

# **EPIQ AUSTRALIA PTY LTD**

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**INQUIRY INTO THE CITY OF PERTH**

**PUBLIC HEARING - DAY 100**

**TUESDAY, 3 SEPTEMBER 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 MATTHEW HOWARD SC and MS PENELOPE FORD (DR Jemma GREEN)  
MR CHRISTOPHER HOOD (Mr Jim ADAMOS)  
MS ALENA ZORIC (Mr Gary STEVENSON)  
MR TOBIAS BARRIE (Ms Judith McEVOY)  
MR JOEL YELDON ( Ms Janet DAVIDSON)  
MR GREGORY McINTYRE (Mr Reece HARLEY)  
MR PETER van der ZANDEN (Ms Lisa-Michelle SCAFFIDI)  
MR PETER MARIOTTO and MR ALAN SKINNER (Mr Dimitrios LIMNIOS)**

.03/09/2019

HEARING COMMENCED AT 10.01 AM:

5 COMMISSIONER: I will begin with an Acknowledgment of Country. I will then have Dr Green return to the witness box and I will then take appearances and hear any applications.

10 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.

Ms Ellson, do you recall Dr Green?

15 MS ELLSON: I do, yes, Commissioner.

COMMISSIONER: Dr Green, please come forward and take a seat in the witness box to my left, thank you.

20 **Dr Jemma Marie GREEN, recalled on former oath:**

COMMISSIONER: You remain under your oath?---Yes.

25 I will take appearances and hear any applications. Mr Hood.

MR HOOD: Yes, Commissioner. You hopefully will have in front of you an application to appear, an application for Mr Adamos to be legally represented.

30 COMMISSIONER: I do.

MR HOOD: And the accompanying affidavit.

COMMISSIONER: I do. Is there any objection, Ms Ellson?

35 MS ELLSON: No, Commissioner.

COMMISSIONER: In that case, leave is granted.

40 MR HOOD: Thank you, Commissioner. Ms Saraceni?

MS SARACENI: Commissioner, I continue to seek leave to appear on behalf of Mr Mileham, given matters of interest to him in relation to this witness' evidence.

45 COMMISSIONER: Yes, of course.

MS SARACENI: Thank you.

COMMISSIONER: Mr Howard, you continue to appear for Dr Green?

MR HOWARD: May it please the Commission.

5 COMMISSIONER: Ms Zoric, you continue to appear for Mr Stevenson?

MS ZORIC: Yes, thank you, Commissioner.

10 COMMISSIONER: Mr Barrie, you appear today in place of Ms Tomasini for Councillor McEvoy?

MR BARRIE: Thank you.

15 COMMISSIONER: Thank you. Mr Yeldon, you appear today for Ms Davidson.

MR YELDON: Thank you, Commissioner.

COMMISSIONER: Mr McIntyre, you appear for Mr Harley?

20 MR McINTYRE: Yes, with Mr O'Meara.

COMMISSIONER: In lieu of Mr O'Meara, thank you. Mr van der Zanden, you continue to appear for Ms Scaffidi?

25 MR van der ZANDEN: May it please, you Commissioner.

COMMISSIONER: Mr Mariotto, I see that the other members of the rear Bar table have isolated you towards the left-hand side as I look at you.

30 MR MARIOTTO: Yes, I will slowly be out that door, I suspect.

COMMISSIONER: I hope you feel better today.

35 MR MARIOTTO: Thank you.

COMMISSIONER: Ms Ellson, are you ready to resume?

MS ELLSON: Yes, Commissioner.

40 COMMISSIONER: Thank you, please do.

45 MS ELLSON: Dr Green, before yesterday's adjournment I was asking you to recall whether or not you had a meeting with Mr Ridgwell and Mr Mileham on 5 December. You recollected a meeting on 4 December 2017 but I would like to ask you some more questions about 5 December 2017. Madam Associate, if you could please bring up 15.0869, TRIM 20422.

COMMISSIONER: Thank you.

MS ELLSON: Dr Green, could you read through the material on this page,  
please. Do you see this as a file note Mr Ridgwell made?---Yes, I do.

5

Mr Ridgwell's made this note on 5 December 2017 regarding a meeting he says  
occurred at 10 am, do you accept that?---Yes, I do.

Madam Associate, could you turn over the page, please, to 15.0870?---Yes.

10

Madam Associate, 15.0871?---Thank you.

Going back to 15.0870, please, Madam Associate. Dr Green, I would like to ask  
you about the comment that:

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*The CEO - Mr Mileham - advised that the level of aggression at the  
previous evening's Elected Member briefing - - -*

COMMISSIONER: Yes, Mr Howard?

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MR HOWARD: Commissioner, I'm happy to do this in the absence of the witness  
if it's easier.

COMMISSIONER: Yes, very well. Dr Green, I will ask you to be excused from  
the hearing room. Thank you.

25

#### **WITNESS WITHDREW**

COMMISSIONER: Yes, Mr Howard.

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MR HOWARD: Commissioner, we have no information as to the provenance of  
this document. We have no disclosure as to the circumstances in which it was  
created, whether some witness has given evidence confirming its contents, the  
circumstances in which it was made and whether there is any other relevant  
evidence about its creation or its contents. I'm not sure - it's obviously not this  
witness' document and I apprehend Counsel Assisting is going to ask her questions  
as though one should take it that this document is an accurate record of a meeting,  
but we have not seen anything behind that that might make good that assumption,  
if that is the assumption that Counsel Assisting is going to work from.

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COMMISSIONER: Thank you, Mr Howard. Ms Ellson, what do you say about  
that?

MS ELLSON: Yes, I see my learned friend's point, Commissioner. Perhaps I will  
ask a few more questions before I ask the witness to comment on its content.

45

COMMISSIONER: Yes, and to assist, it might also be helpful if you were to

explain something about the provenance of this document to the witness so that Mr Howard has the benefit of that information, mindful of course that this is an Inquiry.

5 MS ELLSON: Thank you, Commissioner.

COMMISSIONER: Thank you. Madam Associate, would you please bring Dr Green back into the hearing room. Dr Green, please come forward and resume your seat in the witness box, thank you.

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**DR Jemma Marie GREEN, recalled on former oath:**

COMMISSIONER: Dr Green, in your absence an objection was heard and it was dealt with, and your exclusion from the hearing room is no reflection on you whatsoever?---Thank you.

15

Ms Ellson.

MS ELLSON: Yes.

20

Madam Associate, 15.0869. You see here the recording officer, Mr Ridgwell, it's a record of personal contact dated 5 December 2017 at 10 am?---Yes.

Mr Ridgwell's the Manager of Governance, you recall that?---I do.

25

I would ask you to assume that Mr Ridgwell created this note on or about 5 December 2017 at 10 am with respect to the meeting and recorded notes with respect to the meeting. In light of Mr Ridgwell's position at the City, will you accept that Mr Ridgwell has made an accurate note?

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COMMISSIONER: Mr Howard, yes. You may have to deal with it in a slightly different way.

MR HOWARD: If my friend's struggling to understand what the proposition was I was putting before, I'm happy to do it again in the absence of the witness but I think you understand, Commissioner.

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COMMISSIONER: I do understand. May I suggest that you and she confer, now at the Bar table?

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MR HOWARD: I'm very happy to do so.

COMMISSIONER: Thank you very much, Mr Howard.

45 MS ELLSON: Commissioner.

COMMISSIONER: Thank you, Mr Howard.

MS ELLSON: Thank you, Commissioner, that was useful.

COMMISSIONER: I thought it might be, also time-saving.

5

MS ELLSON: Yes.

Dr Green, does reading this note now assist you to recall what occurred during the meeting or a meeting on 5 December 2017?---It does trigger my memory about this meeting.

10

It occurred?---It did occur.

And what happened?---Several things happened. I think that it was in this meeting that we also set up the follow-on meeting, for me to meet with the CEO and all of the Executive Leadership Group, and that's not documented here, but it is documented that Mr Mileham offered this as something that we could do and I took him up on his offer and we subsequently did have that meeting. I can't recall whether it was this same day or the following day.

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Madam Associate, the document can be taken down for now. Dr Green, were you using that to refresh your memory? I apologise. 15.0869?---Would you mind turning to the following page, please?

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[10.15 am]

15.0870?---With regard to the contracts of Ms Barrenger and Ms Battista, my recollection was not that he advised he was confirming the completion of their probation periods. My recollection was that he was in the process of reviewing them and making a determination on them. Would you mind turning back to the first page?

30

Madam Associate, 15.0869?---In terms of the papers that are referred to, I don't recall there being papers given to me in the meeting that I had with the CEO and the Manager of Governance and I'm not sure if those notes refer to papers that I was given in the meeting with those two individuals or the tea and coffee referred to in the prior paragraph.

35

Do you have a memory of attending a member briefing on 4 December 2017, just prior - I'm sorry, just prior to the Elected Members briefing on 4 December 2017, where Councillor Limnios had been agitated and agitating others?---I do recall that he was frustrated about the way that he was being dealt with and being treated and it was in relation to an issue he had, I think, for a stop sign on Lake Street and that he was trying to get a resolution on this, on behalf of a ratepayer. There was something that was, I think, unsafe on the road and his experience was that it was not being taken seriously or that the responses he was getting were not adequate, and he also cited frustrations with the CEO Inbox insofar as, the response times

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were very long and the responses were poor in quality, and that he felt that the Administration was creating processes to stop him being able to do his job effectively, and he was frustrated about that.

5 Madam Associate, if you could turn the page to 15.0870. Dr Green, do you have a memory of the CEO raising with you the level of aggression at the previous evening's Elected Member briefing in the context of the behaviours not creating a safe working environment?---I do remember him referring to concerns about the work environment not being safe and that he wanted to - me to meet with the  
10 Executive Leadership Group to hear their views on the matter as well.

As at 5 December 2017, did you share or did you have a view that the workplace was not a safe one?---I wouldn't say that I had that view at that time, no.

15 MS SARACENI: Commissioner, perhaps it would be, for clarity purposes to understand, when it's workplace, whose workplace; where the Elected Members were working, or the administrative staff?

20 COMMISSIONER: Yes, I think that's a fair point. Ms Ellson, can you deal with that?

MS ELLSON: Yes, I can.

25 Dr Green, did you have a view at 5 December 2017 that the workplace in which the Administration was working was not a safe one?---At that time, I did not have that view.

Why not?---I did subsequently form that view but not at that time. I later received information, towards the end of December, that had me form that view.

30 When did you form that view?---It was some time after 23 December.

Why did you form that view?---I received a copy of a letter from the Director of Economic Development detailing specific concerns and in addition to that, and  
35 perhaps prior to that, what had occurred in the - there was a meeting subsequent to this meeting with myself, the CEO and the Directors and I believe also the Manager of Governance was present, and in that meeting, matters were raised which resulted in me taking certain actions, and following up with the CEO subsequently on that. So if you would like, I can provide more details on that.

40 With respect to safety, Dr Green, what were your particular concerns?---I would characterise them in a few ways. One, that staff that were performing well but were not seen as being loyal to the leadership were ostracized.

45 Which leadership?---Both the CEO and the Lord Mayor.

Go on?---And that staff that were perhaps behaving in a way that was in

contravention to the policies at the City of Perth were not being appropriately dealt with and I believe that I gave evidence to that effect in the private hearing, and more broadly, there were - it came to my attention via conversations and written correspondence from the Director of Economic Development that there were areas  
5 where certain Elected Members were interfering in administrative processes as well, to attain personal gain or manage an outcome to their desired objective.

Would it be fair to say that you based your view then upon information in a letter by Ms Battista?---Yes, that's correct.  
10

Madam Associate, if you could please bring up 15.0481. Do you see here a letter purportedly to Martin, Mr Mileham, 23 December 2017, private and confidential?---Yes, I do.

15 And you see the date?---Yes.

Madam Associate, 15.0482.

COMMISSIONER: Have you had time to read that page, Dr Green, the previous page?---I have not the full page yet.  
20

MS ELLSON: I'm sorry?---That's okay.

COMMISSIONER: Just tell counsel when you've finished, please?---Sure.  
25

Thank you?---I've finished reading this page.

MS ELLSON: Madam Associate, 15.0482, please?---Yes, I've finished reading this.  
30

15.0483?---Thank you.

Dr Green, do you recognise this document as the letter you saw from Ms Battista to Mr Mileham?---I do.  
35

Madam Associate, if it could be taken down, please. Dr Green, in the middle of December, 11 December 2017, Mr Mileham circulated a memorandum with respect to the CEO Inbox and Communications Protocol, do you remember that?---I don't recall that correspondence on that particular day, but I accept that  
40 that occurred.

Madam Associate, 15.0371. Dr Green, do you see a memorandum to Elected Members from the Chief Executive Officer, 11 December 2017?---Yes.

45 The Chief Executive Officer then is Mr Mileham, isn't it?---Yes.

Just take a moment to read through that?---Yes.

Madam Associate, 15.0372?---Yes, thanks.

Madam Associate, 15.0373?---Yes.

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15.0374?---Yes

[10.30 am]

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15.0375?---Yes.

15.0376?---Yes.

15.0377?---Yes.

15

Dr Green, do you recognise this document as a memorandum sent to you as an Elected Member in December 2017?---I do.

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Do you consider the effect of the memorandum indicates that - I withdraw the question. Mr Mileham has given evidence in relation to the matter and has indicated that one of the new initiatives he was proposing at about this time was Elected Member forums. Do you recall participating in round table discussions?---I remember that we had a workshop with a third party consultant, is that what a forum is?

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15.0376, Madam Associate. Do you see a heading there, "6. Elected Member forums"?---I do.

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Does that help you to recall whether or not you participated in that type of matter?---I do know we had meetings with the CEO and Elected Members and we did have one that was facilitated by a consultant called Bartlett, but I can't recall whether that was called a forum or not, so I'm not entirely sure.

35

I asked you yesterday about the buddy program so I don't propose to repeat those questions?---On that, I just remembered the buddy program after reading this.

I see?---Yes.

40

What did you remember?---That it was for the Presiding Member of a committee and the Director responsible for that committee to meet in advance of the committee meetings in order to exchange information and make sure that each party was fully briefed in advance of the session.

45

Did you participate in any yourself?---No, as I was not the Presiding Member of any committees, with the exception latterly of the CEO Performance Review Committee, but this was only maybe a few weeks before Council was suspended.

Madam Associate, you can take the document down, please. Dr Green, with respect to the CEO Inbox, were you aware that there was a response time aimed for, completion within five working days?---I was.

5 What was your view about that?---I think for certain matters, it was okay but for many matters, it was insufficient and by contrast, I live in a different Council and I was able to call up with an issue and speak to someone and get information, whereas as an Elected Member in the City of Perth, we weren't able to provide that level of service to ratepayers if they had contacted us seeking information. So it  
10 was - I think it was an unworkable structure in the way that it was designed.

It wasn't designed for ratepayers though, was it?---No, but ostensibly what would happen would be that ratepayers would contact Elected Members with a query and the Elected Member would say, "I will look into it" and then they would have to  
15 contact the CEO Inbox and then they would have to wait five days for - up to five days for a response but typically five days is the status, and then if that query was not fully responded to, an Elected Member would have to reply back to the CEO Inbox and then wait a further, potentially another five days and if that wasn't adequate, then you would have to reply again and ask further questions. So quite a  
20 lot of time could transpire before a complete response would be attained and feedback could be given to ratepayers or stakeholders or residents that were not ratepayers.

In your view, Dr Green, how could that problem be ameliorated?---Well, I think that for things that were of a non-urgent nature or that a five day response was not a problem, then that Inbox was a good process for managing non-time sensitive queries but for things that would reasonably be expected to be responded to more promptly or necessitated a faster reply, then being able to call and speak with somebody within the Administration to garner information would be a more  
30 expeditious and workable approach.

Do you consider that Elected Members calling and speaking to somebody in the Administration amounts to interference in the administrative process?---I wouldn't say that asking for information from the Administration amounts to interference in  
35 the administrative process.

Why not?---Because of the Local Government Act provisions for Elected Members being able to request and receive any information from the Administration.

40 It doesn't specifically deal with that information being given to Elected Members directly from the administrative staff though, does it?---It doesn't, as far as I can recall, prescribe exactly the way it can or can't be done.

I will ask you another question about that in a moment, Dr Green. Madam Associate, if you could please bring up 5.92 of the Local Government Act, page 187 if that assists, Madam Associate. Dr Green, do you see the provision 5.92 on the screen?---Yes, I do.

Is that the provision you were referring to in your evidence just now?---It is.

5 Thank you, Madam Associate. Dr Green, at around the same time Mr Mileham sent the memorandum to Elected Members, the one I just showed you, did you exchange emails with him with respect to the workplace being unsafe?---I do recall that I did some correspondence in relation to that.

10 Madam Associate, if you could please bring up 15.0194, TRIM 15386.

COMMISSIONER: Thank you.

15 MS ELLSON: I will just ask you to read that, please, Dr Green?---Yes, I recall sending this email.

Just to be clear, 15.0193, at the very bottom of the page, indicates it's correspondence from you to Mr Mileham, 11 December 2017, 9.31 am. So you do recognise the content of the document as an email you sent to Mr Mileham on that date?---I do.

20 15.0193, please, Dr Green?---I haven't read this one yet. Just bear with me a second. Yes.

25 Dr Green, above that - sorry, before I move on, you recognise the material in the middle of the page as a response from Mr Mileham to yourself at 1.58 pm?---I do.

And above that, Dr Green, do you see there an email from yourself to Mr Mileham, copying in Mr Ridgwell?---I do.

30 Have you finished reading it, Dr Green?---I have.

Did Mr Mileham provide you with a summary, the summary that you requested with respect to what had been done about an assertion of lack of safe work environment?---I don't believe that I received that

35 [10.45 am]

40 Thank you, Madam Associate, that can be taken down. My apologies, Commissioner.

COMMISSIONER: That's all right. There's no need to apologise.

45 MS ELLSON: Dr Green, do you recall being sent a SMS message from Councillor Limnios on 21 May 2016?---Not off the top of my head, I'm sorry.

Madam Associate, if you could bring up, please, 14.1621. Do you see here a table

of SMS messages relating to Councillor Limnios' telephone from 21 May 2016?---Is there a particular line that you would like me to look at?

The heading?---Yes.

5

Did you communicate with Councillor Limnios on his private telephone?---Yes, I did.

14.1627. From time to time you received messages from Councillor Limnios on your telephone?---I did, yes.

10

I would like for you to look at a message time stamped 21 May 2016, 11.14 am, do you see that?---Sorry, I'm just trying to find the time.

15 It's the third message down?---Thank you. Yes, I recognise this message.

What is it that you recognise?---I previously gave evidence at the Inquiry in relation to this message, in the private hearing, and this is a message that Councillor Limnios sent to me which was part of a WhatsApp group that certain Elected Members were a part of plotting to exclude me.

20

What did you feel when you received this message, Dr Green?---I was upset and frustrated.

25 Did you do anything about it?---I did, yes.

What did you do?---I spoke to my family and I spoke to some of my friends and I did speak to a journalist about it as well and I arranged a meeting with the Lord Mayor and I confronted her about it as well, and she denied it and I may have sent her an email about it as well, but I can't recall exactly if I did that.

30

Can you tell me when you confronted the Lord Mayor about it?---I can't recall exactly but I believe it would have been some time in late 2016.

35 You said late 2016, why the gap?---I mean, in the last half, because this says that I received it in May of 2016 and some time after that - numerous things that I mentioned that I did over a period of time in relation to this.

Why was there a gap between you receiving the message in May and you confronting the Lord Mayor in late 2016?---I can't remember precisely how long it was but I don't know exactly, I think it took me quite a while to digest this and think about how I might respond.

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Madam Associate, the document can be taken down. Dr Green, do you recall saying, "No shit" and "Fuck yeah" to Mr Mileham in relation to him discussing with you allegations that an Independent Member of Audit and Risk was scared or frightened of the Lord Mayor?---No, I do not.

45

Is that conduct, conduct that you engage in?---I have no recollection of swearing in the presence of the CEO at any time.

5 Dr Green, did you call Mr Mileham, on 26 January 2016, after it had been reported that there had been two fatalities at the Sky show, and talk to him about the Council dinner?---I heard the evidence that Mr Mileham gave last week and my recollection of events is entirely different.

10 What do you recall?---I arrived at the train station on my way into town and someone on the platform said that there had been an announcement and there had been some incident at the Skyworks and the trains weren't running. So I called Mr Mileham to find out what had happened. Mr Mileham said to me that there had been a plane crash and two people had died and that as a result of this, he had  
15 made the call to cancel the Skyworks and the dinner as they were implementing an emergency response plan. I then asked Mr Mileham if there was anything Elected Members needed to do and he replied, "No" and I thought that I should get off the phone and let him get on with things and I said as much to him and finished the call. Some time after Australia Day, I was speaking with the Director of Economic  
20 Development and she expressed her frustrations to me, her frustrations with the CEO and the Lord Mayor as, after the plane crash, neither of them had any intention of cancelling the Skyworks and that in spite of that, she had made the call to cancel the event and had cancelled the event and she expressed further frustration to me because Mr Mileham was telling people that he had made the call  
25 to cancel the fireworks and she told me that she had spoken with him about this and expressed her frustration to him about the false account that he was giving around what occurred and she documented this in a file note which she later sent to me.

30 The fact is, Dr Green, irrespective of whose idea it was, it was a cancelled event, wasn't it?---Yes, and that was the appropriate course of action.

Dr Green, have you ever called or referred to Mr Mileham in writing as a snowflake?---I did recount something that happened where a ratepayer called  
35 Mr Mileham a snowflake. It was some time in 2016 during the City to Surf, I think it was and a ratepayer called me and said that she had just had an argument with the CEO on the telephone and she said that she had not received any correspondence from the City of Perth that there would be road closures and she was frustrated because her road was closed and she didn't know about it. I don't  
40 know exactly what was said on the call in relation to this but she said that she said that the CEO was really rude to her and then she called him a snowflake, and he said to her, "What did you call me, what did you call me" and got really angry with her. She called me to tell me about this and how appalled she was at how he had dealt with the situation. I didn't know what a snowflake was at that point but I did  
45 look it up and I can recall discussing it with an Elected Member. I can't recall whether it was Councillor Limnios or Councillor Harley, but I did think it was quite funny and I recall thinking that as well, and I can't remember whether I said

this to the Elected Member, that I thought it was a bit over the top because the ratepayer knew that the City to Surf had been going for 40 years and I think I referred to it - - -

5 Dr Green, I asked you about what you conveyed to Mr Mileham?---No, I don't believe I've ever discussed that with Mr Mileham at all.

COMMISSIONER: Have you ever referred to Mr Mileham as a snowflake?---Yes, in describing this event, I think I recounted that to the Elected  
10 Members, either Mr Limnios or Mr Harley, maybe both, I can't recall exactly, but I certainly discussed what had occurred in the conversation that he had had with the ratepayer, in the story that I just told.

15 Is that the full extent of it?---I think I did discuss it with a friend of mine and I referred to it as, "Snowflakegate".

Ms Ellson.

MS ELLSON: Dr Green, did you ever say to Mr Mileham words to the effect that  
20 Director Barrenger found her job cushy and would rather be a stay-at-home mum, directly?---I did say to the CEO that I had heard that the Director for Planning, Ms Barrenger, had said that to somebody else, and that had come to my attention, that she had said that. I did not at any time say that that was my view of her.

25 Did you say that you had heard about it in an email to Mr Mileham?---I don't recall that. Dr Green, yesterday I asked you some questions with respect to the Grand Central Hotel?---Yes.

30 And I was asking you about how you came to be concerned about the Grand Central Hotel process and it moving through the Heritage Listing process, do you recall that?---Yes, I do.

You gave evidence and said:

35 *Yes, thank you, was due to come before Council prior to the CEO's substantive appointment into the position and that during the Elected Member group acquittal process, for deciding what items would be put into the agenda, the CEO had said that he wanted to delay that until after his appointment to the role substantively.*

40

?---Yes.

45 An Elected Member group acquittal process, is that the same as an agenda settlement meeting?---Sorry, yes, I think I referred to it incorrectly. It's an Executive Leadership Group acquittal meeting. I think it's the same thing that you're referring to.

Is that a meeting which occurred in August 2016?---I don't know when those meetings occurred because Elected Members were not ever invited to them. It's just with the Director and the CEO where they would meet and decide what items would be on the agenda for the next meeting. So I'm not aware of the dates of when those meetings ever occurred.

You were also asked some questions about raising your concerns and speaking to other Elected Members and you said:

10 *I did speak with Ms Chen. I'm not sure if it was at the same time as this*  
-

And you've referred to a discussion with Councillor Harley above, in the transcript at page 51, 2 September, Commissioner:

15 *I'm not sure if it was at the same time as this, but around the time of the Heritage Listing. I can provide you more info if you'd like.*

I didn't ask you about that, can you tell me what you told or said to Ms Chen?---Am I able to read that bit of the transcript?

COMMISSIONER: Just read it back to Dr Green slowly, please.

MS ELLSON: You were taken to a message time stamped 11 September 2016 and asked whether it was Mr Harley's private telephone and the message, "Are you going to work on Lily regarding Lisa and Joe's heritage building? Yes."

30 *Does this help you to recall what other things or what you were doing about your concerns about the Grand Central Hotel moving through the Heritage Listing process in early September 2016?*

Was my question and you said:

35 *I can't recall exactly but I do remember discussing this with Councillor Harley and he may have said he intended to speak to Lily, or I may have suggested it, I can't recall specifically, but certainly it was an area of concern in terms of how the vote was going to go.*

You were asked to clarify who Lily was and you said, "Councillor Chen, Ms Chen", and then I asked Madam Associate to turn a page and you said:

45 *I just remembered that I did speak with Ms Chen. I'm not sure if it was at the same time as this but around the time of the Heritage Listing. I can provide you more info if you'd like.*

?---I'm sorry, I can't remember exactly what it was that I recalled at that time.

You were asked some questions about a message which read:

*Lisa is trying to give Lily Nanjing trip and by-pass Limnios to win her favors to knock down the hotel.*

5

I asked you some questions about that?---Yes.

And you said:

10

*Actually, I just remembered something on that question - - -*

Being:

15

*You mentioned that Ms Scaffidi was trying to give Ms Chen a Nanjing trip to win her favors to knock down the hotel, what did you see or hear which led you to believe that by 12 September 2016 the Lord Mayor wanted to knock down the hotel?*

In answer to that question you said:

20

*Again, I can't recall how I came to know that. It may have been from the pack, the Council meeting pack but I may have heard that from other places, I can't recall.*

25 I asked the associate to remove the document and you said:

*Actually, I just remembered something on that question.*

And I asked you, "Yes", and you said:

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*I actually believe that Councillor Limnios told me that.*

?---Yes.

35

Can you provide me some further details about when Councillor Limnios told you that?---I think it was on a telephone call but I can't say precisely. I think it was a telephone call that I had with him and that he said to me that, "There's a Nanjing trip coming up" and that, "It's been offered to Lily." I think I might remember more now. Maybe it relates to the other question, the earlier question, but the thing that I do remember from yesterday that I wanted to say was that there was another trip that was upcoming and both Ms Chen and Mr Yong both wanted to go on that and Lily said to me that she was no longer on the inner circle with the Lord Mayor and her team and that she felt that she was on the outside and that subsequent to the Grand Central Hotel coming to Council, there was another trip, I think it might have been awarded through the US Government for training for Elected Members and it was instead recommended for Mr Yong to go, or it might have been another trip. There was some particular event and it was given to

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Mr Yong and it occurred to me at the time at least that it was because Lily had not voted in favour of the Heritage Listing of the Grand Central Hotel. Lily challenged me on the notion that she was on the inside of the team. She said that she was no longer on the inside of the team.

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When you say, "Lily didn't vote in favour of the Grand Central Hotel", do you mean that she didn't vote in favour of the motion to propose to list the hotel?---I think in the end she did vote in favour to list the hotel on the Heritage Register.

10 So a trip would have nothing to do with her vote?---No. What I observed happened was that she was given a gift at an event that happened prior to the vote and as an outside observer, it look to me like that was an attempt to mean that - she had a conflict of interest and she would not be able to vote but I think that the value of the gift was such that it didn't conflict her out of voting and she was  
15 essentially forced to vote and - - -

COMMISSIONER: Ms Ellson, this kind of evidence has a limited value.

MS ELLSON: Yes, Commissioner.

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You said, "I observed Ms Chen being given a gift at an event", can you tell me when the event was?---I didn't see the gifting physically speaking but I became aware of it because Councillor Chen was asking for advice on completing paperwork to disclose the gift.

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And did you hear her ask for that advice?---She may have asked for information on more than one occasion but I do recall on the night of the Council meeting, a discussion about it, between her and - - -

30 COMMISSIONER: Just come back to the question?---I'm sorry.

Ask the question again, please, Ms Ellson.

35 MS ELLSON: Did you hear Ms Chen ask for advice?---No, I think I heard someone in the Administration talking about it, not her.

COMMISSIONER: As I said, Ms Ellson, I think there's a limited value in this kind of evidence.

40 MS ELLSON: Yes, I will move on, Commissioner.

I asked you some questions, Dr Green, about a Planning Committee meeting that you attended on 13 September 2016 and I asked you what difference did you think your mere presence would make and then my next question was:

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*Did you expect your presence would make a difference at a Planning Committee meeting?---Probably not but potentially. I placed that a*

*low probability of change but that it would increase the likelihood of Elected Members doing their job properly and providing reasonable rationale for any decision that they might make.*

5 Which Elected Members were you referring to then?---I believe in attendance at that committee meeting were - was a Mr Yong, Ms McEvoy and Mr Adamos and it was really in reference to all of the Elected Members that were members of that committee.

10 Dr Green, I asked you to be shown a message at 27.3479. Madam Associate, would you bring that document up, please.

ASSOCIATE: Could you please repeat it?

15 MS ELLSON: The message, I'm sorry, is at 27.3480, TRIM 23381.

COMMISSIONER: Thank you.

20 MS ELLSON: The large message in text at the bottom of the page, Dr Green, is where I took you and I asked you to read that to yourself. Could you do that again, please?---Certainly. Yes, I've finished reading it.

The message can be taken down, Madam Associate. I asked you, Dr Green:

25 *The message, Councillor Limnios referred to the matter being closely scrutinised; do you agree with that assessment as at the time the message was sent?---Yes. My understanding was that members of the Administration were becoming concerned with the process that had occurred to date and that it shouldn't take that long to get a decision to*  
30 *Council.*

35 And you went on. I would like to know what you saw and heard from any particular members of the Administration about concerns with the process?---It was - I read - I saw in the papers that they were describing what was occurring as abnormal and - - -

40 I'm asking you about direct contact with members of the Administration?---Okay. So when you say "saw", you mean that I witnessed conversations or not saw in a paper?

Yes?---I wasn't privy to any - like, listening to other people's conversations but I did have a conversation with, or maybe more than one conversation with the Director of Economic Development in relation to this matter.

45 That completes my questions for this witness, Commissioner.

COMMISSIONER: Thank you. Mr Mariotto, do you have an application to

make?

MR MARIOTTO: No, Commissioner, no application.

5 COMMISSIONER: Mr van der Zanden, do you have an application to make?

MR van der ZANDEN: No, thank you, Commissioner.

COMMISSIONER: Mr McIntyre?

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MR McINTYRE: No, Commissioner.

COMMISSIONER: Mr Yeldon?

15 MR YELDON: On this occasion, yes

[11.15 am]

20 COMMISSIONER: In that case, I'm sorry, Dr Green but I'm going to have to ask you to leave the hearing room again while I hear this application, and any others.

**WITNESS WITHDREW.**

25 MR YELDON: Thank you, Commissioner. The witness was shown by Counsel Assisting a document at 27.0946 and it is to do with the Grand Central Hotel which, the Commissioner will note is referred to in these papers as - when heritage is being discussed in 2016 as property I.

COMMISSIONER: Yes.

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35 MR YELDON: You will note that Counsel Assisting was asking the witness as to a reason why I may have been treated differently to H and J. One particular line in the document I've referred to says something along the lines of, "Property I will be reported to Council in a future report", do you recall that? Counsel Assisting asked the witness for any insight as to why that was the case and the witness could not give any insight.

COMMISSIONER: Perhaps not surprising.

40 MR YELDON: Yes, but the chronology that was being put to the witness was not complete and I propose to put a document before the witness which will assist the witness and perhaps will refresh her memory. She was not given that opportunity by Counsel Assisting.

45 COMMISSIONER: In what respect was the chronology incomplete, first of all?

MR YELDON: There was no reference to Council's decision to obtain an

independent expert report on the Heritage Assessment and the commissioning of that report occurred on 1 July 2016. That's very close indeed to the Planning Committee meetings that occurred later in September.

5 COMMISSIONER: Is that the document you want to put to the witness?

MR YELDON: I want to put a document to the witness at 27.1206 which is the subsequent Council meeting, which proves on the Council's own documents, that the independent expert report was commissioned on 1 July and the document itself  
10 is dated 31 July. Counsel Assisting did not take the witness to this evidence and the chronology she was presented with is incomplete, in my submission. So I want to ask the witness by reference to the document, whether that refreshes her memory. The Commission will also see the extract in the document that I'm referring to is in this evidence I propose to obtain.

15 Later on in the witness' evidence, the witness referred to, and I have it in - referred to her concerns about the Grand Central Hotel and Counsel Assisting took the witness to a SMS message dated 18 September 2016, a communication in fact with Councillor Limnios, and in an answer the witness gave with respect to that  
20 communication, she remembered to "that many external reports" had been obtained with respect to the Grand Central Hotel and that was never explored by Counsel Assisting with the witness and I think the Commission will benefit from knowing what the witness did think in terms of how many numbers of external reports there were.

25 My questions along those two topics, in my submission, will benefit the Inquiry in that the chronology with respect to the Grand Central Hotel will be complete, or more complete than it was presented to the witness, and the Commission will have clarity as to what the witness is saying with respect to her understanding of the  
30 number of external reports that had been obtained.

COMMISSIONER: Thank you, Mr Yeldon. Ms Ellson, what do you say about that?

35 MS ELLSON: I understand my friend's point with respect to the first question. I'm concerned that the question be limited to asking the witness to acknowledge the chronology.

40 COMMISSIONER: Sorry, what does that mean "acknowledge the chronology"?

MS ELLSON: Acknowledging the entry at 27.1206. It doesn't indicate what my friend says it indicates in terms of a date upon which an internal report was commissioned.

45 COMMISSIONER: Yes.

MS ELLSON: I have no difficulty with a question pertaining to whether or not

the witness can say what number of external reports she recalls the Grand Central Hotel having.

5 COMMISSIONER: Thank you. Is that all you wish to say, Ms Ellson?

MS ELLSON: Yes, Commissioner.

COMMISSIONER: Mr Yeldon, I'm going to give you leave to deal tightly - I'm sorry, there's a lot of rustling going on - with that first point that you raise.

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MR YELDON: Thank you.

COMMISSIONER: Because it may or may not have a bearing on the work of the Inquiry. I'm not going to give you leave to deal with the second point. I do not think that the witness' opinion on that is going to assist the Inquiry at all.

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MR YELDON: Thank you.

COMMISSIONER: Mr Barrie, do you have an application?

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MR BARRIE: No, commissioner.

COMMISSIONER: Ms Zoric?

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MS ZORIC: No, thank you, Commissioner.

COMMISSIONER: Mr Hood?

MR HOOD: No, Commissioner.

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COMMISSIONER: Ms Saraceni?

MS SARACENI: Yes, sir, I have quite a few.

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COMMISSIONER: I see.

MS SARACENI: I'm conscious of the time in relation to morning break, would you like me to proceed now?

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COMMISSIONER: Yes, please.

MS SARACENI: If I start, sir, in giving evidence this witness has spoken about discussions with a journalist, even only just this morning and in the table that was in a document shown to the witness yesterday and today, which I had not seen before, in the quick read of the document, there were emails or SMSes between her and Councillors Limnios and/or Harley in relation to - these are my words, not what was in there because it flashed by very quickly - in relation to putting things

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out into the media and getting the media to take up the story.

5 There was another reference in relation to Ms Green when she actually mentioned one of the community newspapers, The Voice, would put out a story. To the extent that the Terms of Reference of this Inquiry talk about good government, and particularly at paragraph 3, including, amongst other things "whether any member has engaged in improper or unlawful conduct", it is my submission that I should be able to re-examine Ms Green in relation to whether involving journalists and newspapers in Council business is appropriate behaviour for an Elected Member.  
10 That's one. I don't know whether you would like me to go through all of them, sir, or you decide one at a time.

15 COMMISSIONER: No, I would like you to go through all of them, please, because then I can get a picture of everything at the one time.

MS SARACENI: Another series of questions that I submit are relevant is in relation to Councillor Green's discussions, correspondence with one of the Administration staff who was not the CEO, particularly Ms Battista, and Ms Battista feeding her private and confidential emails that she has sent to  
20 Mr Mileham and to others. Again, it's my submission that fits within the same provision of the Terms of Reference here in relation to communications of Elected Members becoming involved in Administration staff matters and also potentially directing staff to do things for ends that, if I could say, support the political agenda of some of the Elected Members.

25 COMMISSIONER: Yes.

MS SARACENI: There were some specific examples: one, the self-serving letter of 23 August that Battista wrote whilst Mr Mileham was sitting in his second  
30 performance interview.

COMMISSIONER: Why do you say it's self-serving?

35 MS SARACENI: I've only read it very briefly on the screen, sir, because from my reading of it, it was a private and confidential document to Mr Mileham whilst he was sitting in his second performance - sorry, when he was sitting in his second interview for the substantive position of CEO and she is referring to conversations allegedly had between her and him. It's a matter that I will obviously be putting to Ms Battista but how then did that private and confidential email be sent by her,  
40 from her private email address to Councillor Green's private email address and for what purpose? What was behind this sort of behaviour?

COMMISSIONER: So you've answered my question with a whole lot of questions. Why do you say it's self-serving?

45 MS SARACENI: Sir, given that we haven't had the opportunity of looking at the documents in detail, only fleetingly when it's up on the screen, that was my firm

view at the time I quickly read it. Without seeing it, I can't unfortunately add further.

5 Then also the private and confidential letter that Battista wrote to Mr Mileham on 23 December 2017, that this witness only this morning said she got. What is Ms Battista doing sending private and confidential emails about admin matters to Councillor Green?

10 The next matter that I would wish to ask Councillor Green, she was asked a series of questions in relation to the CEO Inbox and the time taken to respond. Again, from my brief reading of the document when it was put on the screen, there was actually a five day timeframe for non-urgent matters but a timeframe of two days for urgent matters. That was never put to the witness and I believe it's important, despite the fact that there was commentary from her in relation to the lack of  
15 timeliness of responding to those matters was one of the issues she saw in relation to the CEO Inbox.

COMMISSIONER: The witness' perception of how the CEO Inbox worked and what the memorandum to which you refer actually says about how the CEO Inbox  
20 worked or should work are all matters that can be considered adequately by this Inquiry. So I don't know how examining the witness on that topic is going to assist the Inquiry any further.

MS SARACENI: She showed no knowledge of the fact that there was a two day  
25 timeframe for urgent matters. She gave an example about her own shire, which is outside of the City.

COMMISSIONER: Yes.

30 MS SARACENI: And her comments need, in my submission, to be tested based on what was in writing, not just her impression of it.

COMMISSIONER: I'm not sure I agree with that one, Ms Saraceni. I can read  
35 the memo and I can draw my own conclusions. What's your next point?

MS SARACENI: Yesterday the witness was asked a series of questions in  
40 relation to Mr Mileham's application for the substantive position of CEO, particularly in relation to reference checks and whether the absence of reference checks, and I think one of them was mentioned in relation to the United Arab Emirates and qualifications, whether that was appropriate, professional, et cetera, et cetera. In my submission, sir, there are some questions to be asked there and on my instructions, the Inquiry has documents which ought to show that the Council, through Manager Howells, the HR Manager, did in fact engage a consultancy firm to undertake reference checks and degree qualifications and they should have the  
45 invoices in relation to the costs of that.

So the concern I have, sir, again is I haven't seen these documents. I understand

they exist and they are with the Inquiry and perhaps it should be put to this witness to see if she recalls whether that in fact did occur.

COMMISSIONER: Put to Dr Green?

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MS SARACENI: Yes, because she was asked the questions in relation to - - -

COMMISSIONER: How is she going to know?

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MS SARACENI: How did she know that it wasn't done, sir? It was never put to her - - -

COMMISSIONER: You have a habit of answering my questions with questions, Ms Saraceni. How would she know?

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[11.30 am]

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MS SARACENI: As I recall, it was never put to her, how she knew that it wasn't done. She was asked a whole series of questions, even if they were in the hypothetical, the reality is they were done and it leaves a very difficult and unclear feeling as to whether there was some impropriety or lack of candidness in  
5 Mr Mileham and his setting out his qualifications and work experience, et cetera. It's to paint the whole picture, not just part of the picture as Counsel Assisting has chosen to do.

COMMISSIONER: I don't know that's a fair criticism because, Ms Saraceni, you  
10 have not seen all of what Counsel Assisting has seen.

MS SARACENI: I definitely haven't seen anywhere near the 3 million emails or documents that have been provided to the Commission, sir.

15 COMMISSIONER: Trust me, Ms Saraceni, you should be relieved about that.

MS SARACENI: I'm more concerned, sir, about doing my job as thoroughly as I can and it's very difficult when I don't have access to a lot of the information that's  
20 there.

COMMISSIONER: We are all concerned about doing our jobs as thoroughly as we can. Now, what's the next point?

MS SARACENI: The next point, sir, is there were some questions and evidence  
25 given by this witness about the Performance Review of the CEO and whether that should be done by an external facilitator.

COMMISSIONER: Yes.

30 MS SARACENI: In giving her evidence, as I recall, she said that it had been done in the past and by "the past" I understood her to mean when the CEO was Mr Stevenson. On reading the transcript of the evidence given so far in this Inquiry, that is not what occurred and Mr Stevenson's second and final  
35 Performance Review was an internal review, not done by a facilitator. Then at some point this witness also talked about getting lawyers involved and as I understood, her evidence was that it was her view that getting lawyers involved to do a Performance Review of a CEO was appropriate and she was talking in relation to Mr Mileham at this point in time.

40 So some questions there about - as I recall, she said she contacted or she arranged for this to be done but wasn't sure if it was actually ever done. So seeking some clarity, given she's under a misapprehension in relation to previously always there being a facilitator involved. Then she gave some evidence, sir, that in relation to Mr Stevenson, there were only, I think, three Elected Members who expressed a  
45 view on Mr Stevenson's performance.

COMMISSIONER: Is this the sixth point?

MS SARACENI: Yes, sir. She was not one and did not do so and again, that is linked to the previous question about this external consultant or whether it was, as I understand the evidence of Councillor Davidson who prepared a document seeking the view of Elected Members on Mr Stevenson and how he performed.

Then, Commissioner, another point is in relation to, she was asked a question by counsel, did she believe that Mr Mileham was suitably qualified for the position of CEO and her answer as best I took it down was yes, but questioned how he would go as he'd never been a CEO before and he was untested. There are some matters that I seek to ask the witness in relation to what it was that Mr Mileham did achieve whilst he was Acting CEO, particularly in relation to the Heirisson Island saga, of which there was some evidence by Mr Mileham, and also in relation to the Reconciliation Action Plan, which is another matter that he spoke about having worked on and achieved over a period of time.

This witness appears to be limiting her answers, sir, in my view and I would like to be able to explore that with her in relation to what his performance was and what he did achieve.

COMMISSIONER: I'm not sure I agree with you on that one, Ms Saraceni. The answer was very limited in the way in it was given and what you're proposing to do is open up a new line of enquiry which is not going to assist this Inquiry. May I just make two remark before you go any further? The first is that this witness has given many answers which might, on checking against other parts of the evidence, prove to be unreliable - I'm not making any findings about that now of course, but that exercise of looking at all of the evidence is one that I will have to undertake in due course.

So for you to be questioning the witness now about matters where she has given qualified answers or answers that are very limited in their scope, doesn't necessarily assist this Inquiry in the work it has to do, and the assumption that because something has not been fully explored, it needs to be, does not, in my view, mean that it will assist this Inquiry in the work it has to do.

MS SARACENI: I think, Commissioner, the final submission that I seek to make, I'm not sure if I actually made it and I apologise if I have, but in my list, the last one is one of the last comments that this witness gave in relation to, Ms Battista told her that the admin staff were getting concerned re the processing of the Grand Central Hotel through the Heritage Listing system in relation to, again, her information from Ms Battista and the appropriateness of the communications, verbal and in writing, between the two.

Also, another one, sir, given the information that Ms Green had in relation to unsafe work practices, et cetera, what if anything did she do to report the matter to either the Department of Local Government Standards Committee, the CCC or anyone else. That has not been explored and in my submission, that would be

appropriate in relation to falling within the requirements of the Terms of Reference.

5 COMMISSIONER: How much assistance do you believe you're going to get from this witness on those matters, that I can rely on?

MS SARACENI: Commissioner, without testing the witness, I'm not in a position to say but given the SMS messages - - -

10 COMMISSIONER: Let it put me to a different way then: what do you think the probative value of the answers that she might give about Ms Battista's conduct are going to be?

15 MS SARACENI: Sir, they are matters that I would seek to ask eventually of Ms Battista and to be fair to this witness, I think I need to ask this witness as well.

20 COMMISSIONER: I'm not sure that I agree with you on that, Ms Saraceni. If you have questions about Ms Battista's conduct, it's Ms Battista you should be asking about them because otherwise the probative value of the answers you might get to questions of this witness I think may be of very little value for me.

25 MS SARACENI: But, Commissioner, she has said that she understood her role and responsibilities as an Elected Member, then as a Deputy Mayor and yet there are these - appear to be text messages, for example, in relation to involving the press and, "Let's give the press this story and let's get this happening", having private and confidential emails from Ms Battista sent to her.

30 COMMISSIONER: So you're limiting it to what she did as a result of getting that information from Ms Battista, is that right?

MS SARACENI: And the appropriateness of her getting it in the first place.

COMMISSIONER: So it's just those two matters, is it?

35 MS SARACENI: Thank you, sir.

COMMISSIONER: Ms Ellson, are you in a position to respond to those comments?

40 MS ELLSON: I can, yes, Commissioner and I do so with overarching regard to the Practice Directions with respect to Ms Saraceni not representing the witness in the witness box and having regard to the fact that any proposed questions should be directly relevant to the substantive interest of Ms Saraceni's client.

45 With respect to her first point, any discussions that may or may not have occurred with a journalist or SMSes between them, putting things into a media is not a matter which I say bears directly on the substantive interests of Mr Mileham. The

same submission I make with respect to The Voice story Ms Saraceni referred to.

COMMISSIONER: Yes.

5 MS ELLSON: The third point Ms Saraceni raised with respect to - - -

COMMISSIONER: What about the second point?

MS ELLSON: The Voice?

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COMMISSIONER: No.

MS ELLSON: The second point I had, Commissioner, concerned The Voice putting out a story.

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COMMISSIONER: The second point that I recall is that, it was about the discussion with Ms Battista and Ms Battista feeding emails from the Administration to Dr Green.

20 MS ELLSON: This witness cannot give evidence about what Ms Battista has done, if there was an intermediary, Commissioner. I also submit that it is not something which has direct relevance to the substantive interests of Mr Mileham.

COMMISSIONER: Yes. The third was the CEO Inbox.

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MS ELLSON: Yes. I'm unsure as to what Ms Saraceni proposes her questions to be with respect to this. I do see how it may be relevant to Mr Mileham's interests. Perhaps if the questions were limited to taking Dr Green to the document and asking her to consider the point that there were two days for non-urgent matters and perhaps a second question relating to whether or not that occurred in Dr Green's view.

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COMMISSIONER: Yes. The fourth point? This is the reference checks point.

35 MS ELLSON: Yes. Commissioner, in my submission, what is being raised is not a matter for Dr Green.

COMMISSIONER: Why do you say that?

40 MS ELLSON: Dr Green was not involved in the process of making the reference checks. The questions were posed in the way that they were because of other evidence before the Inquiry and it's not a matter, in my submission, which Dr Green can expand upon any further.

45 COMMISSIONER: Yes. The fifth point?

MS ELLSON: The fact that Performance Review had been done in a different

way for Mr Stevenson, in my submission, has no bearing or is not directly relevant to the substantive interests of Mr Mileham.

5 COMMISSIONER: Why do you say that?

MS ELLSON: Mr Mileham's Performance Review processes were a separate and distinct process to those conducted by Mr Stevenson.

10 COMMISSIONER: Is that all?

MS ELLSON: Yes. My note with respect to my learned friend's sixth point is somewhat illegible to myself, Commissioner, I apologise. As I understood it, Ms Saraceni was seeking to clarify whether or not lawyers had become involved and whether or not there was a misapprehension on the part of Dr Green with respect to that occurring. If a question relates directly to Mr Mileham's recommendations or proposed actions as Dr Green understood them, then I have no difficulty with a question to that effect, Commissioner.

20 COMMISSIONER: Yes. The next point?

MS ELLSON: Yes. With respect to three Elected Members expressing a view about Mr Stevenson's performance, my submission is that the questions Ms Saraceni could propose will not directly be relevant to any substantive interest Mr Mileham has.

25 COMMISSIONER: Right. Yes, Ms Ellson. Do you need a moment to consult with Mr Parkinson?

MS ELLSON: Yes, please, Commissioner.

30 COMMISSIONER: Yes, go ahead.

[11.45 am]

35 MS ELLSON: Commissioner, in my submission, any answers Dr Green could give, in addition to those she has already given in context, will not assist the Inquiry and will open up a new line of enquiry, not proper for today's proceedings.

40 COMMISSIONER: Yes.

MS ELLSON: With respect to the next point, Commissioner, in my submission, what Ms Battista may or may not have told Dr Green with respect to the movement of the Grand Central Hotel through the process has been adequately covered with Dr Green already and the appropriateness of the communications is not something which has direct relevance to the substantive interests of Mr Mileham, in my submission.

COMMISSIONER: Yes. Is that all?

5 MS ELLSON: The last point Ms Saraceni raised, Commissioner, with respect, is whether or not Dr Green had explored workplace safety with the CCC or any other panels is not something which has a direct bearing on the substantive interests of Mr Mileham.

COMMISSIONER: Yes. Are those your submissions?

10 MS ELLSON: Yes.

COMMISSIONER: Thank you. Ms Saraceni, because there were quite a number of matters that you covered, do you wish to respond briefly to any of those submissions?

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MS SARACENI: Just in general, Commissioner, when my friend says that they don't affect my client's interests, as the then CEO of the organisation, he was responsible for all the staff. The Elected Members were not responsible. So to the extent that there were any concerns about their safety and how it was being dealt with, it was up to him. If there were concerns felt by the Elected Members, whether appropriate measures were taken to do that is the main thrust of what I wish to say there.

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Even in relation to Ms Battista and her communications with Ms Green, to the extent that the CEO Inbox and the Communications Protocol was felt necessary by my client to be brought in to try and protect his staff from Elected Members dealing individually with workers, it's my submission that does impact on Mr Mileham's interests and the questions should be allowed to be asked.

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30 COMMISSIONER: Is there anything else?

MS SARACENI: No, thank you, sir.

35 COMMISSIONER: Thank you, Ms Saraceni. Ms Saraceni, what needs to be borne in mind here is the witness who you intend to question and that affects the value of the answers that you might get and therefore, how those answers might advance the purposes of this Inquiry, which I'm required to consider in determining your application. So on that basis, I am going to give you leave to examine Dr Green about the CEO Inbox in the manner that you have indicated, which is the third topic that you addressed me on.

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45 Although I am not convinced about it, I am also going to give you leave to conduct a limited - I emphasise the word "limited" - examination of Dr Green about the reference check point, as I describe it. I suspect that those answers that you obtain from Dr Green, as I indicated, will have a limited value, so that is why I give you leave in that limited way. I'm not going to entertain any other questions from you.

MS SARACENI: Thank you, sir.

COMMISSIONER: Mr Howard, last not but not least.

5 MR HOWARD: I'm sorry to disappoint, I don't have an application at this stage.

COMMISSIONER: Trust me, Mr Howard, I'm not disappointed. Madam Associate, would you please bring Dr Green back into the hearing room, thank you. Dr Green, please return to the witness box.

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**DR Jemma Marie GREEN, recalled on former oath:**

COMMISSIONER: Dr Green, just so you know, in your absence a number of applications were heard and as a result of that, you will be questioned by Mr Yeldon on behalf of Ms Davidson. That questioning will be of a limited purview. You will also be questioned by Ms Saraceni on behalf of Mr Mileham. Again, that questioning will be of a limited purview and can I again indicate to you that your exclusion from the hearing room is no reflection on you whatsoever?---Thank you.

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Mr Yeldon.

MR YELDON: Thank you, Commissioner

25 EXAMINATION BY MR YELDON

Dr Green, do you recall being examined by Counsel Assisting concerning the 19 July 2016 Council meeting?---Not off the top of my head, sorry.

30 I might assist you, in which the Grand Central Hotel, i.e. property I, was deferred?---Yes.

I can show you that to refresh your memory, would that assist?---I can now recall, thank you.

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Do you recall that the words in the report were to the effect that, and this was 27.0946, Commissioner - Madam Associate, there's been a request to bring it up.

COMMISSIONER: Which is a fair request in the circumstances.

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MR YELDON: I'm sorry, Commissioner, I didn't mean to overlook your power.

COMMISSIONER: No offence taken.

45 MR YELDON: Would you like a moment to refresh your memory about this page?---Is there a particular part of it you would like to draw my attention to?

Yes. Do you see in relation to the subject properties, do you see that paragraph up the top?---Yes.

And that resolution that:

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*Council notes that further assessment is required to determine if properties H, I and J are of cultural heritage significance and worthy of built heritage conservation".*

10 Et cetera; do you see that? Then underneath you were asked to read that sentence which says:

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

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Do you recall being asked to do that?---Do I recall being asked to do that yesterday or at - - -

Yesterday?---Asked to do what, sorry.

20

To read that sentence?---Yes, I do.

And do you recall that you were asked for any insight as to why this was, with respect to property I, do you recall that?---I do have a recollection.

25

At the time you said you didn't have any insight, do you recall that?---I do.

Is that still the case?---I don't recall as at 9 August having an understanding about why that was the case.

30

This minute is at 19 July 2016, isn't it?---It is.

It's not a discussion - although it's a discussion recorded on 9 August, it's a discussion that took place on 19 July?---Thank you. In terms of that particular date, I don't recall there being anything particular that I was aware of at that time.

35

Do you recall that the City of Perth commissioned an independent Heritage Assessment of the Grand Central Hotel?---I recall that three assessments were undertaken.

40

I'm asking you a question, do you recall the City of Perth commissioned an independent heritage consultant?---I can't recall the specifics of the three reports insofar as who wrote them or who commissioned them.

45 So you don't recall whether or not the City of Perth commissioned a report from an independent heritage consultant about the Grand Central Hotel?---I don't recall being specifically told that or reading that but I presumed that the City had

organised the reports that were undertaken in relation to this property.

Can the witness now be shown 27.1193, please, Commissioner.

5 COMMISSIONER: Yes, of course.

MR YELDON: Thank you.

10 Do you have in front of you the Council minutes from 1 November 2016, Dr Green?---I do, yes.

On page 27.1197, Madam Associate, you're recorded there, aren't you, Dr Green, as having attended this meeting?---That is correct.

15 If you would turn now, please, to page 27.1201, please, Commissioner, if that's appropriate.

COMMISSIONER: Yes, of course.

20 MR YELDON: Do you see this is the officer's report with respect to the proposed entry of the Grand Central Hotel in the City Planning Scheme No 2 Heritage List, Dr Green?---Yes, I can see that in the title.

25 Do you recall reading this officer's report when you attended the meeting on 1 November 2016?---I don't recall the act of reading it, but I would have read it because I read the pack.

This report also had a chronology attached to it, do you recall that?---I do not.

30 Could you turn to page 27.1205, please. Do you see the third paragraph on that page refers to the Grand Central Hotel as property I?---I do.

35 So you will see, will not you, that property I is recorded as - at 17 March it's recorded with all the rest of the properties, variously described, do you see that in the first line of the table?---I do.

And again in the second line it's recorded with the other properties but there are separate findings with respect to the properties, do you see that?

40 COMMISSIONER: Perhaps you can direct Dr Green's attention to what you describe as the separate findings, in fairness to her.

MR YELDON: Thank you, Commissioner.

45 I'm sorry, Dr Green. Do you see the word - under the column, "Outcome" in the second box on the right-hand side, that at 17 March, properties H, I and J that, "Further on site assessment was required", do you see that?---I do see that written

there.

Then the line below that commencing on the date, 5 April 2016, do you see the entry for properties H, I and J again?---Yes.

5

And it says, "Further on site assessment was required", doesn't it?---It does say that.

If we go over the page, please, to page 27.1206, you see that there is an entry for 19 July 2016?---Yes

10

[12 noon]

And that on 19 July 2016 the action was that there would be a progression of Heritage Listing for property H but that there would be no progression of Heritage Listing for property J, do you see that in the, "Action" column on 19 July 2016?---Yes.

15

Then the next entry is 11 July 2016 to 31 July 2016 but it is only to do with property I, isn't it?---Yes.

20

And it says in the, "Action" column:

25

*Independent heritage consultant, Philip Griffiths, commissioned to undertake Heritage Assessment of property I.*

Do you see that?---I do.

Do you know when it was that Philip Griffiths was commissioned by the City of Perth to undertake the Heritage Assessment of property I?---I don't.

30

Is that Heritage Assessment of Philip Griffiths one of the reports you were referring to earlier?---I don't know.

I see. If you turn now, please, to page 27.1224, if that's appropriate, Commissioner.

35

COMMISSIONER: Yes, it is.

MR YELDON: Do you have that in front of you?---I do.

40

Do you see that certain parts of this report have been blacked out?---I do.

Do you know why that might be?---I do not.

45

And you note that this report is dated 31 July 2016?---I do.

And it's by Griffiths Architects, isn't it?---Yes.

So if you could turn to page 27.1237 - - -

5 MS ELLSON: Commissioner, I anticipate that my friend's next question will stray beyond the bounds that he was given leave to ask the questions he has already.

COMMISSIONER: Yes. Let's see what happens.

10

MR YELDON: Dr Green, do you have 27.1237 in front of you?---I do.

Thank you. Do you see the conclusion there - - -

15 MS ELLSON: I object, Commissioner. My friend was given leave to ask about the chronology.

COMMISSIONER: I will just hear the question first. Dr Green, don't answer the question until I rule on it, please. Thank you. Please proceed, Mr Yeldon.

20

MR YELDON: Yes.

Do you see the conclusion there, Dr Green, was that:

25

*Griffiths Architects' view was that the place is worthy of inclusion in the CPS 2 Heritage List.*

COMMISSIONER: Where is this going, Mr Yeldon?

30

MR YELDON: It goes to the chronology of the Grand Central Hotel issue.

COMMISSIONER: How is Dr Green going to assist me on the task I have to perform by giving answers about what's in this report?

35

MR YELDON: Dr Green was at the meeting in July. This is a report that was with the papers in November.

COMMISSIONER: But I come back to my question, how is questioning Dr Green about the contents of this report going to assist me? I've got the report.

40

MR YELDON: Yes.

COMMISSIONER: I've read it, I know what it says.

45

MR YELDON: Yes.

COMMISSIONER: How is her evidence going to take it any further? You will

have to explain that to me, I don't understand.

MR YELDON: I retract my last question, thank you, Commissioner.

5 COMMISSIONER: Is that your examination?

MR YELDON: Yes, it is.

COMMISSIONER: Thank you. Ms Saraceni.

10

EXAMINATION BY MS SARACENI

Dr Green, I have some very short questions. You were asked a series of questions before in relation to the CEO Inbox and the protocol in relation to that, do you recall?---I do.

15

You gave evidence in relation to a timeframe for answering non-urgent matters of five days?---Yes.

20 Do you recall that there was a timeframe of two days to answer urgent matters?---I do recall that that was stipulated but my experience and the experience that other Elected Members communicated to me, that was not adhered to.

25 You don't need to check the document, do you, Councillor Green in relation to the two days for urgent?---No, but as I said earlier, sometimes if a full response wasn't given, it necessitated a reply and then a further two days would have to be waited for the subsequent information, so it could be a number of days.

30 Councillor, that was not my question but I'll move on to the next one, you've answered it.

MR HOWARD: With respect to my friend, she's asked the question, the witness should be allowed to answer.

35 MS SARACENI: Yes, you've answered, thank you.

COMMISSIONER: No, no, Ms Saraceni.

MS SARACENI: I will move on to the next question.

40

COMMISSIONER: Ms Saraceni.

MS SARACENI: Yes, sir.

45 COMMISSIONER: Just take a seat for a moment, please. You were given leave to ask questions on these matters and you are asking them. That's your decision.

MS SARACENI: Yes.

COMMISSIONER: If the witness is giving a responsive answer to the question you've been given leave to ask, she should be allowed to finish it.

5

MS SARACENI: Thank you.

COMMISSIONER: And she's not being allowed to finish it, so Dr Green, would you like to finish your answer to that question, please? Do you need to hear the question again?---Yes, please.

10

I thought you might. Please ask the same question again and we will hear Dr Green's answer.

15

MS SARACENI: I'm not sure I can ask exactly the - - -

COMMISSIONER: As close as you can then. If it's not close enough, I'm sure someone will tell me, very quickly.

20

MS SARACENI: Councillor Green, in relation to the - I asked a series of questions, sir. In relation to the CEO Inbox and the protocols associated with that, you gave some evidence about five days for non-urgent matters and my question was, do you recall that there was a two day timeframe to deal with urgent matters?

25

MS ELLSON: I object, Commissioner. That's not what the document says.

COMMISSIONER: Ms Saraceni, perhaps we had better go to the document. Would you like to call it up?

30

MS SARACENI: Sir, this witness has already said that she did recall there was a two day timeframe for urgent, but she had a qualification on it.

COMMISSIONER: There's now a different objection so - - -

35

MS SARACENI: I believe the document, Madam Associate, is 15.0371.

COMMISSIONER: Please put it up, Madam Associate. Which page did you want to go to, Ms Saraceni.

40

MS SARACENI: I beg your pardon, sir?

COMMISSIONER: Which page did you want to go to?

MS SARACENI: Sorry, sir. If I could just have a - - -

45

COMMISSIONER: Yes, of course. Take your time.

MS SARACENI: Over the page. I understand, sir, it's 15.0374.

COMMISSIONER: Thank you, Madam Associate, please.

5 MS SARACENI: Councillor Green, if I could refer you to the second paragraph on this page?---Yes.

10 Towards the end of that, I asked a question in relation to urgent matters but I can see there when I read it now, now that I have an opportunity to read it, do you agree with the second and third sentences there in relation to the timeframes for matters which are urgent or need a quick and simple response?

15 COMMISSIONER: When you say "do you agree with", what are you exactly asking Dr Green to agree with?

MS SARACENI: That that was what the protocol was.

20 COMMISSIONER: Or that's what the protocol said, or what it was in practice; what are you asking?

MS SARACENI: Well, what was in practice. The document is self-explanatory now that I see it, sir.

25 In practice, Councillor Green, was the timeframe set out there what was followed by the Administration, in your experience?---In my experience - - -

In your personal experience, yes?---In my personal experience, no.

30 Thank you, sir. Councillor Green, if I could ask you some other questions. Yesterday you were asked a series of questions in relation to factors relevant to Mr Mileham's suitability as the CEO. In particular you were asked questions about verification of his qualifications, international work experience, Australian work experience and reference checks; do you recall those questions from yesterday and your answers?---I do.

35 Do you know whether in fact those verifications took place?---I do not.

Thank you, sir. No further questions.

40 COMMISSIONER: Thank you, Ms Saraceni. Ms Ellson, is there anything arising out of any of those questions?

MS ELLSON: No, Commissioner.

45 COMMISSIONER: Thank you. Are there any other housekeeping matters which any other Council wish to raise at this point because what I intend to do at this point otherwise is to take a short adjournment before the next witness is called.

Mr Yeldon?

MR YELDON: Yes. The redactions on the document, the Griffiths Architects' document, it would seem that they are redactions that are unexplained.

5

COMMISSIONER: Unexplained to you.

MR YELDON: Yes, and the issue of when the independent expert's report was commissioned is an issue which should confront the Tribunal and concern the Tribunal with respect to property I. The timing is important.

10

COMMISSIONER: When I say to you "unexplained to you", Mr Yeldon, I imply in that that I know these things.

15

MR YELDON: I see. So am I able to have a copy or are the people here able to have a copy of the unredacted version?

COMMISSIONER: You will be given what you're entitled to, Mr Yeldon, in that respect and in all other respects.

20

MR YELDON: Thank you.

COMMISSIONER: Yes. Mr Mariotto?

25

MR MARIOTTO: Sir, if I may, I would seek to leave the Bar table after the break and I will be substituted with Mr Skinner, if that's - - -

COMMISSIONER: So it will be Mr Skinner off the subs bench, will it?

30

MR MARIOTTO: Yes, thank you.

COMMISSIONER: Very well. Are there any other housekeeping matters?

35

MS ELLSON: I wonder, Commissioner, whether you might prefer to take an early luncheon adjournment so that we may head well into the next witness' evidence, refreshed.

COMMISSIONER: Are there any other Council at the Bar table who would oppose that course of action? Silence is golden. In that case, I will take a luncheon adjournment early.

40

MR HOWARD: I'm sorry, Commissioner. Is it your practice to formally discharge the witness?

45

COMMISSIONER: I'm about to come with that.

MR HOWARD: May it please.

COMMISSIONER: I was going to deal with the housekeeping matters, sir.  
Thank you. It's also my practice to thank the witness. So what I'm going to do  
then is, in a moment, adjourn the Inquiry from 12.15 pm to 1.30 pm. Councillor  
5 Green, that brings me to you, lastly but not leastly. I want to thank you for your  
assistance in the last two days. It has been a help to the work of the Inquiry. I will  
now adjourn until 1.30 pm.

10 **WITNESS WITHDREW**  
**(Luncheon Adjournment)**

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HEARING RECOMMENCED AT 1.36 PM.

COMMISSIONER: I will have the witness called and then I will hear applications. Ms Ellson, do you call your next witness?

5

MS ELLSON: I do, I call Reece James Harley.

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

10

MR HARLEY: An affirmation, thank you.

COMMISSIONER: Thank you. Madam Associate.

15

**MR Reece James HARLEY, affirmed:**

COMMISSIONER: Thank you. Take a seat please, Mr Harley. I will now hear applications and take appearances.

20

MR SKINNER: Yes, may it please you, Commissioner. By your leave I would seek to appear on behalf of Mr Limnios in relation to this. I believe the previous application was heard and granted in relation to Mr Mariotto, but I would seek it in relation to myself, sir.

25

COMMISSIONER: Yes. I don't imagine there's any objection to that, is there, Ms Ellson?

MS ELLSON: No, Commissioner.

30

COMMISSIONER: Thank you.

MR SKINNER: May it please you, sir.

35

COMMISSIONER: Leave grant. Mr van der Zanden, you continue to appear for Ms Scaffidi?

MR van der ZANDEN: Yes, may it please you, Commissioner.

40

COMMISSIONER: Thank you. Mr Barrie, you continue to appear for Ms McEvoy?

MR BARRIE: Thank you, sir.

45

COMMISSIONER: Mr Yeldon, you continue to appear for Ms Davidson?

MR YELDON: Yes indeed, thank you, sir.

COMMISSIONER: Thank you. Ms Zoric, you continue to appear for Mr Stevenson?

5 MS ZORIC: Yes, thank you, Commissioner.

COMMISSIONER: Ms Saraceni, you continue to appear for Mr Mileham?

10 MS SARACENI: Yes, sir, but I will have to leave at quarter to 4 this afternoon so if Mr Tuohy, my instructor, could be given leave as per the application, in my absence.

COMMISSIONER: I'm sure there will be no difficulty with that, Ms Saraceni. Thank you. Mr Hood, you continue to appear for Mr Adamos?

15 MR HOOD: Thank you, Commissioner.

COMMISSIONER: Mr McIntyre, you appear with Mr O'Meara?

20 MR McINTYRE: I do, sir.

COMMISSIONER: Thank you.

25 MS FORD: Commissioner, Ms Ford continues to appear for Dr Green but the Bar table looked a little tight so I'm just at the rear, if I may.

COMMISSIONER: I'm sorry, I didn't see you there, Ms Ford.

30 MS FORD: That's completely fine.

COMMISSIONER: My apologies. Do you wish to have a seat at the table?

35 MS FORD: I'm comfortable, Commissioner, as long as you're comfortable with me seating here.

COMMISSIONER: I am, thank you. Ms Ellson, are you ready to proceed?

MS ELLSON: I am, Commissioner, yes.

40 COMMISSIONER: Thank you

EXAMINATION-IN-CHIEF BY MS ELLSON.

45 Mr Harley, you were on the Planning Committee from 22 October 2013 to 22 October 2015 and then again from 24 October 2017, is that right?---I recall being on the Planning Committee at the beginning of my first term. I'm not sure about being on the Planning Committee from 2017 onwards, though I may have been.

I see. You have gained some experience as an Elected Member in Planning matters?---Yes.

5 Did you, in February 2014, make enquiries about who owned the Grand Central Hotel?---Yes.

10 What enquiries did you make?---I wrote to the Director of Community Services, Gary Dunn, and the then Director of Planning, Mr Mileham, an email and that was to ask who was the owner and also to pass on some negative reviews of the building that were appearing online on TripAdvisor. I also at the time asked whether or not any health and safety inspections had recently been completed of the premises.

15 I will ask you to identify a document, Mr Harley. Madam Associate, if you could bring up, please, page 27.0460. Do you see there, Mr Harley, a typed signature, an electronic signature belonging to yourself?---Yes, I do.

20 And some JPG file reference names?---Yes.

Madam Associate, 27.0459, please. Do you see at the bottom of the page, Mr Harley, an email from yourself to Mr Mileham?---Yes, and to Mr Dunn.

25 And to Mr Dunn?---Yes.

18 February 2014, 11.07 am?---Mm hmm - yes.

30 And you wanted to know if the property was on the State Heritage Listed or on the City's inventory, do you see that?---Yes.

Can you tell me why?---Yes. It's an old property, it's a gold rush era coffee palace and I knew of its age and I believed that it should have been assessed to be included on the inventory.

35 At around about 18 February 2014, did you make a recommendation to that effect to anyone?---A recommendation to that effect? No. I think I enquired about whether it should be.

40 And you did so here in your email?---Yes.

At the top of the email that I've referred you to, Mr Harley, do you see an email from Mr Mileham to yourself copying in Mr Dunn?---Yes.

45 And you've been advised "The City's mapping system states the owner is Central City Pty Ltd", do you see that?---Yes.

At the time you received that email, did you know who were the owners involved

with Central City Pty Ltd?---I do not recall if I was aware at the time of submitting the email. I think it may have been the case that this was the first time I had heard of the company.

5 The document can be removed, Madam Associate. At some stage following on from your emails on 18 February 2014, Mr Harley, did you become aware that the Lord Mayor had an interest in the property?---Yes.

10 When did that occur?---I think after the email I searched for the company name online to find out who had been the owner and I believe that I was referred to some other court proceedings that identified the owners of the company.

And among them was the Lord Mayor?---The Lord Mayor and her husband, yes.

15 [1.45 pm]

And when did you do the online searches or search?---After - I cannot say with certainty but I believe it would have been after receiving the email from Mr Mileham.

20 You were on the Planning Committee at the time the property first came to the committee with other properties?---Yes.

25 For the purposes of being assessed for possible Heritage Listing, is that right?---Yes.

Madam Associate, 27.2147. Mr Harley, do you see here Planning Committee minutes, 10 March 2015 which have been certified?---Yes.

30 Madam Associate, 27.2149. Do you see here among members in attendance, you are listed?---Yes.

Do you accept that you attended this meeting?---Yes.

35 Madam Associate, 27.2152. Do you see here Mr Harley an item, "Proposed principles of new City Planning Scheme No 2 Planning Provisions and Policy - Heritage Assessments and Registrations"?---Yes.

40 And it relates to Confidential Schedule 11 with a list and some photographs of some places?---Yes.

Do you recall this item dealing with a number of properties to be considered for potential listing in the Heritage Register?---Yes.

45 Madam Associate, 27.2159 - actually, 27.2161. This is TRIM 20720, Commissioner.

COMMISSIONER: Thank you.

MS ELLSON: Mr Harley, do you see here Confidential Schedule 11?---Yes.

5 Madam Associate, 27.2163. Do you see there a document on the right-hand side of the screen says, "Confidential Schedule 11"?---Yes.

It has a list of properties?---Yes.

10 Including Rosie O'Grady's, the Grand Central Hotel, Wiluna Flats?---Yes.

And some other properties?---Yes.

15 Madam Associate, 27.2159. Do you see here a motion moved by the committee that:

*Council notes the draft policy and approves further assessment and consultation with affected landowners for those properties detailed in the attachment Confidential Schedule 11 .*

20 ?---Yes.

And you voted in favour of that?---Yes.

25 That meant that the matter moved to Council for its consideration, didn't it?---Yes.

Madam Associate, the document can be removed. The next time the matter was dealt with was at a Council meeting on 17 March 2015, was it?---Yes.

30 Do you have a memory of attending the meeting?---No  
Madam Associate, if you could please bring up 27.0501, TRIM 17167.

COMMISSIONER: Thank you.

35 MS ELLSON: Mr Harley, do you see there some Council minutes, 17 March 2015 which have been certified, 7 April 2015?---Yes.

40 Madam Associate, if you could turn to page 27.0504. Mr Harley, do you see there a list of members present, and you are among them?---Yes.

Madam Associate, if you could turn, please, to page 27.0507.

45 COMMISSIONER: Before we go to that, I assume that you therefore would accept that you were in attendance?---Yes.

Thank you.

MS ELLSON: Madam Associate, thank you. Mr Harley, do you see here item 83/15?---Yes.

5 "Proposed principles of new City Planning Scheme No 2 - Planning Provisions and Policy Heritage Assessments and Registrations"?---Yes.

Do you accept that this is an item dealing with, among other properties, the Grand Central Hotel's potential listing on the CPS 2 Heritage Register?---Yes.

10 Do you see at the very top of the page, Mr Harley, at 6.30 pm:

*The Lord Mayor previously disclosed a financial interest in the item and left the meeting.*

15 Do you see that?---Yes.

Was it clear to you then at 17 March 2015 that the Lord Mayor had a financial interest in the hotel?---Yes.

20 Madam Associate, 27.0513. Mr Harley, I will ask you to refer to the two large paragraphs in the middle of the page:

25 *In accordance with the above the City has prepared a list of heritage places that have been identified for further investigation on the basis that they have a construction date prior to 1940 and have been classified by the National Trust and/or where the Heritage Council has determined that the place does not meet the threshold for entry into the Heritage Register.*

30 Do you see that?---Yes.

And it says:

35 *The City wishes to compile assessment documentation of these places in the context of the State Heritage Office's assessment criteria, and consult with the owners with respect to the possibility of listing the properties in the City's Heritage Register. The assessments and results of consultation will be presented to the Council for a decision on whether the possible registration should progress to formal owner*  
40 *consultation in accordance with the CPS 2 requirements or not.*

Do you see that?---Yes.

45 Do you recognise this statement as something that the officers have provided in a report to Council?---Yes.

Does it follow that the officers were seeking to move the matter forward so that an

assessment and consultation could take place?---Yes.

There's reference made to Confidential Schedule 11?---Yes.

5 Madam Associate, 27.0517. Do you see here agenda item number 5, "Confidential Schedule 11"?---Yes.

Madam Associate, 27.0518, "Confidential Schedule 11" on the right-hand side of the screen properties include Rosie O'Grady's, Grand Central Hotel, Wiluna Flats, 10 Motor House and others among them?---Yes.

Madam Associate, 27.0514. Under the heading, "Planning Committee recommendation":

15 *Council notes the draft heritage and registrations Planning Policy. 2. Approves further assessment and consultation with affected landowners of the properties detailed in the attached Confidential Schedule 11 for the purposes of possible inclusions in the City Planning Scheme No 2 Register of Places of Cultural Heritage Significance.*

20

Do you see that?---Yes.

And a motion was moved to refer the matter back to the Planning Committee, moved by Councillor Limnios and seconded by Councillor McEvoy?---Yes.

25

That:

30 *Council refer consideration of the report titled "Proposed principles of new City Planning Scheme No 2, Planning Provisions and Policy, Heritage Assessments and Registrations" back to the Planning Committee.*

The motion was put and carried but you voted against the motion, Mr Harley?---Yes.

35

Can you tell me why you did that?---Yes, because I thought that it was self-evident that those properties should be further assessed for inclusion in the Heritage Register.

40 What do you mean "self-evident"?---The properties were of an age where it was likely that they may have some heritage significance and meet the threshold for inclusion in the Register. The officers I trusted in their judgment, that they had put together the attached list of properties using their professional expertise, and I supported it because in my eyes it was self-evident that we needed some further 45 information and to consult with the owners of those properties to determine whether they should be included in the Register as per our requirement under the State Heritage Act.

Did you consider consultation with the owners was going to occur in any event?---No.

5 Whether it went back to the committee or not?---No. I considered that unless Council requested that the matters progress, then they wouldn't. So it was incumbent on us to support the officers' recommendation so that they could do further work.

10 Councillor Harley, just taking you back to - I'm not sure I understand your answer. Just taking you back to point 2 under, "Planning Committee recommendations", it appears that the officers were recommending for Council to approve further assessment and consultation?---Yes.

15 Doesn't it follow then that if Council accepted the officers' recommendations, that consultation would occur?---That's right, and if we rejected, then it would not occur.

I will come back to that in a moment, Mr Harley. The officers were also  
20 recommending that Council adopt their recommendations so assessment could occur, is that right?---Yes, that's right.

What happened was different to what the officers recommended, wasn't it?---Yes.  
25 Council voted to refer the item back to committee. So in essence, the matter stalled for further consideration by the Planning Committee.

I will ask you to explain that a bit further by reference to the next page, Mr Harley.  
27.0515. A reason was given, Council were concerned that consultation - sorry,  
30 I'm not sure why you laughed?---I thought it was very interesting when Council gave the reason that they were concerned that consultation had not occurred, when the motion was in fact to undertake consultation.

COMMISSIONER: I think that was the very point that counsel was driving at  
35 earlier with you, Mr Harley.

MS ELLSON: Mr Harley, is it also the case that because the matter was referred  
back to the committee for further consultation, the assessment of the building  
would be stalled because the officers recommended that Council approve an  
40 assessment?---That's right.

You can see there that at 6.15 the Lord Mayor returned to the meeting and  
resumed the Chair, do you see that?---Yes.

45 So it appears there was discussion for some two minutes, do you recall it being two minutes?---I would have to say I do not recall but it is not unusual. When matters are being referred back to committee, it's a procedural motion and someone will put it and there's not an opportunity to speak to the substantive motion, so it being

quick is not unusual.

Is it fair to say that where procedural motions are moved like this, an agreement is reached before the meeting about it?---You could assume if Council - - -

5

MR van der ZANDEN: Objection.

WITNESS: - - - has voted that way, but it would just be an assumption.

10 COMMISSIONER: Just hold on a moment. Yes, Mr van der Zanden. Should this be heard in the absence of the witness?

MR van der ZANDEN: Yes, possibly - yes, I think so.

15 COMMISSIONER: Well, "Yes, possibly" I will take as yes

MR van der ZANDEN: Yes.

20 COMMISSIONER: Thank you. Mr Harley, it's no reflection on you but I will have you excused from the hearing room, thank you.

**WITNESS WITHDREW.**

COMMISSIONER: Yes, Mr van der Zanden.

25

MR van der ZANDEN: My objection, Commissioner is to the extent that this witness might be asking to speculate on what might either be the case in in instance or in other cases. If my friend wants to ask him about particular instances, that's acceptable but I think it's objectionable in the form that it's been asked and that he appeared to be commencing to answer.

30

COMMISSIONER: Thank you, Mr van der Zanden. Ms Ellson, what do you want to say about that?

35 MS ELLSON: The witness has given evidence, Commissioner, it was not unusual for procedural motions such as this to have no discussion and not to have the opportunity to speak to them. I'm trying to explore with him what the usual procedural way of dealing with such matters is

40 [2.00 pm]

COMMISSIONER: How will that assist me?

45 MS ELLSON: Eventually I hope to find out the reasons for this matter being dealt with in only two minutes. It may be favourable for some and unfavourable to others, I'm unsure at this stage.

COMMISSIONER: If the witness does not know why this matter was dealt with in two minutes, then all sorts of conclusions can be drawn about why that was so, but not based on his evidence, I wouldn't have thought.

5 MS ELLSON: Yes, I see, Commissioner.

COMMISSIONER: There's a danger here. I've noticed that as Mr Harley is giving his evidence, and this is no reflection on him, of course, at the moment, that you tend to ask a question and he tends to give you sometimes an answer that is not necessarily entirely responsive to the question. So it's important, Ms Ellson, to hold him to the question and the responsive answer to that and we then might avoid some of the difficulties that Mr van der Zanden has, for example, complained about.

15 MS ELLSON: Yes, Commissioner.

COMMISSIONER: Mr Yeldon, what are you rising for?

MR YELDON: The resolution on page 27.0514 is a two part resolution - - -

20 COMMISSIONER: Can we go back to 27.0514, please, Madam Associate, just so I can completely understand the objection that Mr Yeldon is making. Yes.

MR YELDON: And it's important, in my submission, that counsel refer to the entirety of the resolution before asking a question about further referral by reason of what's set out in paragraph 1. I'm hearing questions that don't deal with paragraph 1 but it's a two part resolution.

COMMISSIONER: This page was brought up in front of the witness, wasn't it?

30 MR YELDON: Yes.

COMMISSIONER: And if the witness has an adequate opportunity to read it, then provided the question is fair, there should be no difficulty, should there?

35 MR YELDON: Yes, but that wasn't the case. I'm not sure that the witness did read paragraph 1. He was directed to paragraph 2.

COMMISSIONER: So your complaint is he didn't have adequate time to look at the whole of the resolutions?

MR YELDON: Yes. I let it go but - - -

COMMISSIONER: You did let it go.

45

MR YELDON: Since Mr van der Zanden was good enough to make a - while the witness was out of the room, I thought I might raise it now. I hope I haven't

delayed the Inquiry.

COMMISSIONER: I won't comment on that. Thank you, Mr Yeldon, that's helpful.

5

MR YELDON: Thank you, Commissioner.

COMMISSIONER: Ms Ellson, when directing the witness to a particular page, we might, as we did with the last witness, allow a little time so the witness can familiarise himself with the relevant passages on the page.

10

MS ELLSON: Yes, Commissioner, of course.

COMMISSIONER: Thank you, Ms Ellson. Madam Associate, would you please bring Mr Harley back into the room. Mr Harley, please resume your seat in the witness box. Thank you.

15

**MR Reece James HARLEY, recalled on former oath:**

20

COMMISSIONER: Mr Harley, before I call on Ms Ellson to resume her questioning of you, I might just say this to you: when you're being asked questions by anyone, not just Ms Ellson, would you please respond only to the question?---Sure.

25

Because when witnesses tend to answer with more than is required, it sometimes leads to other sorts of problems?---Understood.

Which might inevitably delay the conduct of this Inquiry where it should be not be delayed?---Yes, understood. Thank you, Commissioner.

30

Thank you. Ms Ellson.

MS ELLSON: Commissioner.

35

Madam Associate, if we could please take the page down. Mr Harley, the next time this matter came before Council was on 5 April 2016, do you recall that?---A year, is that right? 13 months after.

40

5 April 2016, and the Council meeting was 17 March 2015?---So it was 13 months, okay. Yes, I do recall there being a long delay and I recall the matter coming back to us.

Do you know what happened at the Council meeting on 5 April 2016?---I'm sorry, but I cannot recall. It would be useful to see the proceedings.

45

Madam Associate, 27.0881. You see here, Mr Harley, some minutes, 5 April

2016, certified 26 April 16?---Yes.

Council minutes, do you accept that?---Yes.

5 27.0884. Do you see on this page, Mr Harley, you are down as being present at the meeting?---Yes.

You accept that you were?---Yes.

10 27.0887, please. Commissioner, 17171.

COMMISSIONER: Thank you.

15 MS ELLSON: Mr Harley, do you see here item 104/16, "Results of landowner consultation on Heritage Assessments and principles of new Heritage Assessment Planning Policy"?---Yes.

This item relates to matters proposed to be listed on the City's Heritage Register, is that right?---Yes.

20

Madam Associate, 27.0889. Do you see hereunder, "Details", "Need for a new Planning Policy"?---Yes.

And some information relating to objectives of the new Planning Policy?---Yes.

25

And that's set out twice?---Yes.

Madam Associate, 27.0890, "New Planning Policy methodology. Identifying heritage places, progressing assessments." Do you need some time to read through that?---No.

30

Madam Associate, page 27.0891, "Heritage Assessment criteria and levels of significance", do you see that?---Yes.

35 And another heading, "Including removing and modifying Heritage List entries"?---Yes.

27.0892, "Interim Heritage Assessments", do you see that?---Yes.

40 It says:

*Prior to the finalisation of the new Planning Policy the City will continue to progress Heritage Assessments in accordance the above methodology where -*

45

And there are some points set out on 27.0893, Madam Associate, please. Thank you. The dots are:

5 *A landowner nomination is received; a Development Application involving demolition is received for a potential heritage place; information exists to suggest the place may be of cultural heritage significance to the City. At this stage officers will not progress Heritage Assessments where a non-landowner nomination is received.*

Do you see that?---Yes.

10 Then it goes on to say:

15 *In accordance with the above, officers have identified a list of heritage places for further investigation on the basis that they have a construction date prior to 1940, have been classified by the National Trust and/or the Heritage Council has determined that the place does not meet the threshold for entry into the State Register (assessments can be provided on request).*

20 ?---Yes.

:

25 *The City has consulted with the landowners with respect to the possibility of listing these properties in the City's Heritage List. The results of consultation are detailed in Confidential Schedule 1 below.*

Do you see that?---Yes.

30 27.0895, Madam Associate. "Heritage investigations, consultation outcomes"?---Yes.

There's a reference to, "The submissions being summarised below and detailed in Confidential Schedule 1"?---Mm hmm.

35 27.0896. Properties are listed under a "Property" column, given letters of the alphabet?---M'mm.

40 "Submission received" is detailed in a column, "Position", presumably of the submission. "Independent advice" underneath?---Yes.

"Present purposes: H. A submission has been received and the submission is not supportive" and "Independent advice: None referenced." I, "Yes, submission received. Position not supportive." "Independent advice: Yes (planning consultant)"?---Mm hmm.

45 J, "Yes, submission received. Not supportive of position. Independent advice: Yes (architect)", do you see that?---Yes.

27.0897, "Properties H, I and J" at the bottom?---Yes.

:

5

*Whilst the Heritage Assessments for these properties demonstrate that they may have some heritage significance, officers consider that the heritage significance of these properties remains unproven until further assessment is undertaken.*

10

Do you see that?---Yes.

Madam Associate, 27.0898. At the top:

15

*An inspection of the properties is required to determine their internal condition and authenticity of properties. The results of the inspections and the further consultation will be reported back to the Council for a final decision.*

20

Do you see that?---Yes.

So there was at one point, a group of 12 properties. Property I has been grouped with two other properties?---Yes.

25

To move in a particular way through the heritage assessment process?---Mm hmm.

Madam Associate, if you could bring up, please, 27.3381, TRIM 23191.

COMMISSIONER: Thank you.

30

MS ELLSON: You see there reference to a Confidential Schedule 1 with respect to 104/16?---Yes.

35

Madam Associate, 27.3389. Mr Harley, do you see there that property H is the Motor House in Milligan Street:

40

*Owner submission: yes. Owner position: not supportive of Heritage Listing. Proposed action: further consultation with the owner in relation to reasons for objecting to Heritage Listing, including development options and request internal inspection to determine internal condition and authenticity.*

Do you see that?---Yes.

45

27.3390, do you see here some historic images and what was then a current image of the Motor House?---Yes.

And property I is referenced as the Grand Central Hotel in Wellington State?---Yes.

:

5

*Owner submission: yes. Owner position: not supportive of Heritage Listing.*

?---Yes.

10

27.3391:

*Proposed action: further consult with owner in relation to reasons for objecting to Heritage Listing and request internal inspection to determine internal condition and authenticity.*

15

Do you see that?---Yes.

Would you agree that property H and I have much in common at this stage?---Yes, in - yes.

20

Madam Associate, 27.3392. You see there some pictures of what was then a current image of the Grand Central Hotel and some historic images?---Yes

25

[2.15 pm]

And property J is described as Kastellorizo, the Wiluna Flats in Hay Street?---Yes.

30

27.3393. "Owner submission: yes", and there's names of some architects and "son of the former owner"?---Yes.

"Owner position: not supportive of Heritage Listing"?---Mm hmm.

35

"Proposed action: further consult with owner in relation to reasons for objecting to Heritage Listing and request internal inspection to determine internal condition and authenticity", do you see that?---Yes.

So property J also has a lot in common with H and I for the purposes of the process, doesn't it?---I accept that, yes.

40

Going back to Council minutes at 27.0898, with respect to the officers' recommendation, you moved the motion on this occasion, is that correct?---Yes.

45

It was seconded by Councillor McEvoy and with respect to H, I and J, the motion reads:

5                    *Notes that further assessment is required to determine if properties H, I and J are of cultural heritage significance and worthy of built heritage conservation and requests that officers undertake internal site inspections of the properties to determine their internal condition and authenticity.*

Do you see that?---Yes.

10                    The effect of this motion, Mr Harley, was for the Grand Central Hotel to move through the process with two other similarly placed properties, is that right?---Yes.

And the original 12 properties that we had seen in March 2015 were grouped differently to H, I and J?---Yes.

15                    And they were also still moving through the process, do you accept that?---Yes.

The document can be taken down, Madam Associate. Councillor Harley, do you recall the next time that the Grand Central Hotel came before you?---Not the date.

20                    Sorry, not the date?---Not the date, not the circumstances but I recall that it came back to Council for further consideration after further inspection with the landowners in consultation.

25                    It came back to you at a Council meeting, is that right?---I believe it would have come back to us through a Planning Committee meeting.

30                    But to you, not being at a Planning Committee, at a Council meeting?---Sure. I understood the question, yes, it would have come back to me at the Council meeting.

Madam Associate, 27.0939. Do you see here some Council minutes, Mr Harley, 19 July 2016, certified 9 August 16?---Yes.

35                    Madam Associate, 27.0942. Mr Harley, do you see there under the heading, "Councillors present", that you are there?---Yes.

You accept you attended this meeting on 19 July 2016?---Yes.

40                    27.0945, please, Madam Associate, TRIM 17172. Do you see here item 251/16?---Yes.

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

45                    27.0946, please. Is your memory jogged by reading this, Mr Harley?---Yes.

Can you tell me what your memory is before I go on then?---My memory is that

we proceeded with the listing of Motor House and Kastellorizo house and that they ended up on the Heritage Scheme but that I was separated out of that process, subject to a separate Council report and was subsequently delayed.

5 I will unpack that with you, Mr Harley, by taking you back to the documentation?---Sure.

27.0946, the Motor House, property H, Kastellorizo, property J, do you see that?---Yes.

10

And there's an indication here that "Property I will be reported to Council as a separate future report", do you see that?---Yes.

:

15

*The list of identified places was previously presented to the Council as confidential. Given that Council would not have endorsed the list prior to it being made publicly available. It is no longer considered necessary to present the list as confidential, given Council's decision above to progress the Heritage Assessments.*

20

Do you see that?---Yes.

25 Do you consider that that applied to property I, as well as H and J?---Yes, because the properties were moving through the assessment process.

27.0949. Do you see here a heading, "Deemed provisions requirements"?---Yes.

"As outlined above" and the report goes on:

30

*The CPS 2 Heritage List, the Planning and Development (Local Planning Scheme) Regulations 2015, requires formal consultation to be undertaken prior to places being included in the CPS 2 Heritage List.*

35 Do you see that?---Yes.

That was in the context of the first part of the sentence which I didn't read, I'm sorry, which said:

40

*Should Council resolve to propose that places be included in the list -*

45 COMMISSIONER: It might just help, Ms Ellson, just to slow down a bit because I think Mr Harley might be having trouble following what you're reading to him and it might also help you to identify the passage on the page where it appears before you start reading from it.

MS ELLSON: I'm sorry, Commissioner.

COMMISSIONER: That's all right, Ms Ellson. I'm just trying to make the exercise as fair as possible for Mr Harley.

5

MS ELLSON: Yes?---Yes, I've read and understood the paragraphs.

It means, doesn't it, that if Council propose to place a matter on the list, there would be further consultation?---Yes. It's a lengthy process.

10

The report goes on to say:

*Formal consultation will include providing affected owners and occupiers with a copy of the draft - - -*

15

COMMISSIONER: So where is that?

MS ELLSON: I'm sorry, I did it again, Commissioner. Underneath from where I was reading out aloud, under the heading, "Deemed provisions requirements".

20

COMMISSIONER: Yes.

MS ELLSON: The second paragraph which starts with the word, "Formal."

25

COMMISSIONER: Yes, thank you.

MS ELLSON: :

30

*Formal consultation will include providing affected landowners and occupiers with a copy of the draft Heritage Place Assessment and a period of 21 days to make a submission on the proposal.*

Do you see that?---Yes.

35 :

*Officers will report back to Council once the formal consultation with affected landowners in this regard is complete.*

40 Yes?---Yes.

:

45

*Whilst the City has already undertaken informal consultation with affected owners, the next phase of consultation will allow affected owners to formally respond to Council's proposed Heritage Listing, prior to it making a final decision on the matter.*

Do you see that?---Yes.

Madam Associate, 27.0950. Mr Harley, here do you see a motion that:

5

*Council proposes to include the Motor House in Milligan Street in the CPS 2 Heritage List.*

And gives the affected owner and occupier a description, the reasons and 21  
10 days?---Yes.

And a second note that:

15

*A report will be presented back to Council with the results of the consultation with the owners and occupiers located at 68 Milligan Street.*

?---Yes.

20 That's in accordance with the way in which the officer described the process, at least with respect to the Motor House?---Yes.

27.0951. Mr Harley, do you see here a point 4 that:

25

*Council determines that Kastellorizo or Wiluna Flats does not meet the threshold for entry in the City Planning Scheme No 2 Heritage List due to its low authenticity and integrity.*

Do you see that?---Yes.

30

Does that help to remind you that both properties were not proposed to be entered on the scheme?---Yes, it does. My apologies.

You voted in favour of the motions that were put and carried?---Yes.

35

And you made a remark during that process, is that right?---Yes.

Can you tell me a little more about that?---Yes. I understood that the  
40 Administration at the beginning of this process was trying to move things through in batches. I thought that it would be simpler for the purposes of decision-making for them to move through individually, so that we wouldn't have, to for example, vote against the listing of a property because the officers' recommendation was for it to be one way or the other. So when multiple properties are bulked together, it gets confusing in terms of the Standing Orders and process to pull out and to  
45 amend motions where perhaps you might support the listing of one property and not support the listing of another. So that was what the comment was in relation to, and it states there that I thought that we should have proceeded to formal

consultation with the owners of Kastellorizo House. I believe under the Standing Orders there's the ability to request a meeting note and that's - I moved a procedural motion to include a note in the minutes.

5 As at the date of this meeting, Mr Harley, were you aware as to whether or not a further independent assessment had been requested for the Grand Central Hotel?---I was not aware of whether or not a further assessment had been requested.

10 27.0946. Mr Harley, the fourth paragraph it says:

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

15 Did you have an appreciation of what that meant as at 19 July 2016?---No. I made an assumption about what I thought it meant but I didn't have any evidence one way or the other.

20 Thank you, Madam Associate. At some stage after this meeting, Councillor Harley, did you become concerned about the progress of the Grand Central Hotel?---Yes.

Had you had concerns before July 2016?---Yes. It had been more than a year since we had dealt with these items, originally.

25 Talk to me about the concerns that you had after July 2016's Council meeting on the 19th?---Well, I was concerned that the matter was being dealt with now as part of a separate report and I wasn't sure exactly how long that would take. In terms of the process, it's the CEO and Administration who determine the agenda, to a large extent, unless Council officially requests something be brought to them. So my concern was that I was not sure how much longer these matters would drag on for.

30  
35 "These matters" being the listing of the Grand Central Hotel?---The listing of the Grand Central Hotel and the other properties more generally, but I was at this point beginning to feel uncomfortable that the Grand Central Hotel was being singled out and given special treatment.

40 What was it that you saw or heard that gave rise to that concern?---When you know that a building is owned by the Lord Mayor, I think that you immediately wish to ensure, because that person is an Elected Member, that these matters are being dealt with in the same way as any other properties in the City would be dealt with. So when you start to see things like - - -

[2.30 pm]

45 Mr Harley, I asked you what - I'm sorry, go on. Yes, you were going to tell me what you saw?---When you start to see things like properties being pulled out

individual and further assessment, I guess you start to question if there is any reason for the delay.

5 Isn't it correct to think though that the properties are receiving independent attention, no matter what or who owns them?---Officers are dealing with the recommendations and officers may or may not bring in independent advice on particular properties. So yes, officers are dealing with it and sometimes independent experts are providing advice.

10 And that happens no matter who owns the building?---I'm not sure whether this is a requirement for an independent assessment of every building. I think it may be, for example, if a landowner nominates, Council officers agree, or if perhaps there had been some kind of prior assessment through a National Trust classification. I'm not sure it is a necessary requirement that all of the properties be subject to  
15 independent heritage or architectural advice but I'm not certain of that.

Putting that to one side, Mr Harley, would it be fair to say that properties are treated on a case by case basis?---It's my view the property should be dealt with on a case by case basis, that they should be dealt with individually and on their merits.

20 Did you have a view on or after 19 July 2016 that that was what was happening with the Grand Central Hotel?

MR van der ZANDEN: Objection.

25 COMMISSIONER: To be heard in Mr Harley's absence?

MR van der ZANDEN: No, I think it can be dealt with in his presence, Commissioner.

30 COMMISSIONER: Very well. What's the objection?

MR van der ZANDEN: Rather than being asked about what his view is, which invites not only evidence of what he knows - what he saw or what he heard, that's  
35 speculation, the witness should be asked about what he actually saw or heard rather than his views.

COMMISSIONER: For all I know, Mr van der Zanden, it may be a case of his opinion being sought and then the basis for that being sought subsequently. If the  
40 opinion is sought and there's no proper basis for it, then I will treat the evidence accordingly; it will have little probative value. If, on the other hand, the opinion is sought and then the basis for it is established in the subsequent questions and answers, then it would have more probative value.

45 MR van der ZANDEN: It would, but - - -

COMMISSIONER: I understand what you're about to say to me,

Mr van der Zanden

MR van der ZANDEN: Can I just say one more thing?

5 COMMISSIONER: Yes, very well.

MR van der ZANDEN: The nature of this Inquiry is that opinions and views are seized upon more widely. So it would be preferable if the basis was set out first, and if there isn't such a basis, then we don't have an opinion without a basis being proffered.

COMMISSIONER: Mr van der Zanden, I cannot be responsible for what is reported

15 MR van der ZANDEN: I appreciate that entirely.

COMMISSIONER: Hear me out then first, please. I cannot be responsible for what is reported and I am assisted by counsel such as Ms Ellson. In framing questions to witnesses like Mr Harley, I work on the assumption that counsel asks their questions for a particular purpose to advance the work of the Inquiry and do so responsibly, mindful of the sorts of considerations that you are now flagging for me. I am quite capable of conducting the Inquiry in a way that I believe is fair and proper, so you can leave that to me

25 MR van der ZANDEN: Yes.

COMMISSIONER: But I will hear from Ms Ellson in relation to your objection

MR van der ZANDEN: Thank you.

30 MS ELLSON: Commissioner, I do intend to expand upon the question in relation to what view Mr Harley had with respect to the hotel being treated individually and then move on to asking for the basis of that to be explained. Mr Harley has already indicated he had some concerns about the property. I'm trying to get more to the heart of that, Commissioner.

COMMISSIONER: Yes, thank you, Ms Ellson. You understand, of course, Mr van der Zanden's concern is a real one and what he's trying to avoid, quite rightly, is a situation where the witness is called upon to offer an opinion and then is unable to substantiate it but the problem being that of course the unsubstantiated opinion then might well be reported and Mr van der Zanden and clients like his might have to deal with those sorts of unsubstantiated opinions in a different arena.

40 So the concern in my view is a real one but as long as you are questioning in the responsible way that I have indicated to Mr van der Zanden, then I have no difficulty with you continuing in that style of questioning. Mr van der Zanden's objection is really a reminder for the questioning to be conducted in a responsible

way, as I understand it. Is that right, Mr van der Zanden?

MR van der ZANDEN: Yes, it is, thank you.

5 COMMISSIONER: Thank you. I'm confident you'll be able to do that, Ms Ellson, but just bear that in mind.

MS ELLSON: Commissioner.

10 COMMISSIONER: Thank you.

MS ELLSON: Mr Harley, did you see or hear anything on or after 19 July 2016 which led you to form the view that the Grand Central Hotel was not being dealt with on its merits?---Yes.

15

What did you see?---I had a conversation with the relevant Director, Annaliese Battista, who mentioned that she had had to, in essence, take extra care with this item and go out to multiple assessments and repeatedly put the item back up for the Council's consideration, and that she had not had to do that with other properties.

20

Can you tell me when you had that conversation?---I believe that occurred in the final months before the Council was suspended. So it was not contemporary with the matter, although I would just like to add that I, as you know, attended as an observer to the Planning Committee meeting where this matter was dealt with later, and Annaliese - - -

25

COMMISSIONER: We will just deal with one question at a time, please.

30 MS ELLSON: We will get to that, Mr Harley.

COMMISSIONER: Mr Harley, I have explained to you already, haven't I?---I was asked a question as to when I heard - - -

35

Yes, what you saw and you started to answer that with what you heard. Just pay attention to the question, please, and just limit your response to a responsive answer, all right?---Yes.

40

MS ELLSON: You said you heard or you had a conversation with Ms Battista in the final months before Council was suspended and Ms Battista mentioned that she had to take extra care and go out to multiple assessments?---Mm hmm.

45

And had not had to do that with other properties?---That's right.

Did Ms Battista place any of that in time? Did she say, "Look, on this date I was

asked to do this, on another day I was asked to do that, on this day I had a concern", anything like that?---No.

5 Was there anything else, Mr Harley, that you saw or heard after 19 July 2016 that made you form a view that the Grand Central Hotel was not being dealt with on its merits?---Yes. My attendance - - -

10 Sorry, I need to ask you another question. What did you see?---I saw the conduct of my fellow Elected Members at the subsequent Planning Committee meeting where the matter was dealt with.

15 I will come back to that, Mr Harley?---At some stage before the meeting you're talking about, did you elicit or engage in conversations with Councillor Green and Deputy Lord Mayor Linnios about Councillor Chen's vote and the potential for having her support?---Yes.

Can you tell me why you did that?---Yes.

20 Actually, I withdraw the question and I will ask one before it. Can you tell me when you did it?---I believe it was between the item being placed on the Planning Committee agenda and the matter being dealt with by the Council. So it would have been in a relatively short window of time.

25 A relatively short window of time before the Planning Committee meeting?---I believe so.

That's a meeting that occurred on 13 September 2016, do you recall that?---Yes.

30 From time to time did you contact Councillor Green using your private mobile telephone by way of instant message?---Yes.

35 Madam Associate, if you could bring up 27.3425. At the very top, Mr Harley, do you see a heading, "Instant messages between Councillor Harley and Councillor Green"?---Yes.

Purportedly extracted from a mobile telephone with a private mobile number?---Yes.

40 Do you recognise that as belonging to your wife's telephone?---No, that's my number.

You have that number? It's a private mobile number of yours?---Yes.

45 I see. And the participants?---Yes.

You and Dr Green?---Right, yes.

Do you accept that this represents messages between you and Dr Green?---Yes.

Madam Associate, if you could please direct the witness to 27.3426, TRIM 23101.  
Do you see here, I'm requesting you to read, Mr Harley, from 11/09/2016, 12.02  
5 pm, in the middle of the page?---Yes.

Just read the messages to yourself, please?---To myself, yes. Yes.

Madam Associate, 27.3427?---Mm hmm.

10 Have you finished that?---The entire page?

Yes?---I'm just reading down it. Yes.

15 Madam Associate, 3428, please?---I believe the first one is a typo, the first text message.

It is corrected in the next message, Mr Harley?---Okay, yes. Right, yes.

20 3429, to the second last message?---Yes.

Does this jog your memory about what was happening on or about 11 September 2016 between you and Dr Green, regarding the Grand Central Hotel?---Yes.

25 What was happening?---Councillor Green and I were in a conversation about our obligations under the Heritage Act. We were discussing the notion of heritage value and how that's applied and assessed in relation to buildings. We were discussing whether or not we thought that Lily and James would be in favour or not of listing the, or including the building in the Municipal Heritage Inventory

30 [2.45 pm]

Madam Associate, 27.3426. A question Dr Green raises:

35 *Are you going to work on Lily -*

Presumably that's Councillor Chen?---Yes.

:

40 *Regarding Lisa and Joe's heritage building.*

Can you tell me why as at September 2016 you were talking with Dr Green about Ms Chen's vote?---Yes. I believe an assessment had been made that because the  
45 Lord Mayor would need to remove herself from any decision-making in relation to the building, that the numbers in essence would be eight. In that situation, the Deputy Lord Mayor becomes the Chair and in a tied situation, has a casting vote. I

had made an assessment that I was going to support the listing of the building and Councillor Green also. If Councillor Chen and Councillor Limnios were of the same view, then Councillor Limnios, using his tied vote, would be able to achieve a simple majority of the Council and progress the listing of the property.

5

3427, please, Madam Associate - I'm sorry, Madam Associate, 27.3428. At the bottom of the page, you see a reference to you, 11/09/2016, 12.43 pm?---12.43 pm, yes.

10 The very bottom line?---Yes.

Madam Associate, 27.3429?---Mm hmm.

15 "And to put in place appropriate protections. Our qualified Heritage Officers think it should be protected. Why would we overturn their recommendations?" Can you tell me firstly what you mean by "to put in place appropriate protections"?---It may help if I could see the preceding page again to understand the context.

20 Yes, 27.3428. Take as much time as you need?---Yes, that's fine. The Local Government Act requires that Local Government establish a Municipal Heritage Inventory and to put in place appropriate protections for Heritage Listed properties under the Planning Scheme - under their relevant Planning Schemes.

25 Is it fair to say that if a property is not on the inventory, it's not afforded the protections that a property has when it's on the list?---That's right. Because a property is on the inventory doesn't mean that it can't be developed, properties can still be developed, indeed, they can still be demolished but it in essence means that any proposed development on the site needs to take into consideration the cultural significance of the building and where possible, retain parts of the building or the building as a whole and restore it, rather than, with a building that's not on the list, a demolition application is usually rubber stamped.

35 "Our qualified Heritage Officers think it should be protected. Why would we overturn their recommendations", do you see that?---Yes.

40 Can you tell me why you've made those remarks in this message as at 11 September 2016?---Yes. The word "we" was not in reference to myself and Councillor Green individually, "Why would we as a Council overturn the recommendations of our qualified Heritage Officers."

Did you have some sense that that was going to occur at the next Council meeting?---I had a suspicion.

45 Sorry, at the next Planning Committee meeting?---I had a suspicion that the item may not be dealt with fairly by Elected Members because of the ownership of the building.

5 What did you see or hear on or about 11 September 2016 which gave rise to that suspicion?---The only way I can respond to that is, I felt as if I knew or could preempt the way that fellow Elected Members would vote. That's the art of politics, I guess. So I'd not seen or witnessed anything in particular that gave rise to the suspicion but I did have a suspicion that it would not be dealt with fairly.

10 Madam Associate, the document can be removed. Madam Associate, if you could bring up, please, 27.3425 once again. Mr Harley, do you see here again a document headed, "Instant messages between Councillor Harley and Councillor Green extracted from Councillor Harley's iPhone"?---Yes.

With the source pertaining to a mobile number you recognise as your own?---Yes.

15 The participants in the conversation, third line of the typed text?---Yes.

Yourself and Dr Green?---Yes.

Do you see that?---Yes.

20 Do you accept that this is a list of messages between yourself and Dr Green?---Yes.

25 27.3430, please. Mr Harley, could you read to yourself, please, the message from 11/9/2016, 3.12 pm, which is the second message on the page?---Yes.

To the end?---Yes.

The next page, please, Madam Associate, 27.3431?---Yes.

30 27.3432. For the transcript, TRIM 23101?---Yes.

27.3433?---Could you please show me the prior document?

35 Yes. Madam Associate, 27.3432, please?---Thank you, and back.

27.3433?---Mm hmm.

27.3434, just to the middle of the page, Mr Harley, to 3.02 pm?---Yes.

40 Madam Associate, 27.3431, to a message at 3.34 pm, 11/09/2016?---Mm hmm.

Dr Green says:

45 *If they oppose the admin we need to make a big noise about this, that they are in her faction and always vote consistent with her.*

?---Yes.

Underneath that you've said, "Yep". Did you agree a way forward with Dr Green with respect to the Planning Committee meeting on 11 September 2016?---Yes, and as stated, if the Planning Committee didn't proceed as per the officers' recommendation, that that would be suspicious and we might like to make a public statement about it.

Up until 11 September 2016, what had you seen or heard that made you think that if the Planning Committee didn't proceed the way the officers recommended, that that would be suspicious?---Seen or heard? Nothing. It's a political instinct.

27.3432. Dr Green says:

*Lisa is trying to give Lily Nanjing trip and bypass Limnios to win her favors to knock down the hotel.*

?---M'mm.

And you say, "Wow, unbelievable"?---Mm hmm.

Did you speak to Dr Green about that?---This was the first I had heard of it in a text message. I cannot recall but it is likely that I spoke in person with Councillor Green after this text message.

Did you yourself hear anything, aside from what Dr Green told you, about the possibility that the Lord Mayor had offered Ms Chen or Councillor Chen the trip to Nanjing?---No.

Thank you, Madam Associate. Madam Associate, could you please bring up page 27.3483. Do you see here, Mr Harley, a document headed, "Instant messages between Councillor Harley and Councillor Chen extracted from Councillor Harley's iPhone", with a source being a mobile number that you recognise as your own?---Yes.

Participants are yourself and the number you recognise as your own and someone said to be Lily Chen, do you see that?---Yes.

Do you accept that this document is representative of instant messages between yourself and Councillor Chen?---Yes.

Could you please read to yourself, Mr Harley, the first message from 13 September 2016, 3.45, until the end of the page?---Yes.

Councillor Harley, what did you mean when you said - actually, I withdraw that question. The first message, 3.45 pm at 13 September 2016, do you recognise that as a message you sent to Councillor Chen?---Yes.

5 What did you mean when you said to Councillor Chen that you "think it's really important for the integrity of the Council that we support the officers' recommendations"?---That's what I meant. It would not look good. It would cause reputational damage if people - if Elected Members voted against the officers' recommendation and in line with the Mayor's financial interest.

Officers' recommendations aren't followed all the time, are they?---That's correct.

10 Reasons are given when they are not?---That's correct.

It wouldn't look like corruption if you did it, would it?---I disagree on this matter because it's the Lord Mayor and her husband's property. There had been, as was aware at the time, three independent reports. There would be no planning basis on which to reject the inclusion of the property as per the officers' recommendation and it would cause reputational damage to the City if that were the way that the matter progressed

[3.00 pm]

20 You had no reason to think as at September 2016, based on anything you had seen and heard, that the Grand Central Hotel was not being dealt with on its merits, did you?---The matters were very protracted, so other than the timeline, the fact that it had taken a very long time to get to this point and I had a view that the Administration were perhaps dragging their heels on the matter, I had not seen or witnessed anything, anything said, any particular behaviour that would suggest there had been any lobbying of Councillors or anything of the sort.

30 COMMISSIONER: The mere fact that something takes a long time to go through an assessment process does not necessarily mean that there's anything wrong, does it?---It does if matters are not being dealt with in the same fashion. So if a building goes from assessment to progressing and recommendation very quickly and another building takes a very long time, then I think it is not always the case that there's an issue of corruption or the like, but if the property happens to be owned by an Elected Member, then I think Elected Members would want to take more care to ensure that that process had been followed very accurately and without any favour to the owner of the property. So it is not always the case that a delay is a cause for concern, although it might indicate that there could be a cause for concern.

40 But if we come back to my question, the mere fact that it takes a long time doesn't mean there's anything wrong, does it?---Not necessarily.

45 And it may indeed be because the property that is being assessed requires that kind of careful and lengthy assessment might it not?---It may be, though other properties - - -

Just deal with other question at a time?---Other properties - - -

Is it not appropriate to assess each property on its own merits?---It is, and we had received three independent assessments to provide Elected Members with that advice.

5

And the three independent assessments, does that not suggest to you it was being dealt with carefully on its merits?---Too carefully in that for the Administration to need to spend ratepayers' money commissioning three independent subsequent assessments, indicated to me that there was some concern in the Administration or that there had been some lobbying.

10

But that was an inference you drew without the benefit of any discussions with anyone in the Administration, I assume?---Yes, it is the only property that - - -

15

Am I right about that?---Yes, it is the only property that had three assessments, which I thought was a coincidence.

It might be indicative of a number of explanations, might it not?---I'm a perhaps more suspicious person than yourself.

20

Why don't you answer my question first. It might be indicative of a number of interpretations?---Yes, it is open to interpretation.

And some of them might be innocent explanations?---Absolutely.

25

Ms Ellson.

MS ELLSON: Commissioner. Would now be a convenient time for an afternoon break?

30

COMMISSIONER: Yes. I will adjourn for 15 minutes.

**WITNESS WITHDREW**

35

(Short adjournment).

**HEARING RECOMMENCED AT 3.22 PM**

**MR Reece James HARLEY, recalled on former oath:**

40

COMMISSIONER: Yes, Ms Ellson.

MS ELLSON: Thank you, Commissioner.

45

Mr Harley, you've mentioned the Planning Committee meeting that you chose to attend?---M'mm.

Was that a meeting in September 2016?---Yes.

Do you remember it as 13 September 2016?---Yes.

5 Do you have a memory of the meeting?---Yes.

10 What happened?---I sat as an observer and watched the proceedings of the meeting, at which the inclusion of the Grand Central Hotel on the Municipal Heritage Inventory was discussed. As far as I can recall, the owners of the property had a planning consultant from I think, Rowe or TPG attend and speak on behalf of them and lobby for a delay in the property being Heritage Listed so that information could be obtained as to whether or not only a portion of the property could be included in the Municipal Heritage Inventory rather than the entire property, and that delay and request for further information was granted by  
15 the committee.

Do you know how long that process took?---I'm not sure

20 MR van der ZANDEN: What process? I'm not sure what process - - -

MS ELLSON: The meeting. Sorry, my apologies.

Do you know how long the meeting took, Mr Harley?---No, I do not recall.

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

Certified or approved by release by the Chief Executive Officer?---Yes.

30 Madam Associate, 27.1038. Do you see there you were in attendance as an observer, Mr Harley?---Yes.

Do you accept you were at the meeting?---Yes.

35 27.1039. Do you see there PL144/16, "Matters for which the meeting may be closed"?---Yes.

Confidential Schedule number 6?---Mm hmm.

40 27.1040, mention of a deputation?---Yes.

And it was approved for Mr Simpson from PTS Town Planning to address the meeting?---Yes.

45 That was in respect of the item, "Proposed entry of Grand Central Hotel, Wellington Street, Perth into Planning Scheme No 2 Heritage List"?---Yes.

So Mr Simpson is the planning consultant to whom you referred earlier?---Yes.

It says here, "Mr Simpson commenced the deputation 5.37 pm, which concluded at 5.39 pm"?---Yes.

5

27.1042. An item next to the bold 19 July 2016, do you see part of a report - I'm so sorry, I will go back. 27.1040. My apologies, Commissioner.

COMMISSIONER: That's all right.

10

MS ELLSON: This is TRIM 1122.

Do you see here, Mr Harley, the proposed entry of Grand Central Hotel, Wellington Street?---Yes.

15

The background is the reporting unit of Arts, Culture and Heritage, the responsible Directorate, Economic Development and Activation?---That's right.

27.1041. Do you see there part of an officers' report to the committee?---Yes.

20

27.1043, under, "Details":

*This report provides a recommendation to Council regarding the inclusion of the Grand Central Hotel on the Heritage List.*

25

COMMISSIONER: Are you reading from the paragraph in the middle of the page?

MS ELLSON: I'm so sorry.

30

COMMISSIONER: That's all right.

MS ELLSON: Yes, the paragraph in the middle of the page:

35

*This report provides a recommendation to Council regarding the inclusion of the Grand Central Hotel on the Heritage List based on the findings of three Heritage Assessments."*

?---Yes.

40

So there's been a "State Heritage Office Heritage Assessment, a draft City of Perth "Heritage Assessment and a complete Heritage Assessment undertaken by an independent heritage consultant", do you see that?---Yes.

45

Madam Associate, if you could bring up page 27.1064. Do you see here an item labelled Schedule 5?---Yes.

A report dated 31 July 2016, purportedly from Griffiths Architects on their letterhead?---Yes.

5 Without seeing any more of that document, Mr Harley, do you accept that this is the complete Heritage Assessment undertaken by an independent heritage consultant?---Yes, Phil Griffiths Architects.

10 27.1043, please, Madam Associate. The second last paragraph on the page, "The extra Heritage Assessment" - I'm sorry, I will go back one:

15 *The independent heritage report referred above was not undertaken for Motor House and Kastellorizo that together with the Grand Central Hotel constituted the group of places Council requested officers to assess more fully, including an internal site inspection prior to reporting back to Council.*

?---M'mm.

20 [3.30 pm]

It goes on:

25 *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.*

Do you see that?---Yes.

30 Can you tell me if you were aware of media attention in relation to this property in July 2016?---Not specifically. I recall that there was media attention in relation to the property prior to the meeting.

35 What media attention do you recall prior to the meeting?---There were a range of very negative stories about the condition of the property and they were in Perth Now, The West, as well as the Perth Voice.

40 Did the media attention you're talking about happen in July or in another month?---I cannot recall. I remember that it happened prior to the meeting. Over a number of years there was negative media attention.

Do you consider that this property received media attention because of who owned it?---Yes.

45 Do you accept that?---Yes, but there was also media attention because there had been a fire at the building when it was a backpackers hostel but the more recent attention had been because of the Lord Mayor's connection to the property.

Madam Associate, 27.1046, please. Do you see the bold heading at the top of the page, "Heritage Assessments"?---Yes.

5 And at the bottom of the page, "Findings of Heritage Assessments"?---Yes.

And just above that:

10 *The advice provided by the independent heritage consultant - refer Schedule 5 - finds that the place has cultural heritage significance at a local level for its aesthetic and historic values. The place is also considered rare and has a moderate degree of integrity and authenticity.*

15 Do you see that?---Yes.

Underneath:

20 *The findings of all three Heritage Assessments agreed that the Grand Central Hotel meets the threshold for entry on the Heritage List."*

?---That's right.

27.1047, under the heading, "Owner consultation":

25

*Following the report considered by Council at its meeting held on 17 March 2015, the owner was invited to comment on the possible Heritage Listing and on the previous Heritage Assessment prepared by the State Heritage Office. In response to this communication, the owner wrote to the City stating that they did not support possible Heritage Listing.*

30

Do you see that?---Yes.

35 It refers to Schedule 6. Madam Associate, if you could bring up, please, 27.1085. This is TRIM 19690. Mr Harley, this document is not marked confidential at the top?---That's right.

40 But the City's TRIM indicates Confidential Schedule 6 at the bottom, do you see that?---Yes.

Do you accept that this document is the document containing the response to the communication referred to as Schedule 6?---Yes.

45 Madam Associate - - -

COMMISSIONER: Can you just hold that page there for a moment, please?

MS ELLSON: Yes.

COMMISSIONER: Thank you.

5

MS ELLSON: Commissioner.

Mr Harley, had you read this document before going to the meeting?---Yes, I'd read the agenda prior to the meeting.

10

You can see that this document is 6 July 2015 and the meeting is occurring in September 2016, do you see that?---Yes.

Can you tell me what else you recall Mr Simpson saying, other than inviting consideration of a portion of the property to be listed?---Yes. I found it odd that the planning consultant's presentation said in essence, "The owner might be prepared" or "we" or "the owner" or "we might be prepared for the property to be included in the Register but not all of it", when - so what they were advocating for, as I understand, for the facade of the building perhaps to be protected but not the rest of the building. However, this letter from the owner, who I believe is listed as Joe Scaffidi, didn't support that at all. So I was a bit confused, having read the agenda and then turning up to the meeting, that the consultant was saying something different to the owner.

15

20

COMMISSIONER: May I see the second page of this letter, please?

MS ELLSON: Yes, Madam Associate, if you could turn, please, to page 27.1086.

COMMISSIONER: Thank you.

25

MS ELLSON: Yes, Commissioner. Thank you.

Mr Harley, did the independent architect's assessment contain reference to the possibility of the front portion of the building having higher significance than the remaining sections of the building?---I cannot recall but that is often the case.

30

Madam Associate, if you could bring up, please, page 27.1064. Again we see Schedule 5?---Mm hmm.

35

40

31 July 2016, do you see that?---Yes.

This is the independent assessment I took you to earlier on?---Yes.

Madam Associate, 27.1077. Do you see here the words at the bottom of the page, before the heading, "Conclusion":

45

*It is possible for the front section of the building to represent the value*

*and the degree of significance. In other words, the front portion of the building has the highest significance and the remaining sections, much less significance.*

5 Do you see that?---Yes.

Underneath, "In conclusion":

10 *In our view the place is worthy of inclusion in the CPS 2 Heritage List. There is the capacity for a fairly high degree of intervention as the degree of significance suggests, notably, the rear portion of the building. However, the first add issue is for the City to determine whether or not the place is to be included in the list.*

15 ?---That's entirely correct. That's my understanding of the process.

Do you accept then that the independent assessor, namely Griffiths Architects, have raised the possibility of proportionate listing in their report?---No.

20 Why not?---That's not the term that's used. The property's either on the list or it's not and then an assessment is made of the heritage value of the fabric of the building and an architect will be engaged to prepare plans that will shade out certain sections of the building that are deemed more significant than others. There's no such thing as a proportionate listing, the building's either on the list or  
25 it's not, but within that listing, there may be leeway for a Council to approve the demolition, for example, of the back of the building if an owner wanted to put up a residential tower at the back. It is the case often with gold rush era buildings that the front of the building displays the wealth, it's important, it's got all of the bits and bobs and has the main grand rooms, but there's ability for other development  
30 towards the rear of the property to occur.

Mr Harley, I didn't ask you if it were possible, I asked you if the independent assessment here had raised it as a potential?---It's not the - the way that you described it to me is not how it applies under the Act. It's not a proportionate  
35 registration. It's the building, as they have said, is either on the list or not. It's black and white.

That's your understanding of the process at the time in September 2016?---Yes, as referenced in the last sentence of this letter.

40 MR YELDON: Commissioner, this letter is dated July 2016, not September as counsel said, so I wonder if - - -

WITNESS: I read it in September.

45 MS ELLSON: I was talking about the meeting in September 2016.

COMMISSIONER: Would you, rather than addressing each other - - -

MS ELLSON: Sorry, Commissioner.

5 COMMISSIONER: What is the objection, Mr Yeldon?

MR YELDON: It's not clear in my submission, from the answer that we are talking about a conclusion in July 2016 having been reached.

10 COMMISSIONER: Yes.

MR YELDON: And I heard September in the question.

15 COMMISSIONER: Thank you. Ms Ellson, do you want to respond to that?

MS ELLSON: I was talking about a meeting that occurred in September 2016 and asking for the witness to comment on his beliefs with respect to that time because that's the time at which he was at the meeting. The document is dated 31 July 2016. It was a document that's been identified as being attached to the committee minutes for the September meeting.

20 COMMISSIONER: Yes. Please continue.

MS ELLSON: Madam Associate, the document can be taken down. If we could return to the minutes at page 27.1046. Do you see here, Mr Harley, "Independent heritage consultant advice"?

COMMISSIONER: The heading?

30 MS ELLSON: Yes. My apologies?---Yes.

Toward the end or just below the middle of the page?---Yes.

35 It says:

40 *In addition to the internal site inspections requested by Council at its meeting held on 5 April 2016 to complete the City's Heritage Assessment of the Grand Central Hotel, the City also commissioned a heritage consultant to undertake an additional, complete and independent assessment of the place.*

Do you see that?---Yes.

45 :

*The advice provided by the independent heritage consultant - refer to Schedule 5.*

---

Which we have seen?---Mm hmm.

5

:

10 *Finds that the place has cultural heritage significance at a local level for its aesthetic and historic values. The place is also considered rare and has a moderate degree of integrity and authenticity.*

The findings:

15 *All three Heritage Assessments agree that the Grand Central Hotel meets the threshold for entry on the Heritage List.*

Do you see that?---Yes.

20 Following on from that, 27.1047, we have already seen that the report was considered and that the owner had written saying they did not support the Heritage Listing?---Yes.

25 There's an indication just under the middle of the page, under the heading, "Deemed provisions requirements"?---Mm hmm.

25

Following directly on from the text in italics, a passage which reads:

30 *Should Council resolve 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. A copy of the draft Heritage Place Assessment will be provided and the owner and occupier will have a period of 21 days to make a submission on the proposal. Following the close of the submission period, officers will report back to Council. At this time Council may consider the draft Heritage Place Assessment and any submission received as part of*  
35 *making a final decision on the proposed Heritage Listing.*

Do you see that?---Yes

40 [3.45 pm]

So at this point in time, it is correct to say that Planning Committee was being asked to move the Grand Central Hotel forward in the same way as property H had moved forward?---That's correct.

45

27.1048, please. Under, "Comments":

5                    *The City of Perth draft Heritage Place Assessment demonstrates that the Grand Central Hotel warrants entry in the Heritage List. Both the State Heritage Office assessment and the independent heritage consultant's advice reflect this position. Further consultation will be undertaken with the owner and occupier prior to Council making its final decision on the proposed Heritage Listing.*

10                  The recommendation is then made for the matter to move forward with the 21 days provision as we have seen?---Yes.

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

                    A motion was moved by Councillor McEvoy, seconded by Councillor Yong that:

20                    *The item titled '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.

                    And the votes were all in favour of the motion?---Yes.

30                  And because the decision was at odds with that recommendation of the officers, a reason was given?---Mm hmm.

                    That reason being:

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

40                  Do you see that?---Yes.

45                  Mr Harley, is it correct to think that from time to time representatives of owners would come to committee meetings and voice their opinions about what the owner's views were?---Yes.

                    And that is what happened in this case?---Yes.

                    It seems as though, from reading the reasons set out in the minutes, that the Planning Committee took on board very much what the person representing the owners of the property had said on this occasion?---Yes.

                    In and of itself there's nothing unusual about that, is there, Mr Harley?---I thought it unusual that a supposed planning consultant would raise this issue about

proportional registration because I knew that that wasn't possible but an owner's representative attending a meeting and giving an opinion is not unusual, and the committee taking on board the views of the representative is also not unusual.

5 COMMISSIONER: Do you recall the owner's representative using the term "proportional registration" at the meeting?---No. I recall that he did not.

Who's responsible for recording the written reason?---Thank you for the question, Commissioner. This is a bit of a grey area. The Administration type the text into  
10 the minutes. They summarise the debate as they hear it around the Chamber. Sometimes the CEO or a Director will ask the committee to explicitly give a reason, usually when they are voting against an admin recommendation. Maybe the admin is not particularly happy about that having occurred, so they will ask for an explanation, and they are owed explanation so that the admin can go away and  
15 respond and do their jobs. Usually what would happen is the Administration would, in more eloquent terms, write a concise statement that captured the essence of the discussion.

So is it fair to say then that the use of the term "proportional registration" in the  
20 second last line of this page 27.1048, has an uncertain origin?---The origin is certain. I'd not heard it discussed at the meeting or voiced by the consultant. It had been inserted by the Administration in their reason. The actual phrase - when I first read that, it was the first time that I'd ever read or heard that phrase.

25 And it could be there for a number of reasons, expressed by one or more different people?---But it had not been expressed at the meeting in that phraseology so it had been - that's the assessment or the kind of synthesis of the discussion that happened at the committee. I believe that - - -

30 Surely all that you know by looking at this is that someone chose to put that phrase in there but you don't know who did?---That's correct.

Thank you.

35 MS ELLSON: Commissioner.

Madam Associate, if the document could be taken down, please. Did anything that you saw or heard at the meeting on 13 September 2016 cause you to have concerns about the way in which the property was progressing through the heritage  
40 process?---Yes.

What was it that you saw?---My understanding is that I saw the Director, the relevant Director of Economic Development and Activation, Annaliese Battista give a defence of the Administration's recommendation at the meeting and clearly  
45 outlined, as it is in the agenda, that the property had gone through a number of independent assessments and I very clearly remember her using the phrase that "the Administration's view", she was speaking on behalf of, I guess, herself and her

team who prepared the report, "The Administration's view would not change. So this matter might come back, but the Administration will be saying the same thing."

5 MS ELLSON: Did you hear Ms Battista speak at all about proportionate registration or compare the value of the front of the building to the back of it in any way?---No.

10 Can you tell me for how long Ms Battista spoke?---It was not long. It would have been a minute or two. It was concise.

15 What was it about what you heard Ms Battista say that caused you concern?---It was not Annaliese Battista that caused me concern. I guess what I'm saying is I heard the Director make a case for the officer recommendation and then I saw the committee vote against the recommendation despite the advice that had been given by the Director.

20 Given - - -?---It's important to say that deferring an item isn't voting against it, it's just delaying it, so I think that's an important point.

25 Given that you say you did not hear Mr Simpson address the subject of proportionate listing, can you tell me, from what you heard at the meeting on 13 September 2016, what happened?---Yes. The consultant addressed the issue, i.e. he said - my recollection is that he said, "Look, the owners would be open to the idea of listing the facade but didn't want to list the back because they want to proceed with the development." He did address the issue generally. My comment before was that he did not use the phrase "proportional registration." I mentioned in prior testimony that what he was saying was at odds with the attachment that the committee had received, which was just a flat rejection of the listing.

30 Which attachment, Mr Harley?---The letter from Central City Pty Ltd signed by Mr Scaffidi.

35 Do you accept, Mr Harley, that the view of an owner can change over time?---Yes, absolutely.

And it can change over time depending upon what information they are provided with, can't it?---Yes.

40 Do you accept that it looks like that is what occurred in this case?---Yes. My assessment was that there had been some movement from the date of the letter being signed to the committee, and that perhaps there had been some discussion back and forward. My assessment was that perhaps their view had changed and a bit more open to the listing and a development taking place.

45 In that context, Mr Harley, you raised your concerns with Councillor Green, did you?---Sorry, is that before or after the meeting?

After the meeting?---Yes, I believe I would have discussed it with Councillor Green. I can't remember a precise conversation.

5 Madam Associate, if you could bring up, please, page 27.3418 - I'm sorry, that's the wrong page. I mean 27.3425. Do you see here, Mr Harley, again, this is a document headed, "Instant messages" between yourself and Councillor Green, extracted from your telephone, your private mobile number you recognise as your own?---Yes.

10

The participants being yourself and Dr Green?---Yes.

You accept that this is a list of messages?---Yes.

15 You've been taken to it before?---Mm hmm.

Madam Associate, could you turn, please, to 27.3434. Commissioner, this is TRIM 23101.

20 COMMISSIONER: Thank you.

MS ELLSON: Mr Harley, if you could read from the message, 13/09/2016 in the middle of the page?---Yes.

25 5.50 pm?---Yes.

Have you finished reading those?---Yes.

Madam Associate, 27.3435?---Yes.

30

Madam Associate, 27.3436?---Okay.

And the top line of the next page, please, if you could read that, Mr Harley.

35 Madam Associate, if you could bring up 27.3436. You've read the top line?---Yes, I've read 36.

40 Going back to 27.3434, please, Madam Associate. Do you see here a message which is attributed to you, "Item was deferred. There have already been three reports recommending listing. Now Jim, Judy and Keith have kicked the can along the road. The building remains not listed and unprotected", do you see that?---Yes.

Do you accept that's a message that you sent to Dr Green?---Yes.

45 Can you tell me what you meant when you said, "Now Jim, Judy and Keith have kicked the can along the road"?---Yes, they had voted to defer the item, hence delaying the further consideration of the registration of the building.

"The building remains not listed and unprotected", do you see that?---Yes.

5 Unprotected from what?---The owner had written to us telling us that a  
development was imminent. If you recall, Mr Scaffidi had, in previous years,  
demolished the Grand Central Hotel - sorry, the Railway Hotel around the corner.

10 I'm not asking you about that, Mr Harley?---Okay. Well, my concern was that the  
Grand Central Hotel would go the same way as the Railway Hotel and be  
demolished.

[4.00 pm]

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Before demolishing a property, approval needs to be sought, doesn't it?---Approval is given if the building is not on the Heritage List.

5 Approval can be given if the property is on the Heritage List though, can't it?---Yes, approval can be given, however, as I mentioned in prior testimony, it's rubber stamped by the Administration, and it's dealt with at an administrative level often, not necessarily coming up on Council. So a demolition permit can be issued by the Administration without reference to Council.

10 That's the process?---Yes, as I understand it.

Madam Associate, if you could turn to page 27.3435, "Further consultation with owner required"?---Yes.

15 Dr Green asked "For what purpose" and you say, "Precisely. Annaliese said the admin report would be the same next time round", do you see that?---Yes.

"Said to you or said to the committee", you say, "To the committee"?---Mm hmm.

20 Did Annaliese, or did Ms Battista speak to the need for further consultation with the owner at the meeting on 13 September 2016?---She said that the Administration's report would be the same the next time around. My reading of that is that further consultation was not required, the Administration had formed a view.

25 My question was, if Ms Battista had spoken to the topic, Mr Harley?---I don't believe so.

30 The document can be taken down, please, Madam Associate?---Could I just clarify, I believe that she - that Director Battista had mentioned that consultation had occurred because that was what was in the report.

COMMISSIONER: You believe or you recall?---It was in the report - - -

35 You believe or you recall?---I recall that Ms Battista spoke to the process, the independent assessment - - -

The question you were asked actually, Mr Harley - - -?---I recall.

40 - - - is whether she spoke to the consultation at the meeting. You didn't answer that question, then you gave one answer, now you've giving me a different answer. So I'm going to ask for the question to be asked of you again. This time I would like a direct answer to the question. Ms Ellson, would you please ask the question again.

45 MS ELLSON: Yes, Commissioner.

Mr Harley, did you hear Ms Battista speak to the topic of consultation at the meeting on 13 September 2016?---Yes.

5 COMMISSIONER: Yes, Ms Ellson, please continue.

MS ELLSON: Thank you, Commissioner.

Mr Harley, did you hear Ms Battista speak to further consultation with the owner being required?---No.

10 Mr Harley, did you send messages to your wife about what happened at the meeting in September 2016?---I don't recall.

15 Madam Associate, if you could provide the witness with a bundle of documents, please, from 27.3417.

COMMISSIONER: And for Mr McIntyre too, I assume?

20 MS ELLSON: Yes, please, to 27.3424.

Mr Harley, did you send instant messages to your mother after the meeting on 13 September 2016?---I don't recall.

25 Mr Harley, do you see there some documents being instant messages - - -

COMMISSIONER: Just wait until Mr McIntyre has his copy, please.

MS ELLSON: My apologies, Commissioner. Yes.

30 COMMISSIONER: That's all right.

WITNESS: Yes.

35 MS ELLSON: Just a moment, Mr Harley?---Sure, sure, sure.

COMMISSIONER: Mr Harley, I think you're being asked not to read it?---Yes.

Yes, Ms Ellson.

40 MS ELLSON: Mr Harley, do you see here a document headed, "Instant messages, Councillor Harley and Ros Harley (mother)"?---Yes.

Purportedly extracted from an iPhone X. Do you see the telephone number there as source is a private mobile number for you?---Yes.

45 The participants in the call, your personal number next to your name?---Yes.

And do you recognise the number next to that as your mother's?---Yes.

Do you accept that this page represents messages sent, or iMessages sent between you and your mother?---Sure, yes.

5

27.3418, please. From the middle of the page, Mr Harley, 13 September 2016, 7.30 pm?---Yes.

A message from Ms Harley which says, "How did planning meeting go"?---Yes.

10

You say, "Deferred. Scaffidi sent a professional planning advocate to make a deputation." Next message at 7.31 pm, "Said they'd consider a partial listing of the front portion of the property but not the rear", or "the rest"?---Rear.

15

"Rear which they want to develop." 27.3419, you go on with another message, 7.32 pm, "Admin says, that's not how we do it. We don't list part of a building, we list the whole building, then allow less significant fabric to be demolished as part of a redevelopment." This message here at 7.32 pm, does that assist your memory with respect to Ms Battista speaking to the subject of partial listing?---I'm not sure how to answer the question. Does it assist my memory? I - - -

20

Do you have a memory now, looking at this text message, of Ms Battista saying to the meeting, that "partial listing wasn't what they did and they list the whole of the building and allow less significant fabric to be demolished as part of a redevelopment"?---I can't answer that with confidence, I'm sorry. I'm not sure. That is my assumption because it's what I've said but I'm not sure.

25

Do you accept that your memory about these matters would be better as at the time and date of the meeting?---Absolutely.

30

And you accept that this message was sent at 13 September 2016 at 7.32 pm, some hours after the meeting concluded?---Yes.

Do you accept that this message then would reflect what happened at the meeting?---Yes.

35

Moving on, Mr Harley, 13 September 2016, 7.32 pm, "Admin said there have already been three reports to Council, a fourth will say the same thing." You go on, "Judy, Keith and Jim sheepishly claimed that more discussion with the owners was required and moved to defer", and you say, "Weak, spineless, and your next message - that was the message at 7.32 pm. You go on to say at 7.33 pm, "Outcome: building not protected. Kicked the can down the road"?---Yes.

40

And your mother replies?---Mm hmm.

45

And you say, 13 September 2016, 7.43 pm, "Yes, but they'd need a demolition permit approved, plus they have just spent all this money renovating it, why

demolish"?---Yes.

Next message, 7.44 pm, "I mean, if you're going to demolish, then just do it but don't spend a million bucks doing a reno, then demolish, right"?---That's right.

5

Then your mother replied with a one sentence reply at 7.59 pm at 27.3420?---Yes.

Do you accept then that as at 13 September 2016, you didn't believe that the Scaffidis would demolish the Grand Central Hotel?---I was confused. Yes, that's right. I had formed the view that they had renovated it recently, so why had Mr Scaffidi in his letter written that they wanted to proceed with the development? What did that mean, and also, if they had renovated it recently, why would they be seeking to ensure that they could demolish the rear of the building? It didn't really stack up for me. So I was unsure.

15

It stacks up if you're going to sell the building, doesn't it?---The owner had said that he had - was intending to develop the building, so I did not believe that they would be selling the building.

The owners' representative had made representations to a committee meeting in 2016 about the potential for partial registration, hadn't they?---Yes.

That was different to the representations made by Central City in 2015, to the extent there that the possibility was raised for the building to be redeveloped?---Yes.

25

So it would seem that things had changed for the owners of the building between 2015 and 16, doesn't it?---Yes, I accept that.

The document can be returned, Madam Associate.

30

COMMISSIONER: A short-lived pleasure, Mr McIntyre.

MR McINTYRE: I beg your pardon?

35

COMMISSIONER: A short-lived pleasure.

MR McINTYRE: I didn't know I was returning to them, so they are highlighted.

MS ELLSON: One last thing I would like to take you to on this topic, Mr Harley?---Yes.

40

Did you send an email to Mr Mileham outlining your concerns on 13 September 2016, the same day as the Planning Committee meeting?---Yes.

45

Madam Associate, if you could please bring up page 27.1083. Mr Harley, do you see from the middle of this page what appears to be an email, 13 September 2016,

7.38 pm from yourself to CEO, presumably Mr Mileham?---Yes.

Do you recognise this as an email you sent to Mr Mileham on that date and time?---Yes.

5

It says:

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? 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. I don't understand why the owners of this property would seek a deferral on these grounds.*

15

Do you see that?---Yes.

Is it fair to say then that at the meeting, the Planning Committee meeting on 13 September 2016 you weren't sure that the City could accommodate a request for part of a property to be listed on the inventory?---I was sure that that request could not be accommodated

20

[4.15 pm]

25 Why then did you send a email to Mr Mileham asking him about it?---Because I wanted the CEO to confirm that he understood the same thing.

What difference would that make to you, Mr Harley?---It would explain or it would help me to understand why - - -

30

It did or it would - sorry, that was my fault in my question?---Receiving a response to that would help me to understand why the CEO had not spoken up at the meeting to explain his understanding of the Scheme, or the provisions of the Act and its operation.

35

I will ask you more questions about your observations of the CEO during the meeting after we move on, Mr Harley?---Sure.

See above there is an email from Mr Mileham to yourself at 7.46 pm:

40

*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 would be keen to hear the officers' view on that and await the review.*

45

Do you see that?---Yes.

You didn't accept that as a reply to your questions though, did you?---No.

Have you read the top?---Yes.

5

27.1082. 13 September 2016 at 11.34 pm. It appears to be an email from you again to Mr Mileham, do you accept that?---Yes.

You think:

10

*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.*

15 Did you hear anything at the meeting to lead you to believe that Mr or Mrs Scaffidi had asked Mr Mileham to talk to them at all about the heritage value of their property?---No. The committee had asked the CEO.

20 COMMISSIONER: Just stick the question, please, Mr Harley. You've answered it. Yes, Ms Ellson.

MS ELLSON: Thank you, Commissioner.

25 Did you see or hear any of the committee members ask Mr Mileham to speak to the Scaffidis about "the heritage value of your property", at any time?---No.

You've been taken to paragraphs 3 and 4 of your email?---M'mm.

30 In the private hearings, Mr Harley, do you recall that?---Yes.

And at the end of the page you say:

35 *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 your tongue but it does concern me.*

Do you see that?---Yes.

40 Ms Battista had spoken to the meeting, hadn't she?---Yes.

And she had done that on behalf of the City, hadn't she?---Yes.

45 So there was no real reason for the CEO to speak in addition to Ms Battista, was there?---I disagree.

Why?---The CEO was the former Planning Director and had a more detailed understanding of the planning matters.

And in his previous reply to you, he had said, "I don't believe partial listing the easily be accommodated in the Scheme"?---M'mm.

5 So it appears that he didn't know, doesn't it?---It appears that he told me that he did not know.

Did you have an expectation that he did?---Having been the former Planning Director I had thought it reasonable that he would have a response in the  
10 committee and offer that.

COMMISSIONER: But if he had nothing more to say than Ms Battista, why would he say anything?---He may have made an assessment that Director Battista had adequately - - -  
15

If he had nothing more to say than Ms Battista, why would he say anything?---He may not. He may wish to say nothing.

And that would be quite appropriate, wouldn't it, if he had nothing to add?---I  
20 observed it to be unusual.

Just answer my question?---Yes.

Thank you. Ms Ellson.  
25

MS ELLSON: Thank you, Commissioner.

COMMISSIONER: Would this be a convenient time, Ms Ellson, or do you need a little longer? It's up to you.  
30

MS ELLSON: I can finish the - no. Now would be a convenient time.

COMMISSIONER: Thank you. In that case I will adjourn the Inquiry until 10 am tomorrow morning.  
35

**WITNESS WITHDREW**

**AT 4.21 PM THE MATTER WAS ADJOURNED  
UNTIL WEDNESDAY, 4 SEPTEMBER 2019**  
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