35 In her capacity as Lord Mayor?---Mm hmm.

And gives her details in relation to refurbishment works and the cafe, do you see that?---Mm hmm.

40 And she indicates to Ms Scaffidi that "various refurbishment and maintenance works to upgrade the facilities on the accommodation levels do not require Planning Approval", do you see that?---Yes.

So Ms Smith has become involved and provided advice, would you say?---Yes.

45

To Ms Scaffidi. Would a Building Permit application or a Planning Approval application trigger a Heritage Assessment if this property were being considered as

suitable for assessment?---Could you repeat the question?

5 Would a Building Permit application or a Planning Approval application, trigger a Heritage Assessment if this property were awaiting Heritage approval or Assessment?---Yes, it would have.

10 Is it correct to think that the refurbishment works that were being undertaken in January 2016 at the Akara Hotel did not require Planning Approval? Do you know anything about those?---No, not the best of my recollection.

15 Mr Mileham, I would like you now to consider a document at 27.0927. Before I ask you about the content of this document, Mr Mileham, I would like to ask you a question about the last email I took down. I apologise for doing this to you - if you could stop reading for a moment and just focus on what I'm asking you now. The last email we read, do you consider that it was the actions of the Lord Mayor which led to the advice being provided to her by Ms Smith on 19 January 2016?---Via the officer, m'mm.

20 M'mm isn't a word, is yes your answer?---Via the officer, Eugene Lee to Margaret Smith, that then triggered an advice directed to the Lord Mayor, it would appear.

And that was all set off by the Lord Mayor's question to Mr Lee?---It would appear so from the trail there.

25 27.0927 now. This is a letter from, it appears to be - do you need some time to read through that, Mr Mileham?---Mm hmm, please.

COMMISSIONER: I think that's only fair?---Okay.

30 MS ELLSON: Madam Associate, if you could turn the page to 27.0928?---Okay.

Mr Mileham, do you see that this is a letter from Mr Bennett of the City of Perth, to Central City Pty Ltd - if we go back to page 1?---Yes.

35 There's an indication in the letter, if you need to see the first page - Madam Associate, please bring up 27.0927.

COMMISSIONER: It's already up.

40 MS ELLSON: Thank you:

*The City is of the opinion that this building work set out above is not exempt from requiring a Building Permit as it is contrary to the Building Regulations.*

45 Do you see that?---Yes.

And that:

*An Occupancy Permit application is required to be lodged with the City for approval for the unauthorised works.*

5

Do you see that?---Sorry, where there's the "unauthorised works" comment?

It's over the page, I'm afraid. I'm sorry, Commissioner. 27.0928?---Yes.

10

The first sentence?---Mm hmm.

This appears to be contrary to the advice Ms Smith gave the Lord Mayor, doesn't it?---It appears to be.

15

In the middle of the page:

*This is likely to involve a fire engineering report that in turn may require additional building work to take place so as the fire engineer can be satisfied that all the appropriate performance requirements have been addressed in the correct format in accordance with the current Building Code.*

20

Do you see that?---Yes.

25

:

*The City requests a response to be provided within 14 business days."*

?---Mm hmm.

30

Mr Mileham, do you know what happened about that?---I can't recall even if that letter was sent. Barry Bennett has written it directly, apparently, to the owner.

35

Assume that it was, do you know what happened with respect to following this up?---No, I can't recall.

40

Can you think of a reason why the City might have accepted a Fire Safety Report in lieu of the permit application or the Building Permit?---Can I think of a reason, pardon?

45

Yes, why the City might have accepted a Fire Safety Report in lieu of a Building Permit and/or an Occupancy Permit application?---I can only speculate that that may have been the building surveyor or the manager on delegation and they were satisfied with the outcome.

[1.00 pm]

You don't know?---No.

Ms Ellson, let me know when it's a convenient time.

5

MS ELLSON: I am moving subjects, Commissioner.

COMMISSIONER: So now would be a convenient time to take the lunch adjournment?

10

MS ELLSON: Yes.

COMMISSIONER: Thank you. I will adjourn the proceeding until 2.15

15

**WITNESS WITHDREW**

**(Luncheon Adjournment)**

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HEARING RECOMMENCED AT 2.15 PM

**MR Martin Nicholas MILEHAM, recalled on former oath:**

5 COMMISSIONER: Yes, Ms Ellson.

MS ELLSON: Commissioner.

10 Mr Mileham, one question in relation to your contract that I would like to follow up with you is why you did not take up the \$15,500 non-mandatory superannuation offer?---I didn't require it.

15 That's all I have about that. Thinking about the letter that was on the screen before the break, Mr Mileham, and the request from the City for a Building Permit, is that something that would have triggered a Heritage Assessment?---Could you repeat, request from the City for a Building Permit?

A Building Permit was required for the work set out in the letter, do you remember that?---The letter that was shown before?

20 Yes?---Was it a Development Approval or a Building Permit, I can't recall.

It said, "Building work is not exempt from requiring a Building Permit"?---Okay.

25 Would an application for that have triggered a Heritage Assessment?---Usually any permit request triggers a checklist, yes.

30 Assuming that the Grand Central Hotel was on a list of properties awaiting Heritage Assessment, would such an application have triggered an assessment?---I would say it's likely.

35 Mr Mileham, I would like to ask you now about what happened at a Council meeting on 19 July 2016. Madam Associate, could you please bring up 27.0939. Do you see here, Mr Mileham, some Council minutes, confirmed for 19 July 2016?---Yes.

Madam Associate, if you could turn to page 27.0942. Here the list of people in attendance includes yourself, do you see that?---Yes.

40 Page 27.0945, do you see here item 251/16?---Yes.

"Results of further assessment to determine if identified properties are of cultural significance and worthy of built heritage conservation", do you see that?---Yes.

45 There's some history with respect to some buildings at the bottom of the page?---Yes.

Madam Associate, 27.0946. For the transcript, TRIM 17172.

COMMISSIONER: Thank you.

5 MS ELLSON: There's two properties listed there, one in Milligan Street, one in Hay Street, H and J?---Mm hmm.

:

10 *In relation to the subject properties Council resolved the following.*

And there's a resolution there with respect to three properties, H, I and J?---Mm hmm.

15 It says:

*Note that property I will be reported to Council as a separate future report.*

20 Assuming that that property is the Grand Central Hotel, can you tell me why it required a separate future report?---Not with the information in front of me, no.

Do you have any memory of dealing with the Grand Central Hotel on or around 19 July 2016?---I don't have a very detailed memory of the matter. I recall three  
25 properties went up anonymously at that time and they proceeded through a process.

And the process for the two properties, H and J, was different to property I, the Grand Central Hotel, wasn't it?---I think the recommendation here says  
30 "Kastellorizo whilst the place may be of cultural heritage it is not worthy of built conservation due to its low level." So obviously some were considered potential, some not, they were all different.

Thank you, Madam Associate, that can come down. I'm sorry, Madam Associate,  
35 if you could put up 27.0950 - I skipped ahead of myself slightly there. Here for the property in Milligan Street was a motion moved to:

40 *Propose to include the property on the City Heritage Register and to 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.*

And a note that:

45 *A report would be presented back to Council with the results of the consultation with the owners and occupiers.*

Do you see that?---Yes.

If you turn the page, please, Madam Associate, to 27.0951. Point 4:

5                    *Council determines that the Wiluna Flats or the Hay Street property does not meet the threshold for entry in the City Planning Scheme due to its low authenticity and integrity.*

?---Mm hmm.

10

Do you accept then that the Milligan Street property has advanced to the next stage of consideration but the Hay Street matter has been finalised and does not?---That's the recommendation.

15

That was the motion which appears to be carried?---Mm hmm.

So that's what's happened?---I would hope so.

20

It can be taken down now, please, Madam Associate. Mr Mileham, do you have a recollection of an agenda settlement meeting, and I know you attended many. The one I'm asking you about is a meeting on 17 August 2016?---I don't recall the exact date of the meeting of agenda settlement.

25

There was a report concerning the Grand Central Hotel to be potentially brought to a Planning Committee meeting on 23 August?---There may have been.

30

Do you have a recollection of, and this is on or before or around 17 August 2016, of asking officers to amend their report with respect to the Grand Central Hotel?---What, after the agenda settlement.

35

During the agenda settlement meeting?---I recall commenting on all the reports that were in the agenda settlement. I don't recall the detail of any of my comments but I commented on most reports. Some made it through, some didn't. That's the point of the agenda settlement, that the Directors and myself get an opportunity to see officer reports in conjunction with all the other Directors and see whether in fact they should progress to the next level.

40

Do you recall speaking to the then Acting Director of Economic Development and Activation about including a timeline about the decision-making for properties H and J, compared to property I, in an agenda settlement meeting or shortly before or afterwards, so on or about 17 July 2016?---No, I don't recall the detail of what I requested or what was spoken about for any item in front of agenda settlement that day. I recall discussions around heritage matters in several agenda settlement meetings but I couldn't specify whens and wheres.

45

Do you recall asking officers to withdraw the report for the Grand Central Hotel from the agenda for the meeting on 23 August 2016?---No, I don't recall asking to

withdraw. I do recall in agenda settlement meetings on occasions conferring with Manager, Governance to see whether it would be appropriate for the matters to go through. It was based on consensus.

5 So you have a memory now?---No, I said generally speaking, if a report was to go forward or there was consideration by, say, one of the Directors, that they felt they hadn't been adequately consulted, that then we would assess whether it should go to the next stage, as a general statement.

10 So you don't know whether or not you asked the officers to withdraw the report for the Grand Central Hotel on or about 17 August 2016?---I don't know. We would have discussed whether it was appropriate to go forward, I'm sure.

15 If you, as the Acting CEO at that time thought it wasn't, it wouldn't, would it?---Not necessarily.

Mr Mileham, if you thought that a report should not go to the Planning Committee, it wouldn't, would it, as the Acting CEO?---No, that's not correct. I didn't dictate what went through.

20 Mr Mileham, I'm going to show you an email, 27.0979, please, Madam Associate, 19688.

COMMISSIONER: Thank you.

25 MS ELLSON: See here an email from Ms Honmon to Ms Harris, copying in Ms McMullen and Ms Battista on 17 August 2016?---Mm hmm.

30 Will you accept that there was an agenda settlement meeting that day?---It would appear so.

And the report concerning what appears to be the attachments concerning the Grand Central Hotel, "The report was withdrawn from the round of committees"?---It would appear to have been.

35 And the report was returned to Ms Harris for further amendments, asking her to resubmit it when she's ready?---Yes.

40 And that there are notes from the agenda settlement meeting underneath?---Yes.

The first note is:

45 *CEO and Acting DEDA commented that a timeline to be included regarding the decision-making about properties H/J compared to property I.*

Do you see that?---Yes.

Reading that, do you accept that that occurred?---It would appear so.

:

5

*CEO asked for factual information to be included only.*

10 . " You asked for the term "particular rigour" to be changed and to "remove the commentary regarding the properties no longer being confidential", do you see that?---Yes.

Do you accept that you did that?---That's what Yvonne is saying and I'm assuming she's taken a correct record. I don't have any particular recollection.

15 In the absence of a recollection, will you accept what Ms Honmon has recorded here in her email?---Yes, I guess so. The second point, it would appear that I had some concerns about wording in one report.

20 Reading this, do you recall what they were?---It says "particular rigour" and I'm speculating, but I think it one of the properties may have been flagged as receiving different attention to others, and that was not appropriate.

And was that the Grand Central Hotel?---It may have been, it's likely.

25 What do you say it's likely?---It's clear that it was a matter of some concern to the officers. I think to put in on one building that you applied particular rigour and on another you didn't, that would be an inappropriate statement in a report, regardless of what building it's about. It could have been about Grand Central, I can't say it wasn't or it was

30

[2.30 pm]

The evidence you've just given there is based on an assumption?---Mm hmm.

35 For the term "particular rigour" to be applied only to property I?---"He asked for term 'particular rigour' to be changed, remove the commentary regarding the properties no longer being confidential." Again, I don't have a particular recollection of that, I'm afraid. However, I'm assuming that the matters were treated differently and therefore they should be the same in terms of the rigour  
40 which was applied to them.

The Grand Central Hotel was treated differently, wasn't it?---By whom?

45 To properties H and J?---By whom?

By the City?---All heritage properties are treated individually, or any property being considered for listing is treated on its merits.

If we look at the date, 17 August 2016 as the date of an agenda settlement meeting, can you tell me when the next Planning Committee meeting would be?---Agenda settlement - - -

5

Is that usually a week before?---Usually a week before the meeting, yes.

Mr Mileham, at an agenda settlement meeting on 17 August 2016, did you direct officers to withdraw the Grand Central Hotel from the agenda for the Planning Committee meeting scheduled for 23 August?---I don't recall specifically directing it be withdrawn. I recall discussion and this report indicates that amendments were required to the reports.

10

Do you recall having a discussion with Ms Battista about the withdrawal of the property in the agenda settlement meeting on 17 August 2016?---A discussion? Do I recall a discussion?

15

Yes?---In the agenda settlement?

Yes, with Ms Battista?---I don't recall a discussion in the meeting, no.

20

Do you recall Ms Battista trying to convince you to leave the item in the agenda?---Don't recall specifics of a discussion. I don't recall the discussion, one of many in an agenda settlement.

25

Do you recall in the context of Ms Battista inviting you to leave the item in the agenda, you saying the words, "Really", throwing your paperwork or pen or glasses down and exclaiming, "Why would you do this to me now"?---No, I don't recall saying that.

30

Ms Battista has provided evidence to the Inquiry that that's what you said and did, do you accept that?---No.

But you don't recall the discussion?---I don't accept it and "to me", what's "to me"?

35

But you don't recall a discussion?---It sounds a very unusual thing for me to say.

But you don't recall the discussion?---No, I don't recall the discussion.

COMMISSIONER: Would you like the document on the screen taken down?

40

MS ELLSON: Yes, please. Thank you, Commissioner.

Mr Mileham, did Ms Battista write to you on 29 August expressing her concerns about the Grand Central Hotel matter "possibly being afforded special attention"?---I don't recall whether they were the words. I do recall that I saw an email that had been sent to me that she had then provided to Deputy Lord Mayor Green and

45

Councillor Harley in that respect, when we later investigated a media leak."

5 Mr Mileham, I will ask you to be shown a document, 27.1812. Madam Associate, can you move the document down, please, to the forwarded message. Please move it further up, Madam Associate. Thank you. Do you see here, Mr Mileham, an email from Ms Battista to yourself dated Monday, 29 August 2016?---Mm hmm.

Ms Battista is attaching the officer's report for 379 Wellington Street?---Mm hmm.

10 Which includes amendments you requested at the agenda settlement meeting on 17 August 2016?---I see the email.

15 Does it help you to remember what's written there, the fact that you requested - does it help you to remember whether you requested amendments, by seeing this email?---Well, Yvonne has said so. I don't know that I would necessarily agree with everything in this email. I haven't seen it all.

20 I will ask you some questions in relation to the content on this page before I turn the page, Mr Mileham?---Mm hmm.

You see here Ms Battista refers to amendments, namely" and she uses a colon:

*1. A timeline to be included.*

25 Which we saw referenced in the previous email?---Mm hmm.

Secondly:

30 *Some factual information to be included only, including the removal of the term 'particular rigour'.*

Do you see that?---Yes.

35 We went through that in the previous email?---Yes.

Also there's an amendment here that Ms Battista indicates for the property I, the Grand Central Hotel "to continue to be referred to as such to remain confidential", do you see that?---Yes.

40 Did you request for the hotel to remain a confidential item?---I don't recall. It may have been appropriate, I don't know. The policy requires that we at that time receive owner responses. I'm not sure what the stage the report was at that point, I can't recall.

45 Tell me a little more about that policy, Mr Mileham?---Which part of it?

Does the item remain confidential until all owner responses have been

received?---I would need to refer to the policy, I haven't looked at it for some time.

Which policy are you referring to?---Our Heritage Listing processes.

5 Does it have a number?---I cannot recall. It's been one year since I even looked at anything relating to the City.

Can you tell me a little bit more detail about the title of the document?---Which document?

10

Heritage Listing process?---No, I don't recall.

15 So you can't direct me to the policy you're referring to?---I recall a report where we were compiling a process and I recall that we had an interim process where it says we would not accept third party public nominations, we wouldn't process them, et cetera. So I can recall discussions, I can't remember the actual outcome in the document.

20 Did it specifically deal with confidential items and Heritage Listings?---I can't recall.

Mr Mileham, there was no need by this stage for the Grand Central Hotel to remain a confidential item, was there?---I don't know.

25 Why don't you know?---Because I can't recall what stage of the process we were in. As we have seen the report, recommended one wasn't listed, one proceeded to list and then one in the middle, so three properties are each treated differently or at different stages of their process.

30 We will come back to that in a chronological way, Mr Mileham. Madam Associate, if you could turn the page, please, 27.1813:

35 *Please note that Governance have advised there is no need or precedent for the property to remain confidential. My view is that to do so would be to afford it special treatment and I therefore strongly advise against it.*

Do you see that?---Yes.

40 Did you accept Ms Battista's advice?---Pardon?

Did you accept her advice?---I can't recall. It's her opinion, whether it's correct or not is another matter.

45 :

*While I note that this property has political sensitivities given its*

5 *ownership and the media attention it has received, I am concerned that, as you will see from the table on pages 4-5, that there have been several attempts made by Administration to refer the report to Council for approval over a 17 month period. There has also been an independent assessment in July 2016 of the veracity of the officer's report and the recommendation and consensus with the officer's recommendation for the property be included in the City's Heritage Register.*

10 Do you recall that?---Do I recall the email or about - - -

Do you recall that there had been several attempts made by the Administration to refer the report to Council for approval over a 17 month period?---No, it had been on the radar since 1995, much longer than 17 months, probably about 23 years.

15 It was listed with 12 other properties for potential listing on 10 March 2015, the recommendation was made by the Planning Committee, do you recall that?---No, could you repeat the factual information, please?

20 The property was listed with 12 other properties for potential listing?---Right.

During a Planning Committee meeting on 10 March 2015?---Yes.

25 Would you accept that?---I can recall several properties were put up as potentials, many of them didn't make it through.

It's being dealt with as a group from March 2015, isn't it?---I beg your pardon?

30 It's being dealt with in a group of properties from March 2015?---What do you mean "it's been dealt with"?

The Grand Central Hotel?---I recall there was - in fact, I've seen some documents you provided me earlier that showed several properties as potential properties that could be listed.

35 Yes?---As I've said, probably three or four of them still are not on the list. Grand Central is.

40 It was, yes?---Grand Central is now listed. Some of the properties in that group were not.

We will get to that, Mr Mileham?---Mm hmm.

45 The statement Ms Battista makes here:

*There has also been an independent assessment in July 2016.*

Do you recall what that assessment was?---No.

Madam Associate, could you bring up, please, 27.0953. Do you see here a report from the firm named Griffiths Architects?---Mm hmm.

5

"Grand Central Coffee Palace, 379 Wellington Street, Perth heritage value for possible CPS 2 Heritage List"?---Mm hmm.

The date of this report is 31 July 2016?---Mm hmm.

10

It's directed to the Chief Executive Officer and you were the Acting Chief Executive Officer at the time?---July 16, yes.

31?---Yes, 31 July 16, yes.

15

Do you accept that is an independent assessment of the Grand Central Hotel?---I would hope so.

Do you accept that it is?---I would hope so.

20

Do you accept that it is?---I can't.

Why not?---I don't know.

25

Why not?---How would I know if it's independent?

Are Griffiths Architects employed by the City in any capacity at all?---Obviously it would appear they have been commissioned to do a report for the City, yes.

30

An independent report?---Well, its independence would be a subject for someone else to verify, not me.

You accept that this document is a report?---Yes.

35

On the suitability or otherwise of the Grand Central Hotel?---Yes.

For possible inclusion in a CPS Heritage List?---Yes.

40

And could be described as an independent assessment in July 2016?---You've described it as that, I don't know that I would be categorically sure of that.

Mr Mileham, can you read line 2?---Mm hmm. Line 2:

45

*The City seeks independent advice on whether or not the place has sufficient heritage value to meet the threshold.*

Yes

[2.45 pm]

5 Do you accept then that the provision of this document is the provision of the independent advice the City had sought?---We sought independent advice from this consultant.

10 And they have provided it?---They have purported it be independent. As I've said, I couldn't verify that.

Mr Mileham, this document says:

15 *The City seeks independent advice on whether or not the place has sufficient heritage value to meet threshold for entry into City Planning Scheme 2 Heritage List.*

Can you see any other reason why Griffiths Architects would be writing to you as Acting Chief Executive Officer?---And?

20 Unless they were providing you with the independent advice the City had sought?---With the benefit of hindsight I found what people propose they are doing and what they actually do have not always been aligned.

25 Mr Mileham, think about this question very carefully?---Mm hmm.

Is there any reason at all that you can think of - - -?---Okay.

30 - - - to say that the document you're looking at is not an independent assessment of the potential heritage value of the Grand Central Hotel?---Would you like me to speculate?

No?---So you want me to think?

35 And answer my question?---So to think why I would have that concern, that it may not be independent?

Mr Mileham?---Yes.

40 You are going around and round in circles and I am asking you very simple questions?---Let me then try to be as clear as I can.

Do you agree that this document in front of you is an independent report providing advice to the City - - -?---No.

45 - - - regarding the potential suitability of the Grand Central Hotel for inclusion in the CPS 2 register?---I agree it's a report, I cannot qualify its independence.

You would expect it to be, wouldn't you?---I would expect it to be, most definitely.

Thank you. Madam Associate, back to 27.1813:

5                    *Over 17 months the officer's recommendation has not changed and the continual referral back to Administration for additional work, most recently at agenda settlement on 17 August 2016, perpetuates the speculation that this property is being afforded special attention.*

10    Do you see that?---Mm hmm.

Do you accept the premise?---No.

15    What do you say had happened to the Grand Central Hotel's Heritage Assessment up to 29 August 2016?---What do I say happened to it?

What was happening with it?---It was being considered.

20    And it was being considered together with other properties, wasn't it?---We had 500 on the list, yes.

And that was reduced to a list of 12, which was reduced a list of three, H, I and J, the H, I and J I took you to earlier?---No doubt those other properties referred to you, some of them made it through in separate reports.

25    You didn't listen properly to my question, Mr Mileham?---Didn't I? Sorry, I apologise.

30    The property had been listed with 12 other properties in March 2015?---Mm hmm.

We have seen that, and I took you to some documents where the property required a further assessment, even though H and J were dealt with, and that was done in a meeting in April 2016?---M'mm.

35    So of the group of 12, property I, the Grand Central Hotel, remained, I suppose, free of its final assessment?---It wasn't complete.

40    That's right. That's all I'm asking you about, Mr Mileham?---Okay. Now I understand.

Do you consider that the length of time that the Grand Central Hotel spent in its process gave rise to speculation that the property was being afforded special attention?---It's not my perception, no.

45    Can you see why other people might think that?---Ms Battista's written it, that's the only one I've heard who's said that.

Can you see why Ms Battista might think that?---No.

Was the property being afforded special attention?---No.

5 Was the property being afforded special attention because the Lord Mayor had a financial interest in it?---No.

Was the property being afforded special attention because there was media attention on the property?---No.

10

Were further assessments requested for the property because the property was the subject of media articles?---No.

Ms Battista goes on in her email, Mr Mileham:

15

*I note your concerns over the timing of the most recent report coinciding with the CEO recruitment process.*

Do you see that?---Yes.

20

What were your concerns over the timing of the Grand Central Hotel report coinciding with the CEO recruitment process?---I can't recall the specifics but I also note that there were concerns about the agendas being pursued by officers. I think - I don't recall the specific - - -

25

COMMISSIONER: We are not on to the second sentence yet?---Okay.

Just deal with the question about the first one, please, Mr Mileham?---"I note your concerns over the timing of the most recent report coinciding with the CEO recruitment process." I can't recall those concerns.

30

MS ELLSON: You had some?---I think I had some concerns with the timing of the report.

35

In what sense?---I was intrigued by the focus on it and the absence of focus on other projects or other properties. It was intriguing.

So it was receiving special attention in terms of it having focus on it that other properties didn't?---I had a perception that there was a potential for certain officers to want that one to be listed above others, for reasons other than its heritage value, or an imperative of risk that it would be demolished or otherwise. That's my recollection.

40

Mr Mileham, going back to the question which was based on the sentence:

45

*I note your concerns over the timing of the most recent report coinciding with the CEO recruitment process.*

Tell me what your concerns were with respect to the CEO recruitment process and the report regarding the Grand Central Hotel?---I don't have a recollection of any concerns in respect to my recruitment.

5

Do you accept that you had some?---No.

Ms Battista goes on:

10

*I also note your concerns over the potential for certain agendas being pursued by an officer/s.*

15 What were your concerns, Mr Mileham?---I don't recall exactly. As I said, I had a general perception - I can't recall discussions, nor the discussion at the agenda settlement. I do recall though later, and during the process, having thoughts that it seemed this particular property was attracting attention from officers, and people outside the City, when other properties eminently more, I would have thought, eligible were being ignored.

20 And it was attracting that attention because it was partly owned by the Lord Mayor, wasn't it?---That's the possibility.

It's a probability? A shrug isn't recorded, Mr Mileham?---It's a possibility, one would imagine.

25

It's a probability. I'm not asking you to imagine. It's a probability that this property was receiving attention from officers and others external to the City, because it was partly owned by the Lord Mayor, isn't it?---It's a possibility, yes.

30 It's probable, in fact, it's likely. Why else would there be attention by so many people?---May be.

Ms Battista goes on to request your approval to submit the report to Governance, do you see that?---Yes.

35

Was the report submitted to Governance, do you know?---I don't recall.

The document can be taken down, please, Madam Associate.

40 MR YELDON: Before you do, I wonder if we could skip back a page so I could note the date of the email, please?

COMMISSIONER: What's the date, Ms Ellson?

45 MS ELLSON: 29 August 2016.

MR YELDON: I'm much obliged.

MS ELLSON: Mr Mileham, you yourself said when I was asking you about your concerns with respect to the Grand Central Hotel, that you were intrigued by the focus of some people - the focus on the property that other properties being considered didn't have. Why were you intrigued by the focus on the Grand Central Hotel?---Because it was clearly - well, my view was that certain properties would seem to attract attention of some officers and others didn't and I wanted to understand why they would have that view and why a staff member would be so keen to take a public nomination through to the CEO for one property, as had been done previously.

In 2014?---Mm hmm.

So that still resonated with you in 2018, did it?---It's intriguing.

It's not the reason that you were intrigued by the focus of this property, is it, Mr Mileham?---I said it's intriguing.

The fact that a public nomination had occurred with respect to this property in 2014 had no bearing on your concerns about this property in 2018, did it?---No bearing?

No bearing at all?---Of course it must have.

It didn't?---It must have.

Mr Mileham, why must a 2014 request for this property to be registered have any bearing on your concerns that the report coincided with the CEO recruitment process, or your concerns over the potential for certain agendas being pursued by officers, or your intrigue about the focus on the property?---As I've said, I don't recall the discussion so the CEO process, or officers' agendas from that email, I can't comment. You would have to probably ask Ms Battista what she heard, I don't recall.

So you don't know and you can't answer my question?---No, so what was the question? Could you please repeat it because it was quite long.

How do you say an application or an invitation by a member of the public in 2014 to list the Grand Central Hotel, had any bearing on your concerns over the timing of the most recent report in 2018, coinciding with the CEO recruitment process, or your concerns over the potential for certain agendas to be pursued?---In the terms of the agendas, I was cognisant of the fact that the building had been in view since 1995. The Heritage Assessment was it was below threshold, so it didn't make it on.

That was the State assessment process?---Yes, and it was a local matter. In my early days as Director of Planning, I had come across the building, as you've seen,

due to building inspectors having a look at it. It seemed it was a building that was a constant subject of people's interests when others weren't.

5 And it was a constant subject of people's interest because it was partly owned by the Lord Mayor, isn't that right?---Well, you'd have to ask those people that raised it.

10 I'm asking you?---I would have to assume that they had reasons that may have included that, but it would be an assumption. I was intrigued.

I may have misled you, Mr Mileham, when I spoke about the timeframe. I spoke about 2018 when I meant 2016?---In respect to?

15 [3.00 pm]

In respect of your view - you said your view or your knowledge of a private individual requesting the listing of the Grand Central Hotel must have had some bearing on your concerns in 20 - I said 18 but it's actually 16?---Thank you. That is a closer time.

20 But it didn't, did it?---Yes.

25 Mr Mileham, are you prepared to accept that the Grand Central Hotel was the subject of media attention with respect to its potential Heritage Listing?---Yes.

Are you prepared to accept that it received attention from City officers because it was partly owned by the Lord Mayor?---We have seen emails that showed that that was included in their communications.

30 So you accept that?---Well, the ownership was actually said as Joe Scaffidi. I think the staff had assumed that it was owned by Mr Scaffidi and therefore the Lord Mayor had some interest. I don't know that that's ever been fully defined in anything I've seen.

35 COMMISSIONER: But the question is, do you accept it? It's been asked twice now, you've twice given a non-answer to the question. Would you answer it, please? Ask it again, Ms Ellson?---Thank you.

40 MS ELLSON: Do you accept that the property received attention from City officers because it was partly owned by the Lord Mayor?---I had a perception of that, yes.

45 Do you accept that the property was afforded special attention because it was partly owned by the Lord Mayor?---No, not by me.

By others?---You would have to ask them.

COMMISSIONER: That's a fair response, Ms Ellson.

MS ELLSON: Madam Associate, if you could be ready to bring up another document. Mr Mileham, do you have a memory of a Planning Committee meeting  
5 which occurred on 13 September 2016?---No.

A meeting - Madam Associate, could you bring up, please, 27.1035. Do you see here some minutes approved for release by you for a Planning Committee meeting on 13 September 2016?---Yes.  
10

Madam Associate, if you could bring up 27.1038. Do you see here, Mr Mileham, "Officers in attendance", you're among them?---Yes.

Madam Associate, could you bring up, please, page 27.1040. Do you see here, Mr Mileham, an entry for the proposed entry of the Grand Central Hotel on the Planning Scheme, the CPS 2 Heritage List?---Yes.  
15

The reporting unit is Arts, Culture and Heritage, responsible to the Economic Development and Activation Directorate, isn't that right? Do you see that at the bottom?---Thank you. Yes.  
20

That's Ms Battista's - she was Acting Director of the Directorate at that time?---13 September 2016, yes, I think so.

For completeness, Mr Mileham, I'm going to ask you to read through the material on 27.1041:  
25

*At its meeting on 17 March 2015 Council considered a Planning Committee recommendation. The report proposed that the city investigate a number of places.*  
30

and there's a list A through to K?---M'mm.

With two Bs?---Mm hmm.  
35

12 properties:

*Further assessments were requested to progress the possible inclusion of the places.*  
40

?---Mm hmm.

:

*Council resolved to refer the matter back to the Planning Committee and the City engaged with affected landowners of the properties.*  
45

There was a Council meeting on 5 April 2016 where an amended version of a report was considered?---Mm hmm. Yes.

The places were grouped according to the action recommended?---Mm hmm.

5

27.1042, 1.3:

*Further assessment was required to determine if properties H, I and J -*

10 and you've accepted that I was the Grand Central Hotel?---Yes.

:

15 *Are of cultural heritage significance and worthy of built heritage conservation and officers were asked to undertake internal site inspections of the properties to determine their internal condition authenticity.*

Do you see that?---Yes.

20

The subject of this report is the Grand Central Hotel?---Yes.

27.1043. You see here this report - - -?---Sorry, do I need to read fully 42?

25 Do you need to go back?---It's still here, so if you wouldn't mind if I could just read it in full?

Yes?---Okay.

30 Madam Associate, 27.1043:

*The report provides a recommendation to Council regarding the inclusion of the Grand Central Hotel based upon the findings of three heritage assessments.*

35

Do you see that?---Yes.

State Heritage Office, a Perth City Heritage Assessment, and a complete Heritage Assessment undertaken by an independent heritage consultant, do you see that?---Yes.

40

Do you accept that's the Griffiths Architects' report?---I assume it would be.

:

45

*The independent heritage report referred to above was not undertaken for Motor House and Wiluna Flats.*

Do you see that?---Yes.

:

5

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

10

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

Can you tell me then, or can you expand upon why the City determined that because of media attention, the property would need an extra Heritage

15

Assessment?---I can speculate. I didn't write the report.

Mr Mileham, you're a Director of Planning, you have some experience in heritage matters?---At this time, yes.

20

You were Acting CEO?---Yes.

Why did this property need an extra Heritage Assessment because of media attention?---There's a couple of reasons potentially.

25

Not potentially?---Okay.

Why?---Well, if you list a building up for heritage, there's a negative and a positive. Some perceive it as a negative in that it would restrict development opportunities. However, listing also grants the owner the opportunity to claim grants from the City, match funding. So given - I'm assuming, and I don't have a great memory of that time being when it was, but assuming that the media was very negative towards the Scaffidis in general, it would seem that the City was damned if it didn't and damned if it did, if it gave a Heritage Listing or it didn't. If it didn't, it was because it was affecting the value and therefore was a favour; if it did, it was giving them an additional opportunity to gain money. So I'm assuming, and again I can't recall the detail, that we would need to be certain that we were unassailable in our decision to list it, or recommend listing; an abundance of caution perhaps.

30

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40

You're saying you're damned if you did list it because of the restrictions it would place on the owners?---A perception would be - a perception may be - - -

You didn't say perception, Mr Mileham?---Then let me clarify it. You've asked me the question, I'm clarifying.

45

Don't argue with me, Mr Mileham, answer my questions?---Okay. What was your question, would you repeat it, please?

You said you were damned if it did because it would restrict the owners' opportunities?---I thought I said there was a perception, but anyway. If any property is listed or proposed to be listed, there will be questions.

5

You answered my question specifically referring to "it" being the Grand Central Hotel. You said you, the City, were damned if it did go on the list and you said that that would restrict - possibly restrict the owners' money, or words to that effect?---The question was asked in the context of a media response, so I'm answering in the context of a media response, not an actuality.

10

So you agree that's what you said?---Pardon me?

You agree that you linked the owner's money with "damned if it did"?---To the media response, which seemed to take a negative view regardless of decisions.

15

So you held the property back from listing because of the possibility that there would be negative media attention?---Didn't told it back, no.

20

You did, didn't you, Mr Mileham?---No, I did not.

You did it at the agenda settlement meeting, didn't you?---I requested at agenda settlement meetings for a robust report, so I can't recall the discussion, as I've said, around that particular report.

25

I will just be clear, we are talking about the agenda settlement meeting on 17 August, aren't we?---I don't recall it in detail, there were many subjects at that meeting, I imagine.

30

You accept that you were damned if it wasn't listed because there was a potential for the owners to gain money?---As I've said, in the context of a media reaction to the decision, or should I say, recommendation to clarify. This was a recommendation.

35

So you held the matter back because you were afraid of what would be reported?---It wasn't held back, it was appropriately analysed in an abundance of caution.

40

You asked officers to hold it back on 17 August 2016 because the Lord Mayor didn't want it listed?---No.

Isn't that right?---No.

45

And you were damned if it did get listed because the Lord Mayor didn't want it done?---No.

That document can be taken down, please, Madam Associate. I note the time,

Commissioner. Do you propose to take an afternoon break?

COMMISSIONER: I do. Will 10 minutes be sufficient?

5 MS ELLSON: Yes, thank you.

COMMISSIONER: I will adjourn for 10 minutes.

**WITNESS WITHDREW**

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(Short adjournment)

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HEARING RECOMMENCED AT 3.28 PM.

**MR Martin Nicholas MILEHAM, recalled on former oath:**

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COMMISSIONER: Yes, Ms Ellson.

MS ELLSON: Commissioner.

10 If I could continue, please, Madam Associate, on 27.1047, still looking at minutes, 13 September 2016 for the Planning Committee. Do you see here, Mr Mileham:

15 *Council resolved to propose that the Grand Central Hotel be included on the Heritage List. Further consultation will be undertaken with each owner and occupier of the place. 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, and that the officers will report back to Council.*

20 Do you see that?---I'm sorry, where is that? I've not been able to pick that up.

Just above the heading, "Financial implications"?---Okay, thank you.

25 COMMISSIONER: Two-thirds of the way down the page, Mr Mileham?---Thank you. Okay.

30 MS ELLSON: Do you accept that that's the same process that property H was led through, the one that we looked at in the Council meeting on 19 July 2016?---I'm afraid I'm getting a little bit lost in the dates, but I'm assuming it was. I don't know.

We looked at the properties H and J and their progress to the next stage?---M'mm.

35 The Council meeting on 19 July 2016 and read through - - -?---Okay.

- - - what became a motion in those terms, do you accept that?---Okay, yes.

40 Does it appear then that if Council resolved to propose to include the property on the Register, the consultation with the owners would occur?---Yes.

Madam Associate, if we could turn the page, please. 27.1048, do you see that?---Mm hmm

45 [3.30 pm]

Paragraph 2:

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

5 Do you see that?---Yes.

So again we see that consultation will occur once Council's made its final decision on the proposed listing, do you see that?---Yes.

10 The officer recommended that the property be proposed to be listed on the Register and that the owner be given notice?---Mm hmm.

And have 21 days to make a submission?---Mm hmm.

15 And made a recommendation to instruct officers to report back to Council with the results of the consultation, do you see that?---Mm hmm.

Rather than do that, the Planning Committee agreed to defer the item in the following terms:

20

*That the item title, "Proposed entry of Grand Central Hotel, 379 Wellington Street, Perth, in the City Planning Scheme No 2 Heritage List be deferred for further investigations and discussions to be carried out between City of Perth officers and the property owner.*

25

Do you see that?---Yes.

Do you see here the reason for the committee deferring the matter was that:

30

*It was considered appropriate to defer the item and for the property owner to consider matters associated with the proportional registration of the building as outlined by the property owner's representative.*

Do you see that?---Yes.

35

Do you have a memory of what occurred at this meeting?---No.

40 If we could turn back to 27.1040, please. Mr Mileham, do you see here a deputation from Mr Simpson relating to an agenda item for Grand Central Hotel?---Mm hmm.

Mr Simpson outlined his client's objections to the officer's recommendation at 5.37 pm?---Mm hmm.

45 He appears to have spoken for two minutes?---Yes.

As the deputation concluded at 5.39 pm?---Mm hmm.

Do you have any recollection of what Mr Simpson said to the meeting?---No.

5 Do you agree that proportional registration was not something the City usually did for properties which were to be included in the CPS 2 Heritage Register?---I'm not even sure I know what proportional registration means.

10 It's possible that the owners were discussing whether or not to register the front or the facade of the building as opposed to the rear of the building, and that's what is meant, that's the possibility?---I guess that's possible, mm hmm.

Is that something the City usually did consider?---I wouldn't have thought so, no. I don't recall that being a normal approach.

15 In the context where we have seen further consultation would be undertaken if Council adopted the recommendation of the officers, does it make sense, Mr Mileham, for the committee to have deferred the matter back to the officers so they could carry out discussions with the property owner?---It may have made sense to the committee.

20 Does it make sense to you?---I can - for a non- - - -

Come on, Mr Mileham, tell me the truth?---I always tell you the truth.

25 As a Planning Director, an Acting CEO at the time, does it make sense that this Planning Committee would send a matter back to the officers for further consultation when further consultation was going to occur when Council adopted the recommendation?---I cannot speak for the committee members. If I were a committee member - - -

30 I'm asking you about what you thought?---What I thought? I don't recall the meeting.

35 What you think as the then Acting CEO and a former Director of Planning, about what happened at this meeting?---I don't recall the meeting and I don't recall the presentation.

40 Thinking about it now, it doesn't make sense, does it?---Well, the proportional registration is an odd one to me, so it's confusing, I think, to some extent. I've not seen a proportional representation that I - sorry, proportional listing that I can recall. If Mr Simpson proposed it, I'd imagine he knew what he was talking about. He's quite a well-known expert.

45 COMMISSIONER: I don't think we have an answer to your question yet though, do we, Ms Ellson?

MS ELLSON: No?---Okay. Could you please rephrase and I will try my best, or

ask me again.

5 Mr Mileham, as Acting CEO and a former Director of Planning at the City of Perth it doesn't make sense, does it, what the committee did, refer the matter back to the officers for the consultation when that consultation, or when consultation was going to occur once Council adopted the recommendation?---The opportunity in the consultation would be to consider all forms of registration, one would have thought, yes.

10 That's not my question, Mr Mileham?---It doesn't make sense, did you say?

What happened at the Planning Committee meeting doesn't make sense, does it?---I can't - I would have to venture an opinion.

15 That's what I'm asking you for, Mr Mileham. As the Acting CEO of the City of Perth?---Yes.

A former Director of Planning?---Yes.

20 Seeing this Planning Committee refer a matter back to the officers so further consultation could occur with the owner, against the advice of the officers - - -?---It's my - - -

25 - - - when consultation was going to occur anyway, it doesn't make sense, does it?---It's my recommendation, therefore they have gone against it and I wouldn't agree with it.

30 Thank you. Mr Mileham, I'm going to ask you some questions again about the email we saw earlier at 27.1813. Mr Mileham, do you recognise the tail end of an email here that we looked at earlier which was dated 29 August 2016 from Ms Battista to yourself?---Yes.

I would like to ask you again about the sentence:

35 *I note your concerns over the timing of the most recent report, coinciding with the CEO recruitment process.*

Do you see that?---Yes.

40 Ms Battista is noting your concerns?---Yes.

In an email to you?---Yes.

45 The concerns that she's reporting could only have come from you, couldn't they?---That's debatable.

Concerns about the CEO recruitment process coinciding with the most recent

report concerning the Grand Central Hotel could only have come from you, couldn't they?---Ms Battista's written it, I don't recall it.

5 The concerns could only have come from you because you were the only person involved with the CEO recruitment process directly, and the most recent report concerning the Grand Central Hotel, isn't that right?---No.

You had applied for the position, hadn't you?---Yes.

10 Do you remember when your second round interview was?---No.

Let's have a look. Do you accept that your second round interview was on 29 August 2016?---Sounds about right.

15 That was the same day Ms Battista wrote this email to you, Mr Mileham?---Mm hmm.

20 Doesn't it make sense then that you were raising concerns about the CEO recruitment process coinciding with the Grand Central report because you were involved in an interview process for the CEO position, and in a decision to defer the matter from an agenda settlement meeting?---No.

25 They can't be anyone else's concerns, can they, Mr Mileham?---Ms Battista's concerns, I don't recall voicing them.

"I note your concerns", she says?---That's what she's written, you would have to ask her where she got that from.

30 She's indicating to you in an email to you that those concerns came from you?---That's what she's indicating. I can't confirm or deny what was said in that meeting because as I said, I don't have a great recollection of it.

35 In which case, you would accept what Ms Battista has said?---No. I'd never accept what Ms Battista would say that I would say because only I would say it.

And you said those things to Ms Battista?---I don't recall. However, as I've said, just because she said it doesn't mean to say I said it.

40 But you don't recall?---Well, as I've said.

45 That document can be taken down, please, Madam Associate. Turning back to the Planning Committee meeting, I ask Madam Associate to turn up page 27.1035 again. The Planning Committee minutes again, Mr Mileham, 13 September 2016, you see those?---Yes.

27.1038, please, Madam Associate. Do you see here, "Observers: Councillor Harley"?---Yes.

Can you tell me why Councillor Harley attended this Planning Committee meeting?---No.

5 Thank you, Madam Associate. 27.1083, please, Madam Associate, TRIM 19689. Do you see here a message sent from an iPhone, 13 September 2016, in the middle of the page, 7.38 pm?---Yes.

It seems to be from Councillor Harley:

10

*Dear CEO, does our Planning Scheme allow part of a property to be on our Municipal Heritage Inventory or is the whole property on the lot on the inventory.*

15 Do you see that?---Yes.

:

20

*My understanding is that the whole property gets listed and then a survey takes place which determines significant fabric from less significant fabric, allowing development to take place.*

Do you see that?---Yes.

25 Is Mr Harley correct about that?--- I don't know.

Mr Harley had been on the Planning Committee in 2013 to 2015, hadn't he?---I don't recall, possibly, yes

30 [3.45 pm]

If he had, he would have some knowledge about Heritage Listings, you would think?---You would assume so.

35 He says:

*I don't understand why the owners of this property would seek a deferral on these grounds?*

40 Do you see that?---Yes.

Above that, Mr Mileham, on 13 September 2016 at 7.46 pm, do you see an email that you wrote in reply to Mr Harley?---Yes.

45 :

*Councillor, committee has asked us to ask that question, I would*

*suppose. I don't believe partial listing can easily be accommodated in the scheme. However, I will be keen to here the officers' views on that and await the review.*

5 Do you see that?---Mm hmm.

You were ambivalent about the deferral of the matter, is that right?---I was responding to the committee's instruction to us to investigate.

10 You were ambivalent about the deferral of the matter, is that right?---I was interested to hear what the result would be of the deferral. It was clearly unusual ground.

Mr Harley replied to you again. Madam Associate, 27.1082. Do you see here:

15

*I think the committee tonight has asked you to go away and have yet another conversation with the Scaffidis about the heritage value of their property which they contest.*

20 Do you see that?---Yes.

Is that true?---The resolution spelled out what we had to do.

25 Had the committee asked you to go away and have a conversation with the Scaffidis about the heritage value of their property?---Not specifically, it talked about the owners. He's referred to the Scaffidis, plural.

But the committee had asked you to discuss with the owners the heritage value of the property, he's not wrong about that?---Pardon me?

30

The committee had asked you to go away and talk with the owners about the heritage value of the property?---Have further discussions with the owners, yes.

He's not wrong about that?---No.

35

COMMISSIONER: Can I just be clear about that because you seem to be at cross-purposes. What counsel is putting to you is that the committee, that night, asked you to go away and have yet another conversation with the owners about the heritage value of that property. To the best of your recollection, is that what this committee asked you to do that night?---It would appear they asked us to do - have an additional discussion to the one offered.

40

I'm just concerned to be accurate on this because if you look at this paragraph here, Mr Mileham, you see it's expressed as the committee asking you. This is an email to you. Did the committee ask you to go away and have yet another conversation with the Scaffidis about the heritage value of their property, is that what happened?---They are not asking me, no, they are asking the Administration.

45

I see. So just on that, how did that request get passed on then?---Usually it would be a communication from the appropriate - - -

5 What I really want to know is how it happened on this night?---We conducted a further conversation.

So you remember this, do you?---No, I don't. I don't recall how the - - -

10 What I want to know is what you can remember?---I can't remember.

So can you remember, that night, being asked by the committee to go away and have another conversation with a Scaffidis about the Heritage Listing of this property?---No, I don't recall it. I've been shown the report and that's the - - -

15

That's helpful?---No. Thank you.

Ms Ellson, back to you.

20 MS ELLSON: Thank you.

Mr Mileham, did you hear Ms Battista speak at the committee meeting?---I don't recall the meeting.

25 The meeting on 13 September you don't recall?---Not the substantive points raised, no. I'm reliant on the evidence in front of me.

Mr Harley goes on in his email to say:

30

*Annaliese stated that the Administration's view would not change as there have been multiple reports about the heritage value of the property by different independent assessors.*

Do you see that?---Yes.

35

As at 13 September 2016, did you agree with Ms Battista's view that the Administration's view would not change?---That would be a fair assessment, yes.

Mr Harley goes on to say:

40

*The owner's representative conveniently made a statement contrary to the written submission from Mr Scaffidi which seems to have swayed the very impressionable committee members.*

45 Do you see that?---Yes.

He goes on further:

*What you saw tonight was three Councillors who are scared of retribution. Believe me, the Scaffidis are capable of it. I've been on the receiving end of their tactics many times.*

5

Do you see that?---Yes.

Did you share Mr Harley's view of what occurred at the meeting on 13 September 2016?---That there were three Councillors scared of retribution?

10

Yes?---No, I didn't share that view.

Can you tell me why not?---I couldn't conceive of what retribution might be. What's retribution? I don't know. Political or physical, I don't know.

15

Do you share, or did you in September 2016, share Mr Harley's view that the Scaffidis were capable of it?---Scaffidis, plural, capable of retribution? It depends what you mean. What's retribution? Political potentially, I suppose. I don't know. I don't know.

20

What makes you say potentially political retribution?---Retribution might be a strong term. There were politics played in Council so I'm assuming that Mr Harley is referring to political interactions he's had with the Lord Mayor but I don't know why he would include the spouse.

25

Mr Harley goes on to say:

*I was also disappointed by your silence on the item. I believe if this property was owned by a different owner you may have been more likely to say something tonight and would have pushed the committee to give proper consideration to the recommendation. You said literally nothing.*

30

Do you see that?---Yes.

35

Did you say nothing at the meeting, Mr Mileham?---I don't recall the meeting.

Do you accept what Mr Harley says about you saying nothing at the meeting?---I don't recall the meeting so I can't accept it.

40

Mr Harley goes on to say:

*You're the CEO, it's your recommendation and yet you didn't back it, speak to the item or defend your officers' work. I'm not sure why you held -*

45

Madam Associate, 27.1083:

- *your tongue but it does concern me.*

Do you see that?---Yes.

5

Did you speak to the matter, Mr Mileham?---As I said, I don't recall the meeting.

Mr Harley goes on to conclude:

10

*I expect this item to be back in front of Council as soon as possible. I'll be watching it closely.*

Do you see that?---Yes.

15

Why did Mr Harley say that, do you know?---No.

Is it the case, Mr Mileham, that you let this matter be deferred because that's what the Lord Mayor wanted?---No.

20

Is it the case, Mr Mileham, that you didn't speak at the meeting because you wanted the matter to go back to your officers?---I don't recall the meeting.

Madam Associate, back to page 27.1082. Mr Mileham, at the top of the page do you see a further email from Mr Harley to yourself the following day at 8.32 am?---Mm hmm.

25

:

30

*Okay, I would ask you also to consider whether the Nanjing trip issue is related to this item.*

Do you have any idea what Mr Harley's talking about there?---No, I don't.

:

35

*I believe it's very possible that the two are tied.*

Do you see that?---Yes.

40

:

*I very much hope not but again, I wouldn't be surprised."*

?---Mm hmm.

45

Mr Mileham, did you reply to Mr Harley's emails?---I think you've shown a piece, a reply in the package.

Did you reply any further?---I can't recall.

5 Did you seek advice about how you might reply to Mr Harley?---Again, I've seen in the papers an email where I spoke to Mr Ridgwell.

Why did you do that?---Don't recall.

10 Did you consider the matter to be a serious one?---You've shown, again in the pack, they were my words in an email, apparently.

Mr Mileham, I'm asking you to think about a point in time which is September 2016?---Mm hmm.

15 Based on what you've just read, in 2016, in September, did you consider what Mr Harley had said to you in those emails as a serious matter?---I can't recall my thoughts at the time.

20 You've said you raised it with Mr Ridgwell?---I've seen an email that you provided to me in the pack.

Putting the email to one side, do you remember raising the matter with Mr Ridgwell?---No, I don't.

25 Mr Ridgwell is the Manager of Governance, isn't he?---That's right.

Why would you raise the subject of Mr Harley's emails with the Manager of Governance?---To take governance advice.

30 About what?---I can't recall.

35 What about those emails that you've read, Mr Mileham, looking at them now gives rise to thoughts of governance issues?---To have a discussion around the merits of the email and the subjects raised, I imagine. I can't recall the discussions.

You have no recollection?---No, I don't.

40 For the sake of completeness, Madam Associate, if you could bring up 27.1081. You see an email at the bottom of the page from you to Mr Ridgwell, 14 September 8.40 am?---Yes.

:

45 *This is now a serious matter in my view and may require immediate and firm action on my part, so your swift advice will be appreciated.*

?---Yes.

Did you speak to the Lord Mayor about what Mr Harley had told you?---I certainly don't recall speaking to the Lord Mayor about this subject.

5 Could you have done that?---It's unlikely.

It's possible?---About the email?

Yes?---No, it's not possible.

10

Why not?---I wouldn't discuss an email of one Councillor with another Councillor.

Mr Harley's suggesting the possibility that the Scaffidis may have intervened, isn't he, in the form of exacting retribution on Council members who have voted in a particular way?---His words are his words, I can't add to them. He hasn't said vote, he's said retribution.

15

That concerned you so much you took it to Mr Ridgwell?---"The matter is serious", I haven't specified which part of it, so I'm assuming the whole matter.

20

Wouldn't you ask Ms Scaffidi about it?---No.

You did though, didn't you?---No, not that I don't recall, certainly, and I don't think I would have.

25

27.1095, please, Madam Associate. 19694. Mr Mileham, you replied to Councillor Harley by letter, didn't you?---Yes.

Is there some reason why you chose a letter rather than a reply email?---I can't recall the reason for using a letter.

30

It's a more formal form of communication, isn't it?---That's true.

You indicate here that - I will go back, actually. You're writing to Mr Harley in response to his email of 13 September 2016 relating to the deferral of the item in the Planning Committee, the deferral of the Grand Central Hotel matter, do you see that?---Sorry, could you repeat that?

35

[4.00 pm]

40

You're writing to Mr Harley in respect of his email to you on 13 September 2016, do you see that?---Yes.

You wanted to respond to Mr Harley's concerns?---Mm hmm.

45

As the Chief Executive Officer, you authorise every officer recommendation going to committee and Council?---Mm hmm.

And you say that:

5                    *The report before the committee had been prepared with considerable effort to ensure that the recommendation was factual, transparent and consistent in its approach to that of other applications.*

That was correct, wasn't it?---Yes.

10    The officers' report was those things?---Yes, I would hope so.

In this instance - you go on to say in regards to you or Mr Harley's observations of you not speaking, you say:

15                    *The Acting Director of Economic Development and Activation responded to all matters raised -*

and no questions were asked of you, do you see that?---"No questions were asked of the Chief Executive Officer", mm hmm.

20    Which was you?---Yes.

Mr Mileham, if you had concerns about what was happening to the Grand Central Hotel's listing at the Planning Committee meeting on 13 September 2016, you would have spoken up, wouldn't you?---Not necessarily.

Why not?---In the letter I've said that the Directors talk to their reports if need be.

30    Ultimately, they are your recommendations?---That's true.

And if you had a concern about committee's approach to one of your recommendations, you would speak up?---Only if the Director hadn't fully covered the points, in my view.

35    You don't remember the meeting?---No.

So you don't remember if she did?---I've written that she did.

40    :

*In this instance the Acting Director Economic Development and Activation responded professionally and factually to all matters raised.*

45    ?---M'mm.

So you considered at the time that she had, is that what you say?---It would appear

so and I have to say that some of the wording leads me to believe that Mark Ridgwell helped me with the drafting of the letter because some of the terminology is not quite mine.

5 Semantics aside, Mr Mileham, you go on to say that, "As the matter resulted in a deferral by the committee pending further information" you had no reason to intervene "if the committee wished to make a fully informed decision", do you see that?---Yes.

10 Could you have intervened if the matter was not progressing in the proper way?---I could have. How successful that intervention would be might be another discussion. The report itself is my recommendation and it should be self-contained. It should not need additional information.

15 Your intervention would not have been successful, would it, Mr Mileham, because the Lord Mayor did not want this property listed?---I don't know.

:

20 *With respect to your assertions that the Planning Committee members fear retribution by the property owner, I note that I have not witnessed or seen such actions or evidence that would indicate such.*

Do you see that?---Yes, second last paragraph, yes.

25

And you encouraged Mr Harley to report the matter to the relevant agencies?---M'mm.

Do you know if Mr Harley did that?---I'm not sure.

30

And you confirm that:

*The proposed Heritage Listing will be reconsidered by the Planning Committee at the earliest opportunity.*

35

Do you see that?---Yes.

Could you be sure about that?---Could I be sure about the Planning Committee - - -

40 Considering it at the earliest opportunity?---That would be my intention. I would do my best to ensure that it was done as soon as was feasible.

Thank you, Madam Associate, the document can be taken down, please. I am moving on to a different subject matter, Commissioner, and I note the time.

45

COMMISSIONER: How much longer do you think you will be with Mr Mileham? Give me your best estimate, please.

MS ELLSON: An hour to an hour and a half.

5 COMMISSIONER: And the next topic you intend to embark on, how long will that take?

MS ELLSON: That includes that, Commissioner. My estimate includes that topic. It's quite a short one - you mean the subject?

10 COMMISSIONER: Yes.

MS ELLSON: Sorry.

15 COMMISSIONER: That's all right. What I'm trying to decide - - -

MS ELLSON: Probably 15 minutes. Sorry, Commissioner, to interrupt you.

COMMISSIONER: That's all right. 15 minutes?

20 MS ELLSON: Yes.

COMMISSIONER: Mr Mileham, how are you bearing up? It's been a long day?---I'll admit I'm a little tired, Commissioner. However, I defer to your judgment on what's best.

25 We are not going to finish your evidence today, that is obvious. I would be quite content with adjourning at this point on the basis that we resume again tomorrow morning. Because you've indicated you're a little tired, I think it is only fair to take that into account. Would you have any difficulty with that, Ms Saraceni?

30 MS SARACENI: No, Commissioner.

COMMISSIONER: Very well. What I will do is I will adjourn shortly and we will resume at 10 am tomorrow morning. I will now adjourn.

35

**WITNESS WITHDREW**

**AT 4.06 PM THE MATTER WAS ADJOURNED  
UNTIL FRIDAY, 30 AUGUST 2019**

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