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INQUIRY INTO THE CITY OF PERTH

PUBLIC HEARING - DAY 106

WEDNESDAY, 11 SEPTEMBER 2019

INQUIRY PANEL:

COMMISSIONER ANTHONY (TONY) POWER

COUNSEL ASSISTING:

**MR PHILIP URQUHART
MS KATE ELLSON**

COUNSEL APPEARING:

**CAV. MARIA SARACENI and MR MARTIN TUOHY (MR Martin MILEHAM)
MR JOEL YELDON and MS EMILY CHAPPELOW(Ms Janet
DAVIDSON)
MR PETER MARIOTTO (Mr Dimitrios LIMNIOS)
MS ALENA ZORIC (Mr Gary STEVENSON)
MR NICK MALONE and MR JASON O'MEARA (Mr Reece HARLEY)
MR MATTHEW CORNISH (Dr Jemma GREEN)
MR PETER McGOWAN and MR TOBIAS BARRIE (Ms Judith McEVOY)
MR PETER van der ZANDEN (Ms Lisa SCAFFIDI)
MR GERALD YIN (Mr Yit-Kee YONG)**

.11/09/2019

HEARING COMMENCED AT 9.30 AM:

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

10 Mr Urquhart.

MR URQUHART: Thank you, sir. I just have some questions to ask of Mrs Davidson. She's in the back of the hearing room, so if we could have her in the witness box, thank you.

15 COMMISSIONER: Thank you. Ms Davidson, would you mind coming forward to the witness box, please.

MS Janet Elizabeth DAVIDSON, recalled on former affirmation:

20 COMMISSIONER: I will take appearances and hear any applications. Mr Tuohy, you appear for Mr Mileham?

MR TUOHY: Yes, Commissioner.

25 COMMISSIONER: Thank you. Mr Yeldon, you continue to appear with Ms Chappelow for Ms Davidson?

MR YELDON: Indeed I do, thank you, Commissioner.

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

MS ZORIC: I do, thank you, Commissioner.

35 COMMISSIONER: Mr Malone, you continue to appear for Mr Harley?

MR MALONE: I do, thank you, Commissioner.

40 COMMISSIONER: Thank you. Mr Cornish, you continue to appear for Dr Green?

MR CORNISH: I do, thank you, Commissioner.

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

45 MR BARRIE: Thank you, Commissioner.

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

MR van der ZANDEN: Yes, thank you, Commissioner.

5 COMMISSIONER: Thank you. Mr Urquhart.

MR URQUHART: Thank you very much, Commissioner.

10 Mrs Davidson, I've just got - not too many questions to ask you before Ms Ellson's going to continue her examination of you. If you don't understand any of my questions, just please say so straight up and that way things will move a lot more smoothly. Okay? Good. Would it be correct for me to say you have followed the evidence of other Elected Members at these public hearings?---The last two weeks I have been sitting in.

15 You've been in attendance in the public gallery?---Yes.

On most days or just some days?---Quite a number of days over the last two weeks.

20 You've also read the transcript of the evidence?---No.

25 Am I right in saying then you're aware of questions that have been asked regarding WhatsApp messages being sent amongst a group of Councillors?---I recall that I think questions may have been asked and - yes.

You remember those, don't you?---I can't recall the specific questions over the last two weeks.

30 No, but the fact that there were WhatsApp messages sent amongst a group of Councillors?---Yes.

And these being messages shared amongst a group of Councillors who you have previously described as a collegiate group?---Yes.

35 Of which you were a member?---Yes.

Do you recall this WhatsApp group was created by Ms Scaffidi?---I don't know whether she created it but I do know that it was there.

40 Do you recall that it was created just after the 2015 City of Perth elections?---Yes.

And you've always remembered, haven't you, that you were a member of that WhatsApp group?---In my private hearings - - -

45 No, I'm just asking you this question?---Sorry.

You've always remembered that you were a member of that WhatsApp group?---Yes.

Comprised of you, the then Lord Mayor and five other Councillors?---Yes.

5

And from October 2015 it was extensively used for the next several years in communications between the seven of you, isn't that right?---Yes.

And you recall that there was a direction from Ms Scaffidi that it, that is, the use of WhatsApp messaging replace text messages for mass communications, do you remember that?---I don't recall that specifically.

10

This might help you. We will have a look at 14.0069, thank you, Madam Associate.

15

ASSOCIATE: On the screen?

MR URQUHART: Yes, up on the screen. That will be fine, thank you, for this one. TRIM number, sir, 13609.

20

COMMISSIONER: Thank you.

MR URQUHART: Here we go. This is actually the first time this WhatsApp chat group was established, and you can see that at the top of the page, 22/10/2015.

25

That's only several days after the elections that year, wasn't it?---Yes.

And we can see there the participants and we can see there's a total of seven Councillors, all part of that collegiate group that you've previously described as, do you see that?---Yes.

30

Then we go a bit further down, about halfway down the page with the time stamp 22/10/2015, 4.37.19 pm, a message from Ms Scaffidi which reads:

Hi everyone, this is for mass communication. Use instead of text for all of us.

35

Do you see that?---Yes.

Does that help jog your memory that in fact that is what she said was to be done?---I only recall it because I've seen this text now.

40

Sure, but you would have read it back in 2015, wouldn't have you?---Yes.

And that's indeed what happened, from then on the seven of you communicated via WhatsApp rather than texts, isn't that right?---Yes.

45

Thank you, Madam Associate, that can be taken down. So am I right in saying

then from October 2015, using WhatsApp became an integral method of communication between the group you belonged to?---Yes.

5 When you first heard or read evidence in the Inquiry regarding the WhatsApp communications within your group, am I right in saying you didn't think, "I completely forgot we had ever had this WhatsApp group"?---In my private hearings - - -

10 No?---Sorry.

I'm asking you about when you first heard or read evidence in the Inquiry regarding the WhatsApp communications within your group. Am I right in saying you didn't think, "Oh, I completely forgot that we ever communicated in this way"?---I had forgotten, and then of course as a reminder, I then remembered.

15 You had forgotten?---Yes.

20 You had forgotten, okay. Let's explore that a little bit further, Mrs Davidson. I'm right in saying though, aren't I, that the communications on WhatsApp continued from October 2015 within this group, right through to when Council was suspended in March of 2018? I'm right there, aren't I?---I wouldn't have thought so.

25 You wouldn't have thought so? How long do you say?---I don't know.

Several years?---I don't know, Mr Urquhart.

Have a guess; several years?---It would have been October 2015.

30 Yes, right through to the next elections in October 2017, I'm right there, aren't I?---I can only say you probably are.

And then beyond that as well?---That I don't know.

35 You don't know? Why don't you know?---Because I cannot remember from October 2017 until 2 March whether it was used or not.

40 Why can't you remember between those dates?---Only because I used to look at the messages cursorily and then deleted them.

You deleted them, did you?---I did.

45 Why?---Because I always kept my phone, you know, clean of emails or any other material. It was just the way that I worked.

Why delete these messages?---Why would I not? Why would I - - -

I'm asking you why delete these particular messages?---I would delete texts and any other emails.

5 I'm not interested in texts, I'm just asking about these ones. Why would you delete these ones?---It would just be a process that I would do with my phone.

Is that something that was said to the group?---No, it was the way I kept my phone, always cleared of material.

10 So the group never discussed among themselves about making sure these messages were cleared and wiped?---Not from my point of view. I just did mine automatically.

15 That wasn't the question. The question was, this group never discussed amongst themselves - - -?---Not as far as I know.

- - - about deleting messages? Not as far as you were aware?---No.

20 You read all these messages though, didn't you?---I did cursorily, yes.

Did it surprise you, just even a little bit, that the Inquiry had access to these WhatsApp messages?---No.

25 No? Why is that?---I read in the paper that you had millions of documents and I'm sure you've looked at all the electronic material that people have had, so I assumed, or it seems obviously possible that you would have that material.

30 Not from your phone. The Inquiry wouldn't have it from your phone, would it?---I have no idea, I don't - - -

Because you've deleted them?---It all depends how they were able to access material.

35 Deleting the messages would make it, if not impossible to retrieve, extremely difficult, would you agree with that?---Yes, I would.

40 So if every member of this group had deleted their messages, it would be impossible, or very difficult to retrieve them, by the Inquiry, wouldn't it?---It would.

So again I'm going to ask you, did it surprise you, even just a little bit, that the Inquiry had access to these WhatsApp messages?---It didn't surprise me because I can only assume that other users did not delete.

45 And that would be contrary to what was discussed amongst the group, wouldn't it?---I don't know that. I can only say that I delete mine automatically as I kept my phone very clean.

So again you're maintaining you weren't aware of what others were doing regarding their deletions of these WhatsApp messages?---No.

5 You weren't aware of that?---No.

You maintain that, do you?---I do. It was entirely up to them as regards whatever they were going to do with their equipment.

10 And you're saying there was never a messages posted amongst this WhatsApp group about making sure you delete these messages?---There may have been, Mr Urquhart. There may have been and I'm sure you're probably - you're either going to show it to me.

15 Exactly right. I'm going to hand out hard copies now of this document, Commissioner.

COMMISSIONER: Madam Associate.

20 MR URQUHART: We will just hand them down, maybe one between two. Just turn it over for one moment, please?---Turn it over?

Turn it over, yes, until everybody's got a copy. Sir, this is at 14.0145.

25 COMMISSIONER: Thank you

[9.45 am]

30 MR URQUHART: TRIM number 13609. We are all set now. Okay, you can turn over now, thank you, Mrs Davidson, and I just want you to have a look at those messages that appear. The first one is from - no, just the first page, please. We will get to the second in a moment. The first page there, message from Judy McEvoy on 22 January 2016, three months after this WhatsApp team was established:

35

Please make sure you ALL delete our chats. Start afresh. Important.

Can you see that?---Yes.

40 So why the importance of all the chats being deleted, Mrs Davidson?

MR YELDON: I object.

MR URQUHART: Why do you think - - -

45

COMMISSIONER: Just pause for a moment, Mr Urquhart. There's an objection.

MR URQUHART: Yes, I'm rephrasing the question now.

Why do you think Ms McEvoy would be stating something like that?---I don't know her thinking, Mr Urquhart.

5

No, why did you think she would be sending a message like that? Not her thinking, your thinking?---She was telling us to delete them.

That's not the question. I'm asking you why did you think she was telling you to do that and emphasising, "Important", with three exclamation marks?---Well, to clear all the chats.

10

Why did you think she would be saying it's important to do that? The question's not going to go away?---I'm sure it isn't but it's got no difference to me. I automatically clean my machine.

15

Why do you think she was saying that, stressing? The answer is pretty obvious, Mrs Davidson?---Sorry, I can't come up with one.

My explanation for it is because of the content of these messages; isn't that the explanation?---I've no idea.

20

You think about it. It's the content of these messages, wasn't it? The answer won't be found on that page?---No, I'm sure it won't. I have no idea, Mr Urquhart.

25

That's my explanation, have you got a different one?---I've got no explanation whatsoever. I mean, the - - -

The sort of messages - sorry, go on?---No.

30

No, go on, you were going to add something?---Just on the point of view that whatever was discussed, you move on from.

But why does it need to be deleted?---From my point of view, as I've already explained, I would delete all my material on my phone.

35

The content of these messages would not want to be in the hands of someone outside this group, that would be fair to say, wouldn't it?---It could be.

Well, it is so, isn't it?---So on that basis, if you didn't want it to go anywhere else, the answer is yes.

40

And you yourself did not want this sort of material going anywhere else, did you?---That is correct. That's why I deleted it.

45

Because of the subject matter, isn't it?---Yes.

Can I ask you why you didn't volunteer that explanation when I first asked you?---From my point of view, as I say - - -

5 No, the question is, why didn't you volunteer that evidence when I first asked you?---I'm just trying to get my mind around the questions that you're giving to me, so that I can give a fairly definitive answer.

10 Mrs Davidson, I asked you why. Why did you think there was this direction that these messages be deleted, and you said you didn't know, you couldn't offer an explanation. Then I offered one and you eventually agreed that was it, that's the obvious explanation. So I just want to know why it was you didn't give that explanation to the Commissioner without me prompting you, or ringing your bells?---Just a thinking process, Mr Urquhart, that didn't bring me to your first point immediately.

15 I have trouble understanding that answer?---Well - - -

What do you mean by that?---The word "content" didn't come into my mind.

20 You see, when someone deletes something from their phone, it's because they don't want other people - one of the reasons, they don't want other people to see it?---That is true.

25 Yes, because of the content of it, isn't that right?---Yes.

So that's the most obvious and really, only explanation, isn't it, as to why this group was deleting its messages?---Yes, and I've already explained my other explanation, is to keep my phone as clean as it was.

30 I asking you about the group though, Mrs Davidson. You see there Jim Adamos saying, "Will do", do you see that?---Yes.

James Limnios gives the thumbs up, can you see that?---Yes.

35 And at the bottom of the page, Ms Scaffidi gives a response and we will go over the page, now, if you can do that, 14.0146. She says, "Always doing every few days", and is that what you did as well?---No, I cleaned my machine automatically, whatever was on my machine in terms of emails, texts or WhatsApp, not because of the direction of Judy, it's just that I actually cleaned everything up.

40 With respect to these, I'm right in saying that you would not want third parties seeing the contents of these messages, would you?---That is true.

45 So again I'm going to ask you the question, weren't you just a little bit surprised that the Inquiry had access to these messages, just a little bit?---No.

No? Notwithstanding the fact that there was that direction from Judy to make sure

you all delete your messages, important; it didn't surprise you just a little bit - -
-?---No, it didn't.

- - - that someone failed to comply with that direction?---No.

5

Not at all?---No.

Not the teeniest-weeniest bit of surprise?---No.

10 Concern? Were you concerned at all?---That was entirely up to them.

Were you concerned at all - - -?---No.

15 No, I'm asking you now another question. We are at cross-purposes?---I answered,
Mr Urquhart, was I concerned? No.

No, can you let me finish asking the question. Did it concern you that the Inquiry
now had access to these messages?---I'm going to answer no because you have a
mass of material, so anything could appear, so - - -

20

I'm not asking you about that. Did it concern you - - -?---I'm going to say no, I was
not concerned.

25 No, you've already said you weren't surprised because of the fact that the Inquiry
had all these documents. Now I'm asking you specifically, were you concerned
that the Inquiry now had access to these WhatsApp messages?---No.

You weren't concerned at all?---No, because there is nothing I can do about it.

30 No, but were you concerned - - -?---No.

- - - that we now had that?---No.

Notwithstanding the contents?---No.

35

Notwithstanding some of the evidence that you've heard?---No, nothing I could do
about it.

40 Notwithstanding the fact, for example, that your good friend, Ms Scaffidi, was
asked about whether she ever referred to Mr Mileham, or compared him to Satan -
sorry, Mr Stevenson as Satan and then we find out that there was a WhatsApp
message to that effect, that didn't concern you?---The only time I heard, and I'm
not saying that I haven't - - -

45 The question is, didn't that concern you?---That didn't because I couldn't remember
the reference to Satan.

But when you - I think you were in the hearing room, weren't you, when Ms Scaffidi was asked that question?---No.

You weren't?---No.

5

You weren't here on 26 August?---No.

But you'd read about it in the paper though?---I did do.

10 And did you think, what an extraordinary question to ask, that can't be right; did you think that?---Yes.

And then lo and behold we find out later on that it's actually there in a WhatsApp message. You heard that evidence, didn't you?---That part in the WhatsApp message, no.

15

No?---No.

But you do accept now it's in a WhatsApp message?---I have to accept, yes. I'm sure you've got copies.

20

So did that concern you?---No.

No, still didn't concern you?---No.

25

For example, you wouldn't want the two other Councillors who didn't make it into this WhatsApp team, you wouldn't want them to have access to these messages, would you?---No.

30 Why is that?---Obviously they weren't included.

Why was that?---The 2015 elect had been run and obviously the collegiate group were seven Elected Members.

35 And you didn't want the other two members having access to these messages because of the content?---Yes.

You see, when you gave your evidence at the private hearing in July this year, you had no intention of letting the Inquiry know about the existence of this WhatsApp group, isn't that right?---No, I apologise for that omission.

40

So you deny you had no intention of letting the Inquiry know?---I do because at the time when you were questioning me, in terms of discussing with Elected Members, that was not in my brain.

45

You didn't want it to be in your brain, did you?---No, I did not. I could not remember about it.

Mrs Davidson, are you really saying you forgot?---Yes, I did. At the time that you asked me, yes, I did.

5 About all the communications that you had?---Yes.

With this collegiate group on WhatsApp?---Yes, at that time, yes.

10 Over the course of two years, at least?---Yes. At the time that you asked me, yes, I did.

Or were you hoping or were you trying to conceal the existence of that WhatsApp group from the Inquiry?---No, I was not.

15 Are you sure about that?---I am, Mr Urquhart.

Do you recall that I gave you a number of opportunities?---I do.

20 And that still didn't trigger any memory?---No, it did not.

About these WhatsApp messages?---No, it did not.

Really?---No, it did not, Mr Urquhart.

25 I'm going to remind you now of the questions and answers you gave. Sir, this is from 4 July 2019. It starts at page 7, line 20.

COMMISSIONER: Thank you.

30 MR URQUHART: Before I do that, Mrs Davidson, when you heard during the course of the public hearings over the last two and a half weeks that in fact the Inquiry did have access to these WhatsApp messages, did you cast your mind back to the evidence that you gave at the private hearing?---I did do - - -

35 Yes?---Because I - yes.

Did you realise that the answers you gave were, shall we describe it as, not correct regarding this matter?---At the time I gave the evidence, it was correct and I apologise for that omission.

40 No, I'm not asking about that. I'm asking you whether you realised, once you heard that the Inquiry had access to these WhatsApp messages, that the evidence you'd given at your private hearing was incorrect?---Once I'd heard of the WhatsApp, yes, I would agree.

45 And you had no knowledge, as of 4 July 2019, that the Inquiry did have access to these WhatsApp messages, did you?---I have no idea, Mr Urquhart.

I'm asking you, you had no knowledge, did you - - -?---No.

That the Inquiry - yes. Page 7, 4 July 2019, I asked you:

5

How did you communicate with your fellow Councillors and the Lord Mayor on this collegiate group?---Sometimes we would, you know, meet.

10

So face-to-face?---Yes.

Obviously, yes?---I would say nothing by email.

15

Nothing by email, why was that?---Certainly not from my point of view because I didn't necessarily do emails.

But you did emails though, didn't you?---Yes, but not on - very little in terms of items.

20

I'm just talking about Council matters?---Yes, we would have been at briefing sessions.

Yes, so that's face-to-face?---M'mm.

25

So what, so nothing by email?---Very little.

[10.00 am]

Then I asked:

30

What other means of communication did you have?---I think very little by telephone and very little by, you know, text.

35

I pause there, Mrs Davidson, because now we know why there was very little communications by text because the Lord Mayor had said, "Use WhatsApp rather than text for mass communication", isn't that right?---Yes.

So that's the reason why you did very little by text, isn't that right?---Yes.

40

It continues. So I ask:

So very little by telephone, are you talking about oral conversations on the phone?---Yes.

45

On to page 8 now, sir.

COMMISSIONER: Thank you.

MR URQUHART: I asked:

And then when you say very little by texts, so not much communications via texts?---No.

5

Listen here now, Mrs Davidson. I then asked:

Or any other means of communication on the phone?---No.

10 That wasn't correct, was it?---It was at the time, Mr Urquhart.

No, it's not correct in reality?---In reality, no.

I ask, "No", and you go, "No" again?---That's right, I remember.

15

Yes, you remember that?---I remember you looked up - sorry, you looked at me and I looked at you surprised.

20 Why do you mean surprised?---Because I was trying to work out what you were actually trying to - - -

Careful, Mrs Davidson, because I will warn you now, we have got footage of your evidence at the private hearing. So you want to be very, very careful about making things up, okay?

25

COMMISSIONER: We have audio visual recording?---Fine.

So I can look at that, Mrs Davidson. Go on, Mr Urquhart.

30 MR URQUHART: Do you want to maintain then that you looked surprised or would you like to modify your evidence in that regard in light of what we have just told you?---I felt I was surprised, Mr Urquhart.

35 So you might not have looked surprised, is that right?---Well, I felt I did. I just - - -

You might not have looked surprised then, Mrs Davidson - - -?---I looked at you blankly.

40 - - - is the question. You might not have looked surprised?---I looked at you blankly.

You might not have looked surprised, is that right?---I don't know. I haven't got the footage. I'm almost looking at you now as I probably looked then.

45

You don't look surprised at all to me now?---I'm just probably looking blank then, so I withdraw that I didn't look surprised.

I think that would be a very good idea, Mrs Davidson, a very good idea?---I looked at you blankly.

5 I'm going to back to you about these questions and the next question I asked you:

You're certain about that?---As far as I know, yes.

10 Are you saying you didn't give truthful answers to those last three questions because you had forgotten?---They were truthful as I had not remembered at that time.

You'd forgotten?---True.

15 Mrs Davidson, I just want to use a snapshot of the communications that the group had in the - under the six months from when the group was created. So this is 22 October 2015 to 14 April 2016, under six months. 131 pages of WhatsApp messages in the group, well over 1,000 messages. That's just in the first six months, over 1,000 messages, okay?---Yes.

20 You posted 65 messages in that time, on average, 11 every month, okay?---Yes.

If that amount of messaging continued for, let's say, another 18 months to October 2017, that is about, getting close to 5,000 messages, including a couple of hundred, 25 200 or 300 from you, okay?---Yes.

Are you seriously maintaining you had forgot, when you gave your evidence on 4 July, that that was a means of communication between your collegiate group?---Yes, on 4 July, that was not in my brain. I found - - -

30 Why wasn't it in your brain?---I found the Inquiry process distressing, upsetting and - - -

35 Certainly, and upsetting just asking questions about how you communicated?---Yes, the whole process.

Those ones in particular?---The whole process of suspension from 2 March.

40 I can understand that but you still have an obligation to tell the truth though, don't you?---Yes.

So instead of saying, "I don't recall any other means of communications on the phone", that should have been a more accurate answer, shouldn't it?---Looking back, yes.

45 Not looking back, looking at the time. That would be a more accurate answer, wouldn't it?---Yes.

And a more accurate answer still would have been, "Yes, we communicated via WhatsApp"?---Yes.

5 But instead, you just denied it?---Yes.

Can you understand why someone with a sceptical mind might have difficulty accepting your explanation that you simply forgot that you and your aligned group communicated in this way?---Yes.

10

Because you'd remembered in your evidence on 4 July that you had very little communications via texts with the group, you remembered that, didn't you?---Yes.

15 And the reason for that is because of what the Lord Mayor told all of you to do, "Use instead of texts for all of us"?---Yes.

Isn't the real reason for not telling the truth about the WhatsApp communications is because you did not want the Inquiry finding out about it?---No.

20 M'mm?---No.

Do you agree with me that the contents of a number of those messages reflect poorly on some members of the WhatsApp group?---Not knowing what that content is but I will say that it obviously will be a yes.

25

You do know the content because you've listened to the evidence from the last two weeks, so you do know the content, don't you?---Not specifically to WhatsApp.

All right, I will give you the example?---Right.

30

The Lord Mayor calling Mr Stevenson a snake; that doesn't reflect well?---I read that in the paper.

That doesn't reflect well on the Lord Mayor, does it?---No.

35

The Lord Mayor making fun of Mr Harley's suit, that doesn't reflect very well on the Lord Mayor, does it?---No.

40 So then do you agree with me that the contents of a number of these messages, and that's just two examples, reflect poorly on some members of the WhatsApp group?---Yes.

Is that why you gave less than truthful answers to my questions of you on 4 July?---No, at the time that was not in my brain to enunciate, I'm sorry.

45

Was it conveniently not in your brain?---No, it was not there.

Can you see now why it could be said that it was not conveniently in your brain?---I can see why you're saying it but it actually was not there.

Thank you, Mrs Davidson. They are all the questions I have, sir.

5

COMMISSIONER: Thank you, Mr Urquhart. Ms Ellson. I will just give you a moment to set up.

MS ELLSON: Thank you.

10

Mrs Davidson, I would like to talk to you about Mr Mileham's recruitment. You were the Presiding Member of the CEO Recruitment Committee throughout the process to recruit a replacement for Mr Stevenson, is that right?---Yes.

15

The process to recruit a replacement for Mr Stevenson was one that was conducted internally, is that right?---It is.

What was the rationale for that, Mrs Davidson?---The Director of Corporate Services who looked after the human resource management component, it was agreed that component of the Director of Corporate Services had the capacity to undertake it internally.

20

Anything else?---That was based on, that they had done much of the recruitment process for the organisational restructure of new Directors, so we knew that Human Resources did have the capacity.

25

The decision to recruit a CEO is one of the most important decisions a Council can make, isn't it?---It is.

30

Did you consider that it was unwise to manage an internal recruitment process, rather than involve external contractors?---No. Human Resources documented, and I think I've seen it in previous documents, that they had looked at internally, outside search and going towards an external consultant and so with those variables, it was decided that they did have the capacity to do an internal recruitment process.

35

I'm not asking you about the capacity of HR to conduct the process when I ask you that question, Mrs Davidson. As one of the most important decisions a Council can make, do you consider it unwise to manage that process internally without the input of an external consultant?---Not necessarily unwise.

40

Unsafe?---Not unsafe.

Less robust?---Not less robust provided you've got all the checks and balances.

45

What are they?---The checks and balances through the Human Resources and Director of Corporate Services.

The process needs to be transparent, doesn't it?---Yes.

5 And you were aware that the process needed to be transparent throughout the process - - -?---Yes.

- - - to recruit Mr Mileham, weren't you?---Yes.

10 And needs to be capable of review?---Yes.

And you were aware that the process needed to be capable of review throughout the process to recruit Mr Mileham, weren't you?---Yes.

15 And it needs to be merit based?---Yes.

And you were aware that it needed to be merit based throughout the process to recruit Mr Mileham, weren't you?---Yes

20 [10.15 am]

Do you accept that if the process is not transparent that it's more difficult to ascertain that it was merits based?---Yes.

25 What makes a process transparent, Mrs Davidson?---That it's well researched, that it's been documented.

30 What has?---In terms of the process going forward from the beginning of the recruitment process, and that all the requirements for a CEO recruitment are all, you know, defined and ticked off with the Human Resources.

You mentioned the documented process. Part of the documented process is creating documentation which is capable of review, isn't it?---Yes.

35 And that documentation needs to allow for someone to pick it up and figure out just how the successful applicant was successful, isn't that right?---Yes.

And that's a very important part of transparency in the process to recruit a CEO, isn't it?---Yes.

40 And you were aware that it was a very important part of the process to recruit Mr Mileham, weren't you?---To recruit the CEO for the City of Perth.

45 Mr Mileham was eventually recruited during the process?---Was the successful applicant.

So you would agree then that a very important part of the process to recruit Mr Mileham would be the creation of documentation which is transparent?---Yes.

Mrs Davidson, was the process to recruit a replacement for Mr Stevenson a rushed one?---I don't believe it was.

5 Was the process to recruit a permanent person a rushed one?---No.

Did Mr Mianich raise with you and other members of the CEO Recruitment Committee in June 2016 the fact that he felt the process was being rushed?---I don't recall that, Ms Ellson.

10

Madam Associate, if you could bring up, please, 9.0354. Mrs Davidson, do you accept that the process to recruit a permanent replacement for Mr Stevenson commenced on 7 June 2016 when Council ratified an internally managed recruitment process?---There will be a set of minutes from that Council meeting, so I will say yes.

15

9.0354 is TRIM 1731. Do you see on this page, Mrs Davidson, an email to Ms Scaffidi, yourself and Deputy Lord Mayor Limnios from Mr Mianich?---Yes.

20 The Director of Corporate Services?---Yes.

:

25

I've not seen this timetable until Friday afternoon and I believe the process is too rushed for the appropriate development of the PD and advertisement.

Do you see that?---Yes.

30 :

This is an important step in the process and the current timetable requires this agreed by all parties by tomorrow.

35 Mr Mianich is raising the fact that the process was too rushed for the appropriate development of the PD and advertisement there, isn't he?---Yes, he is.

40 Why did he do that, Mrs Davidson?---He obviously felt that it was ^ and I'm not sure whether that advice - we delayed the advertisement, so I'm not too sure in terms of the timeline after this.

Aside from what Mr Mianich believed, Mrs Davidson, do you think that the process on 13 June 2016 was being rushed?---I didn't, Ms Ellson, no.

45 It was, wasn't it?---I didn't believe that it was.

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

around 13 June 2016, were you concerned with the high level of attention the City had on it?---13 June which year?

5 2016. Did the City have a high level of attention on it?---I can't recall if there were any issues.

In around June 2016, was the City of Perth stable?---With regards - - -

10 The City of Perth Council, the Local Government, was it stable?---It didn't have a substantive CEO at the time, hence the process to recruit and I can't think of any others, Ms Ellson.

Mrs Davidson, I've noticed that you take notes in shorthand?---I do.

15 Is that a skill you've had for a very long time?---Yes, I won't tell you how many years. Yes.

It's a dying art, isn't it?---It is.

20 Not many people can read and write shorthand, can they?---Probably not.

They can't, can they?---No.

25 Do you write in shorthand for your own benefit?---It's the way I think.

Mrs Davidson, were you involved in the interview processes for the recruitment to replace Mr Stevenson permanently?---Yes.

30 Both of them?---Yes.

So you accept that there were two interview stages?---Yes.

35 Who was involved in the first stage, in terms of Councillors and members of the Administration?---Council had given carriage to the CEO Recruitment Committee, consisting of the Lord Mayor, Deputy Lord Mayor James Linnios, and myself and the Manager of Governance, Mark Ridgwell, was in attendance at the interview process of six candidates.

40 In terms of being an interviewer, were you given interview grids to fill in?---Yes.

45 And the purpose of those was to ensure that the documentation was transparent, is that right?---Yes. They knew that I was going to do mine in shorthand and that was agreed, that that could be done. Mark Ridgwell was sitting documenting the whole process from question and answer and then the Interview Panel fed in their key points to Mark Ridgwell so that there was a track of what had occurred through the six interviews.

Mrs Davidson, I will just ask you to identify some documents. 9.0501.

Mrs Davidson, do you recognise this document as a document you filled in with respect to an applicant who was interviewed Monday, 15 August 2016?---Yes.

5 Do you accept that it would be most unlikely for anyone other than yourself to be able to read this document?---Yes.

10 In that sense, this document is not a transparent record of what occurred during the interview on 15 August 2016, is it?---No, it was a document for me to give any thoughts to the committee and to the Manager of Governance, to highlight each criteria that each candidate had given their answers to.

15 It's not possible to ascertain what your thoughts are about each of the applicants that you've written shorthand about, is it?---No.

And that's an important part of the transparency in the recruitment process, isn't it?---Yes.

20 You've completed the shorthand notes for each of the applicants, haven't you?---Yes, I did.

Therefore, it's not possible for anyone but you to compare the candidates from reading your shorthand, is it, or your notes?

25 COMMISSIONER: It's not possible for anyone who doesn't know Pitman shorthand, yes?---Yes. As I say, a discussion took place where we fed in components of our notes through to Mark Ridgwell so he got a whole track of the system.

30 MS ELLSON: Mrs Davidson, do you accept that if someone can't read your shorthand, they can't read your notes?---Yes.

35 And do you accept that if they can't read your notes relating to each six candidates, they can't compare how you thought about each of the six candidates?

MR YELDON: I object.

COMMISSIONER: Yes. What's the objection?

40 MR YELDON: What someone else cannot do is not within the witness' knowledge.

COMMISSIONER: Yes. Ms Ellson, do you want to respond to that?

45 MS ELLSON: I'm asking the witness to comment on the transparency of the documents, Commissioner, and in doing so, the quality of them is important to that process.

COMMISSIONER: I know the purpose of the questioning, Ms Ellson. The objection is to the way in which the question is being asked, the form. What do you say about that?

5

MS ELLSON: Commissioner, I can rephrase the question.

COMMISSIONER: Very well.

10 MS ELLSON: Mrs Davidson, if your notes can't be read, you or anyone else reading them, trying to read them, cannot ascertain or cannot compare the six candidates in your notes, can they?

MR YELDON: The same objection.

15

COMMISSIONER: I understand. There's a problem with that because - the problem with that question, Ms Ellson, is that she can read her own notes. What counsel is getting at, Ms Davidson, is someone without a knowledge of how to read shorthand could not use shorthand notes and compare them to longhand notes and do a comparison between them; I assume you accept that proposition?---Yes.

20

Thank you. Ms Ellson.

[10.30 am]

25

MS ELLSON: If your notes cannot be compared to the notes of others, then it's not possible to determine why a candidate was any better than another, is it?---I'm just going to reply with, this was from our point of view a grid where we would - -

30

I'm not asking you for a collective point of view, Mrs Davidson?---Okay.

I'm asking you, if your shorthand notes cannot be compared with the longhand notes of others, it's not possible to determine why some candidates moved forward and others didn't, do you accept that?---On the basis of the longhand and shorthand, that would be correct.

35

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

40 COMMISSIONER: Just to be clear about this, Ms Ellson, you might need to clear up what you mean by "some candidates moved forward". That can have many meanings.

MS ELLSON: Mrs Davidson, the Interview Panel used the interview grids to make notes regarding the assessment of candidates attending interviews on 15 and 16 August 2016, didn't they?---Yes.

45

As a result of the interviews on 15 and 16 August 2016, two candidates were selected - I'm sorry, three candidates were selected to move forward, isn't that correct?---Yes.

5 And the notes that were taken in the interview grids formed part of the process documentation for the process to recruit a permanent CEO, did they not?---Yes, but they had been fed into Mark Ridgwell of Governance, and each candidate discussed.

10 The notes made during the interviews, Mrs Davidson, formed an integral part of the recruitment documentation, didn't they?---Yes.

COMMISSIONER: When counsel uses the phrase "moved forward" do you understand that to mean something akin to moving to the next stage of the recruitment process?---I do, Commissioner, from six. With all of the information that we had received - - -

No, I'm just asking about your understanding of that phrase so that I understand that you do?---Yes. Thank you, Commissioner.

20 Thank you.

MS ELLSON: Three candidates moved forward, didn't they, to the next stage of the recruitment process, Mrs Davidson?---Yes.

25 And two proceeded to interview, isn't that right?---To a presentation process with all of the Elected Members.

30 And that was on 29 August 2016, wasn't it?---I will accept that date. So one of the three withdrew.

Mrs Davidson, just wait for me, please?---Mm hmm.

35 What was the thinking behind having all Elected Members attend presentations on 29 August 2016?---That was a typical process for CEO recruitment. So this had been my third CEO. That was a convention within the City of Perth that once a Recruitment Committee had selected the short list, which in this case was two, all Elected Members were always given the opportunity to be present at the presentation question and answer.

40 To what end?---Well, if there was obviously more than one candidate, it was then the collective decision of the Council to move forward one particular person to become a substantive CEO.

45 COMMISSIONER: What counsel is asking you, Mrs Davidson, is do you know what the thinking behind having all Elected Members present at these presentations was?---Yes, to give the Elected Members the opportunity to see the

candidates, meet the candidates, hear their presentation, question them if they wished to, and then to do a collective discussion to then eventually move through to a Council decision-making process to appoint a substantive CEO. That was always done.

5

MS ELLSON: So when attending the presentations on 29 August 2016, you expected other members of Council to participate in the decision-making to recruit a permanent CEO, is that right?---Yes. The decision-making would have been at the Council meeting following but each Elected Member was given the opportunity to attend, meet the candidates, hear their presentations and do a question and answer.

10

Were the questions and answered scripted?---No.

15

Did you attend the presentations on 29 August 2016?---Yes.

The first presentation was by a female candidate, isn't that right?---Yes.

20

And she gave her presentation at the outset of the meeting, isn't that right?---Yes, having - - -

A meeting or an interview?---No, it was a, if I can use the word, gathering in Briefing Room 1.

25

What was the first thing that happened when the female candidate attended?---She was introduced to all of the Elected Members and welcomed, and then she presented, and I think they were given the same, the vision and the future, so she presented for about 15 minutes.

30

Then what happened?---She was asked then to sit down and if some of the Elected Members wished to ask questions, they would do and she replied and then eventually she would have been asked to - did she have any questions, et cetera, or anything else to add.

35

Would have, or did?---Did, and thanked and that was the end of that particular candidate.

Did you ask any questions of the female candidate on 29 August 2016?---I don't recall I did.

40

Were you provided with an interview grid or any documentation upon which you could record your assessment of the female candidate on 29 August 2016?---Human Resources did provide us with a grid to make notes, if required. It was not compulsory, it was viewed as an aide memoire and I do believe the majority of the Elected Members, as in the past, chose not to do any writing.

45

Did you, as the Presiding Member of the CEO Recruitment Committee, approve

5 the process with respect to the interview grids not being compulsory?---I don't think it was my decision. Human Resources circulated the grid and I think it was a round table discussion that some said, "Well, I don't wish to do that" and I think it was agreed collectively that was entirely up to the individual, whether they viewed it as an aide memoire to fill in, or not. It had never been done with other CEO recruitments, I believe.

10 Just because it's never been done before doesn't mean it shouldn't be done, isn't that right?---No, no.

The round table discussion that you refer to, Mrs Davidson, was that among the Councillors?---Yes.

15 Did you speak up against the idea that the interview grids should be optional?---No, I don't think I said anything.

20 Should you have?---I don't think so because some didn't wish to use that document and it was really for their benefit if they wished to use it, to make any notes if they wished to.

Mrs Davidson, we have seen the interview grids that were used for the first round of interviews, haven't we?---I have, while I've been sitting in the audience.

25 Council were being asked on 29 August 2016 to participate in the decision-making with respect to recruiting the CEO to the permanent position, weren't they?---Yes.

They were being asked to assess the candidates, weren't they?---Yes.

30 In those circumstances, Mrs Davidson, the grids should have been used, shouldn't they?---Well, I'm going to say no because it was agreed that it would only be viewed as an aide memoire and not specifically to be filled in and handed back to Human Resources.

35 Were you responsible for that decision, Mrs Davidson?---No.

As the Presiding Member of the CEO Recruitment Committee?---No.

40 That decision should not have been made, should it? I will rephrase the question. A decision for Councillors not to use the interview grids should not have been made, should it?---Could you repeat that?

A decision for Councillors not to use the interview grids should not have been made?

45 COMMISSIONER: I think the problem with that question is includes the notion that a decision was made not to use them, whereas I think the evidence at the moment more accurately reflects the position that no decision was made to use

them. That's the reason why I expect Ms Davidson is having some difficulty with the question, as am I

[10.45 am]

5

MS ELLSON: Commissioner.

Mrs Davidson, was it the case that the use of the interview grids during the recruitment presentations on 29 August 2016 was optional?---Yes.

10

The use of the interview grids in the presentations on 29 August 2016 should not have been optional, should it?---I can only say that they were because - - -

15

I'm asking whether you think it should have been optional?---I'm just trying to think what - the full documentation - - -

Mrs Davidson, I'm asking you whether the use of the interview grids in the presentations on 29 August 2016 should have been optional, that's all?---I believe so.

20

Not all Elected Members completed interview grids, did they, Mrs Davidson?---No.

25

In the absence of a full set of interview grids for both presentations, it's not possible to compare the candidates in the documentation, is it?---No, it isn't.

And in that sense, the process is not transparent, is it?---Not in terms of the grids, no.

30

It's not possible to compare - without documentation recording an assessment of the candidates, it's not possible to compare the candidates, is it?---Not in terms of paperwork, no. It was by discussion.

35

And in that sense, it's not possible to determine why someone was chosen, is it?---It is from the discussion that took place.

The discussion cannot now be reviewed, you accept that, don't you, Mrs Davidson?---I do.

40

Did the discussion form a large part of the decision-making process?---To move forward to Council the preferred candidate to become the substantive CEO of the City of Perth, yes.

45

That was the result of the discussion?---Yes.

The reason behind that decision cannot now be reviewed because it was a discussion, isn't that right?---Yes.

And the merits of the decision cannot now be reviewed, Mrs Davidson, because there was a discussion, isn't that right?---Yes, it can only be reviewed by discussion.

5

COMMISSIONER: I don't understand that answer. Ms Ellson, you will have pursue that?---Well, sorry. It was - - -

I will let Ms Ellson do that?---Sorry.

10

MS ELLSON: Mrs Davidson, the decision about who would proceed as the preferred candidate was made during a discussion on 29 August 2016 between Elected Members, isn't that right?---Yes.

15

That decision cannot now be reviewed because it was oral, isn't that right?---Yes. You would have to go back to each Elected Member. However, the decision to go forward to the Council meeting to make that decision was unanimous on one candidate.

20

That was the decision that was made during oral discussions on 29 August 2016, was it?---Yes.

Because it was oral, Mrs Davidson, it can't be reviewed, can it?---Not without interviewing the Elected Members.

25

And even then, without interview grids, you would struggle - I withdraw the question. So there was no complete set of interview grids, is that right?---Correct.

30

And a discussion which formed a large part of the decision-making to appoint or to recommend one candidate for the position, is that right?---That's correct.

And because of that, Mrs Davidson, the decision is not a transparent one, isn't that right?---I believe it is on the basis that each Elected Member agreed to the one candidate being put forward to be the CEO substantive.

35

Without a completed set of interview grids and in the absence of being present for the discussion, it's not possible to ascertain why that agreement was reached, is it?---No, not from your point of view, no.

40

COMMISSIONER: Can you explain to me the answer you gave a short while ago, Ms Davidson, when you said that you regarded the process as transparent because one candidate was - my words, not yours - chosen unanimously; how does that make the process transparent?---The discussion between the Elected Members discussed the two candidates, their CVs, et cetera and each Elected Member agreed that the one candidate going forward for the Council decision-making process, they were unanimous.

45

So are you saying to me that it was transparent to those who were present at the time involved in that discussion?---Yes.

I see?---Yes.

5

Thank you?---There was no-one who did not agree to the one candidate going forward.

10 But if we look at it at a later point in time, if someone who was not present at that discussion wanted to review the process and to work out how that decision was made, that person would have to rely on the incomplete interview grids and anything that any member present at that meeting could remember?---Yes, and rely on that nine Elected Members had unanimously put forward the one candidate.

15 That doesn't really tell you anything more than that there was a unanimous vote?---Yes.

20 If you wanted to work out the reasons how the decision came about, you would have, if I can put it this way, an incomplete record?---Yes, without going back to each individual Elected Member.

25 And what counsel was putting to you, as I understand it, is if everyone who took part in that assessment process was required to complete an interview grid, and you could review those interview grids at a later point in time, you would have a better appreciation of how that decision was arrived at?---Yes.

Thank you, Mrs Davidson. Yes, Ms Ellson.

30 MS ELLSON: You would agree, Mrs Davidson, that relying upon the recollection of people three years after the event would give rise to a risk of inaccuracy, don't you?---Well, only that nine unanimously agreed, as they did when it went to the Council. So all of the Elected Members had had the opportunity and had agreed to move one candidate forward.

35 You wouldn't necessarily know their reasons though, would you?---Only if some Elected Members had highlighted those reasons in their discussion.

40 Mrs Davidson, do you accept that relying upon people's memories without supporting documentation three years after the fact is not a reliable thing to do, if you're looking for the reasons behind a decision to recruit a CEO?---Not at that presentation process but the Council meeting minutes, the candidate going forward for the substantive CEO, it was a unanimous decision. So that's the only documentation, other than at the previous process, and that was a unanimous decision by all Elected Members.

45

Putting the Council meeting to one side, Mrs Davidson, there's no record of the reasons for the unanimous decision being made on 29 August 2016, is there?---No,

other than the movement of the one candidate to go to the Council meeting for a decision.

And that just appears at the Council meeting on 1 September 2016?---Yes.

5

The Council meeting on 29 August 2016 wasn't recorded audio-visually?---That wasn't a Council meeting, Ms Ellson.

10 Sorry. The meeting that occurred after the presentations on 29 August 2016 where a decision was made to recommend one candidate move forward wasn't recorded audio-visually, was it?---No.

Minutes weren't taken?---No. It was not a decision-making process in terms of a committee or a Council meeting.

15

It was, however, a forum in which a decision was made by the Elected Members to recommend a candidate to Council to appoint as the permanent CEO, isn't that right?---Yes.

20 Do you accept that because of that it ought to have been recorded in some way?---Hindsight, yes. Process in the past, it had not been done so because those forums are not specific decision-making processes, they are recommendations to go to a Council meeting where the decision is made.

25 In effect, Mrs Davidson, on 1 September 2016, by the time Council were asked to vote on a motion, the decision had already been made, hadn't it?---No, because that forum was not a decision-making process. You can only make a decision-making process at committee or Council.

30 [11.00 am]

A decision was made to move one candidate forward?---To move one candidate forward.

35 To recommend to Council as the person to be appointed?---Yes.

At the meeting on 29 August 2016 after the presentations, wasn't it?---Yes.

40 So in that sense it was a decision-making forum, wasn't it?---It was for it to go forward to final ratification.

And because of that, the decision ought to have been recorded in some way, shouldn't it?---In hindsight, probably yes.

45 And the reasons for it, shouldn't they?---Yes.

MR YELDON: Commissioner.

COMMISSIONER: Yes.

5 MR YELDON: I see the time. The witness has been in the box for an hour and a half. I wonder if a break might be appropriate.

COMMISSIONER: Yes. I think that's entirely appropriate, Mr Yeldon. I will adjourn for 15 minutes.

10

WITNESS WITHDREW

(Short adjournment)

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HEARING RECOMMENCED AT 11.15 AM.

MS Janet Elizabeth DAVIDSON, recalled on former affirmation:

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COMMISSIONER: Ms Saraceni, you appear in place of Mr Tuohy?

MS SARACENI: That's correct, sir, thank you.

10 COMMISSIONER: Thank you. Ms Ellson.

MS ELLSON: Commissioner.

15 Mrs Davidson, it's correct, isn't it, that a decision to recommend Mr Mileham for the appointment as a permanent CEO was already made on 29 August 2016, at the meeting after the presentations?---Yes, those Elected Members agreed for it to go through to the Council meeting.

20 Madam Associate, if you could please bring up a bundle of documents for the witness, from 9.0672 to 9.0679, a hard copy, please. I think it will have to start at 9.0671. Mrs Davidson, can you identify any of your handwriting on any of the pages in front of you there?---No.

25 Mrs Davidson, I want to assume that those documents are all that exist with respect to what occurred during the presentations on 29 August 2016. Making that assumption, are you able to assess what occurred during the presentation by the female candidate on 29 August 2016?---Am I able to assess from these documents?

30 Yes?---Only by some people.

Are you able to assess Mr Mileham's performance at the presentation on 29 August 2016 looking at those documents, Mrs Davidson?---Only by about - one isn't identified so it's either two or three that have been filled out.

35

You can't assess Mr Mileham's by looking at the documents in front of you, can you? You can't assess his performance at the presentation on 29 August 2016 by looking at those documents, can you?---No, nor (indistinct) as well.

40 Because you can't assess either of the candidates, you can't compare them by looking at those documents in front of you, can you?---No. Not in total, no.

Those documents are woefully inadequate for that purpose, aren't they?---They are not complete.

45

They are woefully inadequate?---They are in terms of the full documentation, yes.

They are nowhere near full, are they?---No.

5 Mrs Davidson, as the Presiding Member of the CEO Recruitment Committee, were you responsible for overseeing the documentation process that occurred with respect to any of the interviews, first round and second round?---It was organised by Human Resources and this was not a compulsory process, in terms of the second round of presentation.

10 My question was whether you were responsible, as the Presiding Member of the CEO Recruitment Committee for overseeing the documentation?---No, not specifically, no.

15 In some way you were?---No, because it had all been organised through Director of Corporate Services and Human Resources.

You're ultimately responsible as the Presiding Member of the CEO Recruitment Committee for Council's involvement in the process, aren't you?---Yes, up to the first round interviews, yes.

20 And you were for the second round as well, weren't you?---No, as the Presiding Member, if I can use that word, I didn't lead that presentation discussion. That was the Lord Mayor in that particular forum.

25 But as the Presiding Member of the CEO Recruitment Committee, you weren't suddenly not responsible for the documentation in the second round interviews, were you?---I did not oversee the grid process.

30 You should have, shouldn't you?---I may have but I did not. It was viewed as an aide memoire.

My question was, you should have, shouldn't you?---Yes.

35 And in overseeing the process, Mrs Davidson, you should have ensured that the record keeping was accurate and complete, shouldn't you?---Yes. A decision was made though that it was going to be at the Elected Members' behest if they were going to complete this particular grid or not.

40 And in overseeing the process, you should have intervened in that decision and recommended against doing that, shouldn't you?---Yes.

And you didn't?---I did not.

45 The documents can be returned, please, Madam Associate. Following on from the meeting subsequent to the 29 August 2016 presentations, the one where a decision was made by Councillors to recommend a candidate, was there a rush to complete the process?---No.

Were you advised by Human Resources staff that they were rushed after the meeting on 29 August 2013, following on from the presentations?---I don't recall, Ms Ellson.

5 Mrs Davidson, was it the case that from the outset of the process in June 2016, you were very keen to see it progress swiftly?---Swiftly may be a poor description. I think for it to progress efficiently so that the City did have a substantive CEO.

10 You didn't answer my question, Mrs Davidson. Were you very keen to see the process completed swiftly from June 2016?---I was keen for the process to complete itself.

15 As quickly as possible?---As quickly as possible because we don't do human resource management all that well and it was critical, I think, for the City to have a substantive CEO, so that timeline needed to be ensured so that staff, and there were 750 staff, were obviously comfortable that there was a person at the helm of the Administration.

20 When you say you were keen to move the process along as quickly as possible, Mrs Davidson, did you respect the wishes of the Human Resources staff with respect to the timetabling of events?---Yes, where it was possible but also with a reasonable message to them that the process did need to be completed.

25 A reasonable message?---Yes.

30 In June 2016, Mrs Davidson, did you have an appreciation for how long the recruitment process to replace Mr Stevenson permanently would take?---I think Human Resources had documented it well, as regards what the process was going to be for advertising, et cetera.

35 Mrs Davidson, if you were keen to have the process move as quickly as possible, why did it not start until June 2016 when Mr Stevenson had left in January 2016?---That's because there was an Acting CEO for a period of time, in order to, you know, if I can use the word, settle the organisation and move forward with the work that was on the Council's objectives.

And you wanted to give - the Acting CEO was Mr Mileham?---He was.

40 And did you want to give Mr Mileham as much opportunity to act in the position as possible?---He was to act in the position.

45 Did you want to give him as much time as possible to act in the position?---Not necessarily as much time. It was agreed, I think in a set of minutes, that he would act until a substantive CEO had been appointed.

Mr Mileham was quite popular among the Elected Members, wasn't he?---Popular might not be the word. I think he was highly regarded.

Especially by the Lord Mayor, isn't that right?---I don't specifically think the Lord Mayor. I think all Elected Members highly regarded Mr Mileham as the Director of Planning previously, and also the work that he established as an Acting CEO.

5

[11.30 am]

As at January 2016 he was relatively untested as a CEO, isn't that right?---CEO in Local Government, yes.

10

Is it correct to think then that you wanted to give Mr Mileham the opportunity to act in the role for as long as possible so he'd have a better chance of getting it?---No, I don't think that was the reason. He had had international experience, run his own business and had certainly been in State Government, so his background was very high and well regarded.

15

Mrs Davidson, you said you don't recall whether Human Resources officers asked for more time following on from the meeting on 29 August 2016 where Council settled a preferred applicant. I will ask you to be shown a document, 9.0731, TRIM 17411.

20

COMMISSIONER: Thank you.

MS ELLSON: Mrs Davidson, do you see here - if the document could be enlarged slightly, Madam Associate.

25

COMMISSIONER: Thank you.

MR YELDON: She saw my hand.

30

COMMISSIONER: Thank you.

MS ELLSON: Do you see here an email from Ms Howells to yourself and other members of the CEO Recruitment Committee on 29 August 2016?---Yes.

35

Do you recognise that as an email you received that day?---Yes.

Take a moment to read through it, Mrs Davidson?---Yes.

40

Mrs Davidson, do you accept that in this email Ms Howells is asking on behalf of herself and the Manager of Governance, Mr Ridgwell, for an extension of time within which to complete a number of tasks concerning the permanent replacement for Mr Stevenson?---Yes, for our consideration.

45

On the basis that Mr Ridgwell, the Manager of Governance, thought it would ensure good governance?---Yes.

And Mr Ridgwell recommended it to ensure that all of the relevant activities were completed prior to Council appointment, do you see that?---Yes.

5 And it appears that Ms Howells and Mr Ridgwell were asking for the matter to proceed "next Tuesday", being 6 September, do you accept that?---Yes.

The second paragraph, Mrs Davidson - - -?---Yes.

10 - - - refers to "next Tuesday"?---It doesn't mention the 6th, but yes.

It's not a lengthy period of time between Monday, 29 August 2016 and Tuesday, 6 September, is it?---No.

15 And you agree that there was quite a number of tasks Ms Howells needed to complete within that time, do you accept that?---Yes.

Do you accept that they were all very important tasks to be completed before appointing a permanent CEO?---Yes.

20 The reference and qualifications checks were required to be done in order for Council to be satisfied that the CEO was suitably qualified for the position, do you accept that?---Yes.

25 And you were aware of that between 29 August 2016 and 6 September 2016?---Yes.

Ms Howells is also asking for time for negotiation with Mr Mileham regarding the terms and conditions of the contract, do you see that?---Yes.

30 And that was something that should have been done before Council considered appointing permanently the CEO, is that right?---Yes. If I recall, it was subject to.

35 Mrs Davidson, that's not an answer to my question?---Sorry. If you could repeat your question.

My question was, do you accept that the negotiations for the terms and conditions of the contract should have been completed before Council were asked to appoint a permanent CEO?---Yes, it was a standard WALGA LGMA contract.

40 COMMISSIONER: Are you agreeing with counsel?---Yes.

Thank you.

45 MS ELLSON: Do you consider those terms and conditions to include the salary, Mrs Davidson?---Salary would have been defined by the State Administrative Tribunal.

I'm asking you whether you consider the salary to be a term or condition of the contract that needed to be negotiated before Council voted on whether to appoint a permanent CEO?---It would be in the contract.

5 That's not quite an answer to my question, Mrs Davidson. I'm asking you if you consider salary to be a term and condition of the contract that needed to be before Council before they could determine whether or not to appoint a permanent CEO?---Yes.

10 COMMISSIONER: Are you asking that or are you asking Ms Davidson whether it should be agreed before it's put before Council?

MS ELLSON: Mrs Davidson, should Mr Mileham's salary have been agreed before Council determined to appoint Mr Mileham as the permanent CEO?---Yes, I believe it was.

COMMISSIONER: Let me ask you a slightly different question, Mrs Davidson: do you believe that the salary to be paid to Mr Mileham under his contract should have been finalised before his appointment went to Council for decision?---I think when it went to Council, Commissioner, it was actually subject to - - -

No, no, I'm not asking you that?---But, I - - -

I think you know what question I'm asking you?---It should have been agreed.

Thank you.

MS ELLSON: Mrs Davidson, who was responsible for ultimately settling the contract Mr Martin entered into with the City?

COMMISSIONER: Mr Mileham.

MS ELLSON: I'm sorry, Mr Mileham?---That would have been through the Director of Corporate Services and Human Resources.

The contract terms and conditions, Mrs Davidson, were settled with Mr Mileham by a member of Council, were they not?---That I can't recall, Ms Ellson.

Was it you?---I can't recall that it was me.

Was it the Lord Mayor?---I don't know.

Who ultimately decided what Mr Mileham would be offered in terms of total remuneration package, Mrs Davidson?---The State Administrative Tribunal outlined the band widths for Local Governments and City of Perth was a Band 1.

Who was ultimately responsible for determining what number was offered to

Mr Mileham for his total remuneration package?---It would be Director of Corporate Services and human resource management.

5 It was Council, wasn't it, Mrs Davidson?---It was ultimately in terms of the decision when the full document, which I've seen over the last few days, came to Council because all that documentation was there with the band widths.

10 A member of Council settled the terms and conditions of Mr Mileham's contract, didn't they?---That I don't know, Ms Ellson.

Council were ultimately responsible for what Mr Mileham was offered to be paid, weren't they?---Yes.

15 Mrs Davidson, did Mr Mileham's appointment go to a Council meeting on 6 September 2016?---No, it went on 1 September.

20 Why?---To complete the process because once a decision had been made for it to go forward, often organisations don't need or don't want large gaps between one process and another and to ensure that really, the candidate then is in their substantive position, which then filters down to the whole of the organisation.

25 The document on the screen can be taken down, Madam Associate. Mrs Davidson, Human Resources Manager, Ms Howells, and Manager of Governance, Mr Ridgwell, had asked for the process to be finalised by Council on 6 September 2016; why wasn't their request complied with, Mrs Davidson?

MR YELDON: Objection, to be developed in the absence of the witness.

30 COMMISSIONER: Yes, of course. Ms Davidson, I'm going to have you excused from the hearing room. Thank you.

WITNESS WITHDREW.

35 COMMISSIONER: Yes, Mr Yeldon.

MR YELDON: The question's improper as it mischaracterises the evidence. If we can go back to 9.0731, I can explain further.

40 COMMISSIONER: Thank you. I will have Madam Associate bring that up. Just enlarge that so we can all read it, thank you.

45 MR YELDON: You see, Commissioner, Ms Howells' suggestion in the third paragraph from the bottom is that, "We discuss these elements and ascertain the most appropriate timing. ".

COMMISSIONER: Yes.

MR YELDON: "Additionally in this meeting we can and formulate a CEO recommendation to committee that will enable the CEO Recruitment Committee to arrange to meet with Martin later tomorrow, informing him he is preferred candidate." Do you see that? Now I would ask you to open 9.0800 - sorry, before
5 I do that, may I direct your attention to the following paragraph, "Mark" - that's Mark Ridgwell, Manager of Governance - "recommends this as it will ensure good governance and ensures that all the relevant activities have been completed prior to Council appointment."

10 Those activities are of course the dot points here, one would infer. Now may I properly direct you to 9.0800.

COMMISSIONER: Yes. Madam Associate, please bring that up. Yes,
15 Mr Yeldon.

[11.45 am]

MR YELDON: You see that there is an acceptance by the Council of the committee's recommendation to appoint "the preferred candidate", and that's the
20 same words that are being used in Ms Howells' email, and of course paragraph 2 - --

COMMISSIONER: Sorry, you're looking at where?

25 MR YELDON: "The preferred candidate" is in the third line of Council's resolution, paragraph 1.

COMMISSIONER: Yes, I have it now, thank you.

30 MR YELDON: So what this motion is doing is accepting the committee's recommendation and it is subject to the completion of satisfactory reference checks and approving the CEO Recruitment Committee to negotiate the terms of the contract provision. So in fact, Ms Howells' recommendation, coupled with Mark Ridgwell's suggestions, have all been complied with.

35 COMMISSIONER: Yes.

40 MR YELDON: So counsel continues to misconstrue, in my submission, the proper construction of what Council did in that resolution, in order to phrase this series of questions. So a question which begins, "Why didn't Council adopt the resolution" is an improper characterisation of the evidence before the Commission. That's my submission.

45 COMMISSIONER: Thank you. Just give me a moment. Feel free to take a seat if you're finished your submission.

MR YELDON: Thank you.

COMMISSIONER: So as I understand it, Mr Yeldon, part of what you are submitting to me is that the proper way to read paragraphs 1 and 2 of the resolution is that those paragraphs are ambulatory, not final?

5

MR YELDON: That is right.

COMMISSIONER: I understand that. Paragraph 1 begins with the words, "In accordance with section 5.36 of the Local Government Act", and I don't know if you have a copy of that handy; you may not.

10

MR YELDON: I don't, but I will be - - -

COMMISSIONER: That's all right. I will get Madam Associate to bring it up on the screen so you have that advantage.

15

MR YELDON: I'm grateful for that.

COMMISSIONER: It's no difficulty at all. 5.36 of the Local Government Act, please, Madam Associate. I will just give you a moment to read that, Mr Yeldon, because there's a bit in it.

20

MR YELDON: Yes.

COMMISSIONER: 5.36, thank you. It begins at the bottom of page 148 and then goes over to the next page. Just enlarge that for Mr Yeldon, thank you.

25

MR YELDON: Yes.

COMMISSIONER: Just go to the next page, please, Madam Associate, so Mr Yeldon has the whole section.

30

MR YELDON: Yes.

COMMISSIONER: When you read those words in section 5.36 of the Act with the opening words of paragraph 1, "In accordance with section 5.36" and then you read the words in line 2, "Accepts the CEO Recruitment Committee's recommendation", does that, in your view - sorry, and the words "to appoint", does that in your view have any effect on your construction of the motion?

35

MR YELDON: In my submission, it does not. May I direct you back to page 9.0800.

40

COMMISSIONER: Yes, I have it in front of me.

45

MR YELDON: And the officer's recommendation was that Council, in accordance with that section "and subject to the satisfactory completion of

reference checks by an absolute majority appoint", so the officer recommended that the appointment was conditional. So that is not an appointment within the meaning of section 5.36. While the paragraph 1 on its proper construction is directed towards something else, that is, an appointment which is conditional on something else to be carried out. In other words, it's executory or ambulatory, as you said. So there has been no appointment by this motion and the terms are not finalised because they are still to be negotiated. So in the absence of a formalisation of terms, there can not be an appointment within the mean of 5.36.

10 COMMISSIONER: It almost seems that the words "in accordance with section 5.36 of the Act" serve also or no purpose.

MR YELDON: That is right.

15 COMMISSIONER: I appreciate here that we are looking at the drafting of someone who is probably not legally trained, some allowance has to be made for that, obviously, but I understand your submission.

20 MR YELDON: Yes, but connecting the breadcrumbs, if I may use that phrase, between Ms Howells' email, it segues very nicely indeed into here, to give you, Commissioner, my point, in my submission.

COMMISSIONER: Then you're talking about the email that's at 9.0731?

25 MR YELDON: Correct.

COMMISSIONER: I understand the submission.

MR YELDON: Thank you.

30

COMMISSIONER: Thank you, Mr Yeldon, that's helpful. Ms Ellson, I will hear you on that.

35 MS ELLSON: Commissioner, I didn't ask the witness if Council didn't adopt the resolution, I asked the witness why the recommendation of Ms Howells and Mr Ridgwell wasn't adopted. I'm asking the witness why procedures were put in train on 1 September 2016 in the face of advice from Ms Howells that certain things needed to occur, which, as at 1 September 2016, still needed to occur. Ms Howells and Mr Ridgwell have asked for time to complete certain things.
40 Those things weren't complete, on the face of the record, at 1 September 2016. I'm asking the witness why.

COMMISSIONER: I understand what you're driving at but that's not my recollection of what your question was. Just repeat your question to me, please,
45 because that's not what I recall it being.

MS ELLSON: I don't have a note of my question, Commissioner, I'm sorry.

COMMISSIONER: Mr Parkinson might.

5 MS ELLSON: No, Commissioner, I'm sorry. In the face of the objection, Commissioner, I can indicate that it's my intention to ask the witness why Council proceeded on 1 September 2016 when they had been asked by the Human Resources officer and the Manager of Governance to delay things until 6 September 2016.

10 COMMISSIONER: I think the point of contention might be, proceeded with what? That's the point that Mr Yeldon is making to me, because he is making the point that this resolution is ambulatory in nature, not final. Am I right, Mr Yeldon?

15 MR YELDON: That is right.

COMMISSIONER: So what's being proceeded with is important here.

20 MS ELLSON: Proceeded to determine whether to appoint Mr Mileham, Commissioner.

25 COMMISSIONER: Mr Yeldon says this resolution did not have that effect. He is saying it's ambulatory in the sense that all it does is start a process that might result ultimately in the appointment of Mr Mileham. It is not the motion that appoints him, and that was my reason for taking him to the words at the commencement of paragraph 1 which speak about the motion being in accordance with section 5.36. If you can formulate your question in a way that addresses his concern, there may be no difficulty. I'm happy for you to take a bit of time and confer with Mr Parkinson about how you might do that, if you want to do that, but we do need to move on.

30 MS ELLSON: Commissioner, I can move on.

35 COMMISSIONER: Do you need to speak with Mr Parkinson about it, or not?

MS ELLSON: I will

COMMISSIONER: Take your time. It might save time later.

40 MS ELLSON: I have a resolution, Commissioner.

45 COMMISSIONER: Excellent, Ms Ellson. Can you indicate to me how you propose to do it? What I want to avoid is a situation where we bring the witness back in, you ask the question and there's another objection and we have to ask the witness to leave again. So perhaps you can indicate what the question might be.

MS ELLSON: Why Council met on 1 September 2016 and not on 6 September

2016.

COMMISSIONER: Or why Council was asked to consider this motion on that date instead of the latter date?

5

MS ELLSON: Yes.

COMMISSIONER: Might that be acceptable to you, Mr Yeldon?

10 MR YELDON: That is acceptable.

COMMISSIONER: Thank you. Let's proceed on that basis. Madam Associate, would you please bring Mrs Davidson back into the hearing room. Thank you. Ms Davidson, would you please resume your seat in the witness box.

15

MS Janet Elizabeth DAVIDSON, recalled on former affirmation:

COMMISSIONER: Ms Davidson, in your absence, your counsel's objection was heard and resolved. It took a little longer than necessary but that was my fault, no-one else's, and your exclusion from the hearing room is no reflection on you whatsoever?---Thank you, Commissioner.

20

Ms Ellson.

25 MS ELLSON: Mrs Davidson, looking at the motion on the screen.

COMMISSIONER: 9.0800.

MS ELLSON: Thank you, Commissioner.

30

Can you tell me why Council were asked to consider this motion on 1 September 2016 and not on 6 September 2016?---To complete the process, Ms Ellson.

35 Why did Council need to do that on 1 September 2016?---We discussed it with Ms Howells and Manager of Governance, wished to proceed with it so that in fact the candidate would be in a substantive position and that would stabilise also the City and its staff and also would stabilise the Council electorate in terms of the business and the residents.

40 COMMISSIONER: And the candidate about which you speak is Mr Mileham?---It is, Commissioner, yes.

Thank you.

45 MS ELLSON: What difference would five days have made, Mrs Davidson? Surely not a lot?---I think it was that sooner was better in terms of the completion of the process. We don't do human resource management very well and we seem

to leave candidates hanging, not knowing what's going on. So that certainly was the attempt to complete it, so that in fact it was finalised.

[12 noon]

5

You, as in Council, don't do human resource management very well and you didn't manage the appointment of Mr Mileham very well, did you?---I believe we did.

10 Human Resources and Governance didn't wish to proceed on 1 September 2016 at all, did they?---On the?

1 September 2016, as you suggest, did they?---They did. We'd had a meeting with them and they were going to prepare for the 1st.

15 On 30 August 2016, Ms Howells again asked for time to complete the processes, didn't she?---That I don't recall unless it was - - -

Madam Associate, if you could bring up, please, 9.0737, TRIM 17413.

20 COMMISSIONER: Thank you.

MS ELLSON: Do you see here a memo from Ms Howells directed to yourself, the Lord Mayor and the Deputy Lord Mayor?---Yes.

25 Copying in Mr Ridgwell, Manager of Governance. Just take your time to read through that, Mrs Davidson.

COMMISSIONER: Just enlarge that for Mr Yeldon, please. I shouldn't single you out, enlarge it for everyone.

30

MR YELDON: Thank you.

WITNESS: Yes.

35 MS ELLSON: Mrs Davidson, Ms Howells is indicating, isn't she, in her memo that there had been no checks on Mr Mileham's qualifications when he was initially appointed as the Director, isn't that right, under the heading, "Reference check"?---His qualifications had been checked when he was appointed Director of Planning.

40

That's not what that says, is it?---No.

:

45 *At the time personal references were conducted. However, no checks of his qualifications were conducted.*

?---You mentioned Director, not CEO.

That's right. So when he was appointed as the Director of Planning?---Yes.

5 :

At the time personal references were conducted. However, no checks on his qualifications were conducted."

10 ?---Where am I seeing that?

In the same paragraph, Mrs Davidson, under the heading, "Reference check".

15 COMMISSIONER: Ms Davidson, I will just direct your attention to it. Do you see the heading, "Reference check"?---Yes.

Do you see the heading, Ms Davidson?---Yes, thank you.

20 It's two sentences underneath that. Take your time?---Yes.

MS ELLSON: And she's also asking for time for a number of other things to be checked?---Yes.

25 And she's indicating it will approximately take one week to complete them, do you see that?---Yes. In reference to that particular paragraph, we are back in 2013 so his qualifications would have checked.

30 Mrs Davidson, read again the paragraph under the heading, "Reference check", just under the middle of the page?---Right, thank you.

Do you see there that Ms Howells is indicating that Mr Mileham's qualifications had not yet been checked, as at 30 August 2016?---Yes.

35 And she's asking for a week to complete those checks, in addition to completing a number of other tasks, do you see those?---Yes.

They are all important things to be checked before a CEO is employed or appointed with a Local Government, aren't they?---Yes.

40 And she was just asking for a week?---Yes.

45 You were aware as at 1 September 2016 that you were required to believe the appointee of a position to the CEO was suitably qualified, do you accept that?---Yes.

Madam Associate, 9.0738. Mrs Davidson, under the heading, "Council paper", do you see there:

5 *Due to the need for reference checks and negotiation with Mr Mileham on his contract which needs to commence, it is recommended by the Manager of Governance that a Special Council Meeting be held on Tuesday, 6 September.*

Ms Howells suggested she could have the recommendation paper to the Recruitment Committee on Thursday, 1 September, do you see that?

10 COMMISSIONER: I think you're going too quickly, Ms Ellson.

MS ELLSON: My apologies, Commissioner.

15 COMMISSIONER: That's all right. It's important for Ms Davidson to have a proper opportunity to consider what you're putting to her. Do you see the two sentences that you've been directed to?---Yes, I've got that, Commissioner, thank you.

20 Thank you, Ms Davidson. Yes, Ms Ellson.

MS ELLSON: The recommendation was, Mrs Davidson, that a Special Council Meeting be held on Tuesday, 6 September, wasn't it?---Yes.

25 That recommendation was made by your Manager of Governance, wasn't it?---Yes.

And he and Ms Howells were responsible for working on the Human Resources aspects of the appointment of Mr Mileham, weren't they?---Yes.

30 Why then, Mrs Davidson, was Council asked to consider the motion that it was on 1 September 2016, and not on 6 September 2016?---To complete the process.

Was there a need to complete the process on the 1st and not the 6th?

35 MR YELDON: I object. It's the premise of the question.

COMMISSIONER: Yes. Rephrase the question, please, Ms Ellson.

40 MS ELLSON: Mrs Davidson, was there a need to complete the process on 1 September 2016?---That's what had been agreed.

Was there a need to complete the process on 1 September 2016?---I believe there was.

45 Why could it not wait until 6 September, Mrs Davidson?---I think I've outlined already the stability of the substantive CEO, stability of the Council and also the outside community, so that everyone would be aware that now there was a

substantive administrative head.

5 COMMISSIONER: Ms Davidson, what is being presented to you by counsel is this situation: you have Mr Mileham acting in the position of CEO for quite some months, as at 1 September 2016. Can we go back to the previous page, please, Madam Associate. You then have this memorandum from the Manager of Human Resources, copied to the Manager of Governance and directed to you, the Lord Mayor and the Deputy Lord Mayor, in which the Manager of Human Resources, under the heading, "Reference check", makes the point that certain checks on
10 Mr Mileham's qualifications need to be made and you've been taken to those. You've agreed that these checks are necessary for an assessment of whether Mr Mileham is suitably qualified for the position, and this paragraph under the heading, "Reference checks" tells you they have not been made previously. So what counsel is putting to you is, in those circumstances, why could it not wait
15 another week? I understand your reasons for why you say it couldn't wait another week but I have to, in fairness, say to you, Ms Davidson, that whilst those reasons might, on face value, be a basis for not delaying the motion going to Council for a long time, I'm struggling with the notion that they are a basis for not waiting another week. I'm giving you the opportunity to tell me why that should be the
20 case, because I don't really understand why it couldn't have waited another week, so I would welcome your assistance, please?---As I outlined, Commissioner, I think we wanted the process completed.

25 But is there any reason why it could not have been completed one week later?---Obviously we chose 1 September.

I understand that?---Just to make sure that everything was - then you can obviously issue media releases and people are - - -

30 I understand all that but here, two days prior to 1 September, you are being told to wait a week later?---M'mm.

35 So why could you not have waited that extra week? In the grand scheme of things, it doesn't seem to be very much?---I can only say, Commissioner, we chose obviously not to.

40 I know that, you chose not to but I want to know why you just didn't wait - - -?---I think we just wanted to, as I say, complete the process as close to 29 August so that it would go through within that time frame.

The 6th is only five days more?---Yes, I acknowledge that.

45 So why could you not wait just that five days more?---I don't know, Commissioner. I really can't give you an answer but obviously 17 September was the beginning of the month and that obviously was a date that was chosen.

Is that all you wish to say?---Yes.

Thank you very much. Ms Ellson.

5 MS ELLSON: It doesn't make sense, Mrs Davidson, not to have waited until 6 September 2016, does it?---No, not in hindsight, no.

10 You were rushing the Human Resources Manager and the Manager of Governance through the process, weren't you, you as Council?---I think just trying to complete the process.

15 You, as part of the CEO Recruitment Committee, were rushing Ms Howells and Mr Ridgwell through the process, weren't you?---I wouldn't say rushing, I think it was just a case of, let's keep it on track.

20 You, as the Presiding Member of the CEO Recruitment Committee were rushing Ms Howells and Mr Ridgwell through the process, weren't you?---I didn't think I was.

25 You as the Presiding Member of the CEO Recruitment Committee didn't adopt their recommendation to have a Special Council Meeting on 6 September 2016, did you?---No.

And you should have, shouldn't you?---In hindsight, yes.

30 COMMISSIONER: You say in hindsight that you might have made a different decision, as I understand it, am I right ?---Well because then obviously these checks would have been completed where the documentation before the meeting on the 1st said, "Subject to."

35 So are you saying to me, and tell me if I'm wrong, please, that in hindsight, you might have decided to wait until 6 September?---Yes, if you wanted that process totally completed and what went through on the 1st was it was subject to.

40 Yes, I understand that, but are you saying to me now that in hindsight, having had your attention drawn to what is on the screen in front of you at the moment at 9.0737 and what is on the next page at 9.0738 - Madam Associate - you might have set the date as 6 September rather than 1 September?---Yes

[12.15 pm]

45 This information was in front of you, of course, on 30 August 2016?---Yes.

So what is it that you know now that you didn't know then?---Other than to move their date to 1 September, Commissioner.

45 What is it that you know now that you didn't know then?---You read this a little bit more clearly.

So this was sent to you?---Yes.

5 At the time, on 30 August 2016. Did you not read it carefully then?---Yes, but chose to go with - after discussion, to go with 1 September.

10 So if you read it carefully then, the information you had in front of you when you chose the 1st rather than the 6th, was that the same information that you have now?---Yes.

And on that basis, was it not clear to you on 30 August 2016 that you should have chosen 6 September rather than 1 September?---Yes, and agreed with the request.

15 Thank you. Ms Ellson.

MS ELLSON: The CEO Recruitment Committee met on 30 August 2016, didn't it, Mrs Davidson?---Yes.

20 What happened at the meeting?---I think it was between Ms Howells and Mr Ridgwell and I can't recall any more than that, but it would be to try and complete the process by 1 September.

Madam Associate, if you could bring up, please, 9.1387.

25 COMMISSIONER: Before you proceed on this document, Ms Ellson, I notice that Ms McEvoy and her counsel are in the public gallery. Just so that they are not inconvenienced any more than necessary, are you able to indicate to me whether you anticipate completing your examination, leaving aside applications for the moment, prior to 1 pm?

30 MS ELLSON: I'm hopeful, Commissioner.

35 COMMISSIONER: So when do you think you might be finished? You knew that question was coming, didn't you?

MS ELLSON: I did. I'm hopeful to have completed by 1.15, if you sat past 1 o'clock.

40 COMMISSIONER: So you won't have it done before lunch.

MS ELLSON: I'm hopeful that I can, Commissioner.

45 COMMISSIONER: I won't work on that basis. For that reason then, Ms McEvoy and her counsel will appreciate that they are unlikely to get on before 2.15 pm.

Thank you very much for your assistance, Ms Ellson. Please continue.

MS ELLSON: Madam Associate, if you could bring up 9.1387. Do you see here

CEO Recruitment Committee minutes for 30 August 2016?---Yes.

9.1390, please, Madam Associate. Mrs Davidson, you see here that you are present with Ms Howells and Mr Ridgwell?---Yes.

5

You accept that you attended a CEO Recruitment Committee meeting on 30 August 2016?---Yes.

9.1391, please, Madam Associate. You see here a confidential item, 4/16, "Employment of City of Perth Chief Executive Officer"?---Yes.

10

Is the motion that is moved?---Yes.

The meeting was closed at 3.22 pm?---Yes.

15

Do you accept that you had Ms Howells' memorandum available to you at this stage?---Yes.

The one that we have looked at that's dated 30 August 2016 with the time, 2 pm?---Yes.

20

At 9.0737, for the transcript. Mrs Davidson, in circumstances where Ms Howells in her memo had made the recommendation for there to be a Special Council Meeting on 1 September 2016 in circumstances where - I withdraw the question.

25

Can you explain, Mrs Davidson, why, at the CEO Recruitment Committee meeting on 30 August 2016 the motion to appoint Mr Mileham to the position of Chief Executive Officer for five years under the contract of employment was moved?

MR YELDON: I object. That is not the motion, with respect.

30

COMMISSIONER: Ms Ellson.

MS ELLSON: Yes, I see my error, Commissioner.

Mrs Davidson, can you explain to me why on 30 August 2016 the CEO Recruitment Committee moved a motion that, "Council, in accordance with section 5.36 of the Local Government Act, by an absolute majority decision, appoints Mr Martin Mileham to the position of Chief Executive Officer for a period of five years under the contract of employment for a Chief Executive Officer", was put and carried?---Yes, that would then move towards the Council meeting as the recommendation.

35

40

Can you tell me why, Mrs Davidson, the motion was moved without it being subject to particular things?---I can't, Ms Ellson.

45

You can't because you don't know or you don't remember?---No, this document would have been prepared by the Council officers.

You voted on the motion that was put at the meeting on 30 August 2016, didn't you?---Yes.

5 Why did you vote in favour of the motion?---Because it recommended Mr Martin - sorry, Mr Mileham, so that it would actually go forward for a Council decision-making process.

10 On 30 August 2016, Mrs Davidson, had a Special Council Meeting been arranged for 1 September 2016?---I'm assuming that it probably had if we'd have had those discussions at 2 pm.

So you don't know?---Not for sure, no.

15 Mrs Davidson, as at 30 August 2016 at the CEO Recruitment Committee meeting, did you have any reason to think that all of the necessary things Ms Howells has suggested needed to be completed, would be completed by 1 September 2016?---No.

20 COMMISSIONER: When you say those things Ms Howells said should be completed, what is it you're referring to, Ms Ellson?

25 MS ELLSON: The qualification checks, Mrs Davidson, the reference checks and the negotiation of the terms and conditions of the contract; did you have any reason to think as at 30 August 2016 those things could be completed by 1 September 2016?

30 MS SARACENI: Commissioner, I have an objection and I think the witness doesn't need necessarily to leave the room. It's in relation to reference checks and the previous email of Ms Howells, what exactly is encompassed in "reference checks", because - - -

35 COMMISSIONER: I think the witness should leave the room. I appreciate where you're heading with this, Ms Saraceni, but - - -

MS SARACENI: I wasn't going to say anything further.

40 COMMISSIONER: In that case, it's good that I'm a mind-reader then. Just stay where you are for the moment, Ms Davidson. Do you understand what the objection is, Ms Ellson?

MS ELLSON: Yes, Commissioner.

45 COMMISSIONER: In that case, well done, Ms Saraceni.

MS ELLSON: Mrs Davidson, did you think on 30 August 2016 when you voted on the motion at the CEO Recruitment Committee meeting, did you have any

reason to think that Mr Mileham's tertiary trade qualifications, professional membership, professional qualifications, bankruptcy check, business interests, financial regulatory check, credit default check, national police check and a check on his qualifications would have been completed?---No.

5

As at 30 August 2016 when you voted on the motion that you did, Mrs Davidson, did you have any reason to believe that an agreement could be reached about Mr Mileham's terms and remuneration of his contract by 1 September 2016?---If not totally complete, it would be in the process. Madam Associate, if you could bring up, please, page 9.0791. Do you see here ordinary Council minutes, 1 September 2016?---Yes.

10

TRIM 17416.

15 COMMISSIONER: Thank you.

MS ELLSON: Madam Associate, 9.0795, please. Mrs Davidson, do you accept that you attended a Council meeting on 1 September 2016?---Yes.

20 Do you see here a motion moved by yourself that, "Council, in accordance with" and you read the words under that?---Yes.

And you read point 2?---Yes.

25 You put the motion and you voted in favour of it?---Yes.

Madam Associate, could you bring up page 9.1391. Do you see here the motion from the CEO Recruitment Committee?---Yes

30 [12.30 pm]

You see that it's different from the motion that you put at the Council meeting on 1 September 2016, don't you?---Yes.

35 9.0795, please, Madam Associate. Mrs Davidson, did you consider Council was appointing Mr Mileham in the meeting on 1 September 2016?---Yes, subject to, and that's why clause 2 is obviously there as well.

40 COMMISSIONER: Just for your benefit, Mr Yeldon, I am treating this as an answer not based on the necessary expertise.

MR YELDON: Thank you, Commissioner.

45 COMMISSIONER: Thank you.

MS ELLSON: Mrs Davidson, why did you move a motion to appoint a preferred candidate, subject to the completion of satisfactory reference checks and

negotiations of the terms of the contract?---That was the document that had been prepared for the 1 September meeting.

5 Mrs Davidson, do you agree that Council needed to believe that Mr Mileham was qualified for the position before employing him?---Yes, it was subject to.

But Council could not employ Mr Mileham unless they believed he was suitably qualified for the position, isn't that right?

10 MS SARACENI: Commissioner, I object. It's a technicality but an important point. Mr Mileham had a substantive position in any event. He was already employed by the City of Perth. Perhaps if counsel could make clear that it's "employed as the CEO".

15 COMMISSIONER: That's a fair point.

MS ELLSON: I see, Commissioner.

20 Mrs Davidson, do you agree that the City of Perth could not employ Mr Mileham as the CEO unless they believed that he was suitably qualified for the position?---Yes.

And you were aware of that as at 1 September 2016?---Yes.

25 Do you accept that Council could not employ Mr Mileham as the CEO of the City of Perth unless they were satisfied with the provisions of the contract of employment?---Yes.

30 And you were aware of that as at 1 September 2016, is that right?---Yes, hence the clause "subject to the".

Mrs Davidson, was the final contract of employment for Mr Mileham ever brought before Council to be voted on?---I believe it was attached to all the full confidential documentation.

35 Pardon me?---I believe it was attached to the confidential documentation that would have gone to the Council meeting on the 1st. There was a packet.

40 COMMISSIONER: I don't understand that answer, Ms Ellson.

MS ELLSON: Pardon me?

COMMISSIONER: You will need to pursue that, I don't understand that.

45 MS ELLSON: Madam Associate, if could you bring up, please, page - - -

MR YELDON: May I approach counsel?

COMMISSIONER: Of course, yes.

MR YELDON: Thank you, Commissioner.

5

COMMISSIONER: It's a pleasure.

MS ELLSON: Mrs Davidson, was the final settled contract for Mr Mileham ever brought to Council for a vote?---I believe it was in those confidential packets that I've just referred to.

10

Mrs Davidson, the appointment motion that I've taken you to, which appears on the screen here, indicates that, "The CEO Recruitment Committee was still to negotiate the terms of the contract provisions", do you see that?---Yes.

15

So the final contract could not have been before the meeting on 1 September 2016, could it?---I think it was the WALGA LGMA CEO template that I think was in the bundle of papers.

I'm asking you about the final settled contract?---Yes. I'm not too sure, Ms Ellson.

20

It couldn't have been before the meeting on 1 September 2016 because the motion indicates that - - -?---"Subject to", so I agree with you.

After 1 September 2016, Mrs Davidson, was the final settled contract brought before Council?---I can't recall, Ms Ellson.

25

Madam Associate, if you could bring up, please, 9.1008. Do you see here some Council minutes, 14 March 2017, 6 pm?---Yes.

30

9.1009. Do you see here you're indicated as being present at this meeting?---Yes.

And do you accept that you attended?---Yes.

9.1011. Mrs Davidson, do you see there confidential item 13.20?---Yes.

35

A and B?---Yes.

Madam Associate, if you could bring up, please, page 9.1018. Do you see here an employment contract, "Parties to the contract: the City of Perth and Mr Mileham"?---Yes.

40

TRIM 17442. Madam Associate, if you could bring up, please, page 9.1030. Do you see there, Mrs Davidson, a schedule of the contract details for Mr Mileham?---Yes.

45

Do you accept that this document is Mr Mileham's contract of employment with

the City?---Yes, except listening to discussion, I know the employer contribution was exited out.

5 Pardon me, Mrs Davidson?---Just with what I'd heard while sitting in the gallery, the employer contribution had been exited out.

COMMISSIONER: Ms Davidson, this is where you need to wait for the question?---Okay, fine.

10 There's no need to repeat to you what you've heard others say?---Okay, sorry.

It's all right.

15 MS ELLSON: Mrs Davidson, I want you to think of the figure \$379,950, can you remember that for me?---Yes.

Madam Associate, could you turn, please, to page 9.1012. At the bottom of the page there's a reference to confidential item 13.2, do you see that?---Yes.

20 And there's a motion - part of a motion on the page at the bottom?---Yes.

9.1013, please, Madam Associate. You see there a variety of alternate motions and a primary motion that were put and carried?---Yes.

25 None of those deal with Mr Mileham's contract of employment, do they?---No.

Do you accept that Council were never asked to vote on the final provisions of Mr Mileham's contract of employment as CEO?---Correct.

30 Do you agree that they should have been, Mrs Davidson?---It could have been returned to Council for final ratification, yes.

It should have been, shouldn't it, Mrs Davidson?---Yes.

35 Madam Associate, if you could bring up, please, page 9.1233. While that's happening, Mrs Davidson, were you aware that it should have been, as at 14 March 2017?

COMMISSIONER: It should have been what?

40

MS ELLSON: Pardon me, Commissioner.

45 Mrs Davidson, were you aware that Mr Mileham's final contract of employment for the CEO position should have been brought to Council as at 14 March 2017?---The final contract? Yes.

Were you aware of that as at 1 September 2016?---No, because it was subject to

negotiation.

Were you aware that the final terms - - -

5 COMMISSIONER: Just stop there, Ms Ellson. Your question was what?

MS ELLSON: Whether Mrs Davidson was aware that the final contract of employment with Mr Mileham for the position of CEO should have been brought to Council on 1 September 2016, whether she was aware of the obligation.

10

COMMISSIONER: No, that wasn't the question. You were asking Ms Davidson whether she was aware, as at 1 September 2016, that the final contract should have been brought before Council on 14 March 2017. Do you recall the answer you got to that?

15

MS ELLSON: Yes, I do.

COMMISSIONER: What was it?

20

MS ELLSON: "Yes".

COMMISSIONER: That wasn't the answer.

MS ELLSON: I apologise, Commissioner.

25

COMMISSIONER: That's all right. You just need to be careful.

Ms Davidson, as at 1 September 2016 when there was a Special Council Meeting and there was a resolution dealing with Mr Mileham's contract of employment, do you remember the resolution of two paragraphs?---Yes.

30

I won't need to take you back to that, will I?---No.

As at that date, were you aware that there would, at some point in the future, be a need to bring the final contract back before Council, or not?---Not totally aware, Commissioner, because it was subject to negotiation and that negotiation would be completed.

35

[12.45 pm]

40

Yes, and when that had been completed, did you think that there would be a need to bring that completed contract back before Council?---Not totally, Commissioner, no.

45

Can you tell me why you say that, please?---Because I think by then the negotiations had taken place and the Council had agreed to the standard template of the WALGA LGMA.

Yes. I think we might be at cross-purposes; it's my fault, not yours. As at the date of that motion being passed on 1 September, were you aware that at some point in the future the contract of employment would have to be finalised?---By Council?

5

Well, finalised?---Yes.

And at the point where it was finalised, did you think it would have to come back before Council?---Normal process, yes.

10

Was that something that you were conscious of on 1 September 2016 when you voted for the motion?---No.

Can you tell me why not, please?---Because of the "subject to", so it would be - I'd be waiting for the next process.

15

What did you think the next process would be?---That the reference checks would have been completed, plus all those other parts and that the contract would be negotiated with the CEO.

20

Yes. So did you understand that all those things would happen at some future point in time?---Yes.

And when those things had happened at that future point of time, did you think that the contract of employment would have to go back before the Council?---No. I thought then that process of checking and negotiation would just take its course.

25

Thank you. Ms Ellson.

30 MS ELLSON: Commissioner.

Mrs Davidson, did you have anything to do with settling upon Mr Mileham's total remuneration package?---I don't recall that I did, Ms Ellson.

35 Mrs Davidson, as at 14 March 2017, did you have an understanding of the significance of the Salary and Allowance Tribunal's bands?---Yes.

Were you aware that someone's total remuneration package could not exceed the top level of a band?---Yes.

40

If you had become aware that Mr Mileham's total remuneration package offered to him was above the top level of the applicable band, what would you have done?---I would have asked Human Resources to have checked the figures according to the Salaries and Allowances Tribunal.

45

Mrs Davidson, I'm going to move on to Mr Mileham's key performance indicators. You were a part of the CEO Performance Review Committee, were you not, on 8

March 2017?---Yes.

5 Was there an ongoing process to review Mr Mileham's performance with respect to his probationary period on around 8 March 2017?---Yes, KPIs had been established.

Who was responsible for measuring Mr Mileham's performance as against the KPIs around 7 and 8 March 2017?---The CEO Performance Review Committee.

10 The members of the committee?---Yes.

There were only three people responsible for measuring Mr Mileham's performance during his probationary period?---Yes.

15 Why only three, Mrs Davidson?---That was the Terms of Reference and agreement by the Council, that the CEO Performance Review Committee would undertake that process.

20 There was some disagreement with respect to the process that was undertaken to assess Mr Mileham's performance during his probationary period, wasn't there, Mrs Davidson?---During the KPIs on 7 and 8 March?

25 There was some disagreement between Elected Members about the process being applied, isn't that right?---No. I think the KPIs had been distributed to those committee members, for them to undertake individually and then come together to look at the results. Mr Linnios did not agree with the - I think there were six on the KPIs and deemed them not satisfactory.

30 Is that something you've learned sitting in the Inquiry, Mrs Davidson?---Only seeing the documents.

During the Inquiry?---Yes.

35 Councillor Green raised some concerns with you about the CEO review process on 9 and 10 March, isn't that right?---Now that I can't recall.

40 Councillor Green was concerned that only three members of the Council were being asked to review Mr Mileham's performance during the probationary review, isn't that right?---I believe that was the case.

Did you ignore her concerns, Mrs Davidson?---No, I don't recall what was said to me if she did say it.

45 What about what she put in writing, Mrs Davidson, did you ignore that?---No, I've only seen probably something in the last two weeks that was put to me and I can't recall what that was.

Madam Associate, if you could bring up, please, page 9.0989. It's an excerpt from what appears to be an email from Mr Ridgwell, do you see that, Mrs Davidson?---Yes.

5 Madam Associate, 9.0988. Can you see at the bottom of the page an indication what was on the page you just looked at was an email from Mr Ridgwell on 9 March 2017 at 11.11 am?---I think I might be on the wrong page.

10 Madam Associate, if you could change to 9.0988. If you could blow that up a little bit, please, Madam Associate, the top lines are quite small. Do you see here in the middle of the page an email from Councillor Green to Mr Ridgwell, copying in you as a Councillor?---I'm not sure where I can see mine.

15 "Lord Mayor and Councillors, Robert Mianich"?---If she's done a collective to all of the Elected Members.

You accept that the email you're looking at there from Councillor Green was sent to you on 9 March 2017?

20 COMMISSIONER: Could we see the whole email, please, Madam Associate. Thank you?---Yes, I don't recall that particular email but I will accept that it obviously came my way if it was "Lord Mayor and Councillors", that was all to the Elected Members.

25 MS ELLSON: Did you discuss or put into writing with Councillor Green whether or not you considered the review process to be a proper one?---I don't recall that I did.

30 Did you discuss or put in writing to Councillor Green your view about the process being a robust one?---I don't recall that I did.

35 Did you discuss with Councillor Green or put into writing to her information regarding the feedback process that staff would undergo or would not undergo with respect to Mr Mileham's Performance Review?---I don't recall that, Ms Ellson.

40 9.0987, please, Madam Associate. Do you see on this page, Mrs Davidson, an email from Councillor Green to Mr Ridgwell and yourself and other Councillors and the Lord Mayor?---Yes.

Dated 9 March 2017, 7 pm?---Yes.

COMMISSIONER: Dated what date? Yes, thank you.

45 MS ELLSON: TRIM 17436, Commissioner.

COMMISSIONER: Thank you.

MS ELLSON: Mrs Davidson, do you recognise this as an email you were sent on 9 March 2017?

5 COMMISSIONER: Is there a second page to it?

MS ELLSON: No, it ends at the bottom of the page.

COMMISSIONER: I see.

10

WITNESS: Yes.

MS ELLSON: Councillor Green is asking you at the bottom of the page a question, is she not?---Yes.

15

:

20

Can you please provide detail as to why the approach you have taken in ascertaining the performance of the CEO is different from the practice undertaken with the previous CEO and why it is different from the process used by the City of Perth for Performance Reviews.

Do you see that?---Yes.

25 Did you ever respond to her?---I don't believe I did, Ms Ellson.

You don't believe you did or you didn't?---I can't recall whether I did or I didn't.

30 Above this, Mrs Davidson, there's another email from Councillor Green to you and Mr Ridgwell, copying in the Lord Mayor and the Councillors?---Yes.

Do you see an entry there, March 10, 2017, 8.58 am?---Yes.

35 And there's a request there from Councillor Green for an urgent reply to her queries regarding the review process, do you see that?---Yes.

Did you respond the her queries, Mrs Davidson?---I don't recall that I did.

40 Councillor Green gave evidence that you ignored her, Mrs Davidson, do you accept that?---I don't, on the basis that really that Performance Review had taken place already. In terms of the KPIs that should have been agreed with the CEO, and the CEO Performance Review Committee had undertaken the process as was agreed.

45 But you don't remember whether you responded to her queries or not, do you?---No.

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

COMMISSIONER: Would this be a convenient time?

5 MS ELLSON: Yes.

COMMISSIONER: I will adjourn until 2.15.

10 **WITNESS WITHDREW**
(Luncheon Adjournment)

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HEARING RECOMMENCED AT 2.15 PM

MS Janet Elizabeth DAVIDSON, recalled on former affirmation:

5 COMMISSIONER: Yes, Ms Ellson.

MS ELLSON: Thank you, Commissioner.

10 Mrs Davidson, we have established that the Performance Review process for Mr Mileham within his probationary period was conducted by you and the other members of the CEO Performance Review Committee?---Yes.

And that the three of you completed KPI assessment sheets, is that right?---Yes.

15 The only three people assessing Mr Mileham's performance within his probationary period were the three of you, is that correct?---Yes.

20 Why did you decide to get feedback from only three Councillors when Mr Stevenson's feedback had come from all of the Councillors and some members of the Executive Leadership Group?---It was an agreed process that the CEO Performance Review Committee would undertake, agreed with whom, I believe - no, I can't say "I believe".

25 It was a process that the CEO Performance Review Committee came up with?---I can't recall, Ms Ellson. It was an agreed process in collaboration with the Human Resources that the three committee members would undertake an assessment by that KPI process.

30 Why did you, as one of the committee members, decide that only three Councillors would assess Mr Mileham's performance when all of them, and members of the ELG had decided to assess Mr Stevenson?---I think this was because of after, it being a probationary period.

35 You said "because after a probationary period", I'm not sure what you mean?---Well, in other words, it was to assess him having completed his six months probation period.

40 What difference did that make when you're thinking about Mr Stevenson's assessment?---I think it was just an agreed process that we undertook.

Did Mr Limnios have an equal say in the committee in what process was to be followed?---Yes.

45 Did you and the Lord Mayor dominate the process with respect to Mr Mileham's Performance Review during his probationary period?---I don't believe that was the case.

Mr Limnios has suggested that the whole process, being the process to review Mr Mileham's probationary period, was dominated by you and the Lord Mayor from day dot, were his words; do you accept that?---I don't, no. I wanted to introduce extra processes in terms of the 360 degrees, et cetera, and that had not been the agreed process and it was to be undertaken with the KPIs feedback sheet.

You didn't take his suggestions seriously, did you, Mrs Davidson?---It's not a case of taking them not seriously, just saying that actually the process could not be changed halfway.

It could have been changed up to any point that it was completed, couldn't it?---I don't believe so. It was agreed that the process that we were going to undertake was the one with the KPI and therefore that expectation on all of us was already in train.

Mr Limnios has given evidence that since becoming involved with the employment subcommittee or the CEO Performance Review Committee he was regularly reminded that he didn't know what was involved and he didn't have the experience about how things are done, do you accept that?---No, I don't.

Mr Limnios has given evidence that in his experience with the CEO Performance Review Committee he was always told, "No, we are the committee and that's how it's done. We have been given the authority to make these decisions", do you accept that?---That was a clear message in terms of the process and that was all received and he accepted that and then wished to introduce those extra avenues to attach to the agreed process.

So you accept that you gave him the message that this was the committee and that's how it's been done and you've been given the authority to make these decisions?---I didn't give him the message, he knew that, that that was the case.

Because you had you'd given him the message?---No.

You had, hadn't you?---No, he was very clear about what he should be doing on the committee and the process to follow.

And when from time to time Mr Limnios disagreed with you and the Lord Mayor, you were quick to tell him that this was the committee, this is how it's done, isn't that right?---No, I just laid out the facts of what the process that we had all agreed to and that is actually what we would follow.

I have no more questions for Mrs Davidson, Commissioner.

COMMISSIONER: Yes, thank you. I will now hear applications.
Mr van der Zanden, do you have an application?

MR van der ZANDEN: No, I don't, thank you, Commissioner.

COMMISSIONER: Thank you, Mr van der Zanden. Mr Barrie, do you have one?

5 MR BARRIE: No, I don't, Commissioner.

COMMISSIONER: Thank you. Mr Cornish, do you have one?

MR CORNISH: No, I don't, Commissioner.

10

COMMISSIONER: Thank you. Mr O'Meara, you're here in place of Mr Malone.

MR MALONE: I am, Commissioner, so I seek the leave to appear, and no application to make.

15

COMMISSIONER: Thank you very much. Ms Zoric, do you have an application?

MS ZORIC: I do not, thank you, Commissioner.

20

COMMISSIONER: Mr Mariotto?

MR MARIOTTO: No application, Commissioner.

25 COMMISSIONER: Ms Saraceni?

MS SARACENI: No, thank you, Commissioner.

30 COMMISSIONER: Before I call on you, Mr Yeldon, to hear if you have an application, you might recall that at the end of proceedings yesterday your client indicated to me that she wished to speak about a matter and I told her that I would reflect on it overnight.

MR YELDON: Yes, I do recall that, Commissioner.

35

COMMISSIONER: Which I have done.

MR YELDON: Thank you.

40 COMMISSIONER: And it may be that you wish to make an application in respect of that matter. That would be consistent with the process which has been followed and I will determine that application on its merits as and when you make it.

45 MR YELDON: Thank you. Yes, I do have an application to make.

COMMISSIONER: Yes.

MR YELDON: I have nine areas.

COMMISSIONER: Nine matters, all right.

5

MR YELDON: It would be appropriate if the witness were out of court.

COMMISSIONER: I was just about to have - - -

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10

MR YELDON: I'm sorry.

COMMISSIONER: That's all right. I was about to have Ms Davidson excused from the hearing room. Ms Davidson, thank you.

15

WITNESS WITHDREW.

MR YELDON: This is not a court, I accept that.

20

COMMISSIONER: You've obviously got a busy practice, Mr Yeldon.

MR YELDON: I'm lucky in that respect.

COMMISSIONER: I don't know about luck, it's probably ability. Ms Davidson is now out of earshot.

25

MR YELDON: Page 14.0580 was shown to the witness.

COMMISSIONER: I will just have that brought up.

30

MR YELDON: It's minutes of a CEO Performance Committee meeting.

COMMISSIONER: Just give me a moment to have that brought up, please.

35

MR YELDON: If Madam Associate would go back to the attendees page.

COMMISSIONER: Yes. Yes, here we have it.

MR YELDON: And do you see Mr Blades, partner of Lester Blades, is present at the meeting. A point was made of this.

40

COMMISSIONER: Yes.

MR YELDON: It was suggested to the witness that he should not have been at the meeting if he was being selected to carry out the Performance Review by the meeting.

45

COMMISSIONER: I recall that.

MR YELDON: I submit that the page should be shown to the witness again, that is page 14.0580.

5

COMMISSIONER: Yes.

MR YELDON: Because it appears from the minutes that were taken that Mr Blades was not selected for that job at the meeting, he had already been selected by the witness. This was not put to the witness and I propose - - -

10

COMMISSIONER: Take me to the passage on 0580.

MR YELDON: It begins, "In consultation with".

15

COMMISSIONER: Let me just read it, please.

MR YELDON: Do you want me to read it?

COMMISSIONER: No, I'm just going to take a moment to read it. I'm not as quick as you, Mr Yeldon.

20

MR YELDON: I doubt that.

COMMISSIONER: Yes, thank you.

25

MR YELDON: You see the past tense in that sentence?

COMMISSIONER: Yes.

30

MR YELDON: "He had been selected", and so I want to put that particular paragraph to the witness. In my submission, this question will assist the Inquiry which is focused on the chronological events which took place with respect to Mr Stevenson's Performance Review in 2014, juxtaposed with his Performance Review in 2015.

35

COMMISSIONER: Yes. What I might do on this occasion, Mr Yeldon, is, because of the number of topics, I might hear from Ms Ellson on each topic as it's raised by you, if that's convenient to you.

40

MR YELDON: That is convenient.

COMMISSIONER: It might assist everyone, I think. Is that all you wish to say about that topic?

45

MR YELDON: Yes.

COMMISSIONER: Thank you. Ms Ellson.

MS ELLSON: Commissioner, in my submission, it certainly is a point that could be clarified with the witness, bearing in mind though that as a matter of fact,
5 Mr Blades had conducted a six monthly Performance Review of Mr Stevenson in 2013 and in July 2014, it appears Council or the committee were considering engaging him to conduct a 2014 Performance Review.

COMMISSIONER: I don't understand how that relates to Mr Yeldon's point
10 though. What Mr Yeldon is saying to me is that the decision had already been made.

MS ELLSON: Pardon me, I didn't hear, there was paper.

COMMISSIONER: That's all right. Mr Yeldon is submitting to me that if you
15 read that paragraph on page 0580, you read it on the basis that the decision to appoint him had already been made and therefore there was nothing wrong with him being present. That's what I want to hear from you on.

MS ELLSON: I accept that could be clarified with the witness, Commissioner, on
20 the basis of what is read in the paragraph.

COMMISSIONER: Do you read that paragraph as perhaps suggesting that the
25 decision was made at this meeting, bearing in mind these are minutes?

MS ELLSON: In my submission, Commissioner, in reading that paragraph in
conjunction with the other paragraphs under the details, there is a point which
could be clarified. There is an ambiguity, Commissioner.

COMMISSIONER: All right. In that case - I'm not sure I'm entirely won over by
30 your point, Mr Yeldon, but because there is an apparent ambiguity, I'm going to give you leave.

MR YELDON: Yes. May I just add a - - -
35

COMMISSIONER: You don't need to, you might go backwards, Mr Yeldon. Be
careful.

MR YELDON: Thank you, Commissioner.
40

COMMISSIONER: I think leave it as it is. I've given you leave, you can develop
it.

MR YELDON: Thank you.
45

COMMISSIONER: What's point number 2?

MR YELDON: The next point is, the witness was taken to Mr Stevenson's 16 page response to the 2015 Performance Review.

COMMISSIONER: Yes.

5

[2.30 pm]

MR YELDON: In this document, Mr Stevenson at paragraph 5, page 14.0927 - - -

10 COMMISSIONER: Shall we bring it up?

MR YELDON: Yes.

COMMISSIONER: Could you give me the number again?

15

MR YELDON: 14.0927.

COMMISSIONER: Yes, I will just have it brought up. Where do you want me to look?

20

MR YELDON: This is something of a Shakespearean proposal, "Where to from here", he begins.

COMMISSIONER: Where is that?

25

MR YELDON: 5.0 at the very top.

COMMISSIONER: Yes, "Where to from here?"

30 MR YELDON: And he says, "It is my view", do you see just before option 1, where the cursor is?

COMMISSIONER: Yes.

35 MR YELDON: "It is my view there are just two options to move forward as clearly it's not acceptable to allow the situation to continue." The witness was asked questions about Mr Stevenson's preference for Option 2 and in fact, commissioner - - -

40 COMMISSIONER: I recall.

MR YELDON: You recall asking questions.

COMMISSIONER: I do, yes.

45

MR YELDON: The witness was never asked whether Mr Stevenson's Option 1 was ever revoked by him before it was accepted by the Council.

COMMISSIONER: Yes.

5 MR YELDON: My proposed question is, did Mr Stevenson ever say to you, Ms Davidson, at any time that his Option 1 was no longer being offered by him before the Council voted. The reason for that, if I may say - - -

COMMISSIONER: Yes, please.

10 MR YELDON: In my submission, the Commission will be assisted by a proper framing of that question. It places the contractual dealing vis-à-vis Mr Stevenson's employment with the City of Perth in its proper contractual perspective.

COMMISSIONER: You don't need to go any further, I understand the point.

15

MR YELDON: Thank you.

COMMISSIONER: Ms Ellson, is there any objection to that?

20 MS ELLSON: Yes, I oppose the application, Commissioner.

COMMISSIONER: Can you tell me why?

25 MS ELLSON: Yes. Irrespective of whether Mr Stevenson ever indicated to anyone that he revoked Option 1, the Council could, under the terms of the contract, terminate his employment at any time for any reason.

30 COMMISSIONER: Mr Yeldon's point, unless I've lost my ability to understand the submissions, is that it's a matter of characterising the conduct. In other words, the contractual analysis is not the be-all and end-all but it's a part of it; am I right, Mr Yeldon?

MR YELDON: I accept that.

35 COMMISSIONER: Thank you. So Ms Ellson, I'm not going to ask you to develop that. I understand your point and thank you for making it but on this occasion I'm inclined to lean more strongly in favour of Mr Yeldon's point. So I will give him leave. Thank you. Mr Yeldon, what's your third point?

40 MR YELDON: I also seek leave to return the witness to the email she received from Mr Stevenson on 30 November 2015.

COMMISSIONER: Do you have the number?

45 MR YELDON: This is document 14.0947.

COMMISSIONER: Yes.

MR YELDON: Perhaps it would be helpful to bring that up, Commissioner.

COMMISSIONER: Yes, of course. What part do you want to look at?

5

MR YELDON: "If Option 1 is imminent", do you see that?

COMMISSIONER: Top half of the page?

10 MR YELDON: The bottom half.

COMMISSIONER: Yes. Enlarge the bottom part of the page; is that big enough for you?

15 MR YELDON: Yes.

COMMISSIONER: Thank you.

20 MR YELDON: The witness was questioned heavily on whether or not it was a mutual decision. The witness was not taken to the words that Mr Stevenson provided that "an agreement statement" - this is about the fifth dot point down, "That an announcement of the decision could be made while on leave."

COMMISSIONER: Yes, I see.

25

MR YELDON: And, "There would be a agreed statement confirming" - this is his proposal - "a mutually agreed separation." That is the evidence you can see yourself in review but if one goes up the page, a key to understanding the chronology is, in my submission, the holiday taken by Mr Stevenson which he refers to in this email.

30

COMMISSIONER: You want to go to the top of this page?

35 MR YELDON: Yes. Do you see in paragraph 1 he says that there is the daughter's wedding on 16 December.

COMMISSIONER: On paragraph numbered 1, yes.

40 MR YELDON: Yes. No decision was made by that time and if you go further down the page to the very end, he says he will be back on 28 December.

COMMISSIONER: We will just go down to that paragraph. Yes, so it's the last bullet point.

45 MR YELDON: Yes. So he returns from leave on 28th. No dealings could have taken place while he was on holiday and I want to - - -

COMMISSIONER: They could have, but that wasn't what he was advocating is your point.

5 MR YELDON: Yes. The witness was simply not taken to Mr Stevenson's further proposal which he made in 30 November about Option 1 being imminent.

COMMISSIONER: Yes.

10 MR YELDON: I submit the terms of his continuing proposal contradict the questioning by Counsel Assisting that it was not a mutual separation.

COMMISSIONER: I understand the point, thank you.

15 MR YELDON: And further establish a chronology with respect to his departure from the City of Perth, for want of a better term.

COMMISSIONER: So this goes to the issue of whether it was consensual or not?

20 MR YELDON: Yes.

COMMISSIONER: I understand. Ms Ellson, how do you respond to that?

25 MS ELLSON: I don't wish to be heard on that application, Commissioner. I can see the benefit to the Inquiry of elaborating on the terms of his continuing proposal. The fact remains though that there's no suggestion to the contrary.

COMMISSIONER: For someone who didn't want to be heard, you've just been heard. So those are your submissions in response?

30 MS ELLSON: Yes.

COMMISSIONER: Thank you. Mr Yeldon, I'm going to give you leave to ask some questions on that topic.

35 MR YELDON: Thank you.

COMMISSIONER: The fourth?

40 MR YELDON: The fourth is, an exchange took place in the witness' evidence concerning why a meeting the witness had in mind between herself, the Lord Mayor, the Deputy Lord Mayor, in which she said the members of the CEO Performance Committee had indicated to Mr Stevenson that Option 1 was going to be accepted.

45 COMMISSIONER: Yes, I remember the exchange.

MR YELDON: Yes. The witness agreed there should have been a notation of the

meeting and it was suggested, three, if not more than three times, that this meeting did not occur. The witness was then shown the minutes of the CEO Performance Committee on 20 January and that is 14.1087.

5 COMMISSIONER: I will just have that brought up.

MR YELDON: Thank you. I may have the page number wrong there. It's the CEO Performance Committee on 20 January.

10 COMMISSIONER: You want the minutes, do you?

MR YELDON: Can I be assisted there?

15 COMMISSIONER: I'm sure you will be. I'm sure Counsel Assisting will be able to provide you with that in a moment.

MS ELLSON: 9.0171.

20 COMMISSIONER: Thank you. Just bring that up, please, Madam Associate.

MR YELDON: Thank you. I'm indebted to my learned friend.

COMMISSIONER: Let's see if it's the one.

25 MR YELDON: Yes.

COMMISSIONER: Is that the one you mean?

MR YELDON: Yes.

30

COMMISSIONER: Are you sure?

MR YELDON: Yes. If we go to the resolutions, I will be able to - - -

35 COMMISSIONER: Yes.

MR YELDON: Paragraph 2 of the resolutions. This is it, Commissioner.

COMMISSIONER: Yes.

40

MR YELDON: It's important, in my submission, to pay close attention to the resolution and the CEO Performance Review Committee has, in paragraph 2, "discussed the above findings with CEO, Gary Stevenson" and in my submission, that is a bread crumb which the witness was never taken to. It alludes to a meeting with Mr Stevenson where there was a discussion. So I wanted to seek your leave to put paragraph 2 to the witness and to see whether, by reference to that paragraph, to which she was not specifically taken, her memory is refreshed.

45

COMMISSIONER: How do you think her memory will be refreshed by this?

5 MR YELDON: By reason that it refers to a past discussion. "Has discussed" is a past event.

COMMISSIONER: What's happened is that she has told the Inquiry about a previous meeting between Mr Stevenson and the CEO Performance Review Committee at a time between two dates.

10

MR YELDON: Yes.

COMMISSIONER: You might recall that. She couldn't recall the date and she could remember something but not very much about the meeting. Just looking at the contents of this paragraph number 2, how is that going to advance her recollection of events?

15

MR YELDON: If you will recall, the 16 page document contains the reference, "Where to from here" and the two options presented.

20

COMMISSIONER: I do.

MR YELDON: So this was a discussion of his 16 page document.

25 COMMISSIONER: Yes, but my question, Mr Yeldon, and I do understand the submission.

MR YELDON: Yes.

30 COMMISSIONER: How is reference to this paragraph going to advance her evidence on that topic?

MR YELDON: It may or it may not.

35 COMMISSIONER: I don't think it will but I will let you develop the submission.

MR YELDON: Yes, in the sense it was put to her several times, I believe, that her recollection was faulty, that that meeting never occurred, but this minute does allude to a discussion, a past discussion.

40

COMMISSIONER: All right, I understand. Ms Ellson, you might recall that you put it to Ms Davidson yesterday that as a result of her answers to questions from me, that this meeting did not occur. You've heard what Mr Yeldon has had to say about paragraph 2. What do you say about his application on that fourth topic?

45

MS ELLSON: Mr Yeldon's application, as I understand it, relates to a meeting the witness can't place in time and can't really place in detail where she considers that

there was an indication by members of the CEO Performance Review Committee that Option 1 would be accepted. In my submission, addressing point 2 in the CEO Performance Review Committee meeting minutes on 19 January 2016 with the witness in the circumstances proposed is not going to advance the matter any further.

5
COMMISSIONER: Why do you say that?

MS ELLSON: Because there are no particulars in the minutes which will, in my submission, prompt the witness' memory with respect to time or circumstances.

COMMISSIONER: What Mr Yeldon is getting at, if I can use that expression, is the issue about whether there was such a meeting or not, not necessarily time or circumstances but the fact of whether there was such a meeting. Of course, if I give him leave to ask some questions on this topic using this paragraph, I would of course expect him not to be leading the witness in the slightest. Does that alter your position?

MS ELLSON: Yes.

COMMISSIONER: Thank you, and how does it alter it? Will you still oppose it, is what I'm asking?

MS ELLSON: Sorry, Commissioner. Yes, I do still oppose it because the witness has given ample evidence already that she doesn't remember when or in what circumstances the meeting occurred.

COMMISSIONER: To use that awful American expression, this is line-ball, as they say, but again I'm persuaded by Mr Yeldon's argument so I'm going to give you leave to ask some questions on that paragraph number 2 at 9.0174, Mr Yeldon, but please bear in mind that it's one of those topics where, if you do lead, the evidence will be considerably devalued.

MR YELDON: Yes.

COMMISSIONER: Very well. What's number 5?

MR YELDON: Paragraph 5 is the point, Commissioner, you raised with me after the witness left the box and went outside, about something she wanted to get off her chest.

COMMISSIONER: Yes

[2.45 pm]

MR YELDON: She was brought back by you, Commissioner, to this topic about 10 minutes after we had moved from it, do you recall?

COMMISSIONER: Yes.

MR YELDON: You asked her, broadly speaking - - -

5

COMMISSIONER: Yes, I do remember. I read the transcript this morning.

MR YELDON: Yes, and the witness said, you will recall probably better than I do what it was about.

10

COMMISSIONER: I do.

MR YELDON: And you indicated you would consider the matter further.

15

COMMISSIONER: Which I have said I did.

MR YELDON: Yes. I make an application she be allowed to make that statement.

20

COMMISSIONER: Why? Why should she be allowed to deal with that?

MR YELDON: Because the circumstances that have been the topic of discussion before the Inquiry were addressed by a State Government body, the CCC, and she was not called to give evidence in respect of that Inquiry.

25

COMMISSIONER: Yes. You're familiar with the Terms of Reference of this Inquiry?

MR YELDON: I am.

30

COMMISSIONER: How is her evidence about that matter going to assist this Inquiry? That's the point, isn't it?

MR YELDON: Yes. I can't make a submission on that.

35

COMMISSIONER: So you don't pursue it?

MR YELDON: I don't.

40

COMMISSIONER: Very well. Thank you.

MR YELDON: Today, questions by Mr Urquhart - - -

COMMISSIONER: Are we on to number 6?

45

MR YELDON: Yes, we are.

COMMISSIONER: All right.

MR YELDON: I've abandoned number 5.

5 COMMISSIONER: That's all right, I'm just keeping tabs.

MR YELDON: Thank you. Questions by Mr Urquhart, who's not in court.

COMMISSIONER: No.

10

MR YELDON: Is that a problem?

COMMISSIONER: Well, only, if I can use your expression, you want to slag him off.

15

MR YELDON: I certainly did not intend to slag him off the other day.

COMMISSIONER: I'm only joking, Mr Yeldon.

20 MR YELDON: I appreciate that and I'm grateful for it. Questions by Mr Urquhart earlier today concerning WhatsApp messages and the witness' recollection of the WhatsApp messages.

COMMISSIONER: Yes.

25

MR YELDON: The witness' response was that she was a deleter - if that's a word. She actively deleted messages from her phone and there are many reasons why she might do that.

30 COMMISSIONER: Yes.

MR YELDON: It would be useful for the Commission to know what phone, for example, the witness was using, because messages through apps do use memory and can sometimes stop people from using their phones. I'm not sure, Commissioner, if you have personal experience.

35

COMMISSIONER: What, deleting messages?

MR YELDON: No, but rather if messages aren't deleted.

40

COMMISSIONER: You're looking at me as though I'm some sort of tech dinosaur, Mr Yeldon, and you might be right, or you might not.

45 MR YELDON: I certainly don't wish to go there, Commissioner. In my submission, the Commission will be assisted to hear evidence of the type of phone she was using, the memory that was available to the phone, the number of apps that were contemporaneously running and this may assist the Inquiry and it may

lend credit to her explanation that was so vigorously attacked this morning.

COMMISSIONER: I do think it would be appropriate to hear from Mr Urquhart on that.

5

MR YELDON: Yes.

COMMISSIONER: I'm sure that somebody can get a message to him. So that's number 6.

10

MR YELDON: Yes.

COMMISSIONER: Are 7, 8 and 9 also concerned with Mr Urquhart?

15

MR YELDON: They are not, that's an outlier. Number 7 is, the witness was shown 9.0354, an email from Mr Mianich dated 13 June.

COMMISSIONER: 9.0?

20

MR YELDON: 354.

COMMISSIONER: Thank you, if you could just bring it up, 9.0354. Yes.

25

MR YELDON: Where he refers to the process being too rushed. This is 13 June and you will recall Counsel Assisting asked questions about this rush.

COMMISSIONER: Yes, I do.

30

MR YELDON: The witness was not taken to the advertisement which appeared in the Australian Financial Review dated 22 June 2016 for the role of Chief Executive Officer of the City of Perth, and that is at 9.1425.

COMMISSIONER: Yes, I will have that brought up, 9.1425. Just hang on a moment, please.

35

MR YELDON: If the bottom right could be blown up.

COMMISSIONER: The advertisement, yes, bring that up.

40

MR YELDON: Yes. So you will see in the top of the page that this is the 22 June 2016 edition, Commissioner.

COMMISSIONER: Yes.

45

MR YELDON: You will then see at the very bottom that applications closed on Friday, 22 July.

COMMISSIONER: Yes.

5 MR YELDON: So in my submission, I can ask the witness whether she had anything to do with the placing of the advertisements, to put the alleged rush into context.

COMMISSIONER: How will it do that? How will that question do that?

10 MR YELDON: This is an advertisement which comes two weeks after, or thereabouts, the rush Mr Mianich is talking about and it refers to an application period a further month on from there.

COMMISSIONER: What if her answer to your first question is she had nothing to do with it?

15 MR YELDON: Yes. Then - - -

COMMISSIONER: You'll leave it there?

20 MR YELDON: I'll leave it there.

COMMISSIONER: All right. Ms Ellson, what do you say about that?

25 MS ELLSON: It was never put to the witness, Commissioner, that what Mr Mianich was suggesting in his email did not occur and in my submission, there's nothing to be gained by asking this witness whether she had anything to do with the placing of the advertisements.

30 COMMISSIONER: Do you wish to be heard in reply, Mr Yeldon?

MR YELDON: No, I don't, Commissioner.

35 COMMISSIONER: Mr Yeldon, I'm not inclined to give you leave on this one. It's a little too tenuous.

MR YELDON: Jolly good. Thank you, Commissioner. Number 8, the witness was shown her shorthand document. Commissioner, that is at 9.0501.

40 COMMISSIONER: Thank you, we will have that brought up.

45 MR YELDON: The witness said it was a document for her to give the committee her thoughts. The witness noted that Mr Ridgwell was in attending at the meeting with the six candidates and my question for the witness I propose to ask is, did Mr Ridgwell from Governance ever ask her to transcribe the shorthand she made, to longhand for his assistance. A secondary question would be, if I were given leave, did she see Mr Ridgwell making notes in the meetings? No notes of his were shown to her. Finally, I propose to ask the witness that if anyone had asked

her to read out her shorthand, whether she could do that.

COMMISSIONER: Yes.

5 MR YELDON: The reason is, Commissioner - - -

COMMISSIONER: You don't need to explain the reason to me, I understand. Thank you very much, Mr Yeldon. Ms Ellson, what do you say about that topic?

10 MS ELLSON: I have little difficulty with the first and the third questions.

COMMISSIONER: You have little, or a?

15 MS ELLSON: Little difficulty with the first and third questions, although whether Mrs Davidson saw Mr Ridgwell making notes in a process in which he was not a decision-maker will, in my submission, not assist the Inquiry.

COMMISSIONER: Mr Yeldon will no doubt say that it goes to the question of transparency; what do you say about that?

20

MS ELLSON: It does to an extent, Commissioner, but - - -

COMMISSIONER: I'm afraid I'm won over by Mr Yeldon on all three matters, so I'm going to give you leave, Mr Yeldon.

25

MS ELLSON: Commissioner.

30 MR YELDON: Thank you, Commissioner. The final matter is, in the context of the meeting by all the Elected Members and the two candidates on 29 August 2016, the witness referred to an aide de memoire that was given to her by Human Resources, or a grid which she may have described as an aide de memoire.

COMMISSIONER: She referred to the interview grid as an aide memoire, yes, I remember that.

35

MR YELDON: Yes, and various questions were put to her about what she should have - - -

COMMISSIONER: That's just Mr Urquhart signalling his appearance.

40

MR YELDON: I see that. Questions were put to her in the context of that informal meeting, what she should have done and my question to her is whether she had any power in that meeting by reason of her position as the Presiding Member of the CEO Performance Review Committee to force other Elected
45 Members to fill in and make notes on the grid.

COMMISSIONER: Or whether she had the ability to offer some guidance?

MR YELDON: Yes.

5 COMMISSIONER: I would have thought she would have that ability, wouldn't she?

MR YELDON: She may have had that ability, to offer guidance, yes, but I don't propose to ask her a question like that.

10 COMMISSIONER: No, but that might be where it goes in the end. In other words, Mr Yeldon, be careful what you wish for, but I will leave it up to you. Do you wish to press the application?

15 MR YELDON: I've heard what you've said, I'm going to withdraw the application for number 9.

20 COMMISSIONER: Very well. Mr Yeldon, what I'm going to do now that Mr Urquhart is in the hearing room, I might get you to, and I apologise for this but we don't get the transcript quickly enough, just re-canvass the point that you raised in respect of his questioning, so that he can respond to it.

MR YELDON: Thank you.

25 MR URQUHART: I have the benefit of hearing my learned friend's dulcet tones in my office. I'm fully aware of the application he's making.

COMMISSIONER: He will think it's jolly good that you've referred to him as a person with dulcet tones, Mr Urquhart. Be careful.

30 MR YELDON: I certainly do.

COMMISSIONER: Mr Urquhart, do you wish to be heard in response to that point?

35 MR URQUHART: I heard what my learned friend had to say. I can't recall - I've had a quick look at the transcript - as to whether I "vigorously attacked" Mrs Davidson's explanation as to why she would clean her phone. So he wishes to explore further as to circumstances or why it was that she would clear her phone, I thought it was quite clear in her evidence and it was that that's just what she did,
40 she cleaned up her emails and her texts. Do I object vigorously to Mr Yeldon's application? I wouldn't do that, sir, but that's my observations on that.

45 COMMISSIONER: Thank you, Mr Urquhart. It may well be, Mr Yeldon, that your questioning of Ms Davidson on that topic results in an application by Mr Urquhart to ask further questions, but that's a matter for you.

MR YELDON: Yes, I'm aware of that.

COMMISSIONER: In that case, I will give you leave on that topic.

MR YELDON: Thank you.

5

COMMISSIONER: Madam Associate, would you please bring Ms Davidson back into the hearing room. Ms Davidson, please resume your seat in the witness box.

10 **MS Janet Elizabeth DAVIDSON, recalled on former affirmation:**

COMMISSIONER: In your absence, Ms Davidson, your counsel made a number of applications to question you further about some of the matters on which you have given evidence and I have given him leave to ask you further questions on most of those matters. Your exclusion from the hearing room is no reflection on you?---Thank you, Commissioner.

15

Are you ready to begin, Mr Yeldon?

20 MR YELDON: Yes, Commissioner, thank you.

COMMISSIONER: Thank you.

[3.00 pm]

25

EXAMINATION BY MR YELDON

Do you recall that it was suggested to you that Mr Blades should not have been at the meeting of the CEO Performance Committee if he was being selected to carry out the Performance Review in that meeting?---Was I asked that? Yes.

30

Could the witness please be shown 14.0580, Madam Associate.

COMMISSIONER: Just enlarge the relevant portion, please, for the witness and for Mr Yeldon, thank you, Madam Associate.

35

MR YELDON: Do you see these details at the top of the page?---Yes.

Whose details are these?---CEO Performance Review Committee.

40

But who would have written these details out?

COMMISSIONER: Don't ask that question. Do you know who wrote them out.

45 MR YELDON: Yes?---Council staff would have prepared - - -

COMMISSIONER: No, do you know who wrote them out?---Only generically,

Commissioner, not a - I can't nominate a name but it would be Council staff.

MR YELDON: So you don't have a memory - do you have a memory of who wrote this information?---No.

5

Madam Associate, could you please go down to - first of all, do you see it says, "Quotations from consultants expert in the field were received as detailed", do you see that?---Yes.

10 And there are three consultants, John Phillips Consultancy, Portland Broome Talent, and Geoff Blades from Lester Blades, do you see that?---Yes.

And then the next sentence says:

15 *In consultation with the Presiding Member of the CEO Performance Review Committee, Mr Geoff Blades was selected as the preferred consultant.*

Do you see that?---Yes.

20

That paragraph says that you - you were the Presiding Member of the CEO Performance Review Committee at this time, were you not?---Yes.

25 And that says, doesn't it, that you had selected him as the preferred consultant?---It does, literally that sentence says but it would be with the other members of the CEO Performance Review Committee.

30 When you say it would be, do you have a recollection of you doing what that paragraph says, selecting him as the preferred consultant?---Not me specifically.

I see. That page could be taken down, please, Madam Associate.

COMMISSIONER: Are you now moving to topic 2?

35 MR YELDON: I am.

COMMISSIONER: Thank you. 14.0927, is that what you want brought up?

40 MR YELDON: It is, thank you, Commissioner.

COMMISSIONER: Madam Associate. Do you want the middle of the page expanded?

45 MR YELDON: Yes, I do, thank you.

Do you recall being shown this document earlier by Counsel Assisting, Mrs Davidson?---Yes.

In your evidence you referred to Option 1, do you recall that?---Yes.

Is that the Option 1 you were referring to in your evidence?---Yes.

5

Do you need to read Option 1 to refamiliarise yourself with it?---No, I'm fine.

Did Mr Stevenson ever say to you at any time that Option 1 was no longer be offered by him to the City of Perth?---Not that I can recall, no.

10

Thank you. I now propose to move to item 3, Commissioner.

COMMISSIONER: So you want page 14.0947 brought up now?

15

MR YELDON: Correct.

COMMISSIONER: Thank you.

MR YELDON: If we can go to the top of the page, please. Do you recall being shown this document?---Yes.

20

And you recall the Commissioner asking you some questions about it?---Yes.

In your evidence, you recalled that Mr Stevenson had taken a holiday, do you recall that?---He was requesting some leave.

25

Do you have a recollection of Mr Stevenson taking a holiday around this time?---It was towards the end of that year, yes.

Do you see the paragraph that says, "Therefore, if Option 1 is ultimately going to be chosen by Council, we would appreciate a very quick process of decision-making", do you see that?---Yes.

30

And he says:

35

I've been unable to take my wife to USA to our daughter's wedding on 16 December.

Do you see that?---Yes.

40

Do you have a recollection of whether he attended his daughter's wedding?

COMMISSIONER: How could she have that recollection?

45

MR YELDON: All right.

COMMISSIONER: Unless she was invited and was present.

MR YELDON: No, I don't think so. I retract that.

5 If I take you down to the bottom of the page, please, do you see the words beginning, "If Option 1 is imminent"?---Yes.

Did you read this email when you received it?---Yes.

10 What did you take from his email, this particular paragraph?---He was outlining what the step of the process would be if Option 1 was to be undertaken.

I see. Thank you. Do you see that in the dot point that begins, "Announcement of the decision", it says:

15 *Announcement of the decision could be then be made while I'm on leave and in USA to minimise scope for media exploitation and an agreed statement confirming the mutually agreed separation could be released.*

20 Do you see that?---Yes.

Was a mutually agreed separation statement ever agreed with Mr Stevenson?---Yes.

25 I see. Was that statement in writing?---Yes, it was agreed with Mr Stevenson, the content of the words.

Did you participate in signing that document?---I don't recall I did.

30 Do you know who did sign that document on behalf of the City of Perth?---I'm only going to make a guess but I know - - -

Please don't guess?---No, I won't, so I won't do that but it was also for Mr Stevenson - so it was an agreed media statement.

35 I see. Topic number 4, Commissioner.

40 COMMISSIONER: Before you go to that, are you going to ask Ms Davidson when that agreed statement was settled?

MR YELDON: Yes, I will ask that, thank you.

45 COMMISSIONER: What I'm interested in, Mr Yeldon, for your benefit - you probably know this already - is whether it was before or after 20 January 2016, for the obvious reason.

MR YELDON: Yes.

Do you have a recollection, Mrs Davidson, of when that document was finalised?---I think after we'd completed the process in January.

5 So that would be after 20 January?---Yes.

COMMISSIONER: Yes, the next topic?

MR YELDON: Paragraph 5.

10

COMMISSIONER: Yes.

MR YELDON: Paragraph 5 is withdrawn.

15 COMMISSIONER: That's right.

MR YELDON: So paragraph 6.

20 COMMISSIONER: I thought it was a like a phoenix rising from the ashes there again, Mr Yeldon; not so?

MR YELDON: That's right. May I continue, Commissioner?

COMMISSIONER: Please do. I'm sorry for the interruption.

25

MR YELDON: No problem.

The questions by my learned friend Mr Urquhart - - -

30 MR URQUHART: Can I just rise like a phoenix, sir?

COMMISSIONER: Yes.

35 MR URQUHART: In fairness to my learned friend I just want to show him some transcript of the evidence this morning. He might want to reconsider his application with respect to this. So with the Commissioner's leave?

COMMISSIONER: Yes, of course. Please do.

40 MR URQUHART: Thank you.

MR YELDON: I'm grateful to my learned friend Mr Urquhart. I won't press that, on the witness' answers.

45 COMMISSIONER: Thank you, Mr Yeldon.

MR YELDON: The next is the shorthand document, Commissioner. It's 9.0501.

COMMISSIONER: Yes. Thank you, Madam Associate, would you please bring that up.

5 MR YELDON: Do you recall this document, Mrs Davidson?---Yes.

And do you recall being asked questions about it earlier today?---Yes.

10 And I think you said in your evidence that Mr Ridgwell was in attendance at the six meetings with the six candidates?---Yes.

And who was Mr Ridgwell?---Manager of Governance.

15 Did Mr Ridgwell, the Manager of Governance, ever ask you to transcribe the shorthand you made in this meeting to longhand?---No.

Did you see Mr Ridgwell making notes in the meetings?---Yes, he did, and that's why he was there.

20 Can you expand on that?---He was there at the interviews so that he could document the answers that each candidate was giving to each questioner and then our documents, we would feed in some comments about the candidates so that he had a reasonable copy of what had been asked and what had been answered.

25 I see. How did you feed him - - ?---Just some highlights on each particular question, where I thought a good reply had been given or an example had been given. So taken from whatever the person had discussed.

30 What did Mr Ridgwell do next, after you'd given him that information, do you recall?---He had, as far as I know - - -

COMMISSIONER: Do you know?---He was writing.

Yes?---Yes, he was writing.

35 MR YELDON: Thank you. If anyone had asked you to read out your shorthand for them, could you have done that?---Yes

[3.15 pm]

40 Did anyone ask you to do that?---No.

That is it, Commissioner.

45 COMMISSIONER: Thank you.

MR YELDON: I'm sorry, may I rise Phoenician-like once again? May I have a

moment to confer with my instructing solicitor?

COMMISSIONER: Most certainly.

5 MR YELDON: I'm being told that I didn't go over with the witness number 4; is that your recollection?

COMMISSIONER: I was just relying on you, Mr Yeldon, to cover the areas you wanted but - - -

10

MR YELDON: May I deal with number 4?

COMMISSIONER: Just as well you conferred then.

15 MR YELDON: I'm sorry.

COMMISSIONER: It's all right, please proceed.

MR YELDON: I do see the time.

20

An exchange took place in your evidence as to why - do you recall an exchange took place in your evidence about when you first gave the news or you gave an indication to Mr Stevenson that Option 1 was going to be accepted by the City, do you recall that?---Yes.

25

It was suggested to you that this meeting did not occur, do you recall that?---Yes.

I want to show you a document. It's 9.0174.

30 COMMISSIONER: Do you want to start at 9.0171?

MR YELDON: 4.

COMMISSIONER: No, do you want to start at 9.0171? It's up to you.

35

MR YELDON: No, if I could start at the commencement of the meeting, it should be 9.0172.

COMMISSIONER: Okay.

40

MR YELDON: Yes. Pot luck.

You said that you attended this meeting, do you recall that?---Yes.

45 And there were resolutions passed at the meeting?---Yes.

Could you go to the resolutions, please, Madam Associate, 9.0174. Could you

read the resolution, please, paragraphs 1, 2 and 3(a)?---Yes.

If you could go back to the attendees, please, Madam Associate. Do you have a recollection of Mr Stevenson being at the meeting?---No.

5

If you could go to the next page, please, Madam Associate. Do you see there that at paragraph 2 it says that there was a resolution, "That the CEO Performance Review Committee has discussed the above findings as documented with the CEO, Mr Gary Stevenson and his response", do you see that?---Yes.

10

Having had paragraph 2 brought to your attention, does that assist your memory in recalling when that discussion with Mr Stevenson occurred?---I can't recall the time. It was his response to the Performance Appraisal that had taken place and he had sent us through a 16 page document but earlier there was his email on that, so there would be a date on his email when that 16 page document came through.

15

I see. So you would say it's some time after you'd received his 16 page document?---Yes.

20

Commissioner, I think that is definitely all, unless you have anything further, or my learned friend does.

COMMISSIONER: No. That's all you wish to ask questions on?

25

MR YELDON: Yes.

COMMISSIONER: Thank you. Ms Ellson, is there anything arising out of that?

30

MS ELLSON: Yes, just shortly, Commissioner with respect to the email of 30 November 2015 at 14.0947.

COMMISSIONER: Yes. Which part do you wish to have enlarged?

35

MS ELLSON: The second half of the page, please, Commissioner.

COMMISSIONER: Thank you. Madam Associate, would you please do that? Thank you. Yes.

40

MS ELLSON: Mrs Davidson, under the first dot point under the number 1, do you see there, Mr Stevenson's recommending as Chair you would advise him immediately after a meeting and he would then work constructively with you to prepare a confidential report for Council's consideration obviating the need for another officer's involvement, do you see that?---Yes.

45

You didn't invite Mr Stevenson to work constructively with you in order to do that, did you?---We didn't take up his offer of his process, no.

At all?---No.

5 And the last dot point, Mrs Davidson, Mr Stevenson suggests he "would work constructively to contribute to a transition until the date of the termination", do you see that?---Yes.

You didn't do that with him, did you?---No.

10 That's because you'd terminated his employment before that could be done, isn't that right?---No, we put in train a CEO Performance Review Committee and a Council decision-making.

I have no more questions, Commissioner.

15 COMMISSIONER: Thank you. I do have some questions and I will give you both an opportunity to ask any questions arising out of mine, of course. Madam Associate, would you please bring up 9.0501. This is the document that is reminiscent of the etchings from the tomb of Tutankhamun, Ms Davidson?---Sorry, Commissioner, I missed that.

20 That's all right, that was a poor joke?---Okay, missed it.

25 You've answered some questions from Mr Yeldon about Mr Ridgwell and what he was doing in this meeting and you said that you saw him doing some writing. Did you see what he was writing down?---No, but he was tasked with - - -

Whatever he was tasked with, did you see what he was writing down?---No.

30 Was his role in that meeting to make an assessment of any of the candidates?---No.

Was his role to set any criteria by which those candidates should be assessed?---No.

35 Was it his role to rate the performance of any of the candidates who were before the committee?---No.

Whose role was it to rate the candidates who came before the committee?---The committee members.

40 Thank you. Mr Yeldon, anything arising out of that?

MR YELDON: Simply to ask, what was Mr Ridgwell's role at the meeting?

45 COMMISSIONER: What was his role at the meeting as you understood it?---To document the answers as he heard them.

Yes. Did you ever read his notes, by the way?---No. We discussed - - -

No, did you read them?---No.

Anything arising out of that question, Mr Yeldon?

5

MR YELDON: No.

COMMISSIONER: Ms Ellson, anything arising out of my questions?

10 MS ELLSON: No, Commissioner.

COMMISSIONER: Are there any other housekeeping matters that I need to deal with before I thank Ms Davidson for her assistance? Ms Davidson, I'm going to excuse you from further attendance today and I want to thank you for your assistance to this Inquiry. I propose to adjourn for a short time to allow the arrangements to be made for the next witness.

15

WITNESS WITHDREW

20

(Short adjournment)

HEARING RECOMMENCED AT 3.34 PM.

COMMISSIONER: Ms Ellson, I will have the witness called and sworn or affirmed and then I will hear applications and take appearances.

25

MS ELLSON: Commissioner. I call Judith Sabina McEvoy.

COMMISSIONER: Thank you. Ms McEvoy, would you please come forward and take a seat in the witness box.

30

MS McEVOY: I will just get my glasses out.

COMMISSIONER: Yes, of course. Do you wish to take an oath or make an affirmation?

35

MS McEVOY: I will have an oath, thank you.

COMMISSIONER: Thank you. Madam Associate.

40

MS Judith Sabina McEVOY, sworn:

COMMISSIONER: Thank you, Ms McEvoy. Mr McGowan

MR McGOWAN: Commissioner, with my learned friend Mr Barrie, I seek leave to appear on behalf of Ms McEvoy.

45

COMMISSIONER: Thank you, Mr McGowan. Is there any objection, Ms Ellson?

MS ELLSON: No, Commissioner.

5

COMMISSIONER: Thank you, leave is granted. Ms Saraceni?

MS SARACENI: Sir, I seek leave to appear and represent Mr Mileham's interests in this matter.

10

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

MS ELLSON: No, Commissioner.

15

COMMISSIONER: Thank you. Mr Mariotto.

MR MARIOTTO: Yes, I seek leave to appear on behalf of Mr Limnios, Commissioner.

20

COMMISSIONER: Yes, of course, Mr Mariotto. Is there any objection, Ms Ellson?

MS ELLSON: No, Commissioner.

25

COMMISSIONER: Thank you, leave is granted. Ms Zoric.

MS ZORIC: Thank you, Commissioner. May it please you, I seek leave to represent Gary Stevenson.

30

COMMISSIONER: Thank you. Is there any opposition to that?

MS ELLSON: No, Commissioner.

COMMISSIONER: Thank you, leave is granted. Mr O'Meara?

35

MR O'MEARA: May it please you, Commissioner, I seek leave to appear on behalf of Councillor Harley.

COMMISSIONER: Thank you. Is there any opposition?

40

MS ELLSON: No.

COMMISSIONER: Leave is granted. Mr Cornish?

45

MR CORNISH: Thank you, Commissioner. I seek leave to appear on behalf of Dr Jemma Green.

COMMISSIONER: Thank you. Is there any opposition?

MS ELLSON: No, not at all, Commissioner.

5 COMMISSIONER: Thank you. Leave is granted. Mr Yeldon?

MR YELDON: I seek leave to appear on behalf of Janet Davidson.

COMMISSIONER: Thank you. Is there any opposition?

10

MS ELLSON: No, Commissioner.

COMMISSIONER: Leave is granted.

15 MR YELDON: I'm grateful, thank you.

COMMISSIONER: Mr van der Zanden?

MR van der ZANDEN: May it please you, Commissioner, I seek leave to appear
20 for Ms Scaffidi.

COMMISSIONER: Thank you. Is there any opposition?

MS ELLSON: No.

25

COMMISSIONER: Leave is granted. Mr Yin.

MR YIN: My timing is impeccable. I filed an application for leave to appear for
Mr Yong during this evidence.

30

COMMISSIONER: Come to the Bar table, Mr Yin, there's a seat at the front.

MR YIN: Thank you, sir.

35 COMMISSIONER: Is there any opposition?

MS ELLSON: No, Commissioner.

COMMISSIONER: Leave is granted. Ms Ellson, are you ready to begin?

40

MS ELLSON: I am, Commissioner, yes.

COMMISSIONER: Thank you, please do.

45 EXAMINATION-IN-CHIEF BY MS ELLSON.

Mrs McEvoy, can you tell me executions, they weren't mutually

things?---Executions?

Executions, yes?---I would say you execute a will, perhaps.

5 Executions of people aren't mutual things, are they?---No, no.

And they aren't normally something which is agreed between the executioner and the person being executed, are they?---I wouldn't have thought so, no.

10 You don't think so, do you?---No.

Mrs McEvoy, did you refer to Mr Stevenson's termination as an excellent execution?---I don't recall using those words but - no, I wouldn't have - I don't recall saying that.

15

Mrs McEvoy, during Mr Stevenson's employment, did he ever talk to you about the possibility that he might report something you hadn't disclosed to the CCC?---Not that I ever thought of, no.

20 Did you ever consider him to make any veiled threats to you with respect to reporting anything?---No.

Anywhere?---No.

25 Did you ever think that Mr Stevenson didn't have your back? Is that an expression you'd use?---No, it's not something that I'd use, no.

Mr Stevenson was very strong on governance, wasn't he?---Very strong, yes.

30 And he was very good for the City of Perth in terms of technical ability, do you agree with that?---I agree, he did very well with the Local Government reform of the City, yes.

35 And the organisational restructure, he was instrumental in that as well, wasn't he?---Yes, he was.

That was an important development for the City of Perth, wasn't it, its organisational restructure?---Well, everybody had differing views on that, but yes.

40 In your view?---To start with I thought it was a good idea but I didn't feel like it was that in the end.

In the end, after 2016?---M'mm.

45 Do you remember the CCC report into the gifted travel by the Lord Mayor coming out on 5 October 2015?---I don't recall when it came out, no.

Do you recall receiving an email from the Lord Mayor the following day, 6 October 2015?---I don't recall but I may have. You may have something there that reminds me about it.

5 Madam Associate, if you could please bring up 14.2093. Mrs McEvoy, from time to time did you communicate with the Lord Mayor using a personal email address?---I may have done, yes. If I was perhaps at home I would have used my computer at home.

10 An iiNet address?---Yes, that's right.

Do you see on the screen an email from someone named Lisa?---Lisa M Scaffidi, yes.

15 To an iiNet address?---Yes, to - - -

Do you recognise that address as yours?---Yes, to Adamos, Butler, yes, it's to quite a number of Councillors, yes.

20 Do you accept that you received this email from Ms Scaffidi?---Yes.

On 6 October - - -?---If you're saying - - -

2015?---Yes, it's up there to watch - to look at, yes.

25

You were a bit keen there, Mrs McEvoy. If you could just wait until I've finished my questions?---Right, okay. Sorry. It's there in front of me, and I'm thinking.

30 Take a moment to read through the document, please, Mrs McEvoy?---Okay, yes, I've gone through that. I don't recall it at the moment but I'm seeing it there, yes.

I'm drawing your attention to the PS:

35 *There is a lot more about who referred me to the CCC which I'm very keen to share but for now one haemorrhaging step at a time!*

Do you see that?---Yes.

40 Did the Lord Mayor ever tell you, around 6 October 2015, who referred her to the CCC?---I'm not sure but I'd presumed it had been the CEO. I don't know.

I'm asking you whether the Lord Mayor told you?---I don't recall her telling me, no.

45 Ever?---No the document can be taken down, please, Madam Associate. Mrs McEvoy, did Mr Stevenson conduct an internal review into gifted travel in 2015 for the City of Perth?---I can't answer that, I'm afraid.

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

5 Did you ever speak to the Lord Mayor about her wish to obtain an internal or external review by Mr Stevenson of gifted travel?---No. Well, I don't recall that, no.

10 Did you participate in Mr Stevenson's second Annual Performance Review? That was something that was done in 2015?---I presume that I would have done. Was that the one that was done with Lester Blades?

No?---No. Another one?

15 Did you participate in more than one?---I don't recall.

Did you participate in three?---No, I certainly don't recall that. I remember the one that was done with Lester Blades.

20 There were two of those, weren't there?---There could have been. At this stage I would - all I'm saying is there's one that I distinctly remember.

25 Do you remember undertaking a survey as requested by Councillor Davidson, to assess Mr Stevenson's performance in 2015?---I don't recall but I could quite possibly have, yes.

Madam Associate, could you bring up, please, 14.0809?---That's my writing

[3.45 pm]

30 It is?---Mm hmm.

Do you recognise this as a CEO Performance Review you completed for Councillor Davidson in 2015?---I'm looking at it now and I filled it out so it must have been, yes.

35 Perhaps looking at a few more pages might help you?---Right.

14.0810, that is your handwriting as well?---It certainly is, yes.

40 14.0811, please, Madam Associate. That's yours as well?---Yes.

14.0812, is that your handwriting as well?---Terrible writing. Yes, it's mine.

45 14.0813, is that your writing?---That's my writing, yes.

14.0814, that's your writing?---Yes.

14.0815, is that your writing?---Yes, it is. I just need to read the bottom - there's a little bit there to read if you want me to read it. Yes, very much my writing.

14.0816, do you recognise that as well, as yours?---Yes, definitely my writing, yes.

5

14.0817. For the transcript, TRIM 13821?---Yes, that's mine.

Mrs McEvoy, do you accept the nine pages you've just seen on the screen as the responses to Mr Stevenson's second Annual Performance Review in 2015?---Right.

10

Do you accept that that's your response?---I do.

As at 2015, Mrs McEvoy, would it be fair to say that you had mixed views about Mr Stevenson?---That's true, yes.

15

What were his strengths, as a CEO?---As a CEO. What I can say for him, he did - the Local Government reform was a big job that he did whilst he was there and he did that very well. He was very much a bureaucrat so that went along with what his thoughts were. There was a lot of - I just always got the feeling that he really didn't want the Councillors and the Lord Mayor there. He would have felt better with just the Directors, that was my feeling.

20

Was that because you were giving him a hard time?---No, I wasn't giving him a hard time. I don't think - there's only one issue that I gave him a hard time on.

25

What about the other Councillors?---No, I don't - well, not that I'm aware of, no.

What were his other strengths?---It certainly wasn't collaborating with us as Councillors or the stakeholders, that wasn't his strong point.

30

I'm asking you about what his strengths were?---His strengths. Umm - - -

You said he was very much a bureaucrat when you were talking about his strengths?---Yes. The Local Government reform and anything that was bureaucratic, he fitted in very well.

35

He was good at governance?---Was that tested? I don't know.

Did you ever speak to any Councillors about their concerns concerning Mr Stevenson potentially reporting them to the CCC?---I don't recall that. It wasn't something that I was concerned about. It wasn't anything to do with me. I don't think so.

40

Mrs McEvoy, did you have a meeting on or around 14 December 2015 with the Elected Members and discussed Mr Stevenson?---I don't recall that. Was it a formal meeting?

45

COMMISSIONER: Do you want that page taken down from the screen?

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

5

From time to time, Mrs McEvoy, would you use WhatsApp to communicate with a number of other Councillors?---Yes, I did.

10 And a number of other Councillors were using a WhatsApp Team chat, is that right?---Yes, that's right.

And you were among them?---I was, yes.

15 Madam Associate, if you bring up, please 14.0069. Do you see here, Mrs McEvoy, an extract from WhatsApp chat 137-Team?---Right, yes.

Do you see there in the participants, you're amongst them in the middle?---Yes, that's right.

20 Do you accept that's your - - -?---That's me, yes.

- - - number, and that's you?---Yes.

25 Looking at the document, Mrs McEvoy, do you accept this is a record of a WhatsApp Team chats between you and other Councillors excluding Councillor Green - - -?---Yes, I accept that, yes.

It excludes Councillor Green and Councillor Harley, doesn't it?---That's right.

30 This is a WhatsApp chat set up by the Lord Mayor, isn't it?---Yes, I think she - - -

Madam Associate, if you could turn, please, to page 14.0123. Mrs McEvoy, could you read through the messages on this page, please?---Right, "Very good discussions" - - -

35

Not out loud, to yourself is fine?---To myself, right. There was a meeting. I've read that.

40 14.0124, please, Madam Associate. If you could read the first three messages on the next page, please. Perhaps if they could be blown up for the people at the Bar table, Madam Associate. Going back to page 14.0123, Madam Associate, please. Do you see a message at 6.03 pm?---What part of the page, is it? Can you - - -

Yes. It's just below the middle.

45

COMMISSIONER: Bottom third?---Bottom two.

MS ELLSON: Bottom third?---Right, "It was good" - - -

:

5 *Yep, good session. Nice having Reece amongst us.*

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

You accept that's your message?---Yes, it would have been probably.

10

14.0124, please, Madam Associate. Your message at 6.21 pm, is it?---This is the blue suit piece?

15 Mrs McEvoy, do you accept that the message at 6.21 pm is your message, the third message from the top?---The third from the top, okay. Yes, I can see that.

Are you referring in those two messages to an Elected Members' briefing session or a meeting that was held on 14 December 2015?---I'm not sure. It appears to be a meeting we had.

20

You don't remember it?---I don't remember, no.

25 COMMISSIONER: Can we just go back to 0123, please. When this page was first shown to you, Mrs McEvoy, I thought I heard you say something like "we did have a meeting"?---There was a meeting, yes. When I saw that, I realised it was a meeting.

30 What part of that triggered that memory for you?---It was down the bottom here "we should have these EM sessions for often." So apparently right from the top going down it appears that it was a session of members.

MS ELLSON: Do you remember what happened in the session?---No, I've got no idea. I hadn't thought about it until I've seen it up there.

35 14.0124, please, Madam Associate. At 6.21 pm, Mrs McEvoy, you indicate you were joking. That's a reference to your comment that, "It was nice having Reece among you", isn't that right?---Whereabouts is that, down the bottom or in the middle?

40 Top third, the third - - -?---Third one down. Yes, that's - I've obviously said that, yes.

You were joking about Mr Harley?---Yes.

45 There was no love lost between you and Mr Harley at the end of 2015, was there?---We were always quite polite to each other.

You didn't like him, did you?---Not particularly, but we weren't rude.

5 In this message, you describe Mr Harley, don't you, as "very shabby and unshaven and must have had the blue suit in the dry cleaners", isn't that a reference to him?---It is a reference to him, the blue suits, yes.

It's not very charitable, is it?---No, it's not but it was always the same blue suit. That's why it was brought up.

10 It's not very respectful of Mr Harley, is it?---If you say so.

You agree with me?---In a way, yes.

15 The message can be taken down, please, Madam Associate.

Mrs McEvoy, do you recall a meeting with the members of the CEO Performance Review Committee on 15 January 2016 where Mr Stevenson's employment was discussed?---Yes, I wasn't a member of that committee but I was invited to come along.

20 Who invited you?---I think it was possibly the Lord Mayor, as the longer term - longest serving Councillor, I think they thought - - -

25 It was, it wasn't or you don't remember?---What's that?

The Lord Mayor who invited you?---I think it's the Lord Mayor but I'm not 100 per cent sure. You've probably got something that you will show me that it was.

30 What were you told about the purpose of the meeting before you went, if anything?---Well, I think he'd come up with an option. He'd realised that he may be coming to an end.

35 I'm talking to you about what was said to you to invite you to the meeting on 15 January 2016?---I was just asked to come along to the meeting. I wasn't a member but I was asked to come along.

Did you ask why you were invited?---Not necessarily.

40 Do you know why you were invited?---My opinion, I suppose. I wasn't able to vote for anything. I wasn't a voting part of the committee.

It wasn't a formal meeting, was it?---Not really, no.

45 It didn't have any minutes, did it?---No, I don't think so

[4.00 pm]

Or a minute taker?---No.

And no-one from Governance was present?---No.

5 And you don't know why you were there?---Well, it was to discuss Gary Stevenson. I don't - - -

Who told you that?---I said - the Lord Mayor. I would say it was the Lord Mayor that had asked me to come along and I went along.

10

People spoke at the meeting; who went first?---That's a long one asking me to remember that. No idea. I mean, there was Limmios, Davidson and Scaffidi there and myself as an outsider looking in.

15 Did you ask anyone why you were there?---No, I just rolled up.

Can you tell me what you heard said at the meeting and when you do, can you tell me who said it?---Right. I really don't recall. I honestly don't recall. I know it was to do with Gary Stevenson and probably an option that he'd put forward but I really have no idea apart from that.

20

Can you tell me what happened at the end of the meeting? How did it end ?---We all moved out, I suppose. I don't recall.

25 Can you tell me what the last thing was that was said at the meeting?---No, I'd have no idea. Can't remember.

Can you tell me whether a plan was made during the meeting?---Look, I vaguely remember them talking about, that he had put forward an option 1 to leave the City. That's all that I can remember of it, it was an option 1.

30

And that's only a vague memory?---Yes, that's a vague memory.

Were you told to attend - at some point after the meeting on 15 January 2016, were you asked to attend a meeting on 19 January 2016?---Yes, that was a formal Council meeting, was it?

35

That was a meeting on 20 January 2016?---Yes.

40 You recall being invited to that?---I would have been invited to that, yes.

Can you tell me who invited you to the meeting?---It was just a - the general consensus of the meeting, it was a follow-up from the meeting that we had had from the Employment Committee. I think everybody would have been invited.

45

Different Councillors perhaps invited different people. I don't recall who invited me but I know I was there.

Did you invite anyone?---Not that I recall.

To the Special Council Meeting on 20 January?---Not that I recall. I may have done but I don't - - -

5

Madam Associate, if you could bring up, please, 14.0137. Mrs McEvoy, do you see here another page of what is labelled an extract of WhatsApp chat 137-Team?---Right, yes.

10 Do you accept this is a record of WhatsApp Team chats?---Yes.

And you were a part of that?---Yes.

I ask you to look at the last message on the page, please?---The very last message?

15

Yes, thank you, 1.36 pm?---Okay. Yes, I've read that.

Do you accept that it was the Lord Mayor that invited you to a Special Council Meeting on 20 January 2016?---It quite possibly was, yes.

20

It was, wasn't it?---Mm hmm.

You need to say a word?---Well, it looks like, according to this, yes. It probably was. I don't have - there's not a problem with her inviting me, I don't think.

25

Do you accept that you received this message from the Lord Mayor on 19 January 2016?---Yes, I probably would have. If it was on WhatsApp I would have received it, yes.

30 14.0138, please, Madam Associate. Could you read the messages until you get to the middle of the page, please?---Right.

You will see a message under your name at 2.40 pm. TRIM 13761 - I'm sorry, 13609 is the TRIM?---I had to leave work for the meeting so yes, I've got a message there.

35

Do you accept that you received an invitation to a Special Council Meeting for 20 January 2016 from the Lord Mayor?---Well, if it's there, yes.

40 And you accept that you agreed to attend at 9.15?---Yes.

And you accept that was because the Lord Mayor encouraged everyone to attend at 9.15 for the meeting?---Yes.

45 The document can be taken down, please, Madam Associate. Did you attend a Special Council Meeting on 20 January 2016?---Obviously I did, yes.

COMMISSIONER: On what date?

MS ELLSON: 20 January 2016. Were you given any papers when you arrived, Mrs McEvoy?---If I recall, there would have been an agenda - - -

5

Not "there would have", what was there?---I don't remember straight. I can't tell you honestly, I'm just saying that I feel there might have been - there would have been an agenda and there would maybe have been - - -

10 But you don't know?---But I don't know, no.

Someone spoke to the meeting, didn't they?---Would have done, yes.

They did?---They did, yes.

15

Can you tell me who spoke first?---No, I don't recall who spoke first.

Can you tell me what was discussed at the meeting? What was said, the words that were said?---That's asking a bit much at this stage. Well, it was to do with Gary Stevenson, wasn't it? It was to do with what had been discussed earlier about his Option 1. That's all I can remember.

20

Madam Associate, could you bring up, please, 9.0207. Mrs McEvoy, do you see here an agenda for a Special Council Meeting, 20 January 2016?---Yes, I do.

25

It's approved for release by three people?---Yes.

9.0209, please, Madam Associate. This is TRIM 13752.

30 COMMISSIONER: Thank you.

WITNESS: Yes.

MS ELLSON: Do you see here an order of business?---Yes.

35

9.0210. Do you see here an indication that there's an agenda?---Yes.

For a Special Council Meeting?---Yes.

40 And attendance is recorded?---Yes.

Ms Smith is acting as minute taker, do you see that?---Yes, I see that.

Was anyone from Governance at the meeting on 20 January 2016?---Mustn't have been because there's nobody in there as being in the meeting. Ms Smith was the Lord Mayor's personal assistant.

45

She is listed as taking the minutes; that's an unusual thing for her to do at a Council meeting, isn't it?---It's unusual, yes.

5 Do you have any insight as to why Ms Smith was taking the minutes at this meeting?---No, I don't have any idea, no. It might have been to keep it within the fold and without - things leaked out fairly quickly sometimes, so it may have been just to keep it in the fold at that time.

10 You're saying "it may have been", but you don't know?---I don't know, but that's what I'm thinking when I see her name there.

15 COMMISSIONER: What do you mean when you say "in the fold"?---Well, keeping it within that Council meeting. I think that there was a bit of a concern that it would get out and would get to Gary Stevenson. I'm just hazarding a guess there.

MS ELLSON: You said there was a concern it would get out to Gary Stevenson?---M'mm.

20 Can you tell me whether you shared that concern?---Well, you're always a little bit concerned when things - we didn't want it to be embarrassing for him, more than anything. So until it was all ratified, I think that was the best way to go about it.

25 So this Special Council Meeting on 20 January 2016, you thought was something going on behind closed doors without his knowledge?---I feel it might have been. Looking back on the minutes, yes, he's obviously not there, so - - -

30 It's usual for the CEO to attend all manner of meetings, isn't it?---Usually they do, yes.

So it was unusual for Mr Stevenson not to be present at this one?---It was unusual but you can understand why.

35 Because maybe things needed to be kept in the fold?---It was relative to his position, so - - -

Something very relevant to him?---M'mm.

40 9.0211, please, Madam Associate. Actually, if we go back to 9.0210, my apologies. Mrs McEvoy, were recommendations made or motions put to the Council at the Special Council Meeting on 20 January 2016?---I don't recall at this stage. We wouldn't have had a special meeting without - there would have been some outcome, but I don't recall what it was.

45 9.0211, please, Madam Associate. You see here, Mrs McEvoy, an item making the CEO Performance Review matter confidential?---Yes.

And a resolution?---Yes.

That, "The Council endorses the minutes/recommendations of the CEO Performance Review Committee held on Tuesday, 19 January 2016"?---Yes.

5

Can you tell me what it was that Council was asked to endorse?---No, I don't recall but I was presuming that it was to do with Gary Stevenson's Option 1. So that's all that I know.

10 You say you were presuming that?---M'mm.

Why?---Well, that's what had been discussed, I think.

But you don't know what was discussed?---No.

15

Madam Associate, if you could please bring up 9. - - -

20 COMMISSIONER: Just before you go to that. Just staying with this document for the moment, you've said a couple of times now that you presumed this was about Option 1. What did you think Option 1 was?---So Option 1 was an option that Gary Stevenson had put to us - - -

What did you think it was?---I beg your pardon?

25 What was Option 1?---That he would be leaving immediately and he would be paid out 12 months of his contract as in 8.5 of his contract. It was something that he had come up with. That's not something that we came up with.

[4.15 pm]

30

You said he would be paid out under clause 8.5 of his contract?---Well, he - - -

Is that what you said?---Yes. Well, his contract, 8.5 is the clause in his contract which allows that to happen.

35

So your understanding of Option 1 was that he would be leaving under clause 8.5 of his contract?---Yes, which was, he would be paid out for 12 months.

40 I'm just looking at what's on page 9.0211 at the moment. There's nothing there to say that Option 1, as you describe it was being - - -?---No, it doesn't.

- - - addressed?---So that why I'm saying, looking at that, I don't recall what came out of the meeting because it doesn't say anything.

45 Was anything other than the consideration of Option 1 discussed at this meeting?---No, I wouldn't have thought so, no. That was the only option.

Can you help me with this: do you know why, if nothing but Option 1 was discussed at this meeting, as best you can recall, it doesn't get a mention. Can you help me with that?---Are you talking to me?

5 I am talking to you, yes?---Sorry, I beg your pardon.

If you look at this?---Yes.

You told me that Option 1 was, as best you can recall?---Yes.

10

Discussed at this meeting. Nothing else was, as best you can recall?---Yes.

So why doesn't Option 1, if I can use the jargon, crack a mention?---I can't answer that question.

15

Thank you?---To the best of my knowledge, I've answered it to what I can recall.

MS ELLSON: Can you tell me what you understood, as at 20 January 2016, clause 8.5 of Mr Stevenson's contract to say?---Well, I believed that the clause 8.5 of his contract was what he put forward to us, that the contract - he would leave the City and he would be paid the 12 months of his contract at whatever it was, \$350,000 or whatever it was.

20

When you first described Option 1 to the Commissioner, you said that he would leave immediately, is that your understanding?---Well, not necessarily but usually with CEOs of big companies, they sort of go out the door pretty quickly, but I think he was given time to leave.

25

Do you remember that happening specifically?---No, I don't.

30

Did you ever witness a conversation between any Elected Members and Mr Stevenson where Option 1 was discussed?---No.

Madam Associate, if you could please bring up 9.0177. Mrs McEvoy, have you ever seen this document before?---Look, I don't recall but - yes, I don't recall it.

35

That document can be taken down, Madam Associate. Madam Associate, if you could bring up 9.0190, please. Have you ever seen this document before, Mrs McEvoy?---Not that I recall, no.

40

The document can be taken down, please, Madam Associate. 9.0213, please, Madam Associate. You see here the minutes of a Special Council Meeting, 20 January 2016?---Yes.

9.0215, please, Madam Associate. Members in attendance include yourself?---Yes.

45

You accept you were there?---Yes.

9.21, the Lord Mayor declared the meeting open?---Yes.

5 Ms Smith is minute taker?---Mm hmm.

9.0216, confidential item and a motion that was moved by Councillor Harley and seconded by you?---Mm hmm.

10 That, "Council endorses the minutes/recommendations of the CEO Performance Review Committee held on Tuesday, 19 January 2016" do you see that?---Mm hmm.

15 What was it that you were seconding, Mrs McEvoy?---To go behind closed doors to discuss, is usually what happens when you move to go behind closed doors.

The resolution that, "The Council endorses the recommendations of the CEO Performance Review Committee held on Tuesday, 19 January 2016" - my apologies, I was confused there?---I'm pleased it was you.

20 This motion was moved by Councillor Davidson and seconded by Deputy Lord Mayor Limnios?---That's right.

25 What was it that you voted on or in favour of, Mrs McEvoy?---It would have been the, "Council endorses the minutes/recommendations of the CEO Performance Review Committee."

It would have been?---Mm hmm.

30 What was it?---I don't know. I don't recall, I'm just reading off that.

9.0217. Do you see there, Mrs McEvoy, anything there that helps you?---That's what I said before, endorses the minutes of the CEO Performance Review Committee.

35 It says, "Minutes/recommendations"?---M'mm.

40 Do you remember what recommendations, if any, were made to the Special Council Meeting on 20 January 2016?---No, I don't recall. I'm just - this is bringing it back to me but I don't recall what resolution it would be, no.

It's usual for an agenda paper to be provided to members attending a Council meeting, isn't it?---Mm hmm.

45 You don't recall whether you received one for this meeting, do you?---I can't think. I'm sure there was something there but - there would have been an agenda, I'm sure.

But you don't know?---But I don't know for sure.

5 In addition to what you think might be an agenda, were there any papers that you were given - I will withdraw the question and ask another one?---All right.

Were you given any papers when you attended the Special Council Meeting on 20 January 2016?---There would have been - - -

10 Not "would have been"?---Okay. Can't recall, don't remember.

The document can be taken down - - -

15 COMMISSIONER: Before you do, can I just ask a few questions, Ms Ellson?

MS ELLSON: Yes.

20 COMMISSIONER: Madam Associate, would you mind going back a few pages, please, to the attendance page. Just take a moment to look at what's on that page. If you look at this page?---Yes.

It seems as though Angela Smith was again taking the minutes?---Right. Yes, I see that.

25 Would that be unusual for a Council meeting to have the Lord Mayor's personal assistant taking the minutes?---Possibly, yes, I agree with you. It's not the normal thing that's done.

30 Is it normal at a Council meeting, whether it be an ordinary Council meeting or a Special Council Meeting, to have someone from Governance in attendance?---Normally, yes. All Council meetings, there's usually a Governance and a CEO.

35 Is it normally Governance or someone from Governance who is responsible for the minute taking?---I can't recall who takes the minutes normally.

Okay?---There is recordings of minutes, so - - -

40 So if we go to the last page, Madam Associate, just take a moment to look at that?---Yes.

45 And now go to the page before it, please, Madam Associate. So this is 9.0216, for the transcript. I want you just to look at that second motion?---The second motion?

The one that says that, "The Council endorses the minutes/recommendations of the CEO Performance Review Committee"?---Yes.

Earlier on we looked at the minutes of the CEO Performance Review Committee on 19 January, the day before this Special Council Meeting?---Right.

5 And you might recall that I asked you a question which was, why didn't Option 1 crack a mention in those minutes, do you remember that?---Right, yes. I remember you asked me.

It doesn't crack a mention in these minutes either?---No, it doesn't either.

10

Do you know why it didn't crack a mention in either set of minutes?---I have no idea because my thoughts would be that was what it was about, but I can't tell you at this stage. I don't know.

15 MR McGOWAN: I think the two documents, one's the agenda of this meeting, this very meeting, the other is the minutes of the meeting. I don't know if we have seen the minutes of 19 January.

20 COMMISSIONER: No, because it's the one and the same document, Mr McGowan

MR McGOWAN: Yes.

25 COMMISSIONER: And it's the description which is perhaps a little deceptive, but thank you for raising the point.

Can you think of any reason why Option 1 does not crack a mention in either of these two documents?---I can't, I can't give you a reason at all, no.

30 Thank you. Ms Ellson.

MS ELLSON: Commissioner.

The document can be removed, Madam Associate.

35

COMMISSIONER: Are you moving to something different now?

MS ELLSON: The same topic, a different document.

40 COMMISSIONER: May I just get an indication from you as to how much longer you think you will be with Ms McEvoy?

MS ELLSON: Perhaps 45 minutes to an hour, Commissioner.

45 COMMISSIONER: It's now almost 4.30. Just take a seat, Ms Ellson. I might just ask Mr McGowan something. Mr McGowan, would you have any difficulty with an earlier start than 10 am tomorrow morning.

MR McGOWAN: No, I would be very happy with it, Commissioner.

COMMISSIONER: I'm very grateful to you. Would you 9.30 suit you?

5

MR McGOWAN: Certainly, Commissioner.

COMMISSIONER: Would anyone else at the Bar table have a difficulty with a 9.30 start tomorrow morning?

10

MS SARACENI: Commissioner, I wouldn't but I won't be here but my instructor will be able to attend in the morning.

COMMISSIONER: Thank you, Ms Saraceni.

15

MR YIN: Sir, I won't be here at that time but I don't take any issue.

COMMISSIONER: Thank you, Mr Yin. Yes, Mr Yeldon.

20 MR YELDON: If I'm not here, I'll be ably replaced by Ms Chappelow.

COMMISSIONER: Very well. Thank you, Mr Yeldon. I will take silence as acquiescence then. I think now is a good time to adjourn and I will adjourn the Inquiry until 9.30 am tomorrow morning. Ms McEvoy, I am sorry, you've been waiting a long time today to give your evidence, but it will be necessary for you to return tomorrow?---Not a problem, thank you.

25

I will adjourn now.

30

WITNESS WITHDREW

**AT 4.31 PM THE MATTER WAS ADJOURNED
UNTIL THURSDAY, 12 SEPTEMBER 2019**

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