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INQUIRY INTO THE CITY OF PERTH

PUBLIC HEARING - DAY 109

MONDAY, 16 SEPTEMBER 2019

INQUIRY PANEL:

COMMISSIONER ANTHONY (TONY) POWER

COUNSEL ASSISTING:

MR CHEYNE BEETHAM

COUNSEL APPEARING:

**CAV. MARIA SARACINI and MR MARTIN TUOHY(MR Martin Mileham)
MR TIM HOUWELING and MS BROWYN WAUGH(MS Lexi BARTON)
MR TOM FOTHERINGHAM (MR Robert MIANICH)
MR TIM RUSSELL (MR Paul CROSETTA)
MR MATTHEW CORNISH and MS PENELOPE FORD (DR Jemma GREEN)
MR ALAN SKINNER and MR PETER MARIOTTO (MR Dimitrios LIMNIOS)
MS JUSTINE SIAVELIS (MS Annaliese BATTISTA)
MR JONATHAN WYATT (MS Rebecca MOORE)
MR NICK MALONE (MR Reece HARLEY)
MS RACHAEL YOUNG (MR Stephen HASLUCK)
MR PETER van der ZANDEN (MS Lisa SCAFFIDI)
MS SARAH HARRISON and MR MICHAEL HARRIS (MS Erica
BARRENGER)**

HEARING COMMENCED AT 10.00 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 Beetham.

MR BEETHAM: Commissioner. When my learned friend Mr Urquhart opened block A of the Inquiry's public hearings in July, he remarked that the Inquiry had heard evidence from nearly 100 witnesses over, at that point, 78 hearing days.
15 Since then, Commissioner, blocks A and B of the public hearings have come, and they have gone. The number of hearing days has moved past the century. This is day 109, and the number of witnesses from which the Inquiry has heard has also continued to climb. We are now in the third and penultimate block of public hearings, block C. A further block, block D, will be held in October and I will say
20 a little bit more about that shortly.

In this block, Commissioner, the Inquiry will hear from some familiar faces and from some new ones. We expect the block to run the duration of the fortnight allocated to it and we do, of course, expect the witnesses called over that period to
25 be candid and responsive to questions. Thematically, this block can be cleaved in two, with a theme being examined in each week of the hearings.

In the first week, the Inquiry will focus its attention on the tail end of 2017 and the first few months of 2018 as the dysfunction of the City reached its zenith,
30 prompting the Minister to suspend Council and call this Inquiry. We will consider three topics in this week: Project Percy, the calling and holding of a Special Council Meeting on Tuesday, 27 February 2018 for the appointment of an Acting Chief Executive Officer, and the activation by the City's Executive of the Crisis Management Plan on the morning of the same day, and along the way,
35 Commissioner, while looking at these topics, we will consider what they have to say and what else can be said about the culture of the City at this time.

These three issues, like all of the issues addressed in the public hearings to date, are issues which have been the subject of the Inquiry's investigations throughout
40 this and the preceding year. As Ms Lendich noted in her opening submissions last year, the Inquiry's investigation team has, and continues to work tirelessly on the matters, the subject of this Inquiry. The three topics the subject of this week's hearings are dealt with here, now and together because thematically and chronologically, that is where they dovetail.
45

Project Percy, sir, is the name given to an investigation carried out by a law firm into serious allegations made about the then CEO, Mr Mileham, and the then and

now suspended Lord Mayor. Project Percy was conducted in late 2017 and into early 2018 and the Inquiry has already heard much evidence on this topic in private hearings. In this public block, we will hear from both Mr Mileham and the Lord Mayor and later in the week, we will also hear from Deputy Lord Mayor Green about her role in the investigation and its aftermath.

The Project Percy Report, as the result of that investigation has come to be known, was delivered to the City on 29 January 2018 and it was provided to the Deputy Lord Mayor and Mr Mileham a few days later, on 6 February. A short period after that, the City engaged another law firm to review the process that led to the Project Percy Report, and a week later, on Friday, 16 February 2018, Mr Mileham, then CEO, took stress leave. On the same day, Mr Mianich, the Director of Corporate Services, assumed the role of Acting CEO, a role that he undertook from 19 February 2018, but a week later, at the close of business on Monday, 26 February, Mr Mianich too took medical leave from the City.

During that week, Mr Mianich and the City were busy. Some significant things happened in that week and immediately after it. On 22 February, Mr Mianich, as Acting CEO and Complaints Officer, lodged complaints with the Local Government Standards Panel in respect of Councillor Harley and Deputy Lord Mayor Green and also notified Councillor Limnios that in the Administration's view, certain aspects of his behaviour were inappropriate. Two days later, Saturday, 24 February, a majority of five Councillors, Councillors Hasluck, Harley, Green, Barton and Limnios, signed a motion requesting Mr Mianich call a special meeting of the Council on that fateful Tuesday, 27 February 2018, and they did that to vote on two things.

The first, sir, was to amend a Council Policy, Council Policy 12.6, to have the effect of permitting the Council to appoint an Acting CEO whenever the substantive CEO was absent. The second thing that that motion called the Council to vote upon was the appointment of a new Acting CEO. Why did they do that, and why did they do it then and was it necessary, or was it part of a broader battle for control of the City. These are some of the questions that the Inquiry hopes to answer or examine in relation to the calling of that meeting.

Three days later, sir, on the morning of 27 February, as I've alluded, the date on which that Special Council Meeting was to be convened, the Executive of the City itself had a series of meetings. At one of those meetings, those members of the Executive present enacted what has come to be known as the Crisis Management Plan and a Crisis Manager, Ms Rebecca Moore, the Director of Community and Commercial Services, was appointed. That was an unprecedented step in the history of the City, sir.

Why was the Crisis Management Plan engaged? What was the crisis to which the City was responding? Was the enactment of that plan a reasonable response to that crisis, real or perceived? Was it motivated by ulterior purposes? Was it planned? This is a pivotal moment in the history of the City, Commissioner. A few days

later, the Minister suspended the Council and called this Inquiry.

5 So those are the three matters we will hear about in this first week. Sir, Mr Urquhart will open the second week of this block next Monday in some further detail, but as a thumbnail sketch, I can indicate that in week two the Inquiry will be considering first, the obligations on Councillors to disclose financial and other interests with respect to sponsorship applications made to the City and secondly, the funding by the City of the Perth Public Arts Foundation.

10 Finally, Commissioner, I also said I would say a little bit about block D. Block D will be the subject of its own opening in due course so at this stage all I will say is this: block D will be the final block of public hearings. It will be a short block and it will deal principally with fiscal management and the future.

15 Sir, those are my opening remarks. Following a short adjournment, which I anticipate will be necessary to make some changes to the room, I will call my first witness.

20 COMMISSIONER: Thank you, Mr Beetham. Those submissions are very helpful. I will now adjourn the Inquiry for a short time to allow the necessary arrangements to be made.

(Short adjournment).

25 HEARING RECOMMENCED AT 10.21 AM.

COMMISSIONER: Mr Beetham, the procedure which I will adopt this morning is to have you call your first witness for this block, who I understand to be Mr Mileham.

30

MR BEETHAM: That's correct, sir.

COMMISSIONER: I will then have Mr Mileham sworn or affirmed, whichever he prefers, and I will then hear applications to be represented and to be present.

35

MR BEETHAM: If it please. In that case, I call Mr Martin Mileham.

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

MR MILEHAM: Oath, please.

45 COMMISSIONER: Thank you. Madam Associate.

MR Martin Nicholas MILEHAM, sworn:

COMMISSIONER: Thank you, Mr Mileham. Please take a seat. I will now hear applications, starting with you, Ms Saraceni.

5 MS SARACENI: Thank you, Commissioner. I appear together with Mr Tuohy on behalf of Mr Mileham and we seek leave in accordance with the application filed.

COMMISSIONER: Thank you. Mr Beetham, is there any objection?

10 MR BEETHAM: No, sir.

COMMISSIONER: Thank you, leave is granted, Ms Saraceni. Mr Houweling.

15 MR HOUWELING: Thank you, Mr Commissioner. I appear together with my learned friend, Ms Waugh this morning in respect of the applications made for and on behalf of Lexi Barton to appear both in this block between the 16th and 20 September, as well as for Ms Barton when she appears to give evidence.

COMMISSIONER: Thank you, Mr Houweling. Mr Beetham?

20 MR BEETHAM: No, sir, no objection.

COMMISSIONER: In that case, Mr Houweling, I grant you leave to appear for this witness. Mr Fotheringham?

25 MR FOTHERINGHAM: Yes, Mr Commissioner. I act on behalf of Mr Robert Mianich who was referred to in the opening and I refer to our application and supporting affidavit seeking leave to appear and represent Mr Mianich.

30 COMMISSIONER: Yes. Mr Beetham.

MR BEETHAM: No, objection, sir.

35 COMMISSIONER: Mr Fotheringham, I grant you leave to appear at the hearing of this witness' evidence for Mr Mianich.

MR FOTHERINGHAM: Thank you.

40 COMMISSIONER: Mr Russell.

MR RUSSELL: May it please you, Commissioner. I seek leave to appear and represent Mr Paul Crosetta and I refer to the application filed.

COMMISSIONER: Thank you. Mr Beetham?

45 MR BEETHAM: No objection to that either, sir.

COMMISSIONER: Thank you. In that case, Mr Russell, I grant you leave to appear at the hearing of this witness' evidence. Mr Cornish, almost missed you at the end there?

5 MR CORNISH: That's okay. I seek leave to appear on behalf of Dr Green.

COMMISSIONER: Thank you. Mr Beetham, is there any objection?

10 MR BEETHAM: No, sir. I can indicate there's unlikely to be an objection to any of the subsequent applications.

COMMISSIONER: That's a much more efficient process, isn't it? Thank you. In that case, Mr Cornish, you have leave to appear at the hearing of this witness' evidence. Mr Skinner.

15

MR SKINNER: May it please you, sir, I think by way of oversight, I think our application will be across to the Inquiry within the next five to 10 minutes but I would seek leave to appear and I do undertake for that application to be filed today, sir.

20

COMMISSIONER: Thank you, Mr Skinner. I'm more than happy to proceed on that basis. You have leave.

MR SKINNER: Thank you, sir.

25

COMMISSIONER: Ms Siavelis.

MS SIAVELIS: Morning, Commissioner. I seek leave to appear on behalf of Ms Battista in accordance with the application filed 12 September.

30

COMMISSIONER: Thank you. You have leave to appear at the hearing of this witness' evidence. Mr Wyatt.

MR WYATT: Morning, Commissioner. I seek leave to appear for Rebecca Moore.

35

COMMISSIONER: Thank you. Mr Wyatt, you have leave to appear at the hearing of this witness' evidence. Mr Malone, you're not on my list here but in any event, I know who you are.

40

MR MALONE: May it please you, Commissioner, I seek leave to appear on Mr Harley's behalf. I will indicate to the Commission that we have not yet filed a written application but we will undertake to do so today.

45 COMMISSIONER: I'm happy to proceed on that basis. Thank you, Mr Malone, you have leave.

MR MALONE: Thank you, Commissioner.

COMMISSIONER: Ms Young.

5 MS YOUNG: May it please you, Commissioner, I seek leave to appear and represent Councillor Stephen Hasluck pursuant to an application filed 23 August 2019.

10 COMMISSIONER: Thank you, Ms Young, you have leave to appear at the hearing of this witness' evidence. Mr van der Zanden.

MR van der ZANDEN: May it please you, Commissioner, I seek leave to appear on behalf of Ms Scaffidi.

15 COMMISSIONER: Thank you, Mr van der Zanden. You have leave to appear at the hearing of this witness' evidence.

MR van der ZANDEN: Thank you, Commissioner.

20 COMMISSIONER: I think that completes the roll call, Mr Beetham. Are you ready to proceed?

MR BEETHAM: Yes, sir.

25 COMMISSIONER: Thank you.

EXAMINATION-IN-CHIEF BY MR BEETHAM

30 Mr Mileham, were you present in the hearing room during my opening address a moment ago?---Yes.

35 And you will hear that I said I want to address three topics in this week's hearing: Project Percy, the Special Council Meeting and the Crisis Management Plan, yes?---Yes.

So those are the topics I want to ask you some questions about this morning. You will recall on the last occasion you were here, when I was asking you questions, we talked briefly about Project Percy, do you recall that?---I recall, vaguely, yes.

40 Can you tell the Commissioner, from your point of view as the Chief Executive at the time, what was Project Percy?---At the time of receiving the initial report, on or about 6 February - - -

45 Just generally, can you tell the Commissioner what Project Percy was?---Okay. As I understood it, it was an investigation carried out by a law firm into allegations made against me and the Lord Mayor.

What were those allegations?---My understanding in my own case was that the investigation was to look into allegations of my attempt to influence a stakeholder.

5 As part of that investigation, were you interviewed by the firm doing the exercise?---No.

When was the first you found out about the investigation?---I believe it was 6 February, thereabouts, when I saw a printed output of the law firm.

10 Sorry, I just missed that last part, a printed output of?---Of the law firm that we spoke of.

This is the Project Percy Report?---Herbert Smith Freehills' - I think it was called advice, actually.

15 During the time that the investigation was conducted, did you know anything about it?---No.

20 How did you find out about it?---When I was provided the advice note on Herbert Smith Freehills' letterhead.

25 And who provided that to you?---I believe it was Manager Governance, although I can't actually recall how it was handed to me. I believe it was in my office on about 6 February in my in tray or on my desk.

And do I take your evidence there to mean, your belief is that it was left there by the Manager of Governance?---I had assumed that and that was never challenged as an assumption.

30 When I asked you questions about this on the last occasion, you indicated that upon receipt you thought it was a bit funny, do you remember giving that evidence?---I recall that I found it so absurd as to be laughable and funny is probably not the correct word but certainly laughable.

35 And did you maintain that view, and do you maintain that view?---At the time or now?

40 To start with, at the time?---At the time, I could not believe that such a thing had happened.

Why couldn't you believe that?---Well, it appeared there had been an investigation by a law firm that had not been commissioned by me, or the Council, into me which I believed appeared to be a gross breach of both natural and actual justice.

45 [10.30 am]

Is it also the case that you eventually formed a view that you thought it was a

breach of your employment contract?---Certainly I thought it was contributory to, yes, a breach of my employment contract.

5 Did receipt of this advice have any effect on your health or well-being or your position at the City?---Its immediate effect, as I said, I was incredulous, but that turned to, I would characterise it as anxiety and stress.

10 How soon did that turn?---Over a period of a couple of days, to the point where I consulted my GP and his advice was to take some leave.

15 What was it that turned your response from one of incredulity to anxiety and stress?---I came to understand that this had actually happened and it was not a prank.

20 What made you think in the first place that it would have been a prank?---It was too out there to be credible that someone had done this without - it appeared that an investigation had been conducted by a lawyer and they would have had to have been paid, I would have assumed, when the appropriate manner for such a thing to be done, I would have thought, would have been to reference it to the CCC or some other authority.

25 But why did you think it could have been a prank, what led you to that view?---That was a 30 second view when I first read it. It soon dissipated because clearly it wasn't, but it was so absurd, in my view and my experience, that something like that would happen and the manner it was communicated to me.

And then over the course of a couple of days, I think your evidence was, that absurdity turned to anxiety and stress, is that right?---Yes, yes.

30 Can you explain in a bit more detail, how did it turn? Did anything else happen that caused that to turn?---I can't recall the exact dates but it became apparent that there was some evidence this may be making it to the media, which led me to believe that it had not been conducted confidentially. That said, I can't recall the exact dates of that. I certainly recall on about 19 February that it was - the Project
35 Percy was first named in the media by the ABC.

The 19th was after you had taken leave?---Yes, and I recall that I wrote to Council and said that leaking was a further breach of my contract terms.

40 When you say a further breach, had you previously written to Council to indicate that something else was a breach of your contract terms?---I believe to the best of my recollection I had sent an email stating that I felt that the conduct or the causing of this investigation, which I questioned its legality, had breached my contract in terms of the good faith that was implicit in my contract.

45 When I asked you a moment ago about how the absurdity turned to anxiety and stress, one of the answers you gave was that it became apparent or there was some

evidence that there had been a leaking to the media. You then went on to say that Project Percy was firstnamed on the 19th. Are you able to clarify that, because those seem to me to be inconsistent?---No, I can't. I'd had a long, ongoing concern that matters that were in confidence in the City found their way to the media
5 swiftly. I would assume - to the best of my recollection, I was concerned that that would happen again and that was confirmed later.

On the 19th when you saw that article?---Yes, and I believe Channel 7 ran a piece at that time too. So my perception, I guess, became a reality.

10 COMMISSIONER: Before you ask the next question, Mr Beetham.
Mr Mileham, I've just been handed a note by my Associate from the transcribers who are telling her that your evidence needs to be given with you facing the microphone because some of it is indistinct?---Apologies.

15 That's all right. Thank you, Mr Beetham.

MR BEETHAM: Thank you, Commissioner.

20 Mr Mileham, your evidence was this ABC article was on about the 19th, that's right?---I'm sorry, could you repeat that?

Your evidence - I'm just trying to confirm your evidence - was that the ABC article that you saw with the Project Percy reference was on the 19th or thereabouts?---To
25 the best of my recollection.

And you went on leave on the 16th, that was your last day?---I'm assuming the record shows that.

30 Do you have a recollection of going on leave on Friday, 16 February?---Not a good one, no.

You have a recollection, I think from your earlier evidence, that you received the Project Percy Report on 6 February?---Yes.

35 Is there anything that happened between 6 February and 16 February to trigger you going on leave?---My doctor's advice.

40 When did you receive that?---I don't recall.

Do you recall if it was closer to the date of the receipt of Project Percy or closer to the date on which you went on leave?---I don't recall. It would have been between that date and my going on leave.

45 And did Project Percy, in your view, contribute to you going on leave?---Yes.

Can you say how?---Pardon?

Can you say how? How did it do that?---It struck at my very heart and my health and well-being is closely and intrinsically linked to my internal moral compass, I suppose.

5

Did you find something immoral about the Project Percy investigation report, is that what you're suggesting?---I saw it as an attack, perhaps, but that was peripheral. It was more, it caused me significant mental anguish.

10

When did it start causing you significant mental anguish? As I understand, you first thought it was absurd and a prank?---Probably by the afternoon of the day I received it. I began to question my ability to operate effectively as the CEO at the City and I thought it was in the best interests of both the City and myself to seek advice on that and as I've said, my GP advised some medical leave.

15

When you say you began to question your ability to operate as the CEO?---Yes.

20

Is that as a consequence of this mental anguish, is that your evidence?---My perception was that this had placed stress on me. I sought medical advice and the advice I got was that I would be wise to take medical leave, for a prescribed period, to address the symptoms that I had reported to the GP.

25

And did anything else in this period of time contribute, in your view, or your doctor's view expressed to you, for you taking that medical leave?---Between the 6th and the time I took it? Could you repeat the question?

30

Did anything else happen - I will break it into two. Did anything else happen or did anything else contribute to you taking that leave?---Not to the best of my knowledge. That was, to me, a, for want of a better term, a straw in camel's back. The job is not without its stresses but that alone may not have caused it. I can accept that the pressure of a job with that added to it could have been contributory but the thing that took me to my GP and the trigger was receiving that report, or that advice, which I had not asked for.

35

And this mental anguish started the afternoon of receiving the report, was your evidence a moment ago?---To the best of my recollection.

40

Is there a reason why you then waited 10 days to go on leave, from that date until 16 February?---Sucking it up, I guess, soldiering on as one might with a severe cold or some such. I'm reticent to take sick leave. I have not availed of it as a practice and attempted to continue in my role, but sought medical advice and also my doctor is busy and I had to find a time to suit.

45

Did you see your doctor on the last day in the office, on 16 February?---I don't recall the date of my appointment.

A moment ago your evidence was that you questioned your ability to operate

effectively as a Chief Executive from, as I understand it, the afternoon of 6 February when you started to suffer this mental anguish as a result of Project Percy, is that right?---It formed in my mind that the symptoms I was experiencing could affect my concentration.

5

That's a slightly different explanation, isn't it, Mr Mileham, than saying it affected your operation of you as a CEO?---I'm required to make decisions that require concentration, so by demonstrable link, I would have thought that any impact on my ability to concentrate could impact. Whether it did or not, I don't know.

10

Did you book the medical appointment immediately upon receipt of the Project Percy Report?---Within days, to the best of my recollection.

15 And did you speak to anyone about going on leave straightaway, given the mental anguish and difficulties in concentration you were suffering?---Not that I recall.

Is it the case that you already had annual leave booked from the end of the 16th for a period of about four weeks?---I believe that was correct, yes.

20 Did you simply then want to avoid taking that annual leave and take it as medical leave instead? Is that why you waited until the 16th?---No.

That's not why you waited until the 16th?---Pardon?

25 That's not why you waited until the 16th?---That's not the reason, no.

30 Was your GP's advice, to the best you can recall, take leave immediately or something lesser than that?---To the best of my recollection, my GP's advice was to remove myself from the potential for further harm. I don't know that he saw it as life threatening, but he was concerned enough to say, take medical leave as opposed to any - and continue at work.

35 Do you recall speaking to your GP at all about the fact that you had this annual leave coming up?---No, I don't recall.

40 Had you received that advice, let's assume for the sake of the argument you received it on a date that wasn't your final day in the office, that wasn't the 16th, is there a reason why you would have remained at work between receiving that advice and that date?---I'm sorry, I don't think I've understood the question. Could you repeat it?

45 Of course. Assume for the sake of the argument that you received the medical advice on, say, the 14th, Wednesday, the 14th; is there a reason why, had you received that advice, you would have stayed on the work for the 15th and the 16th?---I can't recall one. I could speculate.

Please do?---Again, sometimes in the face of legal advice I soldier on.

Do you mean medical advice?---Sorry, I meant medical. Pardon my slip.

5 Doing the best you can, you can't recall when you had that medical appointment?---I can check it but I can't recall it.

10 One of the things that you did during that 10 days, Mr Mileham, between the 6th and the 16th is you wrote to the Director-General of the Department of Local Government, Mr Ord, do you remember that?---Are you referring to the letter co-signed by my Directors?

I am?---We wrote, yes, the Executive wrote to the Director-General.

15 And you recall writing that or being involved in the writing of that letter?---I certainly recall involvement, yes.

Did you write the bulk of the letter or all of the letter or some of the letter?---I had legal advice in constructing the letter.

20 Who was that from?---From McLeods, Mr Douglas.

Did you actually do any of the formulating of the language yourself?---Yes.

25 How much of it?---Hard to recall. It was an iterative process.

Who else was involved?---To the best of my recollection, Mr Douglas predominantly.

30 As an author or as an advisor?---Both, I would imagine. To the best of my recollection - - -

[10.45 am]

35 I will just interrupt you there?---Yes.

Do you have a recollection of Mr Douglas authoring some or part of the document?---I have a recollection of exchanging emails and drafts with Mr Douglas.

40 When you say exchanging drafts, do you mean to say you sent him a draft and he sent an amended version to you, something to that effect?---I recall communicating with Mr Douglas and taking advice as to the terminology.

45 Do you recall Mr Douglas ever actually sending a document amended by him?---Of the draft itself, I can't recall.

So Mr Douglas, who else was involved?---Peripheral in terms of drafting it. I don't

recall if there was any specific direct involvement other than that it was discussed at the Executive table, the content was discussed at the Executive table.

5 So that I understand your evidence correctly, you're saying then the only people who might have been involved in the drafting were you, that's right?---Yes.

And Mr Douglas?---And in discussion with the Executive. Obviously if I was requesting them to sign a letter, they would have to be aware of the draft.

10 What I'm asking you to focus on at the moment is whether anybody else did any of the actual typing of the document, preparation of the document?---I don't think so unless my PA - actually, casting my mind back, it's likely to the best of my recollection, it's likely that my PA would have formatted the correspondence to go on letterhead. I would not have formatted to it go on letterhead.

15 I'm not asking you about the format though, Mr Mileham, just about the content of the document?---The content, the actual - - -

Who wrote it?---Myself in conjunction with Mr Douglas.

20 And those are the only two people?---To the best of my recollection.

You said it was an iterative process?---Mm hmm.

25 When did it start?---I can't recall the exact date that the drafting began.

Did it happen in 2018 when the letter was sent or did it happen in the previous year?---I believe it would have been in some form or the thought process would have been in train in 17.

30 Do you know roughly when in 17?---I can't recall.

Can you say whether it was in the second half or the first half of 17?---No.

35 So it might have been in the first half then?---As I say, no, I can't give you an opinion. I don't know, I can't recall.

40 But you're confident that the thought process began some time in 2017?---No, I'm not confident in that either. I do know that there was some iteration in terms of exchange of content between myself and Mr Douglas.

Are you now saying that you don't know whether that happened in 2017 at all?---As I've said, I don't recall the genesis.

45 When you say the thought process began, what did that phrase "thought process" mean?---In drafting a letter, I think about it.

Yes, and what generated you to start thinking about this letter?---The safety and well-being of the staff of the City and the conduct of good governance of the City.

5 When did you start having those concerns?---I always had concerns about those matters as part of the job. They became more sharply focused in my mind, latter 2017 and certainly early 18.

10 Is there anything in particular that triggered those matters to become sharper?---I think they are delineated in the correspondence itself.

I appreciate that but I'm just asking you if you recall?---No.

15 Since this thought process began in the latter part of 17, would you be comfortable accepting that the letter began its genesis in the latter half of 2017?---As I've said, I don't recall the exact date of genesis. I would accept that it could have been, I don't know when it was.

20 I think you mentioned quite a few questions ago now that you spoke about the draft, or the drafts plural, with other members of the Executive?---I recall that the Executive were provided a copy or a sight of it.

Just once?---I don't know how many times.

25 And when would they have been provided - in what forum would they have been provided a copy?---I don't have a clear recollection so I would have to speculate. I do believe it was provided to them, certainly to sign and agree with. I do recall asking them whether they were happy with its content.

30 Do you recall discussing the content or topics covered in the letter with the Executive group before they signed the letter?---I recall discussing some of it, not potentially - I don't recall whether every facet was discussed.

35 But you recall discussing some of it?---I recall discussing the impetus toward writing such a letter which were concerns around treatment they were receiving from, or communications and treatment they believed they were receiving from Elected Members.

40 When did you start having those discussions?---We discussed them in the Executive context quite regularly.

45 How many times do you think?---I can't recall how many times. It was a subject of discussion at times. I do recall that I had said to the Executive that rather than just discussing things on a regular basis, that if there was a real cause for concern that we would need to document those causes and take appropriate action.

When did you say that to the Executive?---I can't recall when I said it but it was a pervasive subject given that health and well-being, and communication is a key to

their function.

5 So some of the language you've used in answering those questions, Mr Mileham, is pervasive, the one you've just used, and also regularly, had regular discussions or regular meetings. Can you give the Commission an indication, even just a ballpark, about how many meetings you think the topics in the letter might have come up?---Ballpark, six, but that would be a wild guess.

10 Staying with that guess, would these come up at regular meetings or would they come up at ad hoc meetings?---Predominantly at regular Executive Leadership Group meetings, occasionally a Director may bring something specifically to my attention.

15 How often are regular or were ELG, Executive Leadership Group meetings held?---We met weekly.

20 So it's possible then you had six weeks worth of discussion on the basis of that guess?---Over a period of some time it would have - I think on occasion, to the best of my recollection, on occasion that subject would rise to the top, as perhaps an incident had prompted a Director to report something, and the matter would then receive some particular attention. Again, I don't have specific dates and times of when the meetings addressed that matter.

25 I'm trying to ask you just your best recollection of what happened in relation to this matter?---As I've said, I believe that health and well-being, communications with the Elected Members between the Executive was a constant theme in our meetings. Any problems with those communications were, as I said, periodic and addressed as they arose.

30 Another witness has given some evidence, another witness from the Executive, has given some evidence, Mr Mileham, to indicate that discussions of this type were happening in late 2017. Would you have any reason to quibble with that?---I can't recall but I don't have any reason to quibble with that.

35 As part of these discussions, one of the things you said a moment ago, and I'm paraphrasing, is the discussions also dealt with what you might do about some of the issues that you were seeing, is that right?---What I might do?

40 You and the Executive?---Could you repeat the question? Yes. Some of your evidence a little while ago, as I understand it, was that as part of these discussions you were having, when this topic or this letter came up, one of things you would talk about is what could you could do, you as the CEO or as the Executive; do you agree that's what happened?---I agree that we discussed how to deal with matters - such matters, yes.

45 And such matters included the conduct of the Council or certain Councillors, is that right?---Yes, how to deal with it and how appropriately to deal with it under

the auspices of the Act.

Is that the Local Government Act?---Yes.

5 And what ideas did you come up with?---One of the purposes of the Communications Protocol was to put in place an appropriate mechanism for communication between Councillors and the Administration in an appropriate manner under the Act.

10 This is the protocol that led to the CEO Inbox, as it's called?---Correct.

Anything else?---What was the initial question, please?

15 You agreed with me that as part of these discussions you and the Executive considered what you do about the Councillors' conduct and one of the things you said you did was the CEO Inbox and I'm asking you, is there anything else that you and the group considered you could do?---As I've said, the Communications Protocol was more than about the CEO Inbox, it was also about information sharing, about, as I think we have heard evidence before, a buddy system where
20 are Directors would work with the Chair of committee to communicate, where I brought in consultants to facilitate Council to admin workshops.

Mr Bartlett?---That's right. That was characterised as, "Feedback is a gift", intended to perhaps - my concern was I didn't want a one-sided argument so the
25 best thing to do would be to attempt to communicate the concerns of Council, Administration and vice versa.

This letter that you sent to the Director-General was sent on 12 February?---I believe that's correct.

30 By that stage, is it fair to say that these things you're talking about, the Communications Protocol and the workshop, hadn't addressed the problems that you and the Executive saw?---It's fair to say that I had - the Executive had sufficient concern that we needed the advice of the Department.

35 Yes, because you thought that the steps you had taken had not rectified the issue, is that right?---They hadn't eliminated what we - what I saw and Executive saw as problems in communication.

40 What sort of things do you think the recipient of the letter, the State, could have done? What was the thinking around the ELG at that point?---I brought to - the Executive, through the letter we signed, and it was composed, was considered under the Act in terms of what the Administration could do, rightly do.

45 This was considered - so the ELG and you considered what the Administration could do?---And the limits to that because there are limits.

What could you do?---What I and the Executive tried to do, which is enhance communications, but also to communicate to Council that as individuals Councillors had no authority, which I think is - that's a given, but being clear about how that works and why that works and how the Act spells that out, but we
5 recognise as an Administration that it's all very well to take legal advice and to put as many systems in place as you can, but our perception was that there was potential to impact on the ratepayer good or the City's good with what was happening, so we were seeking the Department's advice about what we might be able to do to improve matters.

10

Were you also seeking the Department or asking the Department to intervene?---I was asking for an answer.

[11.00 am]

15

An answer about what the Administration could do or what also the Department and the State could do?---The purpose of writing to the Department was to receive a reply from the Department. I didn't know what that would be.

20

Was there any discussion amongst you and the ELG as to what that might be?---I believe we discussed what the Act permitted, should there be issues, or what the Act required or what the Minister might or might not do or the Department might or might not do. The purpose of the letter was to get an answer.

25

And did you discuss when you were considering that these things that the Minister or the Department might or might not do, did you discuss the suspension of Council?---Yes.

Did you discuss that as a group?---I believe we would have.

30

At about the time the letter was sent on 12 February, did the group - I will take it back one step. Did you have a view as to whether or not Council should be suspended?---Yes.

35

And the view was?---I didn't think they should be. It wasn't yet clear to me what should happen. That's why I wrote, and the Executive wrote a letter to the Department asking them for advice.

Did any of the ELG express to you any contrary views about suspension?---Contrary to what?

40

Did anybody on the ELG say to you, "I think Council should be suspended"?---I can't recall an individual saying that. They may have, but I don't recall.

45

Do you recall it being conveyed to you en masse, as a group?---Should be or could be, I can't recall.

Madam Associate, if you wouldn't mind bringing up the document at 12.0677. Just while that's happening, Mr Mileham, another witness has given evidence to the Inquiry that suspension, as you say, was discussed and that that particular person was in favour of Council being suspended. Knowing that, does that trigger any recollection for you?---No.

5 The witness says that was a generally held view, the best that witness could determine?---Pardon? I didn't hear that.

10 That witness also told the Inquiry that that was a generally held view, to the best of that witness' recollection, within the ELG; can you comment on that?---Not on their views that - no.

15 That's not your recollection?---As I say, I don't recall. I recall concern on the part of the Executive about the running of the City.

If you look at the screen in front of you, Mr Mileham, you should see the letter we have been talking about?---Mm hmm.

20 You will see it's dated 12 February?---Yes.

Marked confidential to the Director-General of the Department of Local Government, Sport and Cultural Industries?---Yes.

25 And that's the Department responsible for administering the Local Government Act, is that right?---To the best of my knowledge, yes.

30 Madam Associate, if you could go over to 679. Can you just confirm, Mr Mileham, that's your signature there in the middle of the page?---Yes.

And these other signatures, were you present when they were put on the document?---No.

35 Do you recognise them nonetheless?---Pardon me?

Do you recognise them nonetheless?---They appear to be signatures of all the Directors, yes.

40 So when you said earlier that the members of the Executive had seen a version of this letter when they signed it, this is the version you're talking about?---I can't recall whether I shared a draft but they certainly saw this one.

If you go back one page, Madam Associate, to 678, you will see here, Mr Mileham, there's a list of dot points?---Yes.

45 Setting out certain measures that the Administration had taken?---Yes.

And these are some of the things you were talking about a moment ago when you were saying these are the things the Administration did to try and deal with the issues?---Yes.

5 And then underneath that you will see there's another paragraph. Could you just read that quietly to yourself?---Beginning with, "Notwithstanding"?

Yes, please?---Just that paragraph?

10 Yes, please?---I've read it, thank you.

You will see there the paragraph concludes from about midway through the second line, "It is my opinion" - that is your opinion as the primary author, is that right?---Yes.

15 "That the conduct of the Council should continue to be closely monitored and that corrective measures should soon be indicated or applied swiftly"?---Yes.

20 What corrective measures are you talking about?---Any available to the Local Government Department.

Did you have any specifically in mind?---My opinion at that time was one of the potentials was a communication from the Minister or the Department to Council.

25 To what effect?---For want of a better term, a warning and that could range through a gamut of options available to the Minister and in my view at that time, probably the most extreme of those was a show cause notice.

30 Show cause about?---As I understand it, the Minister could write to the Council and give them 21 days to explain to him why they would not be suspended, or should not be suspended.

35 So at the time of writing this letter, was that one of the corrective measures you had in mind that might be applied swiftly?---As I've said, I was seeking the Department's advice and answer to this letter. Certainly my reading of the Act at that time and to this day still is that probably the most extreme measure available is a show cause notice.

40 And the other measure you indicated was a warning, was that mean?---Okay, what does that mean, a warning? Previous Ministers had issued, I would call them statements, media statements saying that Council needed to shape up, basically. I had a view that there was potential for the Department and/or the Minister to call Council and ask them questions and then to perhaps put on the table that Council needed to consider its conduct.

45 But what warning could the Minister give?---I don't know. That's why I'm asking the Department. As I say, my reading of the regulation is such is that there is a

gamut of options available to the Department and the Minister and I said "should same be indicated." So what those corrective measures are, I was asking the Department to advise me on their view.

5 Do you recall having any discussions with anybody from the Department about this letter, either leading up to it or following?---I don't recall. I may have, but I don't recall.

You don't have any recollection of that?---No.

10

Who would you have spoken with, had you spoken with somebody at the Department?---It depends on when.

15 We will go with 12 February when this letter was written?---One of the senior officers or potentially the Director-General.

Mr Ord?---Yes, Duncan Ord.

But you have no recollection of that?---No, I don't.

20

No discussions to your knowledge or recollection with the Minister's Chief of Staff?---Mr Hamley.

25 At about this time?---I think that would be prior to 12 February. I have had discussions with the Minister's Chief of Staff but I don't recall whether it was about this specifically.

30 Do you recall discussing at all the options available to the Administration or the State?---With the Chief of Staff? I can't recall the specifics of those discussions. I do recall having discussions with the Chief of Staff, both of the Minister of the day and the former Minister, so on matters relating to our mutual interest, I guess.

35 What do you mean by that?---As part of my stakeholder management approach and communication, I would meet with the Chief of Staff of the Minister, just to update each the other on how things were going.

At the City generally?---Pardon me?

40 At the City generally or specifically with respect to particular topics?---At the City generally. I believed it was appropriate to keep the Minister's office informed of matters. Clearly some were of interest to the Minister and others were not and appropriately or not, so those matters were discussed in those meetings.

45 Can you remember what those matters were?---For example, the one I can recall in a discussion I had with Mr Hamley was about a media report and I assured him that the media report had not emanated from the Administration, those sorts of discussions were had.

Did you have any discussions with any of these people about the steps that the Department or the State could take, or about the Administration's views about those steps in this period?---Which period?

5

Early February 2018?---I don't recall any specific conversations in February about that but I do recall conversations with the Directors-General over a period of time about what the Department could do or the Minister could do.

10

And can you elaborate on those conversations?---Again, my recollection is not perfect but I did meet the former Director-General of the Department on probably three occasions with the Assistant Director-General and speak to them about how things were progressing at the City and we discussed matters of mutual interest, clearly about good governance mainly.

15

Did you talk about concerns you had about the Council?---With the former Director-General I believe I - we had a discussion around conduct matters, yes.

And with Mr Ord?---I don't recall one.

20

Do you ever recall any discussion with any of them about the position the City would need to be in in order for the Minister to suspend Council?---Position?

25

Yes. What would the state of City have to be?---Do I recall discussing it or what the state would have to be?

Do you recall discussing with the State, the state - - -?---No, I'm afraid I can't recall any discussion with Mr Ord at that time.

30

About how dysfunctional the City would need to be before the Minister would intervene?---I can't recall if I spoke to Mr Ord.

Anybody else at the Department about that topic?---I don't recall doing so, notwithstanding that I believe - no, I can't recall any specific discussion about that.

35

Madam Associate, that can now be taken down, thank you. A few days after sending this letter, this is one of the things that you did in that 10 day period between the 6th and the 16th, yes? A few days later you went off on leave, on 16 February. Who did you appoint to Act in your place as CEO during your period of leave?---As I recall, I asked Mr Mianich to assume the role as he had done in the past.

40

And his role was Director of Corporate Services?---That's correct.

45

And did you talk to any of the Councillors or the Council itself about your proposition to appoint Mr Mianich?---I may have. I can't recall, I may have advised the Lord Mayor.

But you don't have an independent recollection of doing that?---No.

5 Did you at that stage have an idea as to how long you would be on leave?---Yes. I believe I had a period of about two weeks which would have seen me return to the City on about early March following a public holiday, I recall. There was a Monday public holiday in early March.

10 Is that the day on which you actually did return, the day following that public holiday?---I believe so, yes.

Does 6 March ring a bell?---I think that's correct. The 5th was the Monday, 6 March I think was Tuesday, was it not?

15 It was. You think that's the day you returned?---Yes.

20 During this period while you were on leave, you're aware, aren't you, that the Crisis Management Plan was enacted and there was a Special Council Meeting to appoint an Acting CEO, you're aware of those things?---Then or - - -

Now?---Now, yes.

25 Are you aware that the motion to amend the Council Policy was put up by some of the Councillors on Saturday, 24 February?---Now? I am aware that a motion was put forward before the date, yes.

And were you aware on that day?---24th? I may have been

[11.15 am]

30 Madam Associate, could you please pull up the document at brief 11 now, 11.0415. Do you recognise this document, Mr Mileham? Take your time to read through it.

35 MS SARACENI: Excuse me, Commissioner, could we have it enlarged?

COMMISSIONER: Yes, I'm sure we can.

40 MR BEETHAM: Yes, Madam Associate.

COMMISSIONER: Madam Associate, would you mind? Thank you. Do you want it enlarged a little more, Ms Saraceni?

45 MS SARACENI: Yes, please.

COMMISSIONER: Yes. It would help me too.

MR BEETHAM: We can scroll through it when we need to.

COMMISSIONER: Thank you, Madam Associate.

5 MR BEETHAM: Can you read that, Mr Mileham?---Yes, thank you.

Just let me know when you've had a chance to look at that document?---Yes.

10 Do you recognise that document as a document you've seen before?---I believe it's in a report on the activation of the Crisis Management Plan.

Do you recall receiving this document when it was sent out by these Councillors?---No.

15 Do you recall it being brought to your attention by any of the Councillors or any of the Executive in the days following 24 February?---The actual document, no.

The motion itself, as a concept?---I may have been aware of the calling of a Special Council Meeting but I don't recall when.

20

Were you aware of it on the day that it was held, the 27th?---I can't recall, I may have been.

25 Do you have any recollection as to how you became aware of it?---Of the 27th meeting?

No, of the motion?---Of the motion. To the best of my recollection, post the meeting.

30 So your recollection is the first time you heard - - -?---Heard or saw?

I'm talking about the motion as a concept?---As a concept, okay.

35 You will see the motion anticipates doing two things, Mr Mileham. You will see it anticipates amending the Council Policy, do you see that in item 1?---Yes.

And then item 2 is that Council appoints an Acting CEO?---Yes.

40 And what I'm trying to understand is when was the first time you knew that Council was trying to do these two things?---The first time I knew?

First time you heard about it, first time somebody told you?---Okay. The first time I knew I would believe was when the meeting was held, that it was maybe - it may have been before the meeting, I can't recall.

45

Do you have any independent recollection sitting here now as to when it was first brought to your attention that some of the Councillors were doing this?---No.

Again, I'd speculate it may have been reported in the media, but I would be speculating.

5 So you don't recall any of the Councillors telling you?---I can't recall but that's not to say that it may have happened, I just don't recall.

You don't recall any of the Executive telling you?---Independently without - no, it's difficult to remember that time. I was quite unwell.

10 Did you have any involvement in discussing this motion with anybody between the 24th and the 27th?---No, not that I recall, no.

15 Did you have any recollection of discussing what happened at the meeting, the 27 February Special Council Meeting?---When?

Immediately following the meeting or in the next day or two?---No, I can't recall. There may be information showing it, I just don't recall.

20 Are you aware now that two days after receiving this motion, Mr Mianich, the Acting CEO, took leave?---I'm aware Mr Mianich took leave after, or at some time. I wasn't sure of the timing. I can't recall the timing.

Did he tell you he was taking leave?---He may have done, I can't recall.

25 You don't have any recollection of speaking with him?---No. As I said, I was very unwell at the time and I don't recall a lot of the communications going on.

30 Can you recall what you were doing in this period, 24-27 February?---Not particularly well, no.

Were you at home?---Yes.

Did you go into the office at all?---Gee, I don't recall. I don't think so.

35 Do you recall doing anything work-related in these couple of days?---I had communications.

With whom?---Which period?

40 24-27 February?---I can't put a timeframe on it. I do know that between the time I took sick leave and the time I returned to work, I had communications from the Lord Mayor, Ms Battista. That's the ones I can remember. There may have been one other, I can't recall.

45 I will ask you some names: do you recall speaking with Mr Ridgwell?---In that period? I don't recall it.

Mr Mianich?---As I said, I don't recall it.

So it's just the Lord Mayor and Ms Battista?---Those are the ones I recall specifically, yes.

5

And specifically, what did you speak about with the Lord Mayor?---Again, the sequence I don't - are we talking timeframe now, a particular timeframe.

10 While you were on leave?---While I was on leave. My recollection of the conversations were that I said I was on sick leave, that the Lord Mayor should refer to the Executive in asking questions. Subsequent to the meeting where Ms Battista was appointed Acting CEO, I said to the Lord Mayor that - I think I spoke to her after that time and told her that she had an Acting CEO and therefore Council had a CEO and communications should be between them, words to that effect.

15

Was that a - just so I understand the timeframe to the best you can help us - was that that evening following the meeting or would that be in the days following?---I can't recall the exact timing, I'm afraid, but probably the daylight hours in that particular conversation.

20

Why do you say that?---I seem to recall that I was at the doctor's surgery, but I may not have been. I can't recall

What makes you say you might have been at the doctor's surgery? It's quite a specific recollection, Mr Mileham?---Because I recall taking a call on my phone.

25

Actually, I'm just thinking, you're asking independent recollection. It's quite blurry at that time. I recall taking a call from either Ms Battista or the Lord Mayor when I was leaving the doctor's surgery and it was on my mobile phone as I went to the car. That's a recollection I have but I don't know what the substantive matter discussed was, but it was in that period because I was at the doctor's.

30

Was that, when you say your mobile phone, your City of Perth mobile or your private mobile?---No, rang me on my private mobile phone.

35 And you can't remember the precise date but it was in that period because you were unwell, is that right?---I certainly can't recall very well the period - that period.

Did you discuss with the Lord Mayor anything else?---When?

40 In this period, in these conversations you recall happening?---No. I don't recall the substantive discussions, only that I attempted to stress that I was on sick leave and that there was an Administration in place and therefore that was the appropriate conversation to be having on matters to do with admin.

45 Do you remember if this was a telephone conversation you had with the Lord Mayor or it was via email or text or some other form?---No, could have been a call or a text.

But you just remember the content rather than the form, is that fair?---That's fair - some of the content, not all of it, unfortunately.

5 The content you do recall is just the content, you don't recall the way in which it came to you?---There are certain peaks - for want of a better term, there are certain subject matters that still resonate and even that memory is hazy, as I recall the time as being one of some stress for me.

10 You also mentioned you spoke with Ms Battista, you have a recollection of speaking with her?---Yes.

Can you remember what that was about?---I believe that was before the Special Council Meeting on the 27th and I believe her question to me was, would I object,
15 or words to that effect, if she, Ms Battista, put up her hand to be Acting CEO.

What did you say to that?---To the best of my recollection, my response was, "I'm on leave, I'll go with whatever the Executive sees fit. Discuss it with the Executive", or words to that effect "but whatever the Executive agrees is the right thing, that's the right thing, I have no view." I did say that, "You'd want to check it with the Executive and not do it probably alone because that might not be construed well by the Executive."

There's a couple of questions arising out of that, Mr Mileham. The first is, did you understand or did Ms Battista say to you that she would be putting up her hand to be Acting CEO because Council was voting on somebody to an Acting
25 CEO?---No, she wasn't - to the best of my recollection and again as I've said, it's hazy, the phrase that sticks in my mind was would I object if she "put up her hand to be CEO" or "Acting CEO", or words to that effect.

30 Do you have any recollection of asking her why she might need to do that?---I have no recollection of that, no.

And you also said that your advice to her was to the effect of, she should make
35 sure - I'm paraphrasing - the ELG is on board with it, is that right?---Not so much on board as informed. I felt that - as I said, my precursor was, "I'm on leave, it's not my decision. I don't have a view - well, I have a view but I'm on leave, it's up to you but you probably should confer with the Exec before doing so" or words to that effect.

40 And why would you have said that?---To try to maintain harmony at the Executive level should that occur.

45 Did you anticipate there would be disharmony were Ms Battista to be appointed Acting CEO?---I had a view that anyone unilaterally putting their hand up, so to speak might cause some issues, but that was pure, shall we say, opinion on my part.

Was that opinion informed by any knowledge you had gained about the other members of the Executive and how they might respond?---I had a knowledge of the Executive and how they might respond.

5

Did any of the Executive give you more concern in that space than others?---Concern? I thought each member of the Executive may respond differently.

10 Did you expect any of them to respond negatively?---I expected them to be respond. I thought it would be wise to inform the Executive. I had no firm view on how each individual might respond.

15 You just thought they would in some way?---Well, I figured it was just good manners.

Did you have a view in particular as to how Ms Moore might respond?---When I said that to Ms Battista, my recollection is I did not.

20 Do you remember - I think your evidence was that this call was before the Special Council Meeting?---I believe it was, to the best of my recollection.

25 Do you know if it was on the same day as the Special Council Meeting?---No, I don't.

So it could have been that day or some day prior to that ?---It could have been that day.

[11.30 am]

30

Do you know whether at the time of this call Ms Moore had been appointed as Crisis Manager?---I'm not sure when I knew that had occurred.

35 Sir, that might be a convenient time for the mid-morning break, if you're minded to take it today.

COMMISSIONER: Yes, thank you. I will adjourn the Inquiry for 15 minutes.

40 **WITNESS WITHDREW**

(Short adjournment)

45

HEARING RECOMMENCED AT 11.48 AM

MR Martin Nicholas MILEHAM, recalled on former oath:

5 COMMISSIONER: Yes, Mr Beetham.

MR BEETHAM: Sir.

10 Mr Mileham, can I talk to you now about the day of the 27th and the activation of the Crisis Management Plan?---Yes.

That's something I want to talk to you about now. You were still on leave that day?---Yes.

15 Do you have any memory of being involved in any discussion or decision to enact the Crisis Management Plan?---No, I don't recall being involved in it and to the best of my recollection, I was not.

20 If somebody were to suggest to the Inquiry that you were dialed into a meeting at which the decision was made, could you comment on that at all?---I can't recall it.

25 Prior to the enactment of the plan on this date, the 27th, did you have an understanding of what the Crisis Management Plan was?---Yes. It was a risk strategy. Business continuity was its aim and the enactment of the Crisis Management Plan was predicted to be needed when a catastrophic event occurred at the City which would affect good government and obviously, the ratepayers' interests.

30 Would an example of that, or would examples of that be a terrorist strike?---If it impacted on the City's administration and ability to perform, yes.

Or if, say, Council House building burnt down?---Yes.

35 Or if it was flooded?---Yes - potentially.

Completely flooded?---Possibly.

40 Possibly, or if there was any catastrophe of that type, is that right?---Not just that. It was also potential for, say, if more than one member of the Executive were to be incapacitated in a plane crash, say.

45 So let's say all of the Executive, plus yourself, were in that one plane and you all unfortunately crashed?---It's happened. A mining company experienced that, around this time I believe where the - - -

Yes, but that's the type of thing you're talking about?---Yes, so it was about a serious impact.

That wipes out the ability of the City to manage its business?---To - well, there were certain parameters within the Crisis Management Plan, would they impact on services a certain number days, essential services versus nonessential. Clearly
5 essential services such as, you know, picking up the rubbish or providing ratepayers service were more important than say, for want of a better term, processing a Development Application. So it had to be looked at in that context.

And in your time at the City, and I'm including here while you were also the
10 Director of Planning?---Yes.

Was the Crisis Management Plan ever enacted, other than on this occasion?---Not in its form but under the former CEO we did have, I recall, one issue that we gathered together a - in effect, a crisis management approach.
15

What was that issue?---I can't recall. I think it was around Heirisson Island.

Since you've been Acting CEO and then CEO, had you ever or your team ever had to put together the Crisis Management Plan?---No, I believe it was all in training.
20 We did simulations, I don't recall an actual situation, no.

Were you involved in any of those simulations?---Yes.

How many, do you remember?---At least two.
25

Can you recall what the subject of the simulations was?---Yes.

What was that?---I was dead.

You were dead?---Yes.
30

And was everybody else or just you?---Just me.

And the other occasion?---I think we had an event in the City, I can't recall exactly
35 but around that time we were talking about the propensity of people to drive cars through pedestrians. So we had, among other things, enhanced our training in crisis management. As well as doing physical protection in the field, we moved to be better trained in response to those things.

And those are the two scenarios that were simulated?---Yes. To clarify, the one
40 where we had a two phase process where, at the beginning of it, I was participating but then the facilitator said, "Now the CEO's gone, he's been taken out in this situation and you have to go to the next phase" and that's when they looked at how to transition leadership.
45

I see. You recall earlier today I asked you some questions about the conversations you had with the Executive?---M'mm.

In either the latter part of 2017 or early 2018, yes?---Yes.

5 Did you ever discuss at those meetings the Crisis Management Plan?---General Executive meetings?

Yes?---We may have, yes.

10 Do you recall doing so?---No, I don't have specific recollection. Generally speaking, to the best of my recollection, those sorts of discussions were reserved for actual crisis management - well, business continuity discussions around the risk profile that we had established.

15 And that's a separate discussion had?---Generally speaking.

But as part of the discussions where you were talking about Council conduct, dysfunction, if I can use that label?---Yes.

20 Did the crisis management come up in that context?---I don't believe it did, to the best of my recollection.

25 I think your evidence a little earlier today was that when you wrote that letter to the Director-General, the one that was up on the screen before, your view was that Council should not be suspended at that point, is that right?---My view at that time was, I would have liked an answer to the letter. I didn't get one.

No, but my question, Mr Mileham, is - - -?---Did I? Sorry, would you repeat it?

30 Yes. Your evidence earlier today, just if I can recall it correctly, was that at that time you held the view that Council didn't need to be suspended?---I held the view that that was not an absolute necessity.

35 And that's because things hadn't gotten bad enough, is that right?---No, I think things had been bubbling for months, in fact, at that time I think we were at the eruption point of a volcano, so it was a very serious juncture in time, hence why I communicated with the Department to that effect.

Had there been a - - -?---Or we did, sorry. Pardon me.

40 We, the - - -?---We as in Executive, yes.

On the day of the 27th, do you recall having any involvement or discussions with any of the Executive Leadership Group that day?---I don't recall. I may have.

45 Do you recall receiving any emails?---I don't recall but I may have. I don't recall. There was communication on various modes, including my private phone as I've said, with at least two people and possibly more. I don't recall the specifics.

Madam Associate, could you please bring up the document at 11.0471. Sir, that's TRIM 14299.

5 COMMISSIONER: Thank you.

MR BEETHAM: Mr Mileham, I wonder if you could help me with this document. You see it's an email from Ms Moore?---Yes.

10 And you will see it's dated 27 February 2018?---Yes.

At 11.04?---Yes.

15 And 24 seconds and I might be being pedantic but that number's important for a reason I will come to. Do you see that?---M'mm.

And that's sent to a number of people but it's also sent to a group called the ELG Team?---Yes.

20 Who is on that email list?---It should be the Executive Leadership Group.

Does that include you?---I believe it did. I couldn't be certain.

If you take a moment just to read the email?---Yes.

25

Do you remember receiving that email?---No, I can't say I do remember receiving it.

If that email was sent to you as part of the ELG Team email on that day?---Yes.

30

Do you think you would have read it?---It's possible.

But you don't remember?---No.

35 Do you recall whether an email like this, this email or some other correspondence triggered you to do anything on that day?---I don't know about on that day. This email didn't trigger anything for me, no.

40 Assuming you received it?---I don't recall it triggering anything, or receiving it for that matter, I'm afraid.

45 Madam Associate, you should have hard copies of messages and telecommunication material from Mr Mileham's telephone. Could you provide a copy of that to the Commissioner, Mr Mileham and Ms Saraceni, please. 217, that's right. Just for the transcript this is Bates 11.0217.

COMMISSIONER: Thank you.

MR BEETHAM: You will see you should have an A2 page in front of you which has some redactions at the top and the bottom?---Yes.

5 And in the middle, it should say "A timeline - Martin Mileham iPhone 6, selected messages"?---Yes.

[12 noon]

10 I can tell you, this is content taken from a telephone the Inquiry has available to it. If I can ask you to look down the column, "Date", you will see that the dates on here are 27 February 2018?---Yes.

15 The date that we are dealing with in respect of the Crisis Management Plan and the Special Council Meeting?---Yes.

And then you will see across at, "Time" there are certain time stamps, do you see that?---Yes.

20 And then next to that the party to whom or from whom you received a call or text message?---Yes.

And then a description?---Yes.

25 If you see the first item on that line, you will see it's a call to Mark Ridgwell?---Which one? The first line?

The first one?---Yes.

30 And you will see it's at 11.04.43?---Yes.

You will recall from the document on the screen in front of you that that email was 11.04.24?---Mm hmm.

35 My question is, do you recall ringing Mr Ridgwell that morning?---No, I don't.

And I take it from that answer you're not able to say whether, if you did, it was triggered by this email in front of you, given the timing?---I don't recall it. It looks like I didn't have a discussion so - - -

40 No, it looks like there was no - - -?---Like, no answer.

You don't have a recollection of that?---No.

45 If I can ask you then to go to the next one?---Mm hmm.

You will see that's a call to the CEO office?---Yes.

And that was a minute and 43 seconds?---Yes.

Do you have any recollection of that phone call?---Pardon?

5

Do you have any recollection of that telephone call?---No, not independently. I could only surmise based on the number.

If you were not at the office that day?---Yes.

10

Who would be the person picking up the phone at the CEO office on that day?---My PA.

Who is that?---Ms Judith Arnold.

15

Do you have any memory of speaking to Ms Arnold?---No, I don't.

Obviously a theme here, Mr Mileham, but if I can get you to look at the next line?---Mm hmm.

20

You will see it's a telephone call from Mark Ridgwell to you?---Yes.

It's a little later, at 11.14. You spoke for four minutes, 20 seconds?---Yes.

25

Do you recollect that at all?---No, I don't.

Do you have any reason - can you explain to the Commission any reason why you might have called Mr Ridgwell, had a call back from him and tried to contact the CEO office at about 11 o'clock on that morning?---I can surmise that I wanted to know what was going on.

30

But you don't - - -?---Couldn't - - -

You don't remember?--- - - - independently recall asking that question. The next call was to Neil Douglas which would have been seeking - - -

35

Advice?--- - - - some advice.

And I'm taking from this gesture you don't recall that conversation either?---No, I don't. I can only look at the sequence and assume that I tried to contact Mark.

40

Yes?---I've tried to contact the office, I've spoken briefly, I would assume, to my PA. Mark has rung me back and based on a brief discussion with him, I've then called Neil.

45

You're surmising that from this document, rather than from your recollection?---I'm surmising. My recollection is not good of that day.

You will see a little bit further down, second from the bottom, a call to Mr Aberle?---Yes.

5 Any idea as to why you would be calling Mr Aberle that day?---I can't recall the discussion. It was a brief one. I have been - I would ring Mr Aberle from time to time to take advice on management issues.

10 So if I can pose something of an hypothetical to you, had you received that email that's on the screen?---Yes.

15 Does it sound reasonable to you that you would have called these people, spoken to these people in the list, Mr Ridgwell, Mr Douglas and Mr Aberle, and Ms Arnold?---If you want me to speculate?

Yes?---Yes, I think it's reasonable to assume. It's reasonable. It's an assumption that could be made.

20 It's not something that would strike you as out of the ordinary? If I suggested to you that's what happened, you wouldn't say, "No, there's just definitely no way that would have happened"?---If I had received that email, I think I would want to know what's going on, even on sick leave.

25 You see that email's from Rebecca Moore?---Mm hmm.

It looks like you made one call to Ms Moore in this period, later that day at 2.46?---Yes.

30 Is there any reason why you wouldn't have called her around the 11.00s?---Again, speculation but knowing my mind at that time, it would have been to not interfere with the operation of the Executive.

35 How would calling Ms Moore do that?---I don't know, but my view of it hypothetically speaking, and the sequence of calls shows me that I did not wish to ring Ms Moore and chose governance and legal advice first.

I think your evidence was that you were home, you weren't present at the office?---Pardon?

40 You were at home that day?---I believe so.

45 So not present at the office?---No, I don't think I went to the office at all during the period of my leave, although I couldn't recollect particularly because as I say, my memory is pretty hazy at that point, given the stresses I was under and how ill I felt.

And you weren't involved in the decision to enact the Crisis Management Plan as

explained on this email?---No, I'm fairly confident in that.

5 Do you have any recollection then as to what advice you would have been seeking from Mr Douglas or why you needed advice?---You asked me a question earlier which jogged my memory about what and who I called. At some point I called the Chief of Staff of the Minister after Mr Mianich stood aside and advised him that that had happened and that I sensed a growing concern with what was going on. So could you repeat the question, because that's context for it.

10 Let me just explore that a little bit further with you first and then we will come back to the question. You say you called the Chief of Staff, Mr Hamley?---Yes.

And you did that after finding out that Mr Mianich had gone on leave?---Yes.

15 Do you recall now how you found out that Mr Mianich had gone on leave?---To the best of my recollection, it was the media.

20 And you spoke to Mr Hamley about that growing concern?---What I said to Mr Hamley as I recall was, it's been reported that the Acting CEO's gone on medical leave. I'm not asking anyone to do anything, I'm just advising you, as was my wont if there was something a bit contention that the minister may want to know before he was door-stopped.

25 Why couldn't you have left to the Administration who were not a leave?---Because I believe - I had his mobile number for a start and had established a communications - you know, a communications pathway.

You were ill at the time, on leave ill, is that right?---Yes.

30 That's the kind of thing you could have asked something at the Executive to have done?---No, I wouldn't have. I saw it as an opportunity to cut through all that.

35 Cut through what?---It might take longer, it might be missed. The communication may not be what it wanted to be which was, "I hear this has happened, just so you're aware, be aware that this is happening."

40 That's not a very complicated message to send, is it, Mr Mileham?---I like it to be from my mouth to Mr Hamley's ear and that way then I can avoid any miscommunication, I would hope.

That's something Mr Mianich could have done?---He was off sick.

So were you?---Yes.

45 So why couldn't Mr Mianich have done it?---I don't know, you will have to ask him. He didn't have any contact with the Minister's office as far as I can recall.

Did he tell you that, did he?---Pardon?

Did Mr Mianich tell you that?---No, I assumed it.

5 One of the other Executive who was not off sick could have done it, Mr Ridgwell, for example?---Possibly.

Mr Gale?---Maybe.

10 But notwithstanding those things, you wanted to convey that message yourself?---I did. I did it, yes.

And all you wanted to do was tell him that it had happened?---Yes. I've said, as I recall, "Not asking for anything to be done, I'm informing you."

15 Why did you want to inform the Minister's Chief of Staff about that, if you didn't want anything to be done?---I wanted him to be aware that this had happened.

20 Do you think he otherwise would have been unaware?---I believe he would have been aware but may not have been aware of the situation and that if any questions were to be asked, I was available for those.

So not only did you tell him that Mr Mianich had gone on leave?---Yes.

25 You also told him that you were available for questions?---No, I didn't tell him specifically, I just rang him. It was a very brief - you've probably got a record of the call, a brief one.

30 Your evidence a moment ago was that was what you told Mr Hamley?---Sorry, would you repeat it?

35 Your evidence a moment ago was that you told Mr Hamley you were available?---No, I didn't tell him that, I said it was to convey the fact that I had called, he knew that I was on the line. It was a brief conversation where I told him of the situation with the Acting CEO and elected that - having said, "This has happened, I'm not asking for any action, I'm advising you.

40 Why would you say, "I'm not asking for any action"?---Because I didn't want it misconstrued that I was sort of instructing or telling the Minister to do anything.

Why did he need to know?---I thought it was good manners.

Good manners to tell the Minister's Chief of Staff?---M'mm.

45 Is that really your answer, Mr Mileham, good manners?---I've informed him on a few things that were good manners, like when - - -

Is that really your answer in relation to what you did on this occasion, you called the Minister's Chief of Staff - - -?---Part of it, yes, part of it.

5 What's the other part?---Information sharing.

I will come back to my question, why did he need to know?---Because he'd have an interest, in my view.

10 What interest, in your view, is that?---About what's happening at the City of Perth.

And you agree with me that he could have found that out through other avenues?---Yes, he could have but I felt it was wise for me to make contact.

15 And in fact, your evidence was you found out, you think, via the media?---I believe I did.

It's likely that the Minister's Chief of Staff would have found out via the media?---And be wanting to know what's going on, perhaps, yes.

20 And perhaps could have called the Executive that wasn't on stress leave at the time, is that right?---Could have done, yes.

Can you understand from - in the context where you've written this letter just a few days before saying that corrective measures should be applied swiftly?---Yes.

25 It could be inferred that your call on this day was in fact a suggestion or could have been construed as a suggestion that steps be taken?

30 MS SARACENI: Commissioner, I have an objection in relation to that. How can this witness - - -

COMMISSIONER: Sorry, do you wish to have me hear it in the absence of the witness, Ms Saraceni, given the topic which is being examined at the moment?

35 MS SARACENI: It may be preferable, sir.

COMMISSIONER: Yes, I think so. Mr Mileham, I will have you excused from the hearing room while I hear the objection. Thank you.

40 **WITNESS WITHDREW.**

COMMISSIONER: Yes, Ms Saraceni.

45 MS SARACENI: Sir, the objection is on the basis that as I understood the question, it was in relation to the impression the person to whom the call was made would have as a result of Mr Mileham ringing him and the objection was that Mr Mileham is not in a position to give any information of use to this Inquiry

about what someone else may have thought his intention in ringing may have, but nothing else. So it was just that fine line that I thought was crossed with that last question.

5 COMMISSIONER: Thank you, Ms Saraceni. Mr Beetham?

MR BEETHAM: Sir, the question, and perhaps I clumsily phrased it, was intended to put the proposition about what an objective view of that evidence might be. It was put to Mr Mileham as a matter of fairness as it may be a
10 submission that might be made to the Commission and I wanted to give Mr Mileham an opportunity to comment on that. I'm happy to withdraw the question and move on, however.

COMMISSIONER: Appropriately framed, Mr Beetham, I would like to know the
15 answer to that.

MR BEETHAM: If it please, sir.

COMMISSIONER: Ms Saraceni, what I'm going to do is ask Mr Beetham to
20 structure the form of the question so that it is not objectionable.

MS SARACENI: Thank you, sir.

COMMISSIONER: Thank you, Ms Saraceni. Thank you, Mr Beetham. Madam
25 Associate, would you please bring Mr Mileham back into the hearing room.

[12.15 pm]

MS SARACENI: Commissioner, can I approach my friend for a moment?
30

COMMISSIONER: Yes, of course. Mr Mileham, please resume your seat in the witness box.

MR Martin Nicholas MILEHAM, recalled on former oath:
35

COMMISSIONER: Mr Mileham, in your absence, your counsel made an objection. I upheld it and I want to make it clear to you that your exclusion from the hearing room is no reflection on you. Mr Beetham.

MR BEETHAM: Madam Associate, just to make things very clear, could I ask
40 you to bring up the document, and I apologise, this is back in brief 12. It's the document at 12.0677 being Mr Mileham's letter to the Department. If I could ask you, Madam Associate, just to go forward to the next page. Mr Mileham, you recall this, I took you to this letter earlier today?---Yes.

45 And at paragraph about - just under the dot points halfway down the page?---Yes.

Where you write:

5 *In my opinion the conduct of the Council should continue to be closely monitored and that corrective measures, should same be indicated, are applied swiftly."*

?---Yes.

10 This was on 12 February?---I believe that's correct.

 And you gave some evidence a moment ago that you spoke to Mr Hamley, the Chief of Staff, as I understand it, at least on the day that Mr Mianich took leave, the 26th?---Probably was that day, yes.

15 And you did that, you say, to update him about the fact of Mr Mianich going on leave?---Yes.

20 Would you agree or disagree with me that to an objective observer, that chain of events, sending this letter and then having that conversation, might suggest that you were having that conversation to give some impetus to the Minister's Chief of Staff to take these corrective measures?---The Minister's Chief of Staff could take the information and bring it to the Minister's attention. What's done with it is their prerogative.

25 My question is a bit different to that, Mr Mileham?---Okay.

30 It's that having regard to that context, that letter and that conversation, do you agree or disagree to me to an objective third party, somebody else looking at it, it could give the suggestion that by having that call, you were trying to give some more impetus to the Minister to take corrective measures?---I wasn't doing that and an outside person could come to multiple conclusions.

35 Would you agree with me that that is one conclusion that they could come to?---Based on their limited knowledge of the facts, they might.

40 In the break, Mr Mileham, your counsel has very properly brought my attention to a matter in which I slightly misstated the evidence earlier. If I could get you to look at those telephone records and if I can get you to look at the fourth one down?---Mm hmm.

 I think I said to you that you called Mr Douglas?---Yes.

 You will see there that says, "From Mr Douglas"?---"From Neil", yes.

45 Do you recall receiving that telephone call?---No. As I've said, I don't recall the ingoing and outgoing and I should have picked that up as well, it's from Neil, yes.

I take it since you don't remember that call, you don't remember if Mr Douglas told you why he was ring you?---No.

5 COMMISSIONER: For the transcript, you're referring to the record on 11.0217.

MR BEETHAM: I am, sir, at 11.21.38.

COMMISSIONER: Yes.

10 MR BEETHAM: Thank you, Madam Associate. If we can now go to document 11.0515. It's TRIM 14313.

COMMISSIONER: Thank you.

15 MR BEETHAM: Is that large enough for you to read, Mr Mileham?---Not quite.

Madam Associate, if that could just be blown up. You've had a chance to read that there?---Yes.

20 And that's an email, is it, from you from your private email?---Yes. I can clarify that, the iCloud address is one that the phone defaulted to. It's a - my City device, however, with my glasses, if I don't check carefully, sometimes it will send from an iCloud.

25 Is that its default setting?---Pardon me?

That is its default?---Yes, unfortunately. It kept defaulting to that.

30 And is your purpose in telling me that to stave off any suggestion that you should have been sending this from your City of Perth emails?---That was, yes.

And you will see that it's dated 27 February, the day we are dealing with?---Yes.

35 And you will see that it's at 12.59?---Yes.

So this is about an hour and 15 minutes or so after the latest of those calls we were looking at?---Yes.

40 And this is an email that you've prepared, on the face of it to Ms Moore and Mr Ridgwell but it's actually to go to Council, is that right?---Well, it's a draft of, yes, something I intend to send to Council.

Can you remember drafting this?---Vaguely.

45 When you say vaguely, what does that mean?---Well, I don't have a recollection of it. I believe I've drafted it but I don't recall doing so.

Now that you've seen it, do you recall talking about an email of this type with Mr Ridgwell when you had those calls earlier in the day?---No.

5 Does it trigger any memory of any conversation with either Mr Ridgwell or Ms Moore?---No.

Can I ask you what prompted you to prepare this email?---To confirm that I was returning to work on 6 March for Lord Mayor and Council.

10 So that's the first line?---Yes.

And then you say:

15 *I note with concern the Acting CEO, direct Director of Corporate Services, Robert Mianich, has now taken sick leave citing workplace safety issues.*

?---Yes.

20 And then there's that large paragraph at the bottom?---Yes.

And that goes a bit further, doesn't it, than simply confirming that you will be back at work on 6 March?---Yes.

25 You're actually saying you see "no urgent reason or requirement for the Special Council Meeting"?---I saw no urgent need for a change of policy.

Which would be the change of policy proposed to be dealt with at the Council meeting?---Yes.

30

Why did you feel the need to send this email on this day when you were ill from the office?---Because I wanted to confirm my return to work.

35 Why did you then need to send the final paragraph dealing with what the Council was going to do that afternoon?---To give clarity to the situation. As CEO I perceived that there was an incipient, for want of a better term, chaos. I saw no need to convene a Special Council Meeting, purely to change policy in the teeth of that. I felt that a more considered result could be achieved post my return.

40 When you say "incipient chaos", what do you mean by that?---The events had begun with Project Percy and had accelerated very quickly past that point to being apparent to me at least, as CEO, that the City's functioning was being impacted by these urgent Council meetings, by media swirling about, by comment around the place that there were issues. So I attempted as CEO, even on sick leave and I
45 accept that the best thing to do on sick leave is say nothing. However, as CEO at the City I felt I had an obligation to try to steer us back to a more conservative course, perhaps.

You mentioned three things, I think, that were impacting the City's capacity to function?---Mm hmm.

5 Urgent meetings?---Pardon?

Urgent meetings, that's the first one, urgent Council meeting?---An urgent Council meeting is usually for matters that - - -

10 That is one of them?---Yes.

Other than this urgent Council meeting, were there others in this time?---Yes. As I've said, the report that I had seen in relation to Project Percy which had said that there were potential multiple breaches of the Act.

15

Sorry, my question is, during this period, and let's call the period 1 January 2018 until 27 February?---Yes.

Were there other urgent Council meetings?---I don't recall any.

20

I think the other one you said was the media?---I think the media had been quite active in relation to City of Perth matters and not in a positive way.

Was that impacting on the capacity of the City to do its job?---Yes.

25

How?---When you say "do its job", communicate our programs to the community, have the trust and faith of the community and the ratepayers, I believe it was impacting on that.

30 How would putting off the Special Council Meeting and the change of policy influence that?---My belief is that - an urgent Council meeting and a change of policy on the run, so to speak, would just add more fuel to that fire, for no great gain in my view.

35 Why do you satisfy I "no great gain"? It's the case, wasn't it, that the City was without a CEO at the time?---In effect, no.

Why do you say "in effect no"?---Well, as I understood it, there was a management structure in place.

40

But there was no - you were not there?---No.

Notwithstanding your involvement on the day, you were not there?---No.

45 Mr Mianich, your deputised Acting CEO was not there?---That's right.

So there was no-one in that role, was there?---As I understand it, the crisis

management enactment had given leadership.

Yes, but there was no CEO in place, was there?---No.

5 The policy that was to be dealt with was a policy about the appointment of Acting CEOs?---Mm hmm.

And that is a legitimate thing for the Council to be concerned about, isn't it, about whether or not it has a CEO in place?---Yes.

10

And had it not amended the policy and appointed Ms Battista as it did, the City would have been without a CEO, wouldn't it, for the remainder of that week until your return on Tuesday?---It would have been without an Acting CEO per se. It would have had a management process put in place to - that predicted that situation.

15

It would not have had a CEO, that's right, isn't it?---I think that's arguable.

Why?---Because the convener of the Crisis Management Team takes that role.

20

They take the role of the Chief Executive Officer?---In effect.

But not in substance?---In effect.

25 I think your evidence was that a change in policy or a policy change on the run would have generated more media involvement, is that right?---That's only my view.

30 That's the view you held at the time?---The view that I had at the time was, it was a component - an action that wasn't required, wasn't necessary

[12.30 pm]

35 I understand that, but one of the reasons you gave for what you wrote in this paragraph here is that there was media concern and you thought that policy on the run at that urgent Council meeting, would have generated more media; that's my recollection of your evidence?---Yes.

And that's right?---Could have.

40

That's right though?---What's right, my perception or the action?

My recollection?---Yes.

45 And your perception at the time was that's the case, that it might have generated more media interest?---Not more, just media interest and not positive, based on my experience.

Could it have also been the case that the City functioning without a CEO similarly would be been the subject of media attention?---Yes.

5 Would you agree with me in that case then that deferring the Special Council Meeting the way you suggest would not necessarily have had the effect of limiting media interest?---There's all manner of possible outcomes.

And the Crisis Management Plan had been enacted?---Yes.

10

Would you agree with me that that is something that was of media interest?---I believe it attracted interest.

And that was an unusual event in the City's history, that enactment of that Crisis Management Plan, wasn't it?---It wasn't a usual event, correct.

15

When you wrote this email, were you at all motivated, and I'm particularly interested in the last paragraph, by any plan of yours or of the Executive's to which you were privy, to simply prevent Council ever changing that policy?---Could you repeat the question, please?

20

Were you motivated at all by a concern to prevent Council from ever changing that policy?---No.

25 Were you concerned at all that some members of the Council, some Councillors were trying to remove you from your position?---At that time?

Yes?---That any members of Council were trying to remove me?

30 I will go through the members of Council who signed the motion?---M'mm.

Did you have any concerns that Councillor Harley wanted to remove you as CEO?---Any concern, at all, you're asking, even the slightest scintilla?

35 COMMISSIONER: Yes, that is precisely what Council is asking?---Slightest scintilla, yes.

MR BEETHAM: So on the 27th, you had the slightest scintilla?---Not on the 27th, earlier than that.

40

But also on the 27th or by that stage had your scintilla disappeared?---I didn't have a view of it at that stage. I think predominantly at that stage I wasn't thinking about that aspect.

45 At all?---No.

But you were concerned about Councillor Harley prior to this point in time?---I

had, as I say, varying degrees of view on different Councillors.

I'm just trying to take them in turn, Mr Mileham?---Mm hmm.

5 So the first one, Councillor Harley, you said you had the slightest scintilla of a concern?---Slightest scintilla, yes.

And when you received or became aware of the motion to change the policy and appoint an Acting CEO?---Yes.

10

Did it cross your mind that maybe this was part of a broader plan to remove you as CEO?---No.

It didn't modify the size of your concern?---No.

15

What about Councillor Green, or Deputy Lord Mayor Green, did you have any concerns about her?---Project Percy had given me concerns, yes.

Did you have concerns that she wanted to remove as Chief Executive?---At that time?

20

Yes?---In that email, no.

Prior to that?---No. As much as anyone wants a change of a CEO, I believe that - -

25 -

Is that what people normally want?---People will either agree or disagree with you at times so they may change their views from time to time, I don't know.

30 Were you concerned, having received the Project Percy Report, that the Deputy Lord Mayor didn't want you as Chief Executive Officer?---No, I was not concerned about that. I was concerned at the conduct, of its manner of conduct - its mode of conduct.

35 And did you have any concern about Councillors Hasluck or Barton?---No.

Or Limnios?---No. Councillor Hasluck, Barton, no; Limnios, some concerns.

And in particular, that he didn't want you as the Chief Executive?---I didn't know that. I had a perception that he was antagonistic toward me.

40

So on the 27th when you sent this email, were you completely comfortable about your job security?---Yes, apart from my notification to Council that I believed my breach of contract had occurred prior to this.

45

The scintilla of concern you had about Councillor Harley, what happened to that?---Councillor Harley didn't attend the meeting where I was confirmed and that

just caused me to think why. That was about it.

Did he ever tell you that he didn't want you to be the Chief Executive?---No, he did not.

5

Did any of the other Councillors?---Not that I recall, no.

Just so it's completely clear, there's no part of you when writing this last paragraph, wrote that paragraph out of a concern for job security?---No.

10

You didn't think they were trying to install Ms Battista in your place?---No. No, I didn't. It was an altruistic motive to, in my view, calm the waters.

Is it fair to say then that your view held at the time is that Rebecca Moore as Crisis Manager, supported by the members of the Crisis Management Team, could have remained - stood up for the balance of the week and that would have provided calmer waters than an Acting CEO being appointed that afternoon?---Yes, in the mode that it was delivered, yes.

15

If I can ask you to turn back to the document in front of you. If you can go over the page to 219, you should see 219 in the top corner?---Yes.

20

And if I can ask you to go about halfway down the list to a time stamp of 6.37.39 and you should see it says next to that, "From" and then there's a number ending in [REDACTED], followed by Rebecca Moore?---Yes.

25

Do you see that?---Yes.

And it says, I suggest, there was a hang-up and you weren't reached?---That's right.

30

And then shortly after that, about 20 seconds later, there's a call to that number, [REDACTED]?---Yes.

Ms Moore's number and you will see it records there was a conversation for 42 minutes and 8 seconds?---Yes.

35

And did that happen at 6.37 in the evening?---Yes.

That was, I can tell you, Mr Mileham, after the Special Council Meeting had completed for the evening. So do you recall that conversation?---No, I don't.

40

Do you recall any conversation with Ms Moore on that day?---No, not independently.

When you say "not independently", what do you mean by that?---Unless there was a transcript, I couldn't tell you what we spoke about.

45

A moment ago you gave quite detailed evidence about your motivations for writing that paragraph of that email that's on the screen?---Yes.

5 Which is a paragraph you wrote on the same day as this call with Ms Moore?---Yes.

And you could recall those motivations quite clearly?---Yes.

10 And now you're saying you can't recall anything you spoke about with Rebecca Moore for 42 minutes following the Special Council Meeting, the subject of your email?---I would have to surmise.

15 Please surmise?---I'm assuming it was the result of the meeting. That's all I can surmise.

You've got no inkling at all as to what you might have said or Ms Moore might have said to you?---To be frank, I have no inkling how I would spend 42 minutes speaking to Ms Moore at 6.37 pm on that date.

20 If you go a bit further down the page, Mr Mileham, to - if you look down the left-hand column you will see there is SMS messages?---Yes.

And you see the last one in that list?---Yes.

25 And if you go one above that you will see, "Call log, outgoing" on the 27th?---Yes.

At 9.56?---Yes.

30 And that's a call you made to Mr Gale?---Yes.

Who is Mr Gale?---He reported to me in a stakeholder management role at the City.

35 What does that mean?---Strategy and stakeholder management - I can't recall the exact title but he reported to me to manage matters such as the City of Perth committee.

40 I think stakeholder is a word you used to describe the Minister's Chief of Staff earlier in your evidence?---I may have.

Would you consider the Minister or the Minister's Chief of Staff a stakeholder?---Yes.

45 Is Mr Gale responsible for management of that stakeholder as well?---Not solely.

But is that within his role?---Within his remit, yes.

And are you commonly in contact with Mr Gale after business hours?---Yes.

In a professional capacity?---Yes.

5 Do you recall what you spoke about with him on this evening?---No, I can't.

Can you tell the Commissioner why, knowing what you do about that day and what happened, why you would have called Mr Gale?---Do I know? I don't know but I can surmise.

10

Yes?---My surmising is that I would have spoken about the day's events and other matters all - - -

Why - sorry, go on?---It's a surmise.

15

Why Mr Gale?---Because I had a working relationship with him in managing stakeholder management.

20 So can you expand on that. In the context of what happened on that day, what would you need to talk to him about?---I didn't need to, I chose to.

Why did you choose to speak with him?---I often spoke about policy matters with Mr Gale.

25 When you say "policy matters", can you tell the Commissioner what you mean by that?---My approach in creating that position and appointing Mr Gale was to improve our policy making and to look at ways to, rather than policy on the run, develop policy in an appropriate way with an evidence basis. I could surmise I was talking to him about a policy matter at that time.

30

Is it possible that policy matter was the Council Policy that was amended that evening?---It's possible.

35 Do you think it's likely?---It's probably likely. I don't know, I can't recall the conversation.

40 I appreciate that. I'm just trying to work out from your knowledge of your relationship with Mr Gale and what was happening on that day, if you can assist the Commission to understand what the topic might have been. Do you think it's most likely that it would have been about that policy?---If we are going into probabilities, I'm going to be hard pressed to give you a good answer.

45 Can you think of anything else you would have spoken about?---Was it the football season? No. Probably not football. No, I can't really. I did speak to him on all manner of things.

If Mr Gale was to tell the Commission that he spoke to you about the amendment

to the policy and the events of that day, would you quibble with that?---Not if Mr Gale said it, no.

If I can ask you to look a little bit earlier in this chain of messages?---Mm hmm.

5

And telephone calls, you will see there's a SMS message, it's sort of the biggest one on the page there?---Yes.

Do you see that one?---Sorry, which one?

10

It's at 6.22.13 from Mr Hunt?---6.23.13.

COMMISSIONER: 22?---22.13 I've got, yes

15

MR BEETHAM: Yes?---From Mr Hunt, yes.

It says:

20

Hi Martin, another Acting CEO, my goodness. What the hell happens next?

?---Yes.

25

And if we go a few lines further down, you will see there's a message from you to Mr Hunt?---Which one are you talking about? Number 10.12.54 pm?

That's the one?---Yes.

30

And you write, "I think it's amazing"?---Yes.

What does that mean, what was amazing?---The situation.

Can you expand upon that for the benefit of the Inquiry?---No.

35

[12.45 pm]

40

Was it amazing that they had appointed an Acting CEO, that they changed the policy?---Well, given that Gary's text says, "Another Acting CEO" and I think it's amazing, I assuming I'm responding to that sentiment, but again without independent - I can't recall the text exchange.

You can't, sitting here today, tell the Commissioner what you intended by that sentence?---I would say the situation that the City found itself amazed me.

45

Amazing in my mind can have a number of different connotations. Do you mean in amazing in a surprised way or in a positive way or a negative way? Take as much time as you need?---I was perplexed. I found it amazing. I found the

situation perplexing.

Other than the messages and the telephone calls that I've taken you to, including that one?---Yes.

5

Did you have any other discussions with anyone that you can remember following the Special Council Meeting?---On the same evening?

On the same evening?---I don't recall, I may have.

10

You do not recall any - if I was to suggest to you or ask you if you spoke with the Lord Mayor, could you say yes or no to that?---I couldn't say yes or no but if I was shown something, I wouldn't dispute it.

15

Is that the case if I put any name to you, you would say you don't know but if I put something - - -?---No, of course not. As I've said to you, my memory of that time is hazy. I was under medication and am under medication. My memory has been seriously damaged by my workplace and continues to be.

20

That's one of the reasons why you can't recall with specificity the events of that day, is that right?---I can't recall with specificity many things, I'm afraid, and that's one of them. I can recall when shown an email or a contact detail who the person is; what we spoke about, I have great difficulty recalling many, unless of course something absolutely signal is said and it stuck in my mind.

25

I might ask Madam Associate to pull up - - -

COMMISSIONER: Before you move to the next document, I do have some questions.

30

MR BEETHAM: Certainly, sir.

COMMISSIONER: Would this be a convenient time to do that?

35

MR BEETHAM: Yes, sir.

COMMISSIONER: Mr Mileham, I would like you to look at the document which is on the screen in front of you now, 11.0515 and I want you to look at that last paragraph about which you were asked a number of questions. If you need to re-read it to yourself, please do?---Yes.

40

You might recall that when you were being questioned by Mr Beetham you were able to give him quite a lot of assistance in relation to that last paragraph?---Yes.

45

Including why you wrote it. This Special Council Meeting on 27 February 2018 to amend the policy at short notice?---Yes.

Was that an unusual event for you?---Yes.

Was it therefore a memorable event for you?---Yes.

5 Don't worry about where I'm going, Mr Mileham. This day then, was it a day that stood out in your memory for you, because of these events?---It's hard to compare it to other memories. It's not extreme. I do remember it. If I was asked what day it was, I couldn't have told you until I was shown the record.

10 Come back to my question, was it a day that stood out in your memory for you?---Yes.

Did it do so because of these events?---Yes, and other events.

15 Mr Beetham might want to ask you about those other events in due course, but for the moment I want to stick with these events. So some hours later, as the telephone records to which you were taken demonstrate, you had a 42 minute conversation with someone?---Mm hmm.

20 Do you remember those questions?---Yes.

That 42 minute conversation was with the person, one of the people to whom you sent this email, Rebecca Moore?---Yes.

25 Can you tell me why you sent this to Rebecca Moore?---Yes.

Why?---As I understood it, she was leading the crisis management process.

So it was important that she have this communication?---Yes.

30

And important that she understand those things which you wrote about in the last paragraph?---Yes.

35 So how is it, Mr Mileham, that you don't recall anything about the content of this 42 minute conversation on the same day which you describe as an unusual and memorable day?---I can't answer that, Commissioner, because I don't recall the substantive matters. I can assume we discuss the day's events.

40 I've heard your evidence but what I don't understand is how you don't recall anything about that 42 minute conversation, can you explain that to me?---No, I can't.

45 If you look at the telephone records that you have in front of you, you will see that is, if not the longest conversation by far, it is one of the longest conversations by far, do you agree?---Yes.

Clearly you had a lot to talk about?---I probably listened a lot.

Whether you were listening or talking, clearly there was a lot to be discussed between you?---Yes.

5 Is it a reasonable assumption on my part to think that it was about the Special Council Meeting and the change in policy which was being advocated?---I think it would be reasonable to assume it was a report on what happened.

10 Do you think it is reasonable for me to assume it was about the Special Council Meeting and about the change in policy which was being advocated?---Yes.

And those were the two memorable things about this day for you, weren't they?---The phone calls weren't memorable, the actions were.

15 Come back to my question?---Mm hmm.

Were those two things memorable about this day for you?---Which things, Commissioner, could you repeat, please?

20 Yes. The Special Council Meeting?---Yes.

And the advocated change in policy?---They were both unusual, yes, and memorable for that reason.

25 I still don't understand then how you cannot recall anything that was discussed, whether it was mentioned by you or Ms Moore, in this 42 minute conversation?---Well, I can't recall and if I could say anything about the call, it would be surmising.

30 Mr Beetham. Thank you, Mr Mileham.

MR BEETHAM: Madam Associate, could I ask you to go to the document at 11.0667. I apologise, Commissioner, I don't have a TRIM reference for this document.

35 COMMISSIONER: That's quite all right.

MR BEETHAM: Mr Mileham, you see this is a chain of emails. The one I'm interested in is the one in the middle of the page from you to Mr Ord?---Yes.

40 Copied to Ms Arnold?---Yes.

And Ms Arnold's your PA at the time?---Yes.

45 And Mr Ord was the Director-General of the Department?---Yes.

And you will see you've sent this email at quarter to 11 in the evening?---Yes.

Following the conversation - the same evening in which you had the conversation with the Commissioner just asked you questions about?---Yes.

5 And it's a forward of the email that Rebecca Moore sent to the Council based on the draft you had sent to her we looked at a moment ago, and I can take you to the next page if you need to see that?---Yes, please.

10 I apologise, I didn't realise it wasn't on the screen. If you could scroll to the bottom and just pause there. Let me know when you've read that, Mr Mileham?---Yes.

Madam Associate, if you could just go over to 669?---Yes.

15 So would you agree with me that what you've done here is forward to Mr Ord a copy of your email to the Council?---Could you go back to the first page, please?

Yes, of course. 667, Madam Associate?---I'm forwarding the email sent by Ms Moore to Mr Ord.

20 Which is an email that Ms Moore sent on your behalf and it's the email that you drafted and sent to her that we looked at a moment ago?---She sent it on behalf of the ELG, I believe it was signed as.

25 You will see at the bottom of that page:

Please find below an email we received from the CEO - - -

?---Mm hmm.

30 That's you?---Yes.

"Which he has asked the ELG to distribute on his behalf"?---Yes.

35 And that's the email, or a version of the email we were looking at a moment ago, the one that I asked you questions about?---It would be appear to be, yes.

And that the Commissioner asked you questions about?---Yes.

40 And you see you forwarded that email to the Director-General?---Yes.

At quarter to 11?---It would appear so, yes.

45 Why did you do that? I'm not sure you'll find the answer on the screen, Mr Mileham. Do you remember?---I'm thinking. I can't remember.

You recall when I asked you questions earlier today about the conversation you

had with Mr Hamley after learning about Mr Mianich going on leave?---Gary Hamley, yes.

5 And I suggested to you that one inference that might be drawn from a reasonable third party observer is that you had that conversation to prompt the Minister to take certain steps?---Yes.

10 If I suggested the same thing to you in relation to this email?---You could suggest it, yes.

Would you agree with me that's an inference open to be drawn by a reasonable third party?---It's hypothetical.

15 Would you agree with me that it's one inference that's open to be drawn?---It's one of many, I would agree with you.

What are the others?---"I provide the below information"; awareness.

20 So one of the other possible reasons is you just sent this at quarter to 11 at night for the awareness of the Department?---Correct, yes.

Do you think it's fair to say that the Department would have been made aware by the City staff or by the Councillors?---Who knows?

25 But do you agree with me that it's reasonable to suggest that it's likely to have happened given the events of that day?---No, I can't agree with you on that, given the situation.

30 COMMISSIONER: Mr Mileham, please speak into the microphone?---Okay. No, I can't agree with you on that.

MR BEETHAM: What do you mean "given the situation"?---Could you repeat the question, please, because I didn't hear it clearly.

35 So you provided this?---Yes.

To Mr Ord?---Yes.

40 One of the reasons you said an objective third party might think you sent this email was for the purpose of just information?---Yes.

45 I asked you whether it's reasonable for that person, that objective third party to form the view that the City might have done it themselves without your involvement?---I don't think it would be reasonable because it wouldn't have full information to hand

[1.00 pm]

The City - sorry, let's say Ms Moore with Mr Ridgwell and the other people?---Yes.

5 It would be reasonable, wouldn't it, in these circumstances for one of them to forward this email to the Department, they could have done that?---Reasonable? Perhaps, I don't know.

10 Other than the two reasons we have canvassed, are there any other reasons why you would have sent this email to the Department?---I believe that I always wanted to show my leadership to the Department and the Minister, that the matters were - that matters that were within my purview, that I was aware of what was happening.

You were on leave?---Yes.

15

A Crisis Manager had been appointed?---Yes.

And Ms Battista was now the Acting CEO?---That's right.

20 So why did you need to demonstrate your leadership in those circumstances?---So that the Minister and others would be aware of what was coming.

Why couldn't Ms Battista have told them?---She may have.

25 Why did you need to do it?---Because I felt a personal need to do so.

Why?---To keep them informed.

COMMISSIONER: Mr Beetham, would this be a convenient time?

30

MR BEETHAM: Sir.

COMMISSIONER: I will adjourn the Inquiry to 2.15 pm

35

WITNESS WITHDREW

(Luncheon Adjournment)

40

45

HEARING RECOMMENCED AT 2.14 PM.

MR Martin Nicholas MILEHAM, recalled on former oath:

5 COMMISSIONER: Ms Ford, you appear in place of Mr Cornish?

MS FORD: I do, Commissioner.

COMMISSIONER: Mr Beetham. When you're ready.

10

MR BEETHAM: Thank you, sir.

Mr Mileham, it's the case, isn't it, that you returned to work following the period of leave on 6 March 2018?---Sorry, I didn't quite hear the last bit.

15

You returned to the office?---Yes.

From your period of leave on 6 March 2018?---I believe that's correct.

20 That was the Tuesday following the public holiday I think we talked about earlier?---I believe that's correct.

[2.15 pm]

25 Madam Associate, could you please bring up the document at 11.0631.
Mr Mileham, you should see on the screen in front of you - is that big enough for you to read?---Just. If it could be a bit bigger, it would be good.

30 Madam Associate, if you wouldn't mind just zooming in a little bit. Is that better?---Yes, thank you.

You will see here this is a document that's titled in bold, "Proposal - proposed incident review"?---Yes.

35 And you will see at the top it's dated 20 March 2018?---Yes.

After your return from leave?---Yes.

40 Do you know what this document is?---It's a proposal from Riskwest to conduct a post incident review on the recent activation of the City's Crisis Management Plan on 27 February 2018.

Have you seen that before?---I've seen Riskwest correspondence, probably that one, I can't say absolutely - - -

45

You can't say absolutely whether you saw this one?---Not the proposal, no.

Do you recall any discussion within the organisation, within the City, about engaging Riskwest to do this post incident review?---I have a recollection that there was some discussion at the City and we felt it appropriate to see whether it had been conducted as per the procedure that was laid down.

5

Were you involved in those discussions?---To instigate, probably; the rest of it, no.

I will just take that in turn. When you say, "To instigate, probably", and by instigate you mean get the review conducted?---My authority would have been required, I believe, for that to occur.

10

Do you have a recollection of that?---Not specifically.

And then I think your evidence was you weren't involved in the later parts, is that right?---In the review itself?

15

Yes?---No, the report, I think to the best of my recollection, came to me complete.

Do you recall having any discussions with anybody about the terms of the proposal?---No, I don't recall specifically.

20

Madam Associate, could you skip ahead to page 636, please, in the same document. TRIM reference, sir, 14343.

25 COMMISSIONER: Thank you.

MR BEETHAM: You will see there, so this is the last substantive page of this proposal document, just to situate you in the material?---Yes.

30 And you will see it's signed by Mr Ridgwell?---Yes.

On 21 March?---Yes.

Is that something that Mr Ridgwell had the authority to do or did he need your involvement to do that?---He can act under a delegation within budget.

35

And do you recall whether he spoke to you about this matter, now seeing his signature on it?---I don't specifically recall a discussion.

40 Or any correspondence?---No.

Madam Associate, could we now go forward to 11.0645, which is TRIM reference 14345.

45 COMMISSIONER: Thank you.

MR BEETHAM: This is the report, Mr Mileham, that was received back from

Riskwest following that proposal?---Yes.

Do you recognise this cover page?---I recognise it as a cover page of that report, yes.

5

Have you seen this report before?---Before today, yes.

I think your evidence a little moment ago was you saw the report when it came onto your desk, is that right?---I don't recall the actual time I saw it but certainly prior to today, yes.

10

And you've seen it while you were at the City in the capacity of Chief Executive?---I believe so.

15

And do you know whether you read the document?---I don't know it. I'm assuming if it came to me, though, I would have perused it but I cannot categorically say I read it because I can't recall in detail.

20

Madam Associate, if you could please go forward in the document to 651. Can you read what's on that page, Mr Mileham? I'm not asking you to read it, I'm just asking you whether you can?---I can, yes.

And you will see about a third of the way down the page there are four dot points?---Fourth dot point?

25

No, there are four?---Yes.

And you will see those dot points follow a chapeau that reads:

30

The ELG arrived at the decision of activating the CMP. That was the best option given their concerns over -

And then there's those dot points?---Yes.

35

You in that first dot point, it says:

The Acting CEO having taken sick leave the day before leaving CoP - being the City of Perth - without a leader in the midst of serious ongoing issues that needed attending to.

40

?---Yes.

I will just ask you to read the next three dot points to yourself?---Yes.

45

There's nothing in those dot points, is there, to indicate that the authors of this Riskwest report were aware that the Special Council Meeting was going to, that afternoon, appoint an Acting CEO?---I don't recall the report, I would have to read

it again to see what observations they made in full.

But in those dot points - - -?---Not in those dot points.

5 And you will see there, in that first one that I read out to you, it says "leaving CoP without a leader", do you see that?---Yes.

10 It would be important to understand what they meant by that, wouldn't it, to know whether or not Riskwest were aware that there was going to be an appointment of an Acting CEO that afternoon?---I don't know. Is it important? It's certainly a factor.

15 To form a view about whether or not the CoP was "without a leader" they would need to know whether that was actually the case and for how long?---Yes.

And they would need to know that in order to determine whether, in all of the circumstances of the activation of the Crisis Management Plan, that was a reasonable thing to do?---That sounds fair.

20 Were you involved in providing any information to Riskwest as part of this review?---Not that I recall.

There's evidence before the Inquiry to indicate that Mr Ngara, Desmond Ngara, was involved?---Desmond, yes.

25 And possibly Mr Ridgwell?---Yes.

30 Do you recall discussing with either of those two people what should be given to Riskwest?---I don't recall a discussion. There may have been, but I don't recall it.

But you yourself weren't responsible for doing the liaison between the City and Riskwest?---No, Desmond, predominantly, the Risk Manager, would have been engaging with Riskwest to manage that process.

35 Did you have any discussions with Ms Moore about it?---About that report? I don't recall any, no.

40 Do you recall reading this report? I think your evidence was earlier, you assumed if it was on your desk, you did read it?---It's probable but I don't have a recollection of reading it.

45 Is it fair then to say that you don't have a recollection of reading this and going, "Hold on a second, there's nothing in here about the fact that there was going to be a CEO appointed that afternoon"?---No, I don't recall the substantive detail of it. I recall the cover page and that's about it at this point.

I'm going to ask you to speculate again but had you read the document and noticed

it was missing any reference to the fact of the Council appointing an Acting CEO, do you think you would have done something?---Speculating, that the report lacked key detail.

5 Or that detail?---Maybe not.

Why do you say that?---I'm not the person providing the report, nor quality checking it. I would have assumed that the officers charged with looking after the report would have made sure it was as robust as possible and so would the
10 consultants. That said, if I'd noticed a glaring error, I certainly would have brought it to someone's attention, either the author or the manager.

Did you have a view yourself as to whether or not the calling of the Crisis Management Plan was a reasonable thing for the Executive to have done?---Did I
15 have a personal view?

Yes?---At what time?

When it was done on the 27th?
20

MS SARACENI: Commissioner, perhaps just for clarity, asking this witness in what capacity is his view, given that he was on sick leave and not at work at that time, his personal capacity or his capacity as the CEO?

25 COMMISSIONER: Yes, I think it's a fair point. Can you clarify that?

MR BEETHAM: Yes.

So when you first heard about this happening on about the 27th, did you in your
30 personal capacity, that is not in your capacity as CEO, have a view about the reasonableness of the decision?---I had a view.

Which was?---There might have been other ways to deal with the matter.

35 What other ways?---Waiting until - now, let me think. At that time, on hearing of it, and I can't recall exactly when I heard of it, I felt that exercising of the crisis management process was a - what can I call it - a serious move. In other words, I viewed it with some seriousness, that there must be a serious matter in train for this to happen.

40 Did you, at that time - I will skip ahead. When you came back to the City at Chief Executive following 6 March?---Yes.

45 Did you have a view then as to whether or not the Crisis Management Plan should have been enacted?---I had a view that it was an acceptable response by the Executive to a situation that they had confronted.

That was a view you held in your capacity as Chief Executive of the City?---Yes.

I will just ask you just to be conscious of the microphone when giving the answers?---Sorry.

5

I understand there's some difficulty with picking up your responses. Did you share that view, that the enactment of the Crisis Management Plan was reasonable, with others in the Executive at that time?---I don't recall expressing a specific view about it. I may have.

10

Did anybody express a view to you?---I don't recall the specific Directors but I do recall that it was, what I would call a majority view of the Executive that it was the right move.

15

Madam Associate, could you now go forward in the document to 653. This is the final substantive page and you will see at the top it's page 9 of 18 but it's the final substantive page of the report before the Terms of Reference and some annexures?---Yes.

20

You will see there are two paragraphs in bold?---Yes.

The first one is:

25

Based on the evidence from the review the decision to activate the CMP appears to be appropriate in view of the circumstances that led up to the events of 26 and 27 February 2018.

?---Yes.

30

Was that the view that you held at that time, being 16 April?---16 April? I still held a view it was an appropriate response to a situation confronting the Executive.

So were you quite pleased to see that, do you remember?---Pleased wouldn't be the right word. I viewed the information and took it on board.

35

Did you discuss it with anybody?---I don't recall doing so.

The view you've expressed about the enactment of the Crisis Management Plan, is that a view you maintain today?---Today? As a private member of the public?

40

Yes?---Yes.

The author of this report, one of the authors of this report, has given some evidence that had that author known the Council was going to appoint an Acting CEO that evening and had, more particularly, that author known the Executive knew, then that author would have reached the view that it was not appropriate or necessary to exercise the Crisis Management Plan?---Mm hmm.

45

Knowing that, does that change your view at all?---No.

5 Knowing that the ELG knew there would be an Acting CEO, just some eight hours or so after they enacted the Crisis Management Plan, your view is still, that was a reasonable thing for them to have done?---I'm sorry, when did the Executive know that there would be an Acting CEO?

[2.30 pm]

10 They knew before they enacted the Crisis Management Plan?---You would have to ask the Executive on that.

15 I'm just asking you for your view?---My view? If they knew that, it was an available approach. I think it was potentially reasonable in the circumstance. I believe they took a decision as an Executive based on the facts before them.

20 And you think that was a reasonable decision for them to have reached?---My view? It's a reasonable decision.

Sir, those are all the questions that I have for Mr Mileham.

25 COMMISSIONER: Thank you. Just bear with me for a moment. I shall hear applications. Mr van der Zanden, do you have any application to examine?

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

30 COMMISSIONER: Thank you, Mr van der Zanden. Ms Young, do you have any application?

MS YOUNG: No, I don't, Commissioner.

COMMISSIONER: Thank you, Ms Young. Mr Malone?

35 MR MALONE: No, Commissioner, no application.

COMMISSIONER: Thank you. Mr Wyatt?

40 MR WYATT: No, I don't, Commissioner.

COMMISSIONER: Thank you. Ms Siavelis?

MS SIAVELIS: No, Commissioner.

45 COMMISSIONER: Thank you. Mr Mariotto?

MR MARIOTTO: No application.

COMMISSIONER: I didn't see you sneak in there in place of Mr Skinner.

5 MR MARIOTTO: Yes, and I jumped straight past Ms Saraceni. I apologise,
Commissioner.

COMMISSIONER: That's all right. Mr Russell?

10 MR RUSSELL: No, thank you, Commissioner.

COMMISSIONER: Thank you, Mr Russell. Ms Ford?

MS FORD: No application, Commissioner.

15 COMMISSIONER: Thank you. Mr Fotheringham?

MR FOTHERINGHAM: No application, Commissioner.

20 COMMISSIONER: Thank you. Mr Houweling?

MR HOUWELING: I have no application, Commissioner.

COMMISSIONER: Thank you. Ms Saraceni?

25 MS SARACENI: No, thank you, Commissioner.

COMMISSIONER: Very well. In that case, what I will do before the next
witness is called is, I will take a short adjournment to allow those arrangements to
be made but in the meantime, Mr Mileham, thank you for your assistance
30 today?---Thank you, sir.

WITNESS WITHDREW.

35 COMMISSIONER: I will now adjourn pro tem.

HEARING RECOMMENCED AT 2.39 PM.

40 COMMISSIONER: Mr Beetham, I will adopt the same procedure for this witness
as I did for the last, so I will have you call the witness. I will then have the witness
sworn or affirmed, whichever she prefers, and then I will hear applications and
take appearances.

MR BEETHAM: Yes, sir. I call Ms Erica Barrenger.

45 COMMISSIONER: Thank you. Ms Barrenger, please come forward and take a
seat in the witness box. Do you wish to take an oath or make an affirmation?

MS BARRENGER: Affirmation, please

MS Erica Margaret BARRENGER, affirmed:

5 COMMISSIONER: Thank you, Madam Associate. I will now hear applications.
Mr Fotheringham.

MR FOTHERINGHAM: As set out in the affidavit of Ms Randall, I seek leave to
appear today to protect the interests of my client, potentially.

10 COMMISSIONER: Is there any objection?

MR BEETHAM: No, sir, and I can indicate there will be no objections to the
other applications.

15 COMMISSIONER: Very well. Thank you. Leave is granted

MR FOTHERINGTON: Thank you.

20 COMMISSIONER: Ms Saraceni?

MS SARACENI: I seek leave to appear on behalf of Mr Mileham to protect his
interests, sir.

25 COMMISSIONER: Leave is granted.

MS SARACENI: Thank you.

COMMISSIONER: Ms Harrison?

30 MS HARRISON: I seek leave to appear on behalf of Ms Barrenger.

COMMISSIONER: Thank you. Leave is granted, of course. And Mr Harris
assists you?

35 MS HARRISON: Yes, sir.

COMMISSIONER: Very well. Thank you. Mr Houweling?

40 MR HOUWELING: May it please you, Commissioner, I seek leave to appear for
Alexis Barton on the same basis as this morning.

COMMISSIONER: Leave is granted

45 MR FOTHERINGTON: Thank you.

COMMISSIONER: Ms Ford?

MS FORD: I seek leave to appear on behalf of Dr Green, Commissioner.

COMMISSIONER: Leave is granted. Mr Russell?

5 MR RUSSELL: I seek leave to appear on behalf of Paul Crosetta.

COMMISSIONER: Leave is granted. Mr Mariotto?

10 MR MARIOTTO: May it please, I seek leave to appear on behalf of Mr Limnios.

COMMISSIONER: Leave is granted. Ms Siavelis?

MS SIAVELIS: I seek leave to appear on behalf of Ms Battista.

15 COMMISSIONER: Leave is granted. Mr Wyatt?

MR WYATT: I seek leave to appear on behalf of Rebecca Moore.

20 COMMISSIONER: Leave is granted. Mr Malone?

MR MALONE: I seek leave to appear on behalf of Councillor Harley.

COMMISSIONER: Leave is granted. Ms Young?

25 MS YOUNG: Commissioner, I seek leave to appear on behalf of Councillor Hasluck.

COMMISSIONER: Leave is granted. Last but not least, Mr van der Zanden.

30 MR van der ZANDEN: Yes, thank you, Commissioner. I seek leave on behalf of Ms Scaffidi.

COMMISSIONER: Leave is granted.

35 MR van der ZANDEN: Thank you.

COMMISSIONER: Mr Beetham.

40 MR BEETHAM: Ms Barrenger, could you just repeat your name and address for the purposes of the transcript, please?---Sure. It's Erica Margaret Barrenger, [REDACTED].

45 What do you do for a living, Ms Barrenger?---Currently?

Yes?---Currently I'm taking a year off.

And you were at the City for a while before that?---I think about three years.

Is it right that you held the role that entire time of Director of Planning and Development?---No, that's not correct.

5

How long were you in that role for?---I was acting for about six months and I think I was appointed for about a year but I'm not quite sure, fully.

10 So you had a period of acting and a period where you were substantive?---That's right, before I left, yes.

Ms Barrenger, I want to ask you some questions about things that happened in February of 2018?---Yes.

15 Those things, just so you know where I'm going are, Project Percy, which you might have heard about, yes?---Yes, I've heard about it.

COMMISSIONER: Ms Barrenger, would you please speak up?---Sorry. Yes, I've heard about it.

20

Because in a moment I'll get a note from the transcribers that they cannot hear you and I'm having trouble hearing you as well?---Okay, thank you.

Thank you.

25

MR BEETHAM: The second thing I want to talk to you about, or ask you questions about is the enactment by the Executive Leadership Group of the Crisis Management Plan, do you remember doing that?---Yes, I do.

30 I want to ask you some questions about the Special Council Meeting that followed on that same day; do you know the one I'm talking about?---Yes, I do.

Can I take you then to 16 February 2018 and that's when Mr Mileham went on leave. Do you remember that?---Yes, I do.

35

Is it right that Mr Mianich was appointed by Mr Mileham to be Acting CEO in his absence?---Yes, that's correct.

40 And that Mr Mianich was in that role for a week before he went off on leave as well?---Yes, I believe that's correct, yes.

45 Can you recall, as best you can, how you found out that Mr Mianich was going on leave?---Mark Ridgwell called me at home, I think it was about 5, 5.30, was in one of my notes, and said that Rob Mianich's blood pressure was high and that he had been asked by the doctor to take sick leave.

And you said 5.30, is that in the afternoon?---Yes, it was.

Do you recall what day that was?---So that was the Monday before - so I think it's 26 February, the Monday before the Special Council Meeting.

5 In your evidence there you mentioned your notes?---Yes.

Is that something you've refreshed your memory from?---Yes, I have. I had a read through my notes that I took on that day

10 [2.45 pm]

When did you do that? When did you read through the notes?---Over the weekend.

15 And these are typed notes or handwritten notes?---I had handwritten notes that I did the day after, or the night of the Special Council Meeting and I typed them up upon my return to work, so I've read both.

You've read both of those?---Mm hmm.

20

When you found out that Mr Mianich was going on leave from Mr Ridgwell?---Yes.

Did you try and contact Mr Mianich at all?---No, I didn't.

25

Did you have any contact with him from that point until when he returned to work?---No.

What about any contact with Mr Mileham?---After the Monday?

30

Yes?---I think we had a call from Mr Mileham on the Tuesday.

When you say "we", who do you mean?---This is when the Directors, we had a Special Council Meeting called the next morning by Mark Ridgwell.

35

So do you mean a special Executive meeting?---Sorry, Executive, ELG meeting the next morning and I went along to that meeting and I know later in that meeting that there was a call from Martin Mileham.

40 So that was a call - was it a call to you or was it a call to a sort of a phone in the middle of the table or - - -?---No, Mark Ridgwell.

When you say it was a call that the group received, did Mr Ridgwell put it on speaker or something like that?---Yes, I believe he did.

45

And that call was during this meeting that was convened by Mr Ridgwell in the morning?---I've been trying to figure that out, when that call took place. I know

that it was - definitely had confirmed with Martin that Annaliese had been asked to be the acting and was he aware and he said yes. I know that at some point he informed us that he was returning to work on the Tuesday. I'm not quite sure if that was in the same phone call.

5

But the call happened after you were aware, I think from your evidence, that Ms Battista had been nominated or suggested as an acting, is that right?---Yes, that's right.

10 And how did you find out that Ms Battista had been nominated?---When I arrived for the 8.30 meeting that Mark Ridgwell had called, he said that he had received a text from Annaliese to say that she had been offered the position of Acting CEO.

So Mr Ridgwell told you that at the meeting?---Yes, he did.

15

When Mr Ridgwell contacted you on the afternoon, the 5.30 phone call on the Monday afternoon?---Yes.

20 Did he tell you then that he was calling the ELG together the following morning?---Yes. That was the only conversation I had with them, that he had called an ELG, special ELG he called it, at 8.30 the following morning and that I was to attend.

And did he tell you what you were to talk about at that meeting?---No, he did not.

25

Do you recall asking him?---I suppose, no, I didn't ask him what it was about but I thought we would be discussing, I suppose, what was going to happen now.

That Mr Mianich was on - - -?---That Mr Mianich was on - - -

30

On leave?---On leave, sick leave.

Madam Associate, could I ask you just to turn up the document at 11.0449. I think your evidence was Mr Ridgwell told you the meeting was at 8.30?---Yes.

35

I'm just wondering, can you read that? Is that large enough on the screen? I can ask Madam Associate to blow it up just a little bit more, please, Madam Associate. How's that?---Okay. It says 8 o'clock.

40 I have a few questions for you about this?---Yes, sure.

Do you recognise this as a meeting invitation?---Yes, I do.

45 Do you have a recollection of receiving a meeting invitation to this ELG meeting on the 27th?---Well, I assume I would have received an invitation.

Do you remember receiving it is my question at the moment?---No, I just went off

that I'd had the phone call. I didn't relog back in to check that I'd received an invitation.

5 And you will see - you've pre-empted where I was going with this but you will see, "When", it starts at 8 am?---Yes. My notes say 8.30, so I'm going on what - - -

Do you have an independent recollection of when it started, whether it was at 8 or 8.30?---I just remember it was early.

10 In the morning?---Yes, before school time.

Sorry, what was that last time?---Before school time, so I knew it was early.

15 After Mr Ridgwell called you to tell you that Mr Mianich had taken leave and there was going to be this meeting in the morning, did you talk to anybody else about that, that afternoon?---No, I didn't.

Just so I'm clear, I mean any others of the Executive?---No, I didn't.

20 At that point, am I right, you didn't know what the meeting would be about specifically?---No, I didn't.

Did Mr Ridgwell mention to you in that call the Crisis Management Plan ?---No, he did not.

25 And you weren't contacted by any of the other Executive?---No.

Not that you recall?---No, I don't.

30 COMMISSIONER: Just keep your voice up, please, Ms Barrenger?---Sorry. No.

That's okay.

35 MR BEETHAM: Were you surprised to receive the call from Mr Ridgwell saying that Mr Mianich was taking leave?---No, I was not surprised.

40 Why is that?---Because on the Monday, I had had a budget meeting with Mr Mianich and he had asked me to go into the CEO room to just give me a bit of information, which was that the Council had called for a Special Council Meeting to change the policy so that they could appoint a different Acting CEO and that was all he - and he asked me had I been asked and I said no, I hadn't. He then said that he had a meeting - an appointment with his doctor because his blood pressure was high.

45 During this conversation, so this was on - when you say the Monday, you mean the Monday that Mr Mianich took leave?---Yes, that's correct.

Which is the 26th?---Yes, it is.

Did he express a view as to what the Councillors had done in calling that Special Council Meeting?---No, I was just told that it was to do, to change the policy to replace the Acting CEO with one of their choice.

I might ask you just to lift your voice an little bit, if you can?---Yes, sorry. Yes.

Did you say anything to him, do you remember? Did you express any surprise, for example?---I would have been surprised, yes.

When you say "would have" do you remember the interaction or are you going, based off your notes?---I would have just taken it as information.

Did you say anything to him like, "But we have an Acting CEO, it's you, Mr" - Rob you probably would have called him?---I didn't say but we both thought it, I would say. I would have thought that, I don't recall saying it out loud.

And you don't recall him saying anything to that effect to you?---No, but he was the Acting CEO. He's told me that they have called to replace the Acting CEO, so to me that was sort of said, that that's what's happening.

Do you have any other recollection of anything else that was said in that brief meeting with you and Mr Mianich?---He said that he had spoken to Rebecca and asked her had she been asked, and he'd spoken to Paul and asked him and he hadn't been asked.

Did he indicate whether he had been asked, Mr Mianich himself had been asked?---No.

Did he mention Ms Battista at all?---He said he'd called Ms Battista and left a message.

Did he say whether he had received a response?---He said he hadn't received a response at this stage.

Was there, in your recollection, any discussion on this day or leading to it, to suggest that Ms Battista might take over as CEO or Acting CEO?---No.

Did the Special Council Meeting, did it take you by surprise? Was it out of the blue from your point of view?---Yes, it was.

Were you happy with Mr Mianich as an Acting CEO at the time?---Yes, I was.

And were you happy with Mr Mileham as CEO at the time?---Yes. He was on sick leave.

COMMISSIONER: You will have to speak up, Ms Barrenger?---Sorry, he was on sick leave at the time.

5 MR BEETHAM: Would you be happy for him to remain substantively as CEO upon his return in March?---Yes.

Did you, after that conversation, try and contact anybody? Did you try and contact Ms Battista, for example?---I did not.

10 Did you speak with Ms Moore or Mr Crosetta about this conversation you had with Mr Mianich?---No I did not.

And you say Mr Mianich mentioned to you that he had a doctor's appointment that afternoon?---Yes, he did.

15

Did he indicate to you whether or not that was a long standing doctor's appointment or a one he had went out and got because of what was going on with the Special Council Meeting?---He just said that his blood pressure was high.

20 COMMISSIONER: I'm sorry, you will just have to be conscious of speaking up because about two or three answers into the examination, your voice drops right away. It's really important I hear what you say?---Okay. Yes.

25 MR BEETHAM: I will ask that question again and I will try and do it a bit shorter. Did he say to you that it was a long-standing appointment, the doctor's appointment?---No, he did not mention that.

He simply said that he had an appointment?---That's correct.

30 And that his blood pressure was high?---That's correct, yes.

The following morning, the 27th, you had this special ELG meeting?---Mm hmm.

We know it was in the morning at 8 or 8.30?---Yes.

35

Do you know how long it went for?---It went until we enacted the Crisis Management Plan.

And when was that?---Which was about 11.15, 11.30 according to my notes.

40

Do you have a memory of the passing of the time? Do you have a memory of it being about that long, independent of your notes?---Yes, I do because we sought a lot of advice from different - well, from Neil Douglas. We had spoken to the Minister's office, so a lot of things had happened and I know that when we realised it was 11 o'clock, we were quite shocked that that had been the amount of time that it had taken us to have gathered the evidence and make a decision.

45

I see. Can we go through some of those things. Were you the first person at the meeting, was there somebody else there?---I don't think - I wasn't the first person, there were people there.

5 Who was there?---I assume - I'm normally the last person to walk into the meeting. I know Mark Ridgwell was there, Paul Crosetta was there and Rebecca Moore was there and Nicola Brandon was there.

10 And Mr Ridgwell is the Manager, Governance or was the Manager of Governance at the time?---Yes, he was. I think he was Acting in Rob Mianich's substantive position of Director of - - -

Corporate Services?---Corporate Services at that point.

15 And you were there in your capacity as Director of Planning and Development?---Yes, I was.

And Mr Crosetta as Director of Construction and Maintenance?---Yes, that's correct.

20

And Ms Moore, Director of Community and Commercial Services?---Community and Commercial Services, yes.

And Ms Brandon?---Was acting for Annaliese.

25

Who was the Director of Economic Development and Activation?---Yes, that's correct.

Was anybody else there at that time, at the start of the meeting?---No.

30

Did some other people come and go from the meeting?---Yes, they did.

Who were they?---So the HR Manager and Paul Gale which I think was Manager of Strategic Partnerships.

35

Who was the HR Manager?---Alison Egan.

And did they come, stay for a while and leave or was it a short visit, do you remember?---Yes. So Alison's was quite a short visit, Alison Egan. She came in at the beginning of the meeting and once we had found out that Annaliese had been in discussions with the Department and with the State and had been asked to be Acting CEO, we wanted to know whether she had broken, I suppose, her contract in dealing directly with the State and the Department, to just get another piece of information, and so we asked that of Alison Egan and also, Neil Douglas was on the phone as well at the same time. They both agreed that it had broken a Code of Conduct but that is a warning, so that nothing, I suppose, fundamental or substantial there.

40
45

Mr Gale, why was he there?---Mr Gale came in at the end of our meeting with Neil Douglas to tell us that the Minister's office had just called and said that the Council was to be invited in at 3.30 the next day to speak to the Minister.

5

Was that all that Mr Gale did?---No, I have a recollection and my notes - I can see in my notes I wasn't quite sure where that fitted into the piece but I know that when we were talking to Neil Douglas, he said we needed to rely on policies and procedures and could we think of a policy and procedure of what we do if there wasn't a CEO.

10

[3.00 pm]

COMMISSIONER: This is Mr Douglas saying this, was it?---Neil Douglas, yes. If there was an Acting CEO or a CEO, who sort of led the organisation, and my recollection is that Paul Gale suggested that the Business Continuity and Crisis Management Plan did nominate that the Crisis Manager would lead the organisation in the absence of the CEO.

15

MR BEETHAM: It's your recollection that Mr Gale - was he the first person to bring up this idea of the Business Continuity and Crisis Management Plan?---Yes, that's my recollection.

20

Did he have a copy with him?---I think he must have got a copy because I definitely remember looking through a copy of the document, because we then recalled Neil Douglas to say, "We have found this policy or procedure, would this be suitable" or did he think this was a suitable way of identifying who could lead the organisation, and he said yes, that it was a good policy. I know that we were flicking through it to have a look at what the definition of a crisis was in that policy and it said, "Damage to reputation and safety to employees."

25

30

So your recollection is that Mr Douglas - you expressly asked Mr Douglas whether enacting of the Crisis Management Plan was a good idea and he said yes?---He said that the policy - yes, that it was a good idea, that policy identified something.

35

Sorry, I missed that last part, that the policy identified?---The policy identified a person and that would cover the - - -

Did you send a copy of the policy to Mr Douglas?---I think we may have just read it out, I'm not sure.

40

Do you have a recollection of emailing him a copy?---No, I don't have a recollection, no.

You said Ms Brandon was there in the acting role for Ms Battista?---Yes.

45

It's the case, isn't it, that she left the meeting?---Yes, that's correct.

And in fact, I think it was the case that she was asked to leave the meeting, is that right?---Yes. So Rebecca asked her to leave the meeting, Rebecca Moore asked her to leave the meeting. Myself and Paul agreed with that because - - -

5

Can I just interrupt you?---Yes, sure.

How soon into the meeting was Ms Brandon asked to leave?---At the beginning of the meeting.

10

Right at the start?---Yes.

And she was asked by Rebecca Moore?---Yes.

15

And what was Ms Moore's reason for asking? What did she say?---I don't know what her exact words were, I'm sorry. She just asked her to leave the meeting because it was an ELG matter.

And you say you and Mr Crosetta agreed with that?---Yes, we did.

20

Because it was an ELG matter?---Yes, because Nicola Brandon was the only person in that group who had not - was not aware of the letter that we sent to the DG of the Department about the Councillors.

25

Mr Ridgwell also?---Yes, because he's the Governance manager.

But he wasn't aware of that letter, was he?---Yes, he was.

He was?---Yes.

30

Why was that a reason to exclude Ms Brandon, the fact she wasn't aware of that letter?---Because I suppose, I thought - my personal view was I thought that Annaliese should be in that discussion and not another staff member within the organisation as it was a highly confidential matter.

35

So was it to maintain the confidence of that letter?---Yes.

Ms Brandon was there for Ms Battista, wasn't she? She had been properly appointed as an Acting Director?---Yes, because Annaliese was on holiday - on leave.

40

So in those circumstances, wouldn't it be appropriate for her to be in the meeting for Ms Battista?---At the time I did not think so, no.

45

Ms Battista was a signatory to that letter we are talking about?---Yes, she was.

The one to the Director-General?

COMMISSIONER: Did you say she was?---Yes, she was, yes.

5 MR BEETHAM: So any conversation you might have about that letter should properly involve Ms Battista?---Yes, that's correct. That's why I said to Nicola that I would ensure that we call Annaliese, when she left the room.

10 Why were you so concerned about the confidentiality of that letter that you couldn't have Ms Brandon know about it for the purposes of her telling Ms Battista?---I suppose the fact that the Directors had signed that letter, that the people that were involved in the signatories should be the one that we discussed first in case it had something to do with that letter, I suppose.

15 COMMISSIONER: Before you asked Ms Brandon to leave the room, did you ask her if she knew about the letter?---No, I did not.

20 MR BEETHAM: Why were you talking about the letter at all at this special ELG meeting, and why were you talking about it first-up?---Well, I suppose we needed to be able to gather the information with the ELG. We had agreed obviously to this letter and this plan to seek the Department to have a look into the matters with the Council and it even stated in that letter that it was highly confidential and now, I suppose, it was seen that Annaliese potentially was doing a different plan and I thought, out of respect to Annaliese, we should call her and discuss what was happening.

25
30 When you say plan, what do you mean by that? This plan, you say "we had this letter and this plan", what was that?---So the letter that we wrote had asked the Department to review, as part of its ongoing inquiry into the City, to have a look at the behaviours of Council. So to me that was what we had asked. I think it was in February, I think the 12th or the 13th, I'm not quite sure, that letter was written. So to me that was what the approach had been.

I will come back to that letter a bit later on?---Yes, sure.

35 But I think you said you thought that Ms Battista was adopting some other plan. What made you think that at this point, the point of excluding Ms Brandon from the room?---Well, I didn't know that at that point because we hadn't heard about the text. I suppose I wanted to get the - I suppose as much as I could, the core members of the ELG together to discuss what was going to happen next.

40
45 Can you explain to the Commissioner, how do you link Mr Mianich going on leave and the meeting on the morning of the 27th, with the letter in the 12th? What's the link there? Why is it that that's the natural thing to talk about first up at that meeting?---It wasn't that we spoke about it first up. I suppose it was in our minds that we had written that letter and we were aware of it and the people that were in that letter, sorry, as myself, I wanted to talk to them first to see if that would give me any other information.

Can you explain - I'm having a little difficulty understanding that?---Yes, sure.

5 Can you explain why you needed to speak to those people in that letter first, rather than simply the people who were substantively or on acting in the role of Director on the day, to deal with the absence of Mr Mianich?---I didn't have enough information to make a decision because - I don't know. That was my view at the time.

10 Decision about what?---About what we should do next or what should - obviously we were there to gather information. We spoke to Neil Douglas, we spoke to Annaliese as well, so she was included as part of the discussions.

15 Before we jump ahead to that point in time?---Yes.

Perhaps we go right back to the very start when the meeting first opened. Did Mr Ridgwell say, "Thanks everybody, I've called you here today for X, Y and Z reasons" and if so, what were those reasons?---All I remember him is repeating that Rob Mianich has gone on to stress leave.

20 That's what he said?---Not stress leave, sorry, on sick leave.

That's what Mr Ridgwell said?---Yes.

25 And did he then go on to say, "And the reason I've called this meeting is", blank?---I believe Rebecca asked Nicola to leave the room so that Mark Ridgwell could show us the text that Annaliese had sent.

30 What's the very first thing you remember happening at the meeting?---Us sitting down and Nicola being asked to leave and then Mark Ridgwell explaining the text from Annaliese.

35 So at this stage, you didn't know about the text from Annaliese?---No, I didn't know about the text from Annaliese.

You might not be able to answer this but do you know if, or did Ms Moore say to you that she knew about the text or did Mr Ridgwell indicate to you that there was something that he needed to talk about in the absence of Ms Brandon?---Not that I can recall, no.

40 One of the difficulties I'm having, Ms Barrenger, is your evidence just a moment ago was that Ms Moore wanted Ms Brandon to leave the room so that Mark could show the text?---Mm hmm.

45 Your evidence earlier was that she was asked to leave the room because she wasn't a member of the ELG; those seem to be different reasons?---Well, the text from Annaliese and so I felt that that discussion needed to happen with the actual ELG

members and Annaliese was on annual leave.

Yes?---So not on - so I thought it would be easy enough to contact Annaliese and ask her directly about what her approach was going to be.

5

So what I'm interested in is the sequence of events?---Yes.

I take it you didn't know about the text message when Ms Brandon was asked to leave?---Mm hmm.

10

So I'm finding it a bit difficult to understand how the existence of the text message could be a reason for Ms Brandon to be asked to leave; can you shed any light on that?---I suppose I assumed that Mark Ridgwell would be telling us something about Annaliese.

15

Why?---Because I know that Rob Mianich was waiting to find out whether she had been asked to be Acting CEO or not.

But Mr Ridgwell wasn't waiting?---Sorry, what was that.

20

Mr Ridgwell wasn't waiting, to your knowledge, was he? He only knew that Mr Mianich was waiting?---But Mark Ridgwell is Rob Mianich's acting.

So is it the chain of reasoning then that you assumed Mr Mianich was either still waiting on or had received a response and told that response to Mr Ridgwell and then Mr Ridgwell would want to convey that response to you, Mr Crosetta and Ms Moore at the meeting?---Yes, but not even just specifically that. Mr Ridgwell is the Manager of Governance and if he had any discussions with the Council or anything like that that needed to be - we needed to be briefed on, Mark would also brief us on that as well.

25

30

There's nothing wrong, is there, with Ms Brandon as acting to being involved in those discussions? In fact, on one view she needs to be involved, doesn't she, so that she can properly deal with her Directorate on the day?---Yes, that's why we brought her back into the meeting for the Crisis Management Plan.

35

[3.15 pm]

40

45

So was it the case that Ms Brandon was removed before there was any substantive discussion at all?---Yes, that's correct.

5 And that was primarily moved by Ms Moore, supported by you and Mr Crosetta?---Yes, that's correct.

And did Mr Crosetta express a view as to why he supported that view, that move?---Yes, to protect Nicola, was his words.

10 To protect Nicola?---Yes, to protect other staff being brought into these discussions.

Sorry, which discussions and what was she being protected from?---So for the letter that we had written to the Department.

15 Prior to the meeting - - -

COMMISSIONER: If you hadn't asked her whether she knew about the letter, how would you know whether she needed protection or not?---Yes, I agree that - I had assumed that she didn't know as we were told that only the ELG knew about the letter.

Who told you that?---Martin Mileham.

25 Mr Beetham.

MR BEETHAM: Did Mr Ridgwell say anything about Ms Brandon being removed?---I don't know. He didn't say anything against it, so not that I can recall.

30 Did Mr Ridgwell, to your recollection, suggest he should leave, as well?---That Mark should leave?

35 Yes. Did Mark say, "I'm in an acting role just like Ms Brandon, I'd better leave too"?---Yes, we - I don't know if it was discussed but I did think that through but Mark Ridgwell in his substantive role is the person that would be coordinating a Special Council Meeting and was across the letter that had gone to the Department.

40 How do you know he was across the letter that had gone to the Department?---Because he was - my understanding was that Mark Ridgwell was the person that kept the letter secure.

Where did you get that understanding from?---I don't know, I'm sorry.

45 A moment ago in response to one of the Commissioner's questions, you said that your view, conveyed to you by Mr Mileham, was that only the ELG were aware of the letter, that's right, isn't it?---Yes, but - so that's not correct. My understanding

was that the Manager of Governance, because it was involving governance and obviously the Department's inquiry, and the Strategic Partnerships were aware of this letter because we needed the advice on the person we were to - I suppose, the approach to go and the advice was given from Paul Gale.

5

From who, sorry?---Paul Gale about, I suppose, who do we contact in government, and so that's where that would become - - -

10 So the people who knew then were the ELG, Mr Ridgwell and Mr Gale?---Yes, and Martin's PA.

Ms Arnold?---Yes.

15 And I take it Ms Arnold knew because of the fact that she was Martin's PA?---That's correct.

And Mr Gale knew because he is the liaison to the Minister's office?---Yes, that's correct.

20 And Mr Ridgwell because he was the Manager of Governance so it was proper for him to know about these types of things, is that right?---Yes, that's correct.

But to your knowledge, no-one else knew?---Yes, that's my knowledge, no-one else knew.

25

Within the City of Perth?---That's correct.

30 Sitting here today, do you still think it was appropriate to exclude Ms Brandon from that meeting?---With hindsight, I don't - now I know what was discussed, I don't think there would have been any difference if Nicola was included in the room.

35 But at the time you thought that the letter was going to be discussed and that's something that you wanted to keep from her?---I couldn't control what was about to be discussed. I didn't know at that point.

During some of your earlier evidence you mentioned that the meeting went on for a while and you were surprised at how long it went for?---Yes.

40 And you discussed that you spoke to and received advice from a number of people, is that right?---Yes, that's correct.

And I think you mentioned Mr Douglas, that's right?---Yes, that's right.

45 And I think you said it was a call to the Minister's or the Minister's office?---Yes, the Minister's Chief of Staff.

Mr Hamley?---Yes, that's correct.

5 And other than those two people, Mr Douglas and Mr Hamley, were there any other external calls made?---As I said, I know we had contact with Martin at some point. I don't know if it was before 11 o'clock, but I can't recall but I know it wasn't taken into account when we were weighing up what we should do.

10 Did you speak with any of the Councillors, and I include in that phrase the Deputy Lord Mayor and the Lord Mayor?---I know that Mark Ridgwell had been in - was our contact to the Councillors from a governance point of view about the Special Council Meeting and that's the only contact.

15 Sorry, when you say that's the only contact, do you mean that you know that Mr Ridgwell contacted some, all or one or two of them?---I don't know. I only know that we did write as the ELG, a request that the Special Council Meeting not go ahead.

Yes?---I can't remember what time that was.

20 All right, but were any of the Councillors dialed into the meeting the way Mr Mileham was?---No.

25 And I included within that phrase again the Deputy Lord Mayor and the Lord Mayor?---No.

So to your recollection, it was just Mr Mileham, Mr Douglas and Mr Hamley?---There was someone else at the Minister's office as well but I'm not sure who the other person was. It was two people at the Minister's office.

30 On the same call?---Yes.

So somebody who works with Mr Hamley, presumably?---Yes, I can assume that, yes.

35 The decision to enact the Crisis Management Plan, that was taken somewhere in this three hour block?---Yes, that's correct.

40 And I think your evidence was it was towards the end of that three hour block, near about 11, 11.15, something like that?---Yes, it was after we had called the Minister's office because we had spoken to Neil Douglas originally. He said we had to base our decision on policies and procedures and all we could do was advise Council to not proceed with the meeting and then we heard about the Minister wanting to meet with Council and that's when we actually - we thought about the Crisis Management Plan somewhere in there to be a policy we could rely on in
45 engaging a Crisis Manager to complete things and we ran Neil back to check that he thought that was okay, and then we rang the Minister's office and when we rang the Minister's office we asked them, you know, could they stop the Special

Council Meeting that night and they said that they couldn't and they asked us how are we going to keep the staff safe at the City of Perth and we said, we are looking at enacting the Crisis Management Plan because under the definition of crisis was risk to reputation and health and safety of staff, and they said, "Good idea." So we then - - -

Do you have a recollection of that phrase, "Good idea"?---Yes, definitely because when we hung up the phone, Paul Gale said, "Oh well, that's good, they said it was a good idea." So I suppose with all those parts, we agreed that we would enact the Crisis Management Business Continuity Plan.

One of the things you said in that passage of evidence was that you could appoint a crisis manager to complete things, that was the language that I think you used. What do you mean by that, "complete things"?---We were getting inundated with press asking questions so we needed someone to coordinate those responses and be the response out and if the Council does proceed with a Special Council Meeting, we needed someone to Chair the meeting.

Were you being inundated with media between 8 and 11 in the morning - - -?---Yes, we were.

- - - when making this decision. Do you have a strong recollection of that?---Yes. I remember being told - I can't remember the figure but it was heaps. I remember the media people saying, "We have got heaps of enquiries."

Would it surprise you if I told you that some of the media people have been examined by the Inquiry and they have indicated that it was a business as usual day from their point of view?---That's not what we were told.

Did you see the media enquiries yourself or were you relying on what you had been told?---No, Simone said that there had been a lot of media enquiries, we needed to respond.

Did you ask - you as a group, did you ask to see the media enquiries, to see the nature of the media enquiries?---No, I did not.

Did you say it was Simone, Ms Holmes-Cavanagh?---Yes, that's correct.

Did she tell you what the nature of the enquiries were?---She probably did but I can't recall.

And I think you said you needed somebody to Chair the meeting in the evening?---That was my understanding, yes.

Was that meeting a Council meeting?---That was the Special Council Meeting that they called.

Is that not Chaired by the Lord Mayor or the Presiding Member of Council?---Sorry, to sit beside the Lord Mayor as the representative for the Administration.

5 Could that person simply have been somebody nominated amongst the group?---That wasn't my understanding at the time.

Sorry, your understanding was it could not be just somebody?---My understanding was that we needed to nominate somebody.

10

Yes, but you could have nominated Mr Crosetta, for example. If you didn't enact the Crisis Management Plan, you still had the Special Council Meeting, the group of you could have appointed somebody, is that right?---My understanding was that's what we had asked Neil Douglas for, the advice on how do we, I suppose, choose who will be, I suppose, leading the company in the Acting CEO's absence and the CEO's absence and he said, "Rely on policies and procedures" and therefore the Crisis Management Plan was the policy and procedure we relied on to choose that person.

15

20 So your view at the time, based on Mr Douglas' advice as I understand your evidence, was that you couldn't simply choose amongst your group, you had to make that decision based on some documented policy or process?---Yes, that's correct.

25 The Crisis Management Plan, am I right in thinking that's also known as the Business Continuity Plan?---Yes, that's correct.

And it becomes the sort of Crisis Management Plan when you declare a crisis under that plan, is that right?---Yes, that's correct.

30

And does it form part of the Crisis and Business Continuity Management Framework?---Yes, that's correct.

35 And you saw that document, I take it, on that morning when you made this decision as part of the group?---Yes, I did.

Had you seen it before?---Yes, we had run a practice exercise with the Crisis Management and Business Continuity Plan previously.

40 And what did that exercise involve? What was the incident?---I can't remember, sorry. I know that - no, I can't remember what it was.

You can't remember the incident at all?---No, I can't, sorry. I know that we had been evacuated from Council House for some reason.

45

Is it fair to say that the incident wasn't a CEO or Acting CEO taking leave?---No, it was not.

Madam Associate, could I ask you to go to the document at 11.0275. Do you recognise that cover page of the Business Continuity Plan?---Yes, I do.

5 You see this is dated 31 October 2016?---Yes.

I won't take you to every page but I just want to skip through a few pages and just ask you to comment on some things?---Yes, sure.

10 Madam Associate, if you could go forward to 278, can you read that? Is that large enough on the screen, Ms Barrenger?---No, that's fine.

You will see in the first paragraph there under, "Purpose", it says, "The purpose of the plan", so on and so forth "to be used in responding to an incident that could result in prolonged disruption of services and business activities of the City of Perth located in Council House", do you see that?---Yes.

15 Then if you go down to the paragraph above the word, "Assumptions"?---Mm hmm.

20 It says:

This plan is activated in a Priority 1 incident when a crisis has been declared.

25 Then it goes on to say:

The plan does not address procedures for dealing with emergencies such as bomb threat, fire or building evacuation or day to day operational problems.

30

?---Mm hmm.

35 Would you agree with me that based just on those two paragraphs that the enactment of this plan, a Priority 1 incident with a crisis is dealing with something more significant than bomb threat, fire or building evacuation?---Sorry, can you repeat that?

40 Would you agree with me that based on these paragraphs, the intention is that this plan is only activated when you're dealing with something worse than an emergency, which is a bomb threat, fire or building evacuation?---Yes

[3.30 pm]

45 That's the intention behind this plan?---Yes, it is, yes.

Madam Associate, if we go forward to 281 and if I can take you down the bottom

underneath the heading, "Notification and escalation". You will see again a reference there that:

5 *The plan is activated when an incident disrupts or threatens to disrupt all or a significant number of priority business activities at Council House for an extended period of time.*

Do you see that?---Yes.

10 And then there's a number of examples given as to when that might occur and you will see the first one, the first list is:

15 *Fire, flood or explosion causing significant damage to building and infrastructure, rendering part or all of the premises inaccessible or unusable.*

?---Mm hmm.

20 That would be a quite significant event?---Yes, it would be.

Has that happened in your time?---No.

25 Then there's, "Prolonged loss of electric power to the site, prolonged outage to networks, security or criminal incident resulting in denial of access" and then, "Accidents, sabotage, theft or intention acts resulting in significant loss or damage to critical assets", do you see that?---Yes, I do.

30 What was faced by the Executive on the 27th isn't any of those examples, is it?---Not those examples you've read out there, no.

Would you agree with me that it's something less significant than, for example, fire, flood or explosion rendering part or all of the premises inaccessible or unusable?---Yes, that's correct.

35 Madam Associate, if you could go forward to 283, please. You will see here there's three levels of incident; are you familiar with these?---Yes, I am.

40 Am I right in that when an incident happens at the City, it might trigger this plan and prioritise it either as an incident, an emergency or a crisis?---Mm hmm.

And then based on that, you take the actions that are set out in this schedule in front of you?---Yes.

45 The incidents can be escalated from the first to the second to the third as and when the incident develops?---Yes, that's correct.

And you will see under, "Crisis" and it's only a crisis if there's "a prolonged

interruption to operations lasting greater than 24 hours"?---Yes.

When you enacted this plan, you were aware that Council was going to hold a Special Council Meeting that afternoon?---Yes, that's correct.

5

That evening, and you were aware that Ms Battista had been approached to be Acting CEO?---Yes, I had that morning, yes.

And the period between when you enacted the Crisis Management Plan about 11 o'clock or 11.30, somewhere around that time?---Yes, that's correct.

10

And when the Council was to meet that afternoon was quite a bit less than 24 hours?---Yes, that's correct.

Can you explain then how you were able to say that what was facing the City on that day was a crisis, having regard to the requirement for it to be greater than 24 hours?---Yes, because the fact that Council were changing policy at a Special Council Meeting to remove the current Acting CEO who I believe was doing a good job, to a new Acting CEO, the disruption to that would last longer than 24 hours.

15

20

How?---The staff, they have already lost a previous CEO, the current CEO is on sick leave, the Acting CEO has now gone on sick leave, so it was continuing and my feeling would be if another Acting CEO was put in, we still have a CEO at this point in time, that it would be prolonged interruptions into operations.

25

It would prolong - your evidence is that would constitute a prolonged interruption to operations lasting greater than 24 hours?---Yes, it would.

Madam Associate, if you could go back a page to 281, as an example under the, "Notification and escalation ", it's talking there about "disruptions to a significant number of priority business activities at Council House for an extended period of time." That's the type of prolonged interruption they are talking about, isn't it, disruption to a significant number of priority businesses?---Yes. My understanding was it was interrupting or disrupting our business with the media attention that we had been getting."

30

35

Is media a priority business activity of the City?---No, but the media was impacting the staff at the City.

40

Did they tell you that, the staff?---The staff, yes.

And did they say, "We are not able to provide priority business services or priority business activities"?---They didn't use those words, no.

45

Did they say they weren't able to do their jobs at all?---I could observe that it was affecting them.

As in it was making it more difficult?---Yes.

Was it completely interrupting them, stopping them from doing that work?---No.

5

Madam Associate, if you could go back to 283. That prolonged interrupt we are talking about, if you look at items 1 and 2, that didn't include "irreparable damage or total loss to critical assets", did it?

10 COMMISSIONER: Sorry?---No, I was just reading it. It didn't have total loss to critical assets. I don't know what irreparable damage, if it was regards to a reputation of the City.

15 MR BEETHAM: So if it was irreparable damage to the reputation and if reputation could be considered a critical asset, is that what you're suggesting?---It says, "Irreparable damage or a total loss of critical assets."

20 Yes, and are you suggesting that the City's reputation is a critical asset within the meaning of this framework?---I think the reputation of the City, yes, is important for any business or organisation.

25 I appreciate that but are you saying that when you read that phrase "including irreparable damage or total loss to critical assets", you read that as encompassing reputation?---I did at the time, yes.

And you read that "reputation into critical assets", is that where you read it into?---Yes.

30 And was it your view then that any reputational damage that was or might have been suffered was actually irreparable for the City of Perth?---Yes, I can see what you're saying, whether it could be repaired. I suppose it hasn't been yet. That was my understanding at the time.

35 What was the reputational damage you were concerned about?---The Council changing policies, I suppose, on the run or by calling Special Council Meetings. I suppose - I don't understand why the Council couldn't wait until the next Council meeting and just take it in part of the normal cycle.

40 Was it your view then, on the 27th when you enacted this plan as part of the ELG, that the decision to go ahead or a decision to amend the policy would cause irreparable damage to the City of Perth's reputation? The City's reputation, can I suggest, by that stage wasn't great, is that fair to say?---Yes, that's true. That's why I just thinking about it. I know that the reputation wasn't good already. I suppose for - I suppose my thing was irreparable damage would be for me to the staff if this
45 kept continuing, I suppose changing policies with Special Council Meetings rather than going through the correct process.

COMMISSIONER: Ms Barrenger, can I just ask you to pause for a moment?---Yes, sure.

5 You may not have seen this page for a while but just take a bit of time and read the whole page to yourself?---Okay.

Before I ask you some questions on it, please?---Sure. Yes.

10 You've read it?---I've read it, yes.

Do you agree that in construing what level you give to an incident, you should have regard to the whole of this document?---Yes, that's correct.

15 So looking at the whole of this document, you can see that Priority 3 is dealing with an incident that has less impact than Priority 2 which has less impact than Priority 1, would you agree with that?---Yes, that's correct.

If we just compare Priority 2 to Priority 3 impacts for the moment?---Yes.

20 Do you think that you should read the whole of what is in the box in the column, "Impact" before you decide what is a Priority 2 or a Priority 1 incident?---Yes, you should read the whole lot.

25 If you look at Priority 2, you can see it speaks about "significant delays or interruption to daily operations lasting less than 24 hours", do you see that?---Yes.

And then you look at what is in the box just below it for Priority 3 and you can see it talks about something different, can't you?---Sorry, which priority now are we looking at?

30 3, "Prolonged interruption to operations lasting greater than 24 hours"?---Yes.

35 In considering what is something that causes a prolonged interruption to operations lasting 24 hours, do you think that the examples given beneath that are meant to give you some idea of what kind of interruption is being contemplated?---Yes, I do.

40 So one of those examples is "irreparable damage or total loss to critical assets"; did you read that at the time as meaning either total loss of a critical asset, such as a building, or irreparable damage to a building?---I didn't read it in regards to just buildings.

45 No, of course not but that's an example of one, isn't it?---No, but that is an example one, yes.

If you lost a building, for example?---Yes, that would be - - -

Or there was irreparable damage to a building, you could understand how that might cause prolonged interruption to operations for greater than 24 hours?---Yes, I do.

5 Or if you lost a piece of infrastructure or it was irreparably damaged, that might also cause a loss of greater than 24 hours?---Yes.

Yes?---Yes, I do, yes.

10 And if you look at the next example given, "Death or injuries to staff or visitors requiring hospitalisation", again, you can understand how that might cause a prolonged interruption to operations of greater than 24 hours?---Yes, I do.

15 I want you to look across at the next column to its right, it talks about, "Actions", do you see that?---Yes.

Have a look at the last paragraph. The CMT there means the Crisis Management Team, doesn't it?---Yes.

20 So this is telling you what you will do in the event of that impact, isn't it?---Yes, it is.

25 And it is telling you that the team "will consider in dealing with that impact, the broader strategic and reputational implications of the incident", in other words, it is telling the team, isn't it - if you think I've got this wrong, please say so - how it should go about dealing with the incident?---Yes.

30 Isn't that where the reputational implications come into it?---I'm not quite sure of that question. You're saying in how we deal - how the team deals with it, we should consider the reputational impacts?

That's what that box says, isn't it?---Yes

[3.45 pm]

35 So the sort of impact which Priority 1 is concerned with is, would you think, something like a terrorist attack on a building?---Yes, I think that's what this plan was specifically written for.

40 Or, for example, a loss of a critical piece of infrastructure that meant all power to the CBD was lost?---Yes.

45 Or there was some gas leakage at Council House which meant that there were significant injuries or even deaths to some of those working at Council House?---Yes.

Did you think that Priority 1 was an appropriate priority for what you were dealing

with on this day?---I suppose we were looking for a policy that we could rely on to say what would happen in the event that the CEO wasn't there.

5 Yes?---I know - I completely acknowledge it's not the perfect document.

What about answering my question?---Sorry, yes.

10 Did you think it was an appropriate priority for what was happening on this day?---At the time I did because it was went across the City not just within a Directorate, is how I read it.

15 And now do you think it's an appropriate priority for what was happening on this day?---Not if you apply exactly what the impacts are they are talking about there for priority.

As I understood it, you were aware of the this plan on that day?---Yes.

20 So you would have known, would you not, of what the different priorities were and when they should apply?---Yes, I suppose we had a short - - -

25 How was it then, Ms Barrenger, that you did not see this as an inappropriate priority on the day?---There was another page that we were looking at, I don't know which page it was, where it said that a crisis was deemed to cause a lot of reputational damage and that the effect - sorry, the health and safety of staff was called into question and that was the paragraph that I was shown on the day when I made the decision, along with the fact that I knew that this wasn't an exact fit with what they were saying here.

30 Did you say not an exact fit?---An exact fit with what they were saying here.

Did you think it was a fit at all?---With the paragraph I was shown, we were looking at - - -

35 I'm sure counsel will take you to that paragraph in just a moment?---Yes, okay, good.

40 But this was deemed a Priority 1, wasn't it?---It was deemed a Priority 1 because we needed to - I suppose the Crisis Management Team would allow us to have a, I suppose, a reason of choosing (a), a person to manage the City if the CEO was away.

45 Let's just come back to that point. When the Crisis Management Plan was invoked on that day and you knew, didn't you, that there was a Special Council Meeting later that same day?---Yes, I did, yes.

And was it not at least obvious to you that it was probable that an Acting CEO would be appointed at that Special Council Meeting?---Yes, it was probable, yes.

If we then look at the first part of that Priority 1 impact, if the interruption was not having a CEO, that was going to be fixed in less than 24 hours, wasn't it?---The Council were going to put in another Acting CEO.

5

So it would be fixed in less than 24 hours, wouldn't it?---Yes, there would be an Acting CEO.

10 So out of fairness to you, Ms Barrenger, I must tell you that I'm struggling with the notion of how what happened on that day could be deemed a Priority 1 and I would welcome anything you can say to demonstrate otherwise?---That was the decision we made on the day. Looking back, and I suppose reviewing it and people saying it was in crisis and then that meant these types of things, it probably wasn't the best decision on the day.

15

Listening to your evidence so far, and reading this document, it strikes me it wasn't a Priority 1, would you agree with that?---Not according to this table, no.

20 Are you saying this table does not apply?---Well, I thought we took it into consideration with the other parts of the document and what I was shown in that was enough to show that it could include reputational damage as well.

25 Look at the very first two lines of this page, just read that to yourself?---Yes, so according to this table, no.

25

No, and if you had read this on the day, it must have been something you would be aware of on the day?---I didn't read every single page of the Crisis Management Plan. We were taken through it, certain pages.

30 So who suggested Priority 1?---That it was long - there was a paragraph that said "long and interrupted damage to reputation."

Ms Barrenger, you've heard my question, I'm sure?---Yes.

35 Who suggested Priority 1?---I can't recall who suggested Priority 1 but it was Paul Gale that will suggested we could use the Crisis Management Plan and so to enable to be able to do that - - -

40 So you can't remember who suggested Priority 1?---No, but for the Crisis Management Plan to be - the Crisis Management Team to be implemented by would allow the Crisis Manager to be put in place, it would need to be a priority.

Did you suggest it?---No.

45 Mr Beetham. Ms Barrenger, while listening to that evidence, I found a passage that might be the passage you're talking about?---Yes.

That you said you said you saw on the day. I will just ask you to confirm that. Madam Associate, it's at 255. So this is the glossary of terms which is contained not in the Crisis Management Plan, Ms Barrenger, but it's contained within the Crisis and Business Continuity Management Plan which you can see at the top?---Yes.

And you can see there, there's a definition of "crisis" about halfway down the page?---Yes.

10 Just read that to yourself?---Yes.

Is that the passage you were talking about or is there some other passage that you recall?---It referred to reputational damage, so I'm not sure. I remember them reading out - - -

15 .

You require the word "reputation"?---I remember we read it out to the Minister's office.

20 So you do not think it's this one then, because it doesn't have the word "reputation"?---It had a "reputational" in it.

Do you think it was the passage that the Commissioner took you to in that schedule which I will take you back to at 283, Madam Associate, that last passage, the passage at the bottom that the Commissioner took you to where, "The CMT will consider the broader strategic and reputational implications of the incident"?---No, it's not that part because it was part of the body of a document.

I will have my instructor see what else he can find and we will come back to that and seek some clarification from you, Ms Barrenger?---Thank you.

When Mr Gale raised the Crisis Management Plan, I think your evidence a little while ago was, you can't recall if he had a copy with him, or with you then but you did at some point get copies because you remember flicking through the document, is that right?---No, they were flicking through the documents. We had a copy, a copy as far as I'm aware.

A single copy?---I'm aware, yes.

40 For the group?---Yes.

And who was in the meeting at the time you were looking at that document?---My recollection is Paul Gale, Rebecca Moore, myself, Paul Crosetta and Mark Ridgwell.

45

Was Ms Brandon back then?---No.

Was Ms Battista on the phone?---No, she wasn't.

Did anybody take steps to get Ms Brandon to come back into the room?---I don't know, sorry.

5

Was there any discussion that you recall about continuing to exclude her from the room for this part of the discussion?---No, it was very busy.

Do you think it was oversight that she wasn't invited back into the room?---Yes, that would be my - - -

10

That would be your?---Recollection of it, yes.

Was there any discussion amongst the group to the effect that you didn't want Ms Brandon in the room because she would feed this information back to Ms Battista?---No.

15

Were you or Ms Moore or Mr Crosetta unhappy about the fact that Ms Battista had been approached to be Acting CEO?---Not that Annaliese had been approached, I suppose the fact that we had an Acting CEO and that the Council was now wanting to replace the Acting CEO. I suppose that gave me concern, more to ask the question. I didn't know what was happening.

20

But did you have any concerns about Ms Battista being put up to be Acting CEO? I will be clear, what I'm asking is, did you have any particular problems with her in particular, not just simply the fact that somebody else was going to be appointed replacing Mr Mianich but her in particular?---I suppose through my interactions through Annaliese, her experience is mainly in the activation area.

25

Yes?---Short-term activations and I hadn't seen her demonstrate, I suppose, the full range of skills that would be required for an Acting CEO.

30

So does that mean, is your answer to my question is you weren't happy about the idea of her being Acting CEO?---At the time I don't think - my main thing was about the changing of the policy. If she had continued as Acting CEO, I don't think that would be the best, I suppose, fit for Acting CEO.

35

The changing of the policy was only a step along the way, wasn't it, to permit Council to actually appoint somebody in that role?---Yes, that's correct but we had a CEO who was on sick leave for not that long. We had an Acting CEO, I suppose my question to Council would be, if they had an issue with the current Acting, why not follow existing procedures, as in if they - I assumed there would be, if you want to remove - I don't get the urgency of it. If they needed to change a policy, why not wait until the next Council meeting?

40

45

I just want to try and dissect some of that evidence?---Yes.

The change in policy itself didn't change anything, or it wouldn't change anything on the ground, would it? It's only the next step of appointing a CEO pursuant to the amended policy that would have any impact, isn't that right?---Yes, I guess that's right but they were doing both at the same time.

5

I understand that. I'm just trying to understand where your concern was directed on the day, because your evidence was, when I asked you about Ms Battista, that you were concerned about the change to policy and I understand that to mean simply that, changing policy and taking no further steps?---No, that's - - -

10

Is that what your concern was?--- - - - not correct. My concern was that why would Council need to call a Special Council Meeting out of normal Council cycle, and they are every month, so not very far to wait, and choose to replace an Acting CEO who had acted previously, with another acting. I suppose that was the concern I had and I needed to seek more information on that.

15

So you didn't understand why the Council wanted to do what they were doing?---No, I didn't.

20

Could the answer simply be they wanted somebody in the leadership role?---Sorry, I don't get your question that you're asking there.

The motivation of the Council?---Yes.

25

Isn't it simply that they had Mr Mianich on leave - - -?---Mr Mianich wasn't on leave when they called the Special Council Meeting.

I understand that but as of the 27th when you were considering these things?---Yes.

30

Mr Mianich was on leave, is that right?---But he went on leave due to - my feeling is he went on leave due to the Special Council Meeting being called.

Be that as it may, as of the 27th, he was on leave?---Yes, he was.

35

There was no CEO?---That's correct.

Or Acting CEO?---Yes

40

[4.00 pm]

As of that date wouldn't a motivation for Council be that they wanted somebody in that leadership role?---But they had already called the Special Council Meeting the day before.

45

I understand that?---Yes.

But when you were dealing with this on the 27th, you were considering whether or not the Special Council Meeting should go ahead and whether it was appropriate?---Mm hmm.

5 Isn't one view that it was appropriate because there was no CEO as a matter of fact at that time?---Yes. I suppose the other part to that was we knew that the Council had been called to the Minister's office on the Wednesday and I suppose I needed -
- -

10 I will come back to that, the Minister's meeting?---Yes.

But I'm just trying to understand, as of the 27th when you're trying to work out the position that the City is in, what the leadership position's like, why the Councillors had called this meeting to appoint a CEO, did you not consider, "Oh well, we don't
15 have a CEO, it's not a bad option for the Councillors to appoint one"?---I didn't think that, no.

Because isn't that precisely why, on your evidence, the ELG enacted the Crisis Management Plan, was to fill that leadership vacuum? That's why you did it, isn't
20 it, that your evidence was somebody needed to be at that meeting at the right hand of the Lord Mayor?---Yes. That comes before the appointment of the new Acting CEO.

I appreciate that?---Yes.

25 But the motivation was, you wanted somebody in the leadership position?---Yes.

Which is precisely, on one view, the motivation, at least on the 27th - we are not thinking about the 24th, 25th, 26th but at least on the 27th, Council wanted to also
30 fill that leadership vacuum, isn't that the case?---On the 27th they were going to have a Special Council Meeting, yes, to put in an Acting CEO.

And it's within Council's ambit of their powers to appoint a CEO and an Acting CEO?---To appoint a CEO, yes.

35 And now under the amended policy to appoint an Acting CEO?---Yes, that's correct.

40 COMMISSIONER: Mr Beetham, I propose to take a short adjournment before we continue. Would now be a convenient time?

MR BEETHAM: It might be, sir - Mr Parkinson has very helpfully handed to me another reference to "reputational" in the document. If I could perhaps just take the witness through that.

45 COMMISSIONER: That would be helpful.

MR BEETHAM: Madam Associate, could you please go to 372. I will actually ask Madam Associate to take that page down. There's a version issue with that page of this document, sir.

5 COMMISSIONER: Very well.

MR BEETHAM: So perhaps that is a convenient time.

COMMISSIONER: Very well. Will 10 minutes be sufficient for you?

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MR BEETHAM: Yes, sir.

COMMISSIONER: Thank you. I will adjourn for 10 minutes.

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WITNESS WITHDREW

(Short adjournment).

HEARING RECOMMENCED AT 4.15 PM.

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MS Erica Margaret BARRENGER, recalled on former affirmation:

COMMISSIONER: Yes, Mr Beetham.

25 MR BEETHAM: Madam Associate, if you could bring up the document at 369, please. The TRIM number on my version of the document, sir, has been cut off. 14354 I'm told, sir.

COMMISSIONER: Thank you.

30

MR BEETHAM: You see this is a Crisis Management Plan and it's dated 2 December 2017?---Mm hmm.

35 Madam Associate, if you could jump forward two pages in this document to 372. You will see here, Ms Barrenger, about halfway down, above the word, "Scope", there's some italics; just read that to yourself?---Yes.

40 Is that the reference you're thinking of?---It looks more like what I was referring to. It was to do with the safety and reputation, it was in the body of a document, so

45 Can you say for certain whether or not this was the passage?---I can't say with 100 per cent certainty but it definitely looks like within a body of a document which is what I recall it being in and referring to the safety or reputation of the City of Perth and its employees.

You think then that this is what you were relying upon when you reached the view

as a group to enact the Crisis Management Plan, this passage here?---Yes, to the best of my knowledge, it was within the body of the text and this looks correct to me.

5 Do you agree with me that - you might want to take your time and read the passage slowly to yourself - that this passage talks about "reducing the risk and impact of a disruption", so that's the event?---Mm hmm.

10 "That may have the effect on the life, safety or reputation of the City of Perth", so that's the outcome of the event, is that right?---You're saying that comes into effect once an incident has happened.

Yes?---As in an event.

15 Yes?---Yes.

And having regard to the passage that the Commissioner took you to about the actions that were taken, that you take when the crisis is declared?---Mm hmm.

20 It's only after the crisis is declared that you then consider those impacts, "The strategic and reputational implications of the incident"?---That's not how I interpreted it on the day.

25 Your evidence, I think, earlier was you didn't send a copy of this to Mr Douglas, this document?---I can't remember doing it, no.

And do you know or did any of the other people in the room tell you, "Yes, I know I've sent a copy of this document to Mr Douglas"?---I can't recall that, no.

30 Do you recall Mr Douglas saying something like, "I have the document in front of me"?---No, I don't. I just remember, I think it was Paul - I'm not quite sure who read it out to Neil Douglas but what it said within the document. I know it was read out to him.

35 So all of the document, part of the document, do you recall which bits?---They pointed to a few parts within the document.

Was this one of them?---I think that would have been one of them, yes.

40 Your evidence just there was, "I think that would have been", I'm just wondering do you recollect whether or not this was?---I can't recollect. I can't 100 per cent say but I know that we referred to the effect that it would have on the reputation of the City of Perth, was one of the things that I suppose convinced me or that I thought I suppose it would be applicable in this situation.

45

Following the enactment of the plan and the return - the Special Council Meeting and then the return of Mr Mileham and sort of business as usual taking effect for a

couple of days until Council was suspended?---Mm hmm.

5 Following that period of time, has there been any discussion about, or was there any discussion about amending the Crisis Management Plan or the other documents in the framework?---Yes, at the lessons learnt meeting which was the one the following day, on the Wednesday morning.

10 Would this be the meeting at which the Crisis Management Team was stood down?---Yes, that's correct. At that meeting we stated that we needed to look at including a section specifically on potential reputational crisis because the document didn't fully - it wasn't, I suppose, explicit in that type of crisis.

15 So it's the case then on the following day you as a group recognised that this document was what, ambiguous or unclear or perhaps didn't support the declaring of a crisis in those circumstances?---It didn't actually follow, I suppose, a clear step by step action in this and we had to rely on us reviewing the document, referring to different parts of the document to make our decision.

20 But you recognised on that day that the document didn't clearly spell out that you could declare - - -?---The steps for us - - -

25 - - - a crisis in these circumstances when it's just reputational issues, is that right?---We believe - I believed that the document said - it could have been grouped with that but it wasn't completely spelt out and the whole point of having a crisis management or Business Continuity Plan is that it flows straight through and you can follow an exact one, but that, I suppose we hadn't brain-stormed previously about a reputational crisis specifically and that these were examples and part of our lessons learnt was that the document should be updated and that we should also remove the words "Crisis Management Plan", I suppose for the media attention that it had got, and call it the Business Continuity Plan.

30 So on the day of enacting the Crisis Management Plan, you and the ELG looked through this document, formed a view it was satisfactory for what you needed to do, it was a crisis that the City was dealing with, yes?---Yes.

35 And then the following day, you all formed a view that it wasn't actually that clear in relation to a pathway to follow when faced with the issues you were faced with on the Tuesday?---Yes, because we had to contact - we had to get legal advice.

40 Yes?---Obviously, to interpret the - - -

45 But that legal advice you say you received without Mr Douglas having the benefit of the document in front of him, is that right?---My recollection is, yes, he didn't have it in front of him.

Sir, I know we have just taken a short adjournment. I'm mindful of the time. I would be moving to another topic that will take a bit of time to go through, so

subject to your views, this might be a convenient moment to adjourn.

5 COMMISSIONER: The other point, Mr Beetham, is that I also have one or two, I'm not quite sure whether it's one or two at the moment, one or two private hearings starting at 4.30, so it may well be an appropriate time to stop for the day. I hope we can resume tomorrow and complete the evidence.

MR BEETHAM: Yes, sir.

10 COMMISSIONER: Are there any housekeeping matters from any counsel at this stage before I adjourn this public hearing? Silence is acquiescence. In that case, I will adjourn the public hearing until 10 am tomorrow morning.

15 **AT 4.24 PM THE MATTER WAS ADJOURNED
UNTIL TUESDAY, 17 SEPTEMBER 2019**

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